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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 152303. September 1, 2010]

UNIVERSITY PHYSICIANS' SERVICES, INCORPORATED, *petitioner, vs.* **MARIAN CLINICS, INC. and DR. LOURDES MABANTA,** *respondents.*

SYLLABUS

1. CIVIL LAW; LEASE; OBLIGATIONS OF THE LESSEE UPON TERMINATION OF THE LEASE.— Article 1665 of the Civil Code provides that "[t]he lessee shall return the thing leased, upon the termination of the lease, just as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause." Article 1667 likewise states that "[t]he lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault." In other words, by law, a lessee is obliged to return the thing(s) leased and be responsible for any deterioration or loss of the properties, except for those that were not his fault.

2. ID.; ID.; STIPULATIONS REQUIRING THE REPLACEMENT OF CERTAIN MOVABLES SUBJECT OF THE LEASE UPON EXPIRATION OF THE CONTRACT, HELD VALID.— Under the principle of the parties' freedom of contract, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are

not contrary to law, morals, good customs, public order, or public policy. Obligations arising from contracts have the force of law between the parties. The provisions in the lease contract x x x clearly show the parties' binding covenant that, upon the termination of the lease, certain types of movable properties subject of the lease will not simply be returned but replaced in the same quantity and/or quality in case of loss or deterioration. The IAC's final and executory July 18, 1985 Resolution, ordering UPSI "to vacate the leased properties, including the fixtures, supplies and equipment" was in effect a judicial termination of the lease. Upon the termination of the contract, UPSI's duty to return and/or replace the leased properties arose. The return and/or replacement of the leased properties being a necessary consequence of the termination of the lease, the November 5, 1990 Order of the execution court did not vary the IAC judgment which ordered the restitution of the leased assets.

3. ID.; ID.; APPLICABILITY OF ARTICLE 1667 OF THE CIVIL CODE OR THE RESPONSIBILITY OF THE LESSEE IN CASE OF LOSS OR DETERIORATION IS NOT DEPENDENT ON THE PRESENCE OF INVENTORIES.— As regards Article 1667 of the Civil Code, we hold that the applicability thereof, or of the provision of the lease contract holding UPSI liable in case of loss or deterioration of the subject properties, are not dependent on the presence, at the moment, of inventories. The execution court may conduct hearings to determine the existence of such an inventory and, if found that such is unavailable, further hearings may be conducted to reconstruct the same and determine the value of the properties that should be returned or replaced, if necessary.

APPEARANCES OF COUNSEL

Kalaw Sy Vida Selva & Campos for petitioner.
Onofre D. Manalad for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

What happens when personal properties inside leased premises are stipulated as included in the contract of lease? Does a

judgment on a suit for unlawful detainer ejecting the lessees from the subject property carry with it the return of these personal properties as well? Finally, the trickier part which is the crux of this petition: what if some of these personal properties are lost, destroyed or sold by the lessor? May the ejected lessees still be ordered to pay for their value?

This is a Petition for Review under Rule 45[1] of the Rules of Court assailing the October 18, 2001 Decision[2] of the Court of Appeals in CA-G.R. CV No. 34971, which in turn affirmed the Order[3] in Execution dated November 5, 1990 of the Regional Trial Court (RTC) of Manila.

The factual and procedural antecedents of this case are as follows:

On May 31, 1973, Marian Clinics, Inc. (MCI) and University Physicians' Services, Incorporated (UPSI) entered into a Lease Agreement whereby the former leased to the latter the Marian General Hospital (MGH) and four schools for a period of ten (10) years, from June 1, 1973 to May 31, 1983. The land, buildings, facilities, fixtures and equipment appurtenant thereto, including the Soledad Building, were included in the lease, for which a monthly rental of ₱70,000 was agreed upon.

On October 7, 1975, UPSI filed a complaint for specific performance against MCI, alleging that (1) MCI failed to deliver Certificates of Occupancy on certain buildings, and (2) there were some defective electrical installations that caused the issuance of a Condemned Installation Notice by the Office of the City Electrician of the City of Manila. UPSI prayed for the delivery of the Certificates of Occupancy of the buildings leased, for the correction of the defects in the electrical installations

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[1] While the Petition was captioned as a Petition for *Certiorari*, it was clear in the body of the Petition that petitioners are invoking Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justices Ma. Alicia Austria-Martinez and Portia Aliño-Hormachuelos, concurring; *rollo,* pp. 44-56.

[3] *Rollo,* pp. 58-61.

thereon, and damages. The complaint was docketed as Civil Case No. 99934 in the Court of First Instance[4] (CFI) of Manila, Branch 34.

On October 30, 1975, UPSI sent a letter to MCI, informing it of the filing of the complaint and the suspension of payment of the monthly rentals until the resolution of the case. On November 7, 1975, MCI sent a demand letter to UPSI for the payment of the rent.[5]

On December 18, 1975, MCI and Dr. Lourdes F. Mabanta (Dr. Mabanta) filed a Complaint for Unlawful Detainer against UPSI with the then City Court of Manila (now the Metropolitan Trial Court of Manila [MeTC]). The Complaint[6] was docketed as Civil Case No. 006665-CV.

In the meantime, UPSI filed with the CFI a Motion availing of its right to suspend payment of rentals under Article 1658[7] of the Civil Code. In an Order dated January 29, 1976, the CFI ordered that all payments shall be made to said court pending the resolution of the case.

On August 10, 1980, the City Court rendered its Decision in Civil Case No. 006665-CV, dismissing the unlawful detainer case on the finding that (1) UPSI's suspension of rental payments was justified; and (2) there was no ground to cause the rescission of the lease and warrant the ejectment of UPSI.

During the pendency of these cases, on September 1, 1980, MCI ceded to the Development Bank of the Philippines (DBP) some of the leased buildings, including certain facilities, furniture, fixtures and equipment found therein, in full settlement of MCI's

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[4] Now Regional Trial Court.

[5] Records, pp. 23-25.

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

[7] Art. 1658. The lessee may suspend the payment of the rent in case the lessor fails to make the necessary repairs or to maintain the lessee in peaceful and adequate enjoyment of the property leased.

debt to DBP. The Deed of Cession of Properties in Payment of Debt (*Dacion en Pago*) contained an annex (Annex A) which listed the properties ceded to DBP.[8] Upon the execution of the *dacion en pago*, UPSI paid ₱60,000 of the monthly rental to DBP as the new owner of the properties subject of the *dacion en pago*.

On April 21, 1983, the RTC of Manila, Branch 34, affirmed the City Court Decision, dismissing MCI's unlawful detainer case. This case was appealed to the Intermediate Appellate Court[9] (IAC), where it was docketed as CA-G.R. SP No. 00994.

On February 24, 1984, while the RTC Decision in the unlawful detainer case was under review with the IAC, UPSI bought from DBP the leased properties ceded to the latter by MCI under the *dacion en pago*.[10]

On February 28, 1985, the IAC rendered its Decision[11] reversing the rulings of the lower courts. According to the IAC, the absence of the certificates of occupancy for two of the leased buildings, being a matter between the owner of the building and the city government, did not impair the peaceful and adequate enjoyment by UPSI of the premises.[12] The IAC further held that the alleged defective electrical installations on the premises leased is no justification for the refusal to pay rentals, as, under Article 1663 of the Civil Code, the lessee may have said installations properly reinstalled at the expense of the lessor.[13] The dispositive portion of the IAC Decision reads:

Upon all the foregoing considerations, the decision of respondent court, under review, is hereby REVERSED. [UPSI] is hereby ordered

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[8] Annex N of the Petition; *rollo,* pp. 179-190.

[9] Now the Court of Appeals.

[10] Deed of Conditional Sale, Annex O of the Petition; *rollo*, pp. 191-206.

[11] *Rollo,* pp. 62-76.

[12] *Id.* at 69.

[13] *Id.* at 73.

to pay to [MCI and Dr. Mabanta] the agreed rental of PhP70,000.00 a month from November 1975 to May 31, 1983, deducting therefrom the amount already withdrawn by [MCI and Dr. Mabanta] from the rentals deposited with respondent court in Civil Case No. 99934; crediting to [UPSI] the amount of PhP60,000.00 monthly from September 24, 1980 to May 31, 1983, said amount having been paid the DBP for the properties ceded by [MCI and Dr. Mabanta] in the "*dacion en pago*"; and to pay interests on the amounts still due, at the legal rate, from the time that said amounts became due until they are fully paid.

[UPSI's] motion for reconsideration of the resolution of the Court dated October 1, 1984 is hereby GRANTED and the issue of compensation for the continued occupancy of the remaining leased premises as well as the renewal of the lease and the return of the hospital equipment, fixtures, and supplies prayed for, are hereby left to the decision in Civil Case No. 83-21275 in the Regional Trial Court in Manila. Costs against [UPSI].[14]

Both MCI and UPSI filed Motions for Reconsideration of the above Decision. MCI assailed the IAC's failure to include in its order the ejectment of UPSI from the premises and the return of the same. UPSI, however, insists that there was no violation of the lease agreement, raising the same arguments it presented before the February 28, 1985 Decision.

On July 18, 1985, the IAC issued a Resolution[15] granting MCI's Motion for Reconsideration and denying that of UPSI. Noting the finding that UPSI violated the lease agreement by failing to pay the stipulated rentals, the IAC ruled that MCI may now require UPSI to vacate the leased premises. As regards UPSI's Motion, the IAC held that the issues concerning the alleged defective electrical installations and failure to deliver certificates of occupancy had already been sufficiently passed upon. The IAC thus amended the dispositive portion of the February 28, 1985 Decision to read as follows:

Upon all the foregoing considerations, the decision of respondent court, under review, is hereby REVERSED. [UPSI] is hereby ordered

[14] *Id.* at 76.

[15] *Id.* at 77-90.

to pay to the [MCI and Dr. Mabanta] the agreed rentals of ₱70,000.00 a month from November 1975 to May 31, 1983, deducting therefrom the amount already withdrawn by [MCI and Dr. Mabanta] from the rentals deposited with respondent court in Civil Case No. 99934; crediting to [UPSI] the amount of ₱60,000.00 monthly from September 24, 1980 to May 31, 1983, said amount having been paid the DBP for the properties ceded by [MCI and Dr. Mabanta] in the "*dacion en pago*"; and to pay interests on the amounts still due, at the legal rate, from the time that said amounts became due until they are fully paid, and [UPSI] or anyone occupying the premises under it, is hereby ordered to vacate the leased properties including the fixtures, supplies and equipment, listed in Exhibit A (other than the property ceded to the Development Bank of the Philippines in the "*dacion en pago*"), more particularly, what is now occupied by Juanchito's Restaurant and the passageway of the premises still owned by [MCI and Dr. Mabanta].

[UPSI's] motion for reconsideration of the resolution of this court dated October 1, 1984 is hereby granted, and said resolution is hereby set aside.[16]

The aforementioned Resolution was appealed to this Court, where the petition was docketed as G.R. No. 71579. This Court dismissed the same. Thus, the IAC judgment attained finality.

During execution, the RTC of Manila, Branch 33, acting on MCI's "Motion for the Delivery of Leased Facilities/Equipment/ Supplies and/or the Payment of their Value if Defendant cannot Deliver Them," issued an Order dated November 5, 1990, the dispositive portion of which reads:

Accordingly, Defendant University Physician Services, Inc. is hereby directed to replace the equipment, facilities, supplies, *etc*. as reflected in the inventories. Annexes "A" to "A-8" and "B" to "B-8". If the same could not be substituted or replaced within the period of thirty days from receipt of this order, said defendant has to pay the value in the amount of ₱450,932.50 and ₱387,212.05 indicated in the aforesaid annexes. Defendant is likewise directed to return and deliver the leased facilities, equipments, supplies, *etc.*, listed in the Summary of Inventory with Annex "A" or pay the plaintiff their value

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[16] *Id.* at 79-80.

in the amount of ₱5,534,818.50 within the period of two months from receipt of this order.[17]

On November 29, 1990, UPSI appealed the above Order to the Court of Appeals, claiming that said Order varies the term of the IAC judgment, arguing that said judgment did not order the replacement of the leased properties lost or deteriorated and/or to pay their value if replacement cannot be made. UPSI further claims that the Court erred in giving MCI the discretion to determine the circumstances when replacement or payment of value shall be made. The appeal was docketed as CA-G.R. CV No. 34971.

On October 18, 2001, the Court of Appeals rendered the assailed Decision affirming the November 5, 1990 RTC Order. Thus, this Petition, in which UPSI submits the following issues for the resolution of this Court:

A. WHETHER OR NOT THE ORDER IN EXECUTION DATED NOVEMBER 5, 1990 OF THE REGIONAL TRIAL COURT, BR. 33, NCJR, MANILA IS NULL AND VOID FOR IT TOTALLY CHANGED THE FINAL JUDGMENT SOUGHT TO BE EXECUTED;

B. WHETHER OR NOT THE REGIONAL TRIAL COURT, BR. 33, NCJR, MANILA, HAS JURISDICTION IN ISSUING THE ORDER IN EXECUTION DATED NOVEMBER 5, 1990;

C. WHETHER OR NOT THE ORDER IN EXECUTION DATED NOVEMBER 5, 1990 OF THE REGIONAL TRIAL COURT CHANGED THE ORIGINAL CAUSE OF ACTION OF PRIVATE RESPONDENT FROM UNLAWFUL DETAINER TO RECOVERY OF PERSONAL PROPERTIES AND/OR REPLEVIN THUS VIOLATING PETITIONER'S RIGHT TO DUE PROCESS;

D. WHETHER OR NOT ARTICLE 1667 OF THE NEW CIVIL CODE IS SQUARELY APPLICABLE TO THE CASE AT BENCH; AND

E. WHETHER OR NOT THE OBLIGATION OF THE PETITIONER UNDER THE ORDER IN EXECUTION DATED NOVEMBER 5, 1990 FOR THE REPLACEMENT/RETURN AND/OR PAYMENT OF SUBJECT FIXTURES HAS BEEN RENDERED MOOT AND ACADEMIC FOR IT WAS EXTINGUISHED FIRST BY "*DACION EN*

[17] *Id.* at 60-61.

PAGO" DATED SEPTEMBER 1, 1980 EXECUTED BY PRIVATE RESPONDENT WITH THE DBP AND SECOND BY THE DEED OF CONDITIONAL SALE EXECUTED BY THE DBP IN FAVOR OF PETITIONER UPSI AND THIRD BY WAY OF PAYMENT IN FULL SATISFACTION OF THE JUDGMENT CREDIT IN CIVIL CASE NO. 52978.[18]

UPSI explains that the judgment sought to be executed enjoined it to do only the following:

1. to pay the back rentals with interest less the rentals consigned in court and the subject of the *dacion en pago*; and

2. to vacate the Juanchito's Restaurant and passageway as well as the fixtures appurtenant to the subject leased premises, excluding those ceded in the *dacion en pago*.

UPSI points out that the Order in Execution dated November 5, 1990 of the RTC affirmed by the Court of Appeals varied the judgment sought to be executed as it instead mandated the following:

1. to replace and/or pay the value of the equipment, facilities, supplies, *etc.*, as reflected in Annexes "A" to "A-8" and "B" to "B-8"; and

2. to return and deliver and/or pay the value of the leased facilities, equipment, supplies, *etc.*, listed in the Summary of Inventory with Annex "A".

The Court of Appeals ruled that the judgment sought to be executed reveals the intent of the court to have all of the leased properties returned upon the execution of the judgment. Indeed, the original Writ of Execution issued on April 10, 1987 included these personal properties. As some of the leased properties were not returned, causing only a partial execution of the judgment, the November 5, 1990 Order was necessitated. Said Order, according to the appellate court, did not vary the terms of the judgment but merely implemented the IAC's Decision.

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

The Court of Appeals added that a contrary ruling would result in unjust enrichment on the part of UPSI.[19]

UPSI counters that the remedy of MCI is to file an action for recovery of personal properties or collection of the value thereof, as these actions have totally different and distinct cause of actions from that of ejectment.[20] UPSI points out that the only issue to be resolved in an unlawful detainer case is possession *de facto*, *i.e.*, who between the party litigants has a better right of possession, and therefore an order to replace or pay the value of a leased property has no place in such action. UPSI argues that it was precisely because the cause of action of MCI was ejectment that the IAC merely directed UPSI to vacate the leased premises and not to replace or pay the value of the appurtenances of the leased properties if allegedly lost or destroyed.

It is settled that "a writ of execution must conform substantially to every essential particular of the judgment promulgated. Execution not in harmony with the judgment is bereft of validity. It must conform, more particularly, to that ordained or decreed in the dispositive portion of the decision."[21]

Did the writ of execution conform substantially to the essentials of the promulgated judgment?

The Court rules in the affirmative.

To begin with, it cannot be disputed that the subject matter of the lease agreement between the parties included real and personal properties. The pertinent portion of the lease contract provides:

WHEREAS, MARIAN is the owner and operator of that enterprise, consisting of a hospital and 4 schools (nursing, medical X-ray technology, midwifery and medical secretarial science) operating at

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[19] *Id.* at 52-53.

[20] *Id.* at 27.

[21] *Government Service Insurance System v. Court of Appeals*, G.R. No. 103590, January 29, 1993, 218 SCRA 233, 250.

918 United Nations Avenue, Manila, under the names and style of "MARIAN GENERAL HOSPITAL," "MARIAN SCHOOL OF NURSING," "MARIAN SCHOOL OF MIDWIFERY," and "MARIAN SCHOOL OF MEDICAL SECRETARIAL SCIENCE" (the last 4 being known collectively as "MARIAN SCHOOLS"), together with the land, buildings, facilities, furnitures (sic), fixtures and equipment appurtenant thereto, an inventory of which is hereto attached as Annex "A";

WHEREAS, MARIAN is the owner of that lot located at 918 United Nations Avenue, Manila, covered by and described in Transfer Certificate of Title No. 105778 of the Register of Deeds of Manila, together with that building existing thereon known as the "SOLEDAD BUILDING," and other constructions and improvements thereon, which are also used by the hospital and schools, a list of which is hereto attached as Annex "B";

x x x x x x x x x

NOW, THEREFORE, for and in consideration of the above premises and the terms and conditions hereinafter enumerated, the LESSORS agree to deliver unto the LESSEE, by way of lease, with right to possess, use, run and operate, that **certain hospital and schools above-described, together with the lands, buildings, facilities, furnitures (sic), fixtures and equipment listed in Annexes "A" and "B"** hereto attached (all of which – hospital, schools and assets as enumerated – are collectively referred to herein as the "LEASED ASSETS" x x x.[22] (Emphasis supplied.)

As discussed in the Decision of the Court of Appeals, the basis for the obligation of UPSI to return, and in certain circumstance, replace or pay the value of the above-mentioned appurtenances in the leased properties is both law and contract.

Article 1665 of the Civil Code provides that "[t]he lessee shall return the thing leased, upon the termination of the lease, just as he received it, save what has been lost or impaired by the lapse of time, or by ordinary wear and tear, or from an inevitable cause." Article 1667 likewise states that "[t]he lessee is responsible for the deterioration or loss of the thing leased, unless he proves that it took place without his fault." In other words, by law, a lessee is obliged to return the thing(s) leased

[22] *Rollo,* pp. 117-118.

and be responsible for any deterioration or loss of the properties, except for those that were not his fault.

However, it is significant to note that the parties saw fit to go a step further and stipulate the following:

4. During the term of this contract, the operation of the hospital and schools shall be deemed exclusively the enterprise and business of the LESSEE, and, therefore, the LESSEE:

x x x x x x x x x

(d) **Shall keep the LEASED ASSETS in good and decent condition and maintain the same at its own expense.** Maintenance shall include, but shall not be limited to, keeping all equipment in good running condition, x x x and painting and repairing the buildings as may be necessary to keep them in decent and usable condition. x x x.

x x x x x x x x x

(h) **Shall surrender quickly and peacefully unto the LESSORS all the LEASED ASSETS, x x x upon termination of this Agreement.**

x x x x x x x x x

8. In addition, the LESSEE agrees that:

(e) **All pillows, linen, sheets, mattresses, rubber sheets, x x x and such other similar breakable, losable or deteriorating items as may be included in Annex "A"** hereto attached, **shall upon termination** of this Agreement, **be replaced by the LESSEE in the same quantity** as turned over herewith by the LESSORS. **All medical equipment also, if deteriorated upon termination hereof, shall be replaced in the same quantity and quality in which they were received** by the LESSEE, **ordinary wear and tear excepted**.[23] (Emphasis supplied.)

Under the principle of the parties' freedom of contract, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.[24] Obligations arising from contracts have the force

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[23] *Id.* at 119-124.

[24] CIVIL CODE, Article 1306.

of law between the parties.[25] The provisions in the lease contract that:

> (1) All pillows, linen, sheets, mattresses, rubber sheets, x x x and such other similar breakable, losable or deteriorating items x x x shall upon termination of this Agreement, be replaced by the LESSEE in the same quantity as turned over herewith by the LESSORS; and
>
> (2) All medical equipment also, if deteriorated upon termination hereof, shall be replaced in the same quantity and quality in which they were received by the LESSEE. x x x.[26]

clearly show the parties' binding covenant that, upon the termination of the lease, certain types of movable properties subject of the lease will not simply be returned but replaced in the same quantity and/or quality in case of loss or deterioration.

The IAC's final and executory July 18, 1985 Resolution, ordering UPSI "to vacate the leased properties, including the fixtures, supplies and equipment" was in effect a judicial termination of the lease. Upon the termination of the contract, UPSI's duty to return and/or replace the leased properties arose. The return and/or replacement of the leased properties being a necessary consequence of the termination of the lease, the November 5, 1990 Order of the execution court did not vary the IAC judgment which ordered the restitution of the leased assets.

UPSI further argues that Article 1667 of the Civil Code is not applicable considering that the inventories of the leased properties which it was obligated to return was not yet established. UPSI also asserts that the order for the replacement of the subject fixtures had been rendered moot as it had already been extinguished by the *dacion en pago* dated September 1, 1980 with the DBP, by the deed of conditional sale executed by the DBP in favor of UPSI, and by UPSI's payment in full of the judgment in Civil Case No. 529778, a complaint for compensation and damages filed by MCI against UPSI.

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[25] CIVIL CODE, Article 1159.

[26] *Rollo,* p. 124.

As regards Article 1667 of the Civil Code, we hold that the applicability thereof, or of the provision of the lease contract holding UPSI liable in case of loss or deterioration of the subject properties, are not dependent on the presence, at the moment, of inventories. The execution court may conduct hearings to determine the existence of such an inventory and, if found that such is unavailable, further hearings may be conducted to reconstruct the same and determine the value of the properties that should be returned or replaced, if necessary.

On UPSI's argument that the order for the replacement of the subject properties had been rendered moot by *dacion en pago,* by a deed of conditional sale, and by payment in full satisfaction of the judgment credit in Civil Case No. 529778, we rule that the same may also be and are best threshed out in hearings to be conducted by the execution court. Indeed, there is a need for the execution court to (1) identify the mass of properties actually leased to UPSI; (2) identify and exclude the properties transferred to DBP under the *dacion en pago* and to UPSI under the conditional deed of sale; and (3) identify and exclude properties which UPSI already returned, replaced or paid the value of in Civil Case No. 529778. UPSI can be made responsible for only the remaining leased assets which have not been previously returned or replaced, if there are any. As these matters are factual in nature and it is elementary that this Court is not a trier of facts, remand of the case to the execution court would be in order.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 34971 dated October 18, 2001, which affirmed the Order in Execution dated November 5, 1990 of the Regional Trial Court of Manila, is *AFFIRMED with the MODIFICATION* that the case be *REMANDED* to the Regional Trial Court of Manila, Branch 33, for further proceedings on the execution of the judgment in Civil Case No. 135396. Costs against petitioner University Physicians' Services, Incorporated.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 161746. September 1, 2010]

EUGENIO FELICIANO, substituted by his wife CEFERINA DE PALMA-FELICIANO, ANGELINA DE LEON, representing the heirs of ESTEBAN FELICIANO, TRINIDAD VALIENTE, and BASILIA TRINIDAD, represented by her son DOMINADOR T. FELICIANO, *petitioners, vs.* **PEDRO CANOZA, DELIA FELICIANO, ROSAURO FELICIANO, ELSA FELICIANO and PONCIANO FELICIANO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; PRESCRIPTION; WAIVER OF THE DEFENSE OF PRESCRIPTION, NOT A CASE OF.— While respondents have not assigned the defense of prescription in their appeal before the CA, they raised such defense in their December 1, 1993 Answer as one (1) of their affirmative defenses. In their brief before the CA, respondents specifically prayed for the reliefs mentioned in their respective answers before the trial court. Thus, by reference, they are deemed to have adopted the defense of prescription, and could not properly be said to have waived the defense of prescription.

2. ID.; ID.; ID.; AN ACTION TO ANNUL A DEED OF EXTRAJUDICIAL PARTITION MUST BE BROUGHT WITHIN FOUR YEARS FROM THE DISCOVERY OF FRAUD; REGISTRATION OF FREE PATENT IS DEEMED A CONSTRUCTIVE NOTICE OF FRAUD.— We affirm the ruling of the CA. As the records show, the heirs of Doroteo and Esteban did not participate in the extrajudicial partition executed by Salina with the other compulsory heirs, Leona, Maria and Pedro. Undeniably, the said deed was fraudulently obtained as it deprived the known heirs of Doroteo and Esteban of their shares in the estate. A deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious. Hence, an action to set it aside on the ground of fraud could be instituted.

> Such action for the annulment of the said partition, however, must be brought within four (4) years from the discovery of the fraud. x x x Evidently, the applicable prescriptive period to institute the action to annul the deed of extrajudicial settlement was four (4) years counted from the discovery of fraud as held in the case of *Gerona v. De Guzman*. However, the records show that petitioners' complaint was filed only on October 18, 1993, or almost sixteen (16) years after Jacinto Feliciano was issued Free Patent No. (IV-4) 012293 on November 28, 1977, and almost fourteen (14) years from the time Pedro Canoza was issued OCT No. P-364 on November 28, 1979. As petitioners are deemed to have obtained constructive notice of the fraud upon the registration of the Free Patent, they clearly failed to institute the present civil action within the allowable period.

APPEARANCES OF COUNSEL

Vicente C. Angeles for petitioners.
Wilfredo O. Arceo for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to annul and set aside the Decision[1] dated June 26, 2003 and Resolution[2] dated January 15, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 61888. The CA had reversed the Decision[3] dated August 3, 1998 of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 11, in Civil Case No. 819-M-93 and dismissed petitioners' complaint on the ground of prescription.

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[1] *Rollo*, pp. 32-44. Penned by Associate Justice Remedios A. Salazar-Fernando with Associate Justices Delilah Vidallon-Magtolis and Edgardo F. Sundiam concurring.

[2] *Id.* at 45-46.

[3] *Id.* at 28-31. Penned by Judge Basilio R. Gabo, Jr.

The facts are as follows:

When Antonio Feliciano passed away on May 20, 1930, he left behind his only property, a parcel of land located at Bunga[4] Mayor, Bustos, Bulacan. The land had an area of 1,125 square meters and was evidenced by Tax Declaration No. 1402[5] in his name. On March 28, 1972, Leona, Maria, Pedro and Salina, all surnamed Feliciano, declared themselves to be the only surviving heirs of Antonio Feliciano, with the exception of Salina. They executed an extrajudicial settlement of Antonio Feliciano's estate[6] and appropriated among themselves the said parcel of land, to the exclusion of the heirs of **Esteban Feliciano and Doroteo Feliciano**, deceased children of Antonio Feliciano. On even date, Leona, Maria, Pedro and Salina executed a deed of absolute sale or *Kasulatan sa Ganap Na Bilihan* over the property in favor of the late Jacinto Feliciano (Pedro's portion), Felisa Feliciano (Salina's portion) and Pedro Canoza (Leona and Maria's portions).[7]

During his lifetime, Jacinto Feliciano applied for a free patent over the portion of land he bought, declaring that the same was a public land, first occupied and cultivated by Pedro Feliciano.[8] Jacinto was issued Free Patent No. (IV-4) 012293 on November 28, 1977[9] and the same was forwarded to the Register of Deeds of Malolos, Bulacan, but unfortunately, it was burned on March 7, 1987. Pedro Canoza, for his part, also applied for a free patent over the portion of land which he bought, claiming that the same was public land, first occupied and cultivated by Leona and Maria Feliciano.[10] He was issued Free Patent No. (IV-4) 012292,

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[4] Also spelled as "Bonga" in some parts of the records.

[5] Records, pp. 9-10.

[6] *Id.* at 11.

[7] *Id.* at 12.

[8] *Id.* at 13-14.

[9] *Rollo*, p. 43.

[10] Records, pp. 15-16.

now covered by Original Certificate of Title (OCT) No. P-364,[11] on February 23, 1979.

On October 18, 1993, Eugenio Feliciano and Angelina Feliciano-de Leon, surviving heirs of the late **Esteban Feliciano**, and Trinidad Feliciano-Valiente and Basilia Feliciano-Trinidad, surviving children of the late **Doroteo Feliciano**, filed a complaint[12] against Salina Feliciano, Felisa Feliciano, Pedro Canoza and the heirs of the late Jacinto Feliciano, namely Delia, Rosauro, Elsa, Nardo and Ponciano, all surnamed Feliciano, for the Declaration of Nullity of Documents and Title, Recovery of Real Property and Damages. They alleged that the settlement of the estate and sale were done without their participation and consent as heirs of Esteban and Doroteo. Likewise, they averred that the ancestral home of the Felicianos is erected on the subject property and that they have occupied the same since birth. Canoza and Jacinto falsely declared that the property was not occupied, so their titles to the property should be declared null and void on the ground that they have made false statements in their respective applications for free patent.

On November 4, 1993, before an Answer could be filed, the petitioners amended their complaint to include the allegation that they sought to recover the shares of their fathers, Esteban and Doroteo, which they could have acquired as heirs of Antonio Feliciano.[13]

In their Answer,[14] respondent Pedro Canoza and his spouse, respondent Delia Feliciano, alleged that they were buyers in good faith and for value. They likewise contended that assuming that there was preterition of legal heirs, they never took part in it. As affirmative defenses, they alleged that the complaint failed to state a cause of action; the lower court had no jurisdiction as the subject of the case were free patents and therefore prior exhaustion of administrative remedies was required; the case

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[11] *Id.* at 68-69.

[12] *Id.* at 1-8.

[13] *Id.* at 20-27.

[14] *Id.* at 39-45.

was prematurely filed; no effort was exerted towards a settlement; plaintiffs' right has prescribed; Eugenio Feliciano was a mere squatter who should be ordered to vacate; the deed of sale was validly, genuinely and duly executed; Eugenio and Angelina were guilty of misleading the court because there were other heirs who were indispensable parties but who were not included; and Presidential Decree No. 1508 or the Revised *Katarungang Pambarangay* Law was not resorted to by plaintiffs.

Respondents Rosauro Feliciano, Elsa Feliciano and Ponciano Feliciano likewise filed an Answer[15] containing the same allegations and defenses as respondents Pedro Canoza and Delia Feliciano. The other defendants, Salina Feliciano, Felisa Feliciano and Nardo Feliciano were declared in default.

On August 3, 1998, the trial court rendered a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and against the defendants, as follows:
>
> 1. Declaring the extra-judicial settlement of estate of Antonio Feliciano null and void;
> 2. Declaring the sale of the property in question to Pedro Canoza, Felisa Feliciano and Jacinto Feliciano null and void;
> 3. Declaring the original certificate of Title No. 364 in the name of Pedro Canoza and the certificates of titles in the name of defendants over Lot 1874-Cad-344, Bustos Cadastre (Tax Declaration No. 1402) as null and void;
> 4. Ordering defendants to reconvey ownership and possession of said property to plaintiffs subject to a just and equitable partition thereof by and between all interested parties.
>
> No pronouncement as to cost.
>
> SO ORDERED.[16]

The trial court explained that by operation of law, the plaintiffs (herein petitioners) have as much right as Leona, Maria, Pedro

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[15] *Id.* at 86-88.

[16] *Rollo*, pp. 30-31.

and Salina Feliciano to inherit the property in question, and they cannot be deprived of their right unless by disinheritance for causes set forth in the law. When Leona Feliciano, Pedro Feliciano, Maria Feliciano and Salina Feliciano appropriated the disputed lot solely to themselves through the extrajudicial settlement of estate, they committed a fraudulent act. To the extent that Doroteo and Esteban were deprived of their rightful share, the said out-of-court settlement was annullable, said the trial court. The trial court also declared that Pedro Canoza was not a buyer in good faith of Leona and Maria's shares. Records show that Pedro Canoza's live-in partner, Delia Feliciano, was a relative of the petitioners and the other defendants; thus, he could be reasonably charged with the knowledge of petitioners' status *vis-à-vis* the subject property. The acquisition by Canoza and Jacinto Feliciano of free patent titles over portions of the contested lot also did not legitimize their ownership thereof, as they acquired no greater rights over the property than their predecessors-in-interest, having merely stepped into their shoes.[17]

Aggrieved, respondents appealed to the CA with the following assignment of errors:

I. THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN ADMITTING IN EVIDENCE THE EXTRA-JUDICIAL SETTLEMENT OF ESTATE OF ANTONIO FELICIANO (EXHIBIT "B")[;]

II. THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN DECLARING AS NULL AND VOID THE EXTRA-JUDICIAL SETTLEMENT OF ESTATE OF ANTONIO FELICIANO (EXHIBIT "B")[;]

III. THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN DECLARING AS NULL AND VOID THE DEED OF SALE (EXHIBIT "C") IN FAVOR OF JACINTO FELICIANO, FELISA FELICIANO AND PEDRO CANOZA[;]

IV. THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN DECLARING O.C.T. NO. 364 IN THE NAME OF PEDRO CANOZA AND CERTIFICATES OF TITLE OF DEFENDANTS AS NULL AND VOID[; AND]

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

V. THE LOWER COURT COMMITTED A REVERSIBLE ERROR IN ORDERING DEFENDANTS TO RECONVEY OWNERSHIP AND POSSESSION OF THE SUBJECT PROPERTY TO PLAINTIFFS SUBJECT TO A JUST AND EQUITABLE PARTITION THEREOF BY AND BETWEEN ALL INTERESTED PARTIES.[18]

On June 26, 2003, the appellate court rendered the assailed Decision reversing the trial court's decision. The CA held,

> WHEREFORE, premises considered, the appeal is hereby GRANTED. Accordingly, the Decision dated August 3, 1998 of the Regional Trial Court, Branch 11 (XI), Malolos, Bulacan in Civil Case No. 819-M-93 is hereby REVERSED AND SET ASIDE and plaintiffs-appellees' complaint is ordered DISMISSED for being time-barred.
>
> SO ORDERED.[19]

The CA ruled that prescription had set in, citing the case of *Pedrosa v. Court of Appeals*,[20] which held that the applicable prescriptive period to annul a deed of extrajudicial settlement is four (4) years from the discovery of the fraud. It reasoned that when petitioners filed the instant complaint for the annulment of the extrajudicial settlement of Antonio Feliciano's estate, more than four (4) years had elapsed from the issuance of the free patents. As regards the portion claimed by the late Jacinto Feliciano, sixteen (16) years had elapsed from the time the free patent was issued to him before petitioners filed the complaint, while in the case of Canoza, fourteen (14) years had elapsed from the issuance of the free patent in Canoza's favor. Hence, according to the CA, the action for the annulment of the documents had prescribed.

Petitioners filed a motion for reconsideration of the aforesaid Decision but it was denied by the CA in the Resolution dated January 15, 2004 for lack of merit.

Hence, this petition.

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[18] CA *rollo*, pp. 55-56.

[19] *Rollo*, p. 43.

[20] G.R. No. 118680, March 5, 2001, 353 SCRA 620, 627-628, citing *Gerona v. De Guzman*, No. L-19060, May 29, 1964, 11 SCRA 153, 157.

The grounds relied upon by the petitioners are the following:

A. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN GRANTING THE APPEAL BY ORDERING THE DISMISSAL OF THE COMPLAINT ON GROUND OF PRESCRIPTION OF ACTION, DESPITE THE FACT THAT THE ISSUE OF PRESCRIPTION OF ACTION HAS NOT BEEN RAISED ON APPEAL AS AN ISSUE, NOR ASSIGNED AS AN ERROR, NOR DEFINED IN THE PRE-TRIAL ORDER AS AMONG THE ISSUES TO BE RESOLVED;

B. ASSUMING THAT PRESCRIPTION OF ACTION MAY BE TAKEN AS A GROUND FOR DISMISSING THE COMPLAINT EVEN IF NOT RAISED ON APPEAL, NOR ASSIGNED AS AMONG THE ERRORS COMMITTED, THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT THE ACTION PRESCRIBES IN FOUR YEARS, OR IN NOT HOLDING THAT THE ACTION IS IMPRESCRIPTIBLE;

C. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN NOT AFFIRMING THE DECISION OF THE TRIAL COURT.[21]

Essentially, the issue for our resolution is whether the CA erred in reversing the trial court's decision.

Petitioners allege that the CA gravely erred in granting the appeal and in dismissing the complaint on the ground of prescription of action because that issue was never raised on appeal, nor defined as one (1) of the issues outlined and limited in the pre-trial order.

We do not agree.

While respondents have not assigned the defense of prescription in their appeal before the CA, they raised such defense in their December 1, 1993 Answer as one (1) of their affirmative defenses.[22] In their brief before the CA, respondents specifically prayed for the reliefs mentioned in their respective answers before the trial court. Thus, by reference, they are deemed to

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[21] *Rollo*, p. 19.

[22] Records, p. 42.

have adopted the defense of prescription, and could not properly be said to have waived the defense of prescription.

Moreover, Rule 9, Section 1 of the 1997 Rules of Civil Procedure, as amended, provides that when it appears from the pleadings or the evidence on record that the action is already barred by the statute of limitations, the court shall dismiss the claim. Thus, in *Gicano v. Gegato*,[23] we held:

> We have ruled that trial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred x x x; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense; or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings, or where a defendant has been declared in default. What is essential only, to repeat, is that the facts demonstrating the lapse of the prescriptive period, be otherwise sufficiently and satisfactorily apparent on the record: either in the averments of the plaintiffs complaint, or otherwise established by the evidence. (Underscoring supplied.)

But did the CA nonetheless commit error when it held that the applicable prescriptive period is four (4) years?

Petitioners argue that the CA erroneously treated the action they filed at the trial court as one (1) for annulment of the extrajudicial settlement and applied the four (4)-year prescriptive period in dismissing the same. They contend that the action they filed was one (1) for Declaration of Nullity of Documents and Titles, Recovery of Real Property and Damages, and as such, their action was imprescriptible pursuant to Article 1410[24] of the Civil Code.

Respondents, for their part, maintain that the CA did not err in holding that the deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of the partition

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[23] No. L-63575, January 20, 1988, 157 SCRA 140, 145-146.

[24] ART. 1410. The action or defense for the declaration of the inexistence of a contract does not prescribe.

and did not consent thereto, is merely fraudulent and not void. They stress that the action to rescind the partition based on fraud prescribes in four (4) years counted from the date of registration, which is constructive notice to the whole world.

We affirm the ruling of the CA. As the records show, the heirs of Doroteo and Esteban did not participate in the extrajudicial partition executed by Salina with the other compulsory heirs, Leona, Maria and Pedro. Undeniably, the said deed was fraudulently obtained as it deprived the known heirs of Doroteo and Esteban of their shares in the estate. A deed of extrajudicial partition executed without including some of the heirs, who had no knowledge of and consent to the same, is fraudulent and vicious.[25] Hence, an action to set it aside on the ground of fraud could be instituted. Such action for the annulment of the said partition, however, must be brought within four (4) years from the discovery of the fraud.

In *Gerona v. De Guzman*,[26] respondents therein executed a deed of extrajudicial settlement declaring themselves to be the sole heirs of the late Marcelo de Guzman. They secured new transfer certificates of title in their own names, thereby excluding the petitioners therein from the estate of the deceased. The petitioners brought an action for the annulment of the said deed upon the ground that the same is tainted with fraud. The Court held,

> **Inasmuch as petitioners seek to annul the aforementioned deed of "extra-judicial settlement" upon the ground of fraud in the execution thereof, the action therefor may be filed within four (4) years from the discovery of the fraud** (*Mauricio v. Villanueva*, L-11072, September 24, 1959). Such discovery is deemed to have taken place, in the case at bar, on June 25, 1948, when said instrument was filed with the Register of Deeds and new certificates of title were issued in the name of respondents exclusively, for the registration

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[25] *Pedrosa v. Court of Appeals*, *supra* at 628, citing *Villaluz v. Neme*, No. L-14676, January 31, 1963, 7 SCRA 27, 30.

[26] No. L-19060, May 29, 1964, 11 SCRA 153.

of the deed of extra-judicial settlement constitute constructive notice to the whole world.[27] (Emphasis and underscoring supplied.)

Evidently, the applicable prescriptive period to institute the action to annul the deed of extrajudicial settlement was four (4) years counted from the discovery of fraud as held in the case of *Gerona v. De Guzman*.[28] However, the records show that petitioners' complaint was filed only on October 18, 1993, or almost sixteen (16) years after Jacinto Feliciano was issued Free Patent No. (IV-4) 012293 on November 28, 1977, and almost fourteen (14) years from the time Pedro Canoza was issued OCT No. P-364 on November 28, 1979. As petitioners are deemed to have obtained constructive notice of the fraud upon the registration of the Free Patent, they clearly failed to institute the present civil action within the allowable period. The same result obtains even if their complaint is treated as one (1) essentially for reconveyance as more than ten (10) years have passed since petitioners' cause of action accrued. The CA committed no error in dismissing their complaint.

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision dated June 26, 2003 and Resolution dated January 15, 2004, of the Court of Appeals in CA-G.R. CV No. 61888 are *AFFIRMED*.

With costs against petitioners.

SO ORDERED.

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

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[27] *Id.* at 157, citing *Diaz v. Gorricho*, No. L-11229, March 29, 1958; *Avecilla v. Yatco*, L-11578, May 14, 1958; *J.M. Tuason & Co., Inc. v. Magdangal*, L-15539, January 30, 1962; *Lopez v. Gonzaga*, L-18788, January 31, 1964.

[28] *Supra* note 26.

[*] Designated additional member per Special Order No. 879 dated August 13, 2010.

THIRD DIVISION

[G.R. No. 165803. September 1, 2010]

SPOUSES REX AND CONCEPCION AGGABAO, *petitioners, vs.* **DIONISIO Z. PARULAN, JR. and MA. ELENA PARULAN,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; ARTICLE 124 THEREOF, WHEN APPLICABLE.— [T]he sale was made on March 18, 1991, or after August 3, 1988, the effectivity of the *Family Code*. The proper law to apply is, therefore, Article 124 of the *Family Code*, for it is settled that any alienation or encumbrance of conjugal property made during the effectivity of the *Family Code* is governed by Article 124 of the *Family Code*.

2. ID.; ID.; PROVISIONS OF THE FAMILY CODE MAY BE APPLIED RETROACTIVELY; APPLICATION.— [A]ccording to Article 256 of the *Family Code*, the provisions of the *Family Code* may apply retroactively provided no vested rights are impaired. In *Tumlos v. Fernandez*, the Court rejected the petitioner's argument that the *Family Code* did not apply because the acquisition of the contested property had occurred prior to the effectivity of the *Family Code*, and pointed out that Article 256 provided that the *Family Code* could apply retroactively if the application would not prejudice vested or acquired rights existing before the effectivity of the *Family Code*. Herein, however, the petitioners did not show any vested right in the property acquired prior to August 3, 1988 that exempted their situation from the retroactive application of the *Family Code*.

3. ID.; AGENCY; AN AUTHORITY TO DISPOSE PROPERTY CANNOT PROCEED FROM AN AUTHORITY TO ADMINISTER.— [W]e stress that the power of administration does not include acts of disposition or encumbrance, which are acts of strict ownership. As such, an authority to dispose cannot proceed from an authority to administer, and *vice versa*, for the two powers may only be exercised by an agent by following the provisions on agency of the *Civil Code* (from

Article 1876 to Article 1878). Specifically, the apparent authority of Atty. Parulan, being a special agency, was limited to the sale of the property in question, and did not include or extend to the power to administer the property.

4. CIVIL LAW; FAMILY CODE; SALE OF CONJUGAL PROPERTY WITHOUT THE CONSENT OF THE HUSBAND IS VOID; IT CANNOT BE RATIFIED.— [T]he petitioners' insistence that Atty. Parulan's making of a counter-offer during the March 25, 1991 meeting ratified the sale merits no consideration. Under Article 124 of the *Family Code*, the transaction executed *sans* the written consent of Dionisio or the proper court order was void; hence, ratification did not occur, for a void contract could not be ratified.

5. ID.; ID.; ID.; THE VOID SALE OF CONJUGAL PROPERTY IS CONSTRUED AS A CONTINUING OFFER UNTIL THE OFFER IS WITHDRAWN.— [W]e agree with Dionisio that the void sale was a continuing offer from the petitioners and Ma. Elena that Dionisio had the option of accepting or rejecting before the offer was withdrawn by either or both Ma. Elena and the petitioners. The last sentence of the second paragraph of Article 124 of the *Family Code* makes this clear, stating that in the absence of the other spouse's consent, the transaction should be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or upon authorization by the court before the offer is withdrawn by either or both offerors.

6. ID.; SALES; BUYERS IN GOOD FAITH; TWO KINDS OF DILIGENCE THAT MUST BE OBSERVED BY THE BUYERS OF CONJUGAL PROPERTY.— Article 124 of the *Family Code* categorically requires the consent of *both* spouses before the conjugal property may be disposed of by sale, mortgage, or other modes of disposition. In *Bautista v. Silva*, the Court erected a standard to determine the good faith of the buyers dealing with a seller who had title to and possession of the land but whose capacity to sell was restricted, in that the consent of the other spouse was required before the conveyance, declaring that in order to prove good faith in such a situation, the buyers must show that they inquired not only into the title of the seller *but also into the seller's capacity to*

sell. Thus, the buyers of conjugal property must observe two kinds of requisite diligence, namely: (*a*) the diligence in verifying the validity of the title covering the property; and (*b*) the diligence in inquiring into the authority of the transacting spouse to sell conjugal property in behalf of the other spouse.

7. ID.; ID.; ID.; CIRCUMSTANCES NEGATING THE CLAIM OF BUYERS IN GOOD FAITH OF CONJUGAL PROPERTY.— Firstly, the petitioners knew fully well that the law demanded the written consent of Dionisio to the sale, but yet they did not present evidence to show that they had made inquiries into the circumstances behind the execution of the SPA purportedly executed by Dionisio in favor of Ma. Elena. Had they made the appropriate inquiries, and not simply accepted the SPA for what it represented on its face, they would have uncovered soon enough that the respondents had been estranged from each other and were under *de facto* separation, and that they probably held conflicting interests that would negate the existence of an agency between them. To lift this doubt, they must, of necessity, further inquire into the SPA of Ma. Elena. x x x Indeed, an unquestioning reliance by the petitioners on Ma. Elena's SPA without first taking precautions to verify its authenticity was not a prudent buyer's move. x x x Secondly, the final payment of ₱700,000.00 even without the owner's duplicate copy of the TCT No. 63376 being handed to them by Ma. Elena indicated a revealing lack of precaution on the part of the petitioners. It is true that she promised to produce and deliver the owner's copy within a week because her relative having custody of it had gone to Hongkong, but their passivity in such an essential matter was puzzling light of their earlier alacrity in immediately and diligently validating the TCTs to the extent of inquiring at the Los Baños Rural Bank about the annotated mortgage. Yet, they could have rightly withheld the final payment of the balance. That they did not do so reflected their lack of due care in dealing with Ma. Elena. Lastly, another reason rendered the petitioners' good faith incredible. They did not take immediate action against Ma. Elena upon discovering that the owner's original copy of TCT No. 63376 was in the possession of Atty. Parulan, contrary to Elena's representation.

APPEARANCES OF COUNSEL

Espina & Yumul-Espina for petitioners.
Parulan Soncuya Rama & Trinidad Law Offices for Dionisio Parulan, Jr.

D E C I S I O N

BERSAMIN, *J.*:

On July 26, 2000, the Regional Trial Court (RTC), Branch 136, in Makati City annulled the deed of absolute sale executed in favor of the petitioners covering two parcels of registered land the respondents owned for want of the written consent of respondent husband Dionisio Parulan, Jr. On July 2, 2004, in C.A.-G.R. CV No. 69044,[1] the Court of Appeals (CA) affirmed the RTC decision.

Hence, the petitioners appeal by petition for review on *certiorari*, seeking to reverse the decision of the CA. They present as the main issue whether the sale of conjugal property made by respondent wife by presenting a special power of attorney to sell (SPA) purportedly executed by respondent husband in her favor was validly made to the vendees, who allegedly acted in good faith and paid the full purchase price, despite the showing by the husband that his signature on the SPA had been forged and that the SPA had been executed during his absence from the country.

We resolve the main issue against the vendees and sustain the CA's finding that the vendees were not buyers in good faith, because they did not exercise the necessary prudence to inquire into the wife's authority to sell. We hold that the sale of conjugal property without the consent of the husband was not merely voidable but void; hence, it could not be ratified.

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[1] *Rollo*, pp. 55-66; penned by Associate Justice Jose C. Mendoza (now a Member of this Court), with Associate Justice Eugenio S. Labitoria (retired) and Associate Justice Edgardo P. Cruz (retired) concurring.

Antecedents

Involved in this action are two parcels of land and their improvements (property) located at No. 49 Miguel Cuaderno Street, Executive Village, BF Homes, Parañaque City and registered under Transfer Certificate of Title (TCT) No. 63376[2] and TCT No. 63377[3] in the name of respondents Spouses Maria Elena A. Parulan (Ma. Elena) and Dionisio Z. Parulan, Jr. (Dionisio), who have been estranged from one another.

In January 1991, real estate broker Marta K. Atanacio (Atanacio) offered the property to the petitioners, who initially did not show interest due to the rundown condition of the improvements. But Atanacio's persistence prevailed upon them, so that on February 2, 1991, they and Atanacio met with Ma. Elena at the site of the property. During their meeting, Ma. Elena showed to them the following documents, namely: (*a*) the owner's original copy of TCT No. 63376; (*b*) a certified true copy of TCT No. 63377; (*c*) three tax declarations; and (*d*) a copy of the special power of attorney (SPA) dated January 7, 1991 executed by Dionisio authorizing Ma. Elena to sell the property.[4] Before the meeting ended, they paid ₱20,000.00 as earnest money, for which Ma. Elena executed a handwritten *Receipt of Earnest Money*, whereby the parties stipulated that: (*a*) they would pay an additional payment of ₱130,000.00 on February 4, 1991; (*b*) they would pay the balance of the bank loan of the respondents amounting to ₱650,000.00 on or before February 15, 1991; and (*c*) they would make the final payment of ₱700,000.00 once Ma. Elena turned over the property on March 31, 1991.[5]

On February 4, 1991, the petitioners went to the Office of the Register of Deeds and the Assessor's Office of Parañaque City to verify the TCTs shown by Ma. Elena in the company

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[2] *Id.*, pp. 174-175.

[3] *Id.*, pp. 176-178.

[4] *Id.*, p. 23.

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

of Atanacio and her husband (also a licensed broker).[6] There, they discovered that the lot under TCT No. 63376 had been encumbered to Banco Filipino in 1983 or 1984, but that the encumbrance had already been cancelled due to the full payment of the obligation.[7] They noticed that the Banco Filipino loan had been effected through an SPA executed by Dionisio in favor of Ma. Elena.[8] They found on TCT No. 63377 the annotation of an existing mortgage in favor of the Los Baños Rural Bank, also effected through an SPA executed by Dionisio in favor of Ma. Elena, coupled with a copy of a court order authorizing Ma. Elena to mortgage the lot to secure a loan of ₱500,000.00.[9]

The petitioners and Atanacio next inquired about the mortgage and the court order annotated on TCT No. 63377 at the Los Baños Rural Bank. There, they met with Atty. Noel Zarate, the bank's legal counsel, who related that the bank had asked for the court order because the lot involved was conjugal property.[10]

Following their verification, the petitioners delivered ₱130,000.00 as additional down payment on February 4, 1991; and ₱650,000.00 to the Los Baños Rural Bank on February 12, 1991, which then released the owner's duplicate copy of TCT No. 63377 to them.[11]

On March 18, 1991, the petitioners delivered the final amount of ₱700,000.00 to Ma. Elena, who executed a deed of absolute sale in their favor. However, Ma. Elena did not turn over the owner's duplicate copy of TCT No. 63376, claiming that said copy was in the possession of a relative who was then in Hongkong.[12] She assured them that the owner's duplicate copy of TCT No. 63376 would be turned over after a week.

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[6] *Id.*, p. 23.

[7] *Id.*, pp. 23-24.

[8] *Id.*, p. 23.

[9] *Id.*, pp. 23-24.

[10] *Id.*

[11] *Id.*, pp. 24-25.

[12] *Id.*, p. 57.

On March 19, 1991, TCT No. 63377 was cancelled and a new one was issued in the name of the petitioners.

Ma. Elena did not turn over the duplicate owner's copy of TCT No. 63376 as promised. In due time, the petitioners learned that the duplicate owner's copy of TCT No. 63376 had been all along in the custody of Atty. Jeremy Z. Parulan, who appeared to hold an SPA executed by his brother Dionisio authorizing him to sell *both* lots.[13]

At Atanacio's instance, the petitioners met on March 25, 1991 with Atty. Parulan at the Manila Peninsula.[14] For that meeting, they were accompanied by one Atty. Olandesca.[15] They recalled that Atty. Parulan "smugly demanded ₱800,000.00" in exchange for the duplicate owner's copy of TCT No. 63376, because Atty. Parulan represented the current value of the property to be ₱1.5 million. As a counter-offer, however, they tendered ₱250,000.00, which Atty. Parulan declined,[16] giving them only until April 5, 1991 to decide.

Hearing nothing more from the petitioners, Atty. Parulan decided to call them on April 5, 1991, but they informed him that they had already fully paid to Ma. Elena.[17]

Thus, on April 15, 1991, Dionisio, through Atty. Parulan, commenced an action (Civil Case No. 91-1005 entitled *Dionisio Z. Parulan, Jr., represented by Jeremy Z. Parulan, as attorney in fact, v. Ma. Elena Parulan, Sps. Rex and Coney Aggabao),* praying for the declaration of the nullity of the deed of absolute sale executed by Ma. Elena, and the cancellation of the title issued to the petitioners by virtue thereof.

In turn, the petitioners filed on July 12, 1991 their own action for specific performance with damages against the respondents.

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[13] *Id.,* p. 110.

[14] *Id.,* p. 26.

[15] *Id.,* p. 110.

[16] *Id.,* p. 26.

[17] *Id.,* p. 105.

Both cases were consolidated for trial and judgment in the RTC.[18]

Ruling of the RTC

After trial, the RTC rendered judgment, as follows:

WHEREFORE, and in consideration of the foregoing, judgment is hereby rendered in favor of plaintiff Dionisio A. Parulan, Jr. and against defendants Ma. Elena Parulan and the Sps. Rex and Concepcion Aggabao, without prejudice to any action that may be filed by the Sps. Aggabao against co-defendant Ma. Elena Parulan for the amounts they paid her for the purchase of the subject lots, as follows:

1. The Deed of Absolute Sale dated March 18, 1991 covering the sale of the lot located at No. 49 M. Cuaderno St., Executive Village, BF Homes, Parañaque, Metro Manila, and covered by TCT Nos. 63376 and 63377 is declared null and void.

2. Defendant Mrs. Elena Parulan is directed to pay litigation expenses amounting to ₱50,000.00 and the costs of the suit.

SO ORDERED.[19]

The RTC declared that the SPA in the hands of Ma. Elena was a forgery, based on its finding that Dionisio had been out of the country at the time of the execution of the SPA;[20] that NBI Sr. Document Examiner Rhoda B. Flores had certified that the signature appearing on the SPA purporting to be that of Dionisio and the set of standard sample signatures of Dionisio had not been written by one and the same person;[21] and that Record Officer III Eliseo O. Terenco and Clerk of Court Jesus P. Maningas of the Manila RTC had issued a certification to the effect that Atty. Alfred Datingaling, the Notary Public who had notarized the SPA, had not been included in the list of Notaries Public in Manila for the year 1990-1991.[22]

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[18] *Id.*, pp. 14-15.

[19] *Id.*, p. 56.

[20] *Id.*, p. 58.

[21] *Id.*, p. 59.

[22] *Id.*, pp. 58-59.

The RTC rejected the petitioners' defense of being buyers in good faith because of their failure to exercise ordinary prudence, including demanding from Ma. Elena a court order authorizing her to sell the properties similar to the order that the Los Baños Rural Bank had required before accepting the mortgage of the property.[23] It observed that they had appeared to be in a hurry to consummate the transaction despite Atanacio's advice that they first consult a lawyer before buying the property; that with ordinary prudence, they should first have obtained the owner's duplicate copies of the TCTs before paying the full amount of the consideration; and that the sale was void pursuant to Article 124 of the *Family Code*.[24]

Ruling of the CA

As stated, the CA affirmed the RTC, opining that Article 124 of the *Family Code* applied because Dionisio had not consented to the sale of the conjugal property by Ma. Elena; and that the RTC correctly found the SPA to be a forgery.

The CA denied the petitioners' motion for reconsideration.[25]

Issues

The petitioners now make two arguments: (1) they were buyers in good faith; and (2) the CA erred in affirming the RTC's finding that the sale between Mrs. Elena and the petitioners had been a nullity under Article 124 of the *Family Code*.

The petitioners impute error to the CA for not applying the "ordinary prudent man's standard" in determining their status as buyers in good faith. They contend that the more appropriate law to apply was Article 173 of the *Civil Code*, not Article 124 of the *Family Code*; and that even if the SPA held by Ma. Elena was a forgery, the ruling in *Veloso v. Court of Appeals*[26] warranted a judgment in their favor.

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[23] *Id.*, pp. 59-60.

[24] *Id.*, p. 60.

[25] *Supra*, at note 3.

[26] G.R. No. 102737, August 21, 1996, 260 SCRA 593.

Restated, the issues for consideration and resolution are as follows:

1) Which between Article 173 of the *Civil Code* and Article 124 of the *Family Code* should apply to the sale of the conjugal property executed without the consent of Dionisio?

2) Might the petitioners be considered in good faith at the time of their purchase of the property?

3) Might the ruling in *Veloso v. Court of Appeals* be applied in favor of the petitioners despite the finding of forgery of the SPA?

Ruling

The petition has no merit. We sustain the CA.

1.

Article 124, *Family Code*, applies to sale of conjugal properties made after the effectivity of the *Family Code*

The petitioners submit that Article 173 of the *Civil Code*, not Article 124 of the *Family Code*, governed the property relations of the respondents because they had been married prior to the effectivity of the *Family Code*; and that the second paragraph of Article 124 of the *Family Code* should not apply because the other spouse held the administration over the conjugal property. They argue that notwithstanding his absence from the country Dionisio still held the administration of the conjugal property by virtue of his execution of the SPA in favor of his brother; and that even assuming that Article 124 of the *Family Code* properly applied, Dionisio ratified the sale through Atty. Parulan's counter-offer during the March 25, 1991 meeting.

We do not subscribe to the petitioners' submissions.

To start with, Article 254[27] of the *Family Code* has expressly repealed several titles under the *Civil Code*, among them the

[27] Article 254. Titles III, IV, V, VI, VII, VIII, IX, XI and XV of Book I of Republic Act No. 386, otherwise known as the Civil Code of the Philippines, as amended, and Articles 17, 18, 19, 27, 28, 29, 30, 31, 39,

entire Title VI in which the provisions on the property relations between husband and wife, Article 173 included, are found.

Secondly, the sale was made on March 18, 1991, or after August 3, 1988, the effectivity of the *Family Code*. The proper law to apply is, therefore, Article 124 of the *Family Code*, for it is settled that any alienation or encumbrance of conjugal property made during the effectivity of the *Family Code* is governed by Article 124 of the *Family Code*.[28]

Article 124 of the *Family Code* provides:

> Article 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.
>
> **In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void.** However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors.

Thirdly, according to Article 256[29] of the *Family Code*, the provisions of the *Family Code* may apply retroactively provided

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40, 41 and 42 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended, and all laws, decrees, executive orders, proclamations, rules and regulations, or parts thereof, inconsistent herewith are hereby repealed.

[28] *Alfredo v. Borras*, G.R. No. 144225, June 17, 2003, 404 SCRA 145; *Heirs of Ignacia Aguilar-Reyes v. Mijares*, G.R. No. 143826, August 28, 2003, 410 SCRA 97; *Sps. Guiang v. Court of Appeals*, G.R. No. 125172, June 26, 1998, 291 SCRA 372.

[29] Article 256. This Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the *Civil Code* or other laws.

no vested rights are impaired. In *Tumlos v. Fernandez*,[30] the Court rejected the petitioner's argument that the *Family Code* did not apply because the acquisition of the contested property had occurred prior to the effectivity of the *Family Code*, and pointed out that Article 256 provided that the *Family Code* could apply retroactively if the application would not prejudice vested or acquired rights existing before the effectivity of the *Family Code*. Herein, however, the petitioners did not show any vested right in the property acquired prior to August 3, 1988 that exempted their situation from the retroactive application of the *Family Code*.

Fourthly, the petitioners failed to substantiate their contention that Dionisio, while holding the administration over the property, had delegated to his brother, Atty. Parulan, the administration of the property, considering that they did not present in court the SPA granting to Atty. Parulan the authority for the administration.

Nonetheless, we stress that the power of administration does not include acts of disposition or encumbrance, which are acts of strict ownership. As such, an authority to dispose cannot proceed from an authority to administer, and *vice versa*, for the two powers may only be exercised by an agent by following the provisions on agency of the *Civil Code* (from Article 1876 to Article 1878). Specifically, the apparent authority of Atty. Parulan, being a special agency, was limited to the sale of the property in question, and did not include or extend to the power to administer the property.[31]

Lastly, the petitioners' insistence that Atty. Parulan's making of a counter-offer during the March 25, 1991 meeting ratified the sale merits no consideration. Under Article 124 of the *Family Code*, the transaction executed *sans* the written consent of Dionisio or the proper court order was void; hence,

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[30] G.R. No. 137650, April 12, 2000, 330 SCRA 718.

[31] Under Article 1876, *Civil Code*, a general agency comprises all the business of the principal, but a special agency comprises one or more specific transactions.

ratification did not occur, for a void contract could not be ratified.[32]

On the other hand, we agree with Dionisio that the void sale was a continuing offer from the petitioners and Ma. Elena that Dionisio had the option of accepting or rejecting before the offer was withdrawn by either or both Ma. Elena and the petitioners. The last sentence of the second paragraph of Article 124 of the *Family Code* makes this clear, stating that in the absence of the other spouse's consent, the transaction should be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or upon authorization by the court before the offer is withdrawn by either or both offerors.

2.

Due diligence required in verifying not only vendor's title, but also agent's authority to sell the property

A purchaser in good faith is one who buys the property of another, without notice that some other person has a right to, or interest in, such property, and pays the full and fair price for it at the time of such purchase or before he has notice of the claim or interest of some other persons in the property. He buys the property with the belief that the person from whom he receives the thing was the owner and could convey title to the property. He cannot close his eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith.[33] The status of a buyer in good faith is never presumed but must be proven by the person invoking it.[34]

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[32] Article 1409, *Civil Code*.

[33] *Heirs of Ignacia Aguilar-Reyes v. Mijares*, G.R. No. 143826, August 28, 2003, 410 SCRA 97, 107.

[34] *Bautista v. Silva*, G.R. No. 157434, September 19, 2006, 502 SCRA 334, 346; *Aguirre v. Court of Appeals*, G.R. No. 122249, January 29, 2004, 421 SCRA 310, 321.

Here, the petitioners disagree with the CA for not applying the "ordinary prudent man's standard" in determining their status as buyers in good faith. They insist that they exercised due diligence by verifying the status of the TCTs, as well as by inquiring about the details surrounding the mortgage extended by the Los Baños Rural Bank. They lament the holding of the CA that they should have been put on their guard when they learned that the Los Baños Rural Bank had first required a court order before granting the loan to the respondents secured by their mortgage of the property.

The petitioners miss the whole point.

Article 124 of the *Family Code* categorically requires the consent of *both* spouses before the conjugal property may be disposed of by sale, mortgage, or other modes of disposition. In *Bautista v. Silva*,[35] the Court erected a standard to determine the good faith of the buyers dealing with a seller who had title to and possession of the land but whose capacity to sell was restricted, in that the consent of the other spouse was required before the conveyance, declaring that in order to prove good faith in such a situation, the buyers must show that they inquired not only into the title of the seller *but also into the seller's capacity to sell*.[36] Thus, the buyers of conjugal property must observe two kinds of requisite diligence, namely: (*a*) the diligence in verifying the validity of the title covering the property; and (*b*) the diligence in inquiring into the authority of the transacting spouse to sell conjugal property in behalf of the other spouse.

It is true that a buyer of registered land needs only to show that he has relied on the face of the certificate of title to the property, for he is not required to explore beyond what the certificate indicates on its face.[37] In this respect, the petitioners sufficiently proved that they had checked on the authenticity of TCT No. 63376 and TCT No. 63377 with the Office of the

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[35] *Id.*, p. 348.

[36] *Id.*, p. 348.

[37] *Abad v. Guimba*, G.R. No. 157002, July 29, 2005, 465 SCRA 356, 366-367.

Register of Deeds in Pasay City as the custodian of the land records; and that they had also gone to the Los Baños Rural Bank to inquire about the mortgage annotated on TCT No. 63377. Thereby, the petitioners observed the requisite diligence in examining the validity of the TCTs concerned.

Yet, it ought to be plain enough to the petitioners that the issue was whether or not they had diligently inquired into the authority of Ma. Elena to convey the property, not whether or not the TCT had been valid and authentic, as to which there was no doubt. Thus, we cannot side with them.

Firstly, the petitioners knew fully well that the law demanded the written consent of Dionisio to the sale, but yet they did not present evidence to show that they had made inquiries into the circumstances behind the execution of the SPA purportedly executed by Dionisio in favor of Ma. Elena. Had they made the appropriate inquiries, and not simply accepted the SPA for what it represented on its face, they would have uncovered soon enough that the respondents had been estranged from each other and were under *de facto* separation, and that they probably held conflicting interests that would negate the existence of an agency between them. To lift this doubt, they must, of necessity, further inquire into the SPA of Ma. Elena. The omission to inquire indicated their not being buyers in good faith, for, as fittingly observed in *Domingo v. Reed*:[38]

> What was required of them by the appellate court, which we affirm, was merely to investigate – as any prudent vendee should – the authority of Lolita to sell the property and to bind the partnership. They had knowledge of facts that should have led them to inquire and to investigate, in order to acquaint themselves with possible defects in her title. The law requires them to act with the diligence of a prudent person; in this case, their only prudent course of action was to investigate whether respondent had indeed given his consent to the sale and authorized his wife to sell the property.[39]

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[38] G.R. No. 157701, December 9, 2005, 477 SCRA 227.

[39] *Id.,* p. 244.

Indeed, an unquestioning reliance by the petitioners on Ma. Elena's SPA without first taking precautions to verify its authenticity was not a prudent buyer's move.[40] They should have done everything within their means and power to ascertain whether the SPA had been genuine and authentic. If they did not investigate on the relations of the respondents *vis-à-vis* each other, they could have done other things towards the same end, like attempting to locate the notary public who had notarized the SPA, or checked with the RTC in Manila to confirm the authority of Notary Public Atty. Datingaling. It turned out that Atty. Datingaling was not authorized to act as a Notary Public for Manila during the period 1990-1991, which was a fact that they could easily discover with a modicum of zeal.

Secondly, the final payment of ₱700,000.00 even without the owner's duplicate copy of the TCT No. 63376 being handed to them by Ma. Elena indicated a revealing lack of precaution on the part of the petitioners. It is true that she promised to produce and deliver the owner's copy within a week because her relative having custody of it had gone to Hongkong, but their passivity in such an essential matter was puzzling light of their earlier alacrity in immediately and diligently validating the TCTs to the extent of inquiring at the Los Baños Rural Bank about the annotated mortgage. Yet, they could have rightly withheld the final payment of the balance. That they did not do so reflected their lack of due care in dealing with Ma. Elena.

Lastly, another reason rendered the petitioners' good faith incredible. They did not take immediate action against Ma. Elena upon discovering that the owner's original copy of TCT No. 63376 was in the possession of Atty. Parulan, contrary to Elena's representation. Human experience would have impelled them to exert every effort to proceed against Ma. Elena, including demanding the return of the substantial amounts paid to her. But they seemed not to mind her inability to produce the TCT, and, instead, they contented themselves with meeting with Atty. Parulan to negotiate for the possible turnover of the TCT to them.

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[40] *Bautista v. Silva*, note 34.

3.

***Veloso v. Court of Appeals* cannot help petitioners**

The petitioners contend that the forgery of the SPA notwithstanding, the CA could still have decided in their favor conformably with *Veloso v. Court of Appeals*,[41] a case where the petitioner husband claimed that his signature and that of the notary public who had notarized the SPA the petitioner supposedly executed to authorize his wife to sell the property had been forged. In denying relief, the Court upheld the right of the vendee as an innocent purchaser for value.

Veloso is inapplicable, however, because the contested property therein was exclusively owned by the petitioner and did not belong to the conjugal regime. *Veloso* being upon conjugal property, Article 124 of the *Family Code* did not apply.

In contrast, the property involved herein pertained to the conjugal regime, and, consequently, the lack of the written consent of the husband rendered the sale void pursuant to Article 124 of the *Family Code*. Moreover, even assuming that the property involved in *Veloso* was conjugal, its sale was made on November 2, 1987, or prior to the effectivity of the *Family Code*; hence, the sale was still properly covered by Article 173 of the *Civil Code,* which provides that a sale effected without the consent of one of the spouses is only voidable, not void. However, the sale herein was made already during the effectivity of the *Family Code*, rendering the application of Article 124 of the *Family Code* clear and indubitable.

The fault of the petitioner in *Veloso* was that he did not adduce sufficient evidence to prove that his signature and that of the notary public on the SPA had been forged. The Court pointed out that his mere allegation that the signatures had been forged could not be sustained without clear and convincing proof to substantiate the allegation. Herein, however, both the RTC and the CA found from the testimonies and evidence presented by Dionisio that his signature had been definitely forged, as

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[41] *Supra,* note 26.

borne out by the entries in his passport showing that he was out of the country at the time of the execution of the questioned SPA; and that the alleged notary public, Atty. Datingaling, had no authority to act as a Notary Public for Manila during the period of 1990-1991.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision dated July 2, 2004 rendered by the Court of Appeals in C.A.-G.R. CV No. 69044 entitled "*Dionisio Z. Parulan, Jr. vs. Ma. Elena Parulan and Sps. Rex and Concepcion Aggabao"* and *"Sps. Rex and Concepcion Aggabao vs. Dionisio Z. Parulan, Jr. and Ma. Elena Parulan."*

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 170189. September 1, 2010]

SPOUSES ELEGIO[*] **CAÑEZO and DOLIA CAÑEZO,** *petitioners, vs.* **SPOUSES APOLINARIO and CONSORCIA L. BAUTISTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; *ACCION REIVINDICATORIA*; NATURE, EXPLAINED.— The present case, while inaccurately

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[*] Additional member per Special Order No. 879 dated August 13, 2010.

[*] "Eligio" in some parts of the Records.

captioned as an action for a "Writ of Demolition with Damages" is in reality an action to recover a parcel of land or an *accion reivindicatoria* under Article 434 of the Civil Code. Article 434 of the Civil Code reads: "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." *Accion reivindicatoria* seeks the recovery of ownership and includes the *jus utendi* and the *jus fruendi* brought in the proper regional trial court. *Accion reivindicatoria* is an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.

2. ID.; ID.; ID.; REQUIREMENTS TO PROSPER; APPLICATION.— In order that an action for the recovery of title may prosper, it is indispensable, in accordance with the precedents established by the courts, that the party who prosecutes it must fully prove, not only his ownership of the thing claimed, but also the identity of the same. However, although the identity of the thing that a party desires to recover must be established, if the plaintiff has already proved his right of ownership over a tract of land, and the defendant is occupying without right any part of such tract, it is not necessary for plaintiff to establish the precise location and extent of the portions occupied by the defendant within the plaintiff's property. The spouses Cañezo were able to establish their ownership of the encroached property. Aside from testimonial evidence, the spouses Cañezo were also able to present documentary and object evidence which consisted of photographs, transfer certificates of title, and a relocation survey plan. The relocation survey plan also corroborated Elegio Cañezo's testimony on the reason for the spouses Bautista's attitude regarding the encroached property. The relocation survey plan showed that the spouses Bautista's property encroached upon that of the spouses Cañezo by 0.97 centimeters, while the spouses Bautista's property was encroached upon by 1.01 centimeters by another landowner.

APPEARANCES OF COUNSEL

Arias Law Office for petitioners.
Jesus B. Roldan for respondents.

D E C I S I O N

CARPIO, *J.*:

G.R. No. 170189 is a petition for review[1] assailing the Decision[2] promulgated on 17 October 2005 by the Court of Appeals (appellate court) in CA-G.R. CV No. 75685. The appellate court granted the appeal filed by the Spouses Apolinario and Consorcia L. Bautista (spouses Bautista) and dismissed the complaint for the issuance of a writ of demolition with damages filed by the Spouses Elegio and Dolia Cañezo (spouses Cañezo) without prejudice to the filing of the appropriate action with the proper forum. In its Decision[3] on Civil Case No. MC-00-1069 dated 25 March 2002, Branch 213 of the Regional Trial Court of Mandaluyong City (trial court) rendered judgment in favor of the spouses Cañezo. The trial court also ordered the issuance of a writ of demolition directing the removal of the structures built by the spouses Bautista on the portion of the land belonging to the spouses Cañezo.

The Facts

The appellate court narrated the facts as follows:

> Spouses Elegio and Dolia Cañezo (hereafter appellees) are the registered owner[s] of a parcel of land with an area of One Hundred Eighty Six (186) square meters, covered by Transfer Certificate of Title (TCT) No. 32911.
>
> Spouses Apolinario and Consorcia Bautista (hereafter appellants) are the registered owners of a parcel of land, containing an area of One Hundred Eighty One (181) square meters, covered by Transfer Certificate of Title (TCT) No. 31727. Both parcels of land are located at Coronado Heights, Barangka Ibaba, Mandaluyong City and registered with the Registry of Deeds of Mandaluyong City. Appellants' lot is adjacent to that of appellees [sic].

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 50-54. Penned by Associate Justice Juan Q. Enriquez, Jr., with Associate Justices Conrado M. Vasquez, Jr. and Vicente Q. Roxas, concurring.

[3] *Id*. at 39-41. Penned by Judge Amalia F. Dy.

Sometime in 1995, appellees started the construction of a building on their lot. During the construction, appellees discovered that their lot was encroached upon by the structures built by appellants without appellees' knowledge and consent.

The three (3) surveys conducted confirmed the fact of encroachment. However, despite oral and written demands, appellants failed and refused to remove the structures encroaching appellees' lot.

Attempts were made to settle their dispute with the *barangay lupon*, but to no avail. Appellees initiated a complaint with the RTC for the issuance of a writ of demolition.

For failure to file an Answer within the extended period granted by the court, appellants were declared in default. Appellees were allowed to present their evidence *ex parte* before an appointed commissioner. Thereafter the RTC rendered the assailed decision in the terms earlier set forth.[4]

The spouses Cañezo filed their complaint for the issuance of a writ of demolition with damages on 13 April 2000. In an Order dated 15 August 2000, the trial court declared the spouses Bautista in default for failure to answer within the reglementary period. The Public Attorney's Office, which represented the spouses Bautista at the time, filed a Motion to Admit Answer dated 15 June 2000. The trial court denied the motion in its Decision.

The Trial Court's Ruling

On 25 March 2002, the trial court promulgated its Decision in favor of the spouses Cañezo. The trial court found that the spouses Bautista built structures encroaching on the land owned by the spouses Cañezo. The spouses Bautista also refused to remove the structures and respect the boundaries as established by the various surveyors. A referral to the Barangay Lupon failed to settle the controversy amicably. The trial court thus ruled that the spouses Bautista are builders in bad faith, such that the spouses Cañezo are entitled to an issuance of a writ of demolition with damages.

[4] *Id.* at 51-52.

The dispositive portion of the Decision reads as follows:

> IN VIEW WHEREOF, judgment is hereby rendered in favor of the plaintiffs and against the defendants. Let a writ of demolition be accordingly issued directing the removal/demolition of the structures built by the defendants upon the portion of land belonging [to] the plaintiffs at the former's expense.
>
> Further,
>
> 1. the defendant is ordered to pay ₱50,000.00 (Philippine Currency) as and by way of moral damages[; and]
>
> 2. [t]he defendant is hereby ordered to pay ₱30,000.00 as and by way of attorney's fees.
>
> SO ORDERED.[5]

The spouses Bautista filed a notice of appeal dated 29 April 2002 before the appellate court.

The Appellate Court's Ruling

On 17 October 2005, the appellate court rendered its Decision which reversed the 25 March 2002 Decision of the trial court. The appellate court ruled that since the last demand was made on 27 March 2000, or more than a year before the filing of the complaint, the spouses Cañezo should have filed a suit for recovery of possession and not for the issuance of a writ of demolition. A writ of demolition can be granted only as an effect of a final judgment or order, hence the spouses Cañezo's complaint should be dismissed. The spouses Cañezo failed to specify the assessed value of the encroached portion of their property. Because of this failure, the complaint lacked sufficient basis to constitute a cause of action. Finally, the appellate court ruled that should there be a finding of encroachment in the action for recovery of possession and that the encroachment was built in good faith, the market value of the encroached portion should be proved to determine the appropriate indemnity.

The dispositive portion of the appellate court's Decision reads as follows:

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[5] *Id.* at 41.

WHEREFORE, premises considered, the instant appeal is GRANTED. The complaint filed by plaintiffs-appellees is hereby DISMISSED without prejudice to the filing of the appropriate action with the proper forum.

SO ORDERED.[6]

Issues

The spouses Cañezo enumerated the following grounds to support their Petition:

I. Whether the Honorable Court of Appeals gravely erred in granting the petition of the [spouses Bautista] and reversing the Decision of the Court *a quo*; [and]

II. Whether the Honorable Court of Appeals gravely erred in stating that the petitioners should have filed recovery of possession and not writ of demolition.[7]

The Court's Ruling

The petition has merit.

The present case, while inaccurately captioned as an action for a "Writ of Demolition with Damages" is in reality an action to recover a parcel of land or an *accion reivindicatoria* under Article 434 of the Civil Code. Article 434 of the Civil Code reads: "In an action to recover, the property must be identified, and the plaintiff must rely on the strength of his title and not on the weakness of the defendant's claim." *Accion reivindicatoria* seeks the recovery of ownership and includes the *jus utendi* and the *jus fruendi* brought in the proper regional trial court. *Accion reivindicatoria* is an action whereby plaintiff alleges ownership over a parcel of land and seeks recovery of its full possession.[8]

In order that an action for the recovery of title may prosper, it is indispensable, in accordance with the precedents established

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[6] *Id.* at 54.

[7] *Id.* at 11.

[8] See *Javier v. Veridiano II*, G.R. No. L-48050, 10 October 1994, 237 SCRA 565.

by the courts, that the party who prosecutes it must fully prove, not only his ownership of the thing claimed, but also the identity of the same.[9] However, although the identity of the thing that a party desires to recover must be established, if the plaintiff has already proved his right of ownership over a tract of land, and the defendant is occupying without right any part of such tract, it is not necessary for plaintiff to establish the precise location and extent of the portions occupied by the defendant within the plaintiff's property.[10]

The spouses Cañezo were able to establish their ownership of the encroached property. Aside from testimonial evidence, the spouses Cañezo were also able to present documentary and object evidence which consisted of photographs,[11] transfer certificates of title,[12] and a relocation survey plan.[13]

The relocation survey plan also corroborated Elegio Cañezo's testimony on the reason for the spouses Bautista's attitude regarding the encroached property. The relocation survey plan showed that the spouses Bautista's property encroached upon that of the spouses Cañezo by 0.97 centimeters, while the spouses Bautista's property was encroached upon by 1.01 centimeters by another landowner. Elegio Cañezo testified thus:

Q I am showing you a survey plan of lot 13. Can you please tell us what is this survey plan?

A That is the survey plan of the surveyor whom we hired sir.

Q Can you please point to us where in this plan is your property indicated?

A This is our property, sir.

Q The witness, your Honor, is pointing to "Lot 13" indicated in the survey plan. How about the property of the defendants?

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[9] *Salacup v. Rambac*, 17 Phil. 22, 23 (1910).

[10] ARTURO M. TOLENTINO, 2 *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 72 (1998). Citations omitted.

[11] Records, pp. 14-18.

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

[13] *Id*. at 11.

A The defendants' property is this, sir.

Q The witness, your Honor, is pointing to "Lot 14" indicated in the survey plan. Now, Mr. Witness, you said that the defendants wanted you to recover that portion of your property encroached on from the property adjacent to theirs. Please illustrate to us by referring to this survey plan what the defendants meant?

A The defendants want us to get the portion they had encroached on from "Lot 15" because, according to them, Lot 15 also encroached on their lot, sir.

Q The witness, your Honor, is pointing to "Lot 15" indicated in the plan. What happened next?

A We told them that this is not possible because Lot 15 is not adjacent to our property, sir.

Q What did the defendants do?

A The defendants still refused to remove their structure, sir.

Q So, what happened?

A We filed a complaint against the defendants before the Office of the *Barangay* Captain of Barangay Barangka, Ibaba, sir.

Q What happened in the *Barangay*?

A The *Barangay* council tried to settle the matter amicably between us. However, no settlement was reached, sir.

Q While in the *barangay*, did you offer anything to the defendants in order to settle the case?

A Yes, sir.

Q What was it?

A We offered that if the defendants will remove the structures, we are willing to shoulder half of the expenses for the removal.

Q What did the defendants say to this?

A They refused our offer and insisted on their previous position that we get our portion from Lot 15, sir.

Q What did the *Barangay* do after failing to settle the case?

A The *Barangay* issued a Certification to File Action, sir.[14]

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[14] *Id*. at 68-71.

Given the efforts made by the spouses Cañezo to settle the present issue prior to the filing of a Complaint, the trial court was justified in ruling that the spouses Bautista were in default and in not admitting their Answer. The Complaint was not the spouses Bautista's first encounter with the present issue. Moreover, the spouses Bautista failed to file their Answer even after the expiry of the motion of extension granted to them.[15]

The testimony and the relocation survey plan both show that the spouses Bautista were aware of the encroachment upon their lot by the owner of Lot 15 and thus they made a corresponding encroachment upon the lot of the spouses Cañezo. This awareness of the two encroachments made the spouses Bautista builders in bad faith. The spouses Cañezo are entitled to the issuance of a writ of demolition in their favor and against the spouses Bautista, in accordance with Article 450 of the Civil Code.[16]

We affirm the awards made by the trial court in its Decision:

> x x x Considering the length of time when [the spouses Cañezo] were deprived of beneficial use on the subject portion of land owned by them, the [spouses Bautista] are likewise liable to pay ₱30,000.00 (Philippine Currency) in accordance with Article 451 of the Civil Code.
>
> With respect to the prayer for the award of ₱50,000.00 (Philippine Currency) as moral damages, the court decides to give due course to it in view of the fact that the [spouses Cañezo] satisfactorily proved the existence of the factual basis of the damages and its causal relation to [the spouses Bautista's] acts. There was bad faith on the part of the [spouses Bautista] when they built the structures upon the land not belonging to them. This wrongful act is the proximate cause which made the [spouses Cañezo] suffer mental anguish, sleepless nights and serious anxiety. The [spouses Cañezo] positively testified about these matters.

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[15] *Id.* at 47.

[16] Article 450. The owner of the land on which anything has been built, planted or sown in bad faith may demand the demolition of the work, or that the planting or sowing be removed, in order to replace things in their former condition at the expense of the person who built, planted or sowed; or he may compel the builder or planter to pay the price of the land, and the sower the proper rent.

As regards the prayer for exemplary x x x damages, no sufficient evidence were adduced which would warrant and justify this court to award the same. The prayer for attorney's fees however, is found meritorious hence, the same is hereby granted.[17]

WHEREFORE, we *GRANT* the petition. The Decision of the Court of Appeals in CA-G.R. CV No. 75685 promulgated on 17 October 2005 is *SET ASIDE* and the dispositive portion of the Decision of Branch 213, Regional Trial Court of Mandaluyong City promulgated on 25 March 2002 is *AFFIRMED with MODIFICATION*. A writ of demolition of the encroaching structures should be issued against and at the expense of Spouses Apolinario and Consorcia L. Bautista upon the finality of this judgment. Spouses Apolinario and Consorcia L. Bautista are further ordered to pay Spouses Elegio and Dolia Cañezo ₱30,000 as actual damages; ₱50,000 as moral damages; and ₱30,000 as attorney's fees. The interest rate of 12% per annum shall apply from the finality of judgment until the total amount awarded is fully paid.

SO ORDERED.

Nachura, Bersamin,[**] *Abad,* and *Mendoza, JJ.*, concur.

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[17] *Rollo,* p. 40.

[**] Designated additional member per Special Order No. 882 dated 31 August 2010.

FIRST DIVISION

[G.R. No. 171526. September 1, 2010]

RODEL CRISOSTOMO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTIONS; DENIAL OF MOTION FOR INHIBITION, PROPER; REASONS.— It must be stressed that as a rule, "a motion to inhibit must be denied if filed after x x x the Court had already given its opinion on the merits of the case, the rationale being that 'a litigant cannot be permitted to speculate upon the action of the court x x x (only to) raise an objection of this sort after a decision had been rendered.'" Here, petitioner's Motion for Reconsideration and Inhibition was filed on November 29, 2002 after the trial court rendered its Decision on November 14, 2002. Accordingly, the trial judge did not commit any impropriety in denying the motion to inhibit as it came after the case had been decided on the merits. Further, in a motion for inhibition, "[t]he movant must x x x prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial." "Bare allegations of partiality x x x [is not sufficient] in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor." Petitioner's bare allegations in his motion to inhibit are not adequate grounds for the disqualification or inhibition of the trial judge. Thus, credence should not be given to the issue of alleged prejudice and partiality of the trial judge.

2. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— Robbery with homicide exists "when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and[,] (4) on the occasion or by reason of the robbery,

the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."

3. ID.; ID.; ID.; INTENT TO ROB, ESTABLISHED.— In this case, the prosecution successfully adduced proof beyond reasonable doubt that the genuine intention of the petitioner and his companions was to rob the gasoline station. Rodelio testified that at around 12:20 in the afternoon of February 12, 2001, the petitioner and his companions arrived on board a motorcycle at the gas station located at Buliran, San Miguel, Bulacan. While the petitioner stayed on the motorcycle, his companions entered the cashier's office. One of them pulled out a fan knife while the other fired his gun at Janet. After divesting the amount of ₱40,000.00, the man with the gun fired a fatal shot to the head of Janet. The petitioner's companions returned to and boarded their motorcycle, and sped away together. From the foregoing, it is clear that the overriding intention of the petitioner and his cohorts was to rob the gasoline station. The killing was merely incidental, resulting by reason or on occasion of the robbery.

4. REMEDIAL LAW; EVIDENCE; TESTIMONIAL EVIDENCE GIVEN MORE WEIGHT THAN AFFIDAVITS.— The petitioner attempts to discredit Rodelio, the eyewitness presented by the prosecution, by asserting that his testimony is in conflict with the statements in his affidavit. In his testimony, Rodelio said that it was one of the men who entered the cashier's office who was holding a gun while in his sworn statement, he alleged that petitioner had a .45 caliber pistol which was poked at him. Such an argument fails to impress as discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit the witness. "Sworn statements/ affidavits are generally subordinated in importance to open court declarations because the former are often executed when the affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements/affidavits."

5. ID.; ID.; CREDIBILITY OF WITNESSES; INITIAL RELUCTANCE OF THE WITNESS TO TESTIFY DOES NOT AFFECT HIS CREDIBILITY.— That Rodelio had to be subpoenaed five times and be arrested in order to testify for the prosecution do not weaken the case against the petitioner and his cohorts. During cross-examination, Rodelio explained that his failure to respond immediately to the subpoena was because he does not know how to go to court. x x x Even assuming that Rodelio was initially reluctant to testify and get involved in the ensuing criminal prosecution against the petitioner and his co-accused, this "is but normal and does not by itself affect [his] credibility."

6. ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED, UPHELD.— We are also not impressed with the petitioner's insistence that his identification in the police lineup was highly irregular. There is simply no factual basis to prove that he was the only suspect in the lineup with handcuffs that prompted Rodelio to point to him as the suspect. It is worth stressing that the police investigators are presumed to have performed their duties regularly and in good faith. In the absence of sufficient proof to overturn this presumption, petitioner's positive identification by Rodelio remains free from any stain of wrongdoing. Besides, not only did Rodelio identify the petitioner in the police lineup, he also positively identified petitioner when he testified in court.

7. CRIMINAL LAW; ROBBERY WITH HOMICIDE; CONSPIRACY, PRESENT; CRIMINAL LIABILITIES OF CO-CONSPIRATORS.— "The concerted manner [in which the petitioner and his] companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. Where conspiracy is established, it matters not who among the accused actually shot and killed the victim. The consistent doctrinal rule is that when a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing." There was no evidence adduced in this case that petitioner attempted to prevent his companions from shooting the victim. "Thus, regardless of the acts individually performed by [the petitioner] and his co-accused, and applying the basic principle in conspiracy

that the 'act of one is the act of all,' [the petitioner] is guilty as a co-conspirator. Being co-conspirators, the criminal liabilities of the [petitioner and his co-accused] are one and the same."

8. ID.; ID.; PROPER PENALTY.— The crime of robbery with homicide is punishable under Article 294 (as amended by Republic Act No. 7659) of the Revised Penal Code by *reclusion perpetua* to death. Article 63 of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that no modifying circumstance was proven to have attended the commission of the crime, the trial court correctly sentenced the petitioner to suffer the penalty of *reclusion perpetua*.

9. ID.; ID.; CIVIL LIABILITIES.— In robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000.00 each is granted automatically in the absence of any qualifying aggravating circumstances. These awards are mandatory without need of allegation and evidence other than the death of the victim owing to the fact of the commission of the crime. In this case, the CA properly awarded the amount of ₱50,000.00 as civil indemnity. In addition, we also award the amount of ₱50,000.00 as moral damages. To be entitled to compensatory damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party. "[R]eceipts should support claims of actual damages." Thus, as correctly held by the trial court and affirmed by the CA, the amount of ₱14,500.00 incurred as funeral expenses can be sustained since these are expenditures supported by receipts. Also, the courts below correctly held petitioner liable to return the amount of ₱40,000.00 which was stolen from the gas station before the victim was shot and killed.

APPEARANCES OF COUNSEL

Caballero Law Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

For review under Rule 45 of the Rules of Court is the Decision[1] dated September 22, 2005 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01192, affirming with modification the Decision[2] rendered by the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 1632-M-2001, finding petitioner Rodel Crisostomo guilty beyond reasonable doubt of the complex crime of Robbery with Homicide.

Factual Antecedents

The Information filed against petitioner and his two companions designated only as John Doe and Peter Doe contained the following accusatory allegations:

> That on or about the 12th day of February, 2001, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and helping one another, armed with a gun, did then and there willfully, unlawfully and feloniously, with intent [to] gain and by means of force, violence and intimidation upon person, enter the gasoline station owned by Jose Buencamino and once inside, take, rob and carry away with them ₱40,000.00, belonging to the said Jose Buencamino, to the damage and prejudice of the latter in the amount of ₱40,000.00, and on the occasion of the commission of the said robbery or by reason thereof, the herein accused, in furtherance of their conspiracy, did then and there willfully, unlawfully and feloniously, attack, assault and shoot Janet Ramos, cashier of said gasoline station, thereby inflicting on her serious physical injuries which directly caused her death.
>
> Contrary to law.[3]

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[1] CA *rollo*, pp. 120-132; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Japar B. Dimaampao.

[2] Records, pp. 140-148; penned by Judge Crisanto C. Concepcion.

[3] *Id.* at 1.

During his arraignment, petitioner entered a plea of not guilty.[4] Thereafter, trial ensued.

Version of the Prosecution

On February 12, 2001, at around 12:20 in the afternoon, Rodelio Pangilinan (Rodelio) was working at a gasoline station owned by Jose Buencamino (Jose) at Buliran, San Miguel, Bulacan. He was by the gasoline tank which was two or three arms length from the cashier's office when three armed men on board a motorcycle arrived. Two of the men immediately went to the cashier while the driver stayed on the motorcycle. Inside the office, one of the men pulled out a fan knife while the other, armed with a gun, fired a shot at Janet Ramos (Janet), the cashier. They forcibly took the money in the cash register and the man with the gun fired a second shot that fatally hit Janet in the right side of her head. The two armed men returned to their companion waiting by the motorcycle and together sped away from the scene of the crime.

Rodelio gave a description of the driver of the motorcycle but not of the two armed men who entered the cashier's office since they had their backs turned to him. The National Bureau of Investigation (NBI) prepared a cartographic sketch based on the information provided by Rodelio. Jose, the owner of the gas station, stated that the stolen money was worth ₱40,000.00. Receipts in the amount of ₱14,500.00 were presented as funeral expenses.

On February 23, 2001, the petitioner was detained after being implicated in a robbery that occurred in San Miguel, Bulacan. During his detention, Rodelio and another gasoline boy arrived and identified him in a police lineup as one of the three robbers who killed Janet.

Version of the Defense

Petitioner denied committing the crime for which he was charged. He maintained that the face of the man depicted in the cartographic sketch by the NBI was completely different from

[4] *Id.* at 30.

his appearance in the police lineup in which Rodelio pointed at him as one of the perpetrators. He argued that the only reason why Rodelio pointed to him in the police lineup was because he was the only one in handcuffs.

Ruling of the Regional Trial Court

The trial court rendered its Decision convicting petitioner of robbery with homicide. The dispositive portion reads:

> WHEREFORE, finding herein accused RODEL CRISOSTOMO *y* DE LEON guilty as principal beyond reasonable doubt of the crime of robbery with homicide as charged, there being no circumstances, aggravating or mitigating, found attendant in the commission thereof, he is hereby sentenced to suffer the penalty of *reclusion perpetua*, to indemnify the heirs of victim Janet Ramos in the amount of ₱75,000.00, the owner or operator, Jose Buencamino, Jr., of the gasoline station that was robbed, in the amount of ₱40,000.00 plus ₱14,500.00 as funeral expenses (Exh. "H") defrayed by said owner for its cashier Janet Ramos, as actual damages, and to pay the costs of the proceedings.
>
> In the service of his sentence said accused, a detention prisoner, shall be credited with the full time during which he had undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.
>
> SO ORDERED.[5]

Not satisfied, petitioner filed a Motion for Reconsideration and Inhibition,[6] which was denied by the trial court in an Order[7] dated January 13, 2003.

Ruling of the Court of Appeals

Upon review of the case pursuant to this Court's ruling in *People v. Mateo*,[8] the CA affirmed with modification the conviction of petitioner. The dispositive portion of the CA's Decision reads:

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[5] *Id.* at 148.

[6] *Id.* at 158-167.

[7] *Id.* at 168-169.

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

In VIEW OF ALL THE FOREGOING, the appealed decision is AFFIRMED, with a modification that the awarded civil indemnity is reduced from ₱75,000.00 to ₱50,000,00. Costs *de oficio*.

SO ORDERED.[9]

Issue

Before us, the petitioner assails the Decision of the CA and raises the following issue:

WHETHER X X X THE X X X COURT OF APPEALS COMMITTED ERROR IN NOT HOLDING THAT THE TRIAL COURT GRIEVOUSLY ERRED IN THE APRPECIATION (sic) OF FACTS AND APPLYING THE LAW IN CONVICTING ACCUSED OF ROBBERY WITH HOMICIDE.[10]

Our Ruling

The petition is unmeritorious.

The trial court properly denied the motion for inhibition.

Petitioner claims that his motion for inhibition should have been granted since his counsel filed a case against the wife of the trial judge involving a land dispute. Petitioner alleges that the case rendered the trial judge partial, biased and, thus, incapable of rendering a just and wise decision.

We are not convinced. It must be stressed that as a rule, "a motion to inhibit must be denied if filed after x x x the Court had already given its opinion on the merits of the case, the rationale being that 'a litigant cannot be permitted to speculate upon the action of the court x x x (only to) raise an objection of this sort after a decision had been rendered'."[11] Here, petitioner's Motion for Reconsideration and Inhibition was filed on November 29, 2002[12] after the trial court rendered its Decision

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[9] CA *rollo*, p. 132.

[10] *Rollo*, p. 12.

[11] *Chavez v. Public Estates Authority*, 451 Phil. 1, 41 (2003).

[12] Records, p. 158.

on November 14, 2002.[13] Accordingly, the trial judge did not commit any impropriety in denying the motion to inhibit as it came after the case had been decided on the merits.

Further, in a motion for inhibition, "[t]he movant must x x x prove the ground of bias and prejudice by clear and convincing evidence to disqualify a judge from participating in a particular trial."[14] "Bare allegations of partiality x x x [is not sufficient] in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role to dispense justice according to law and evidence and without fear or favor."[15] Petitioner's bare allegations in his motion to inhibit are not adequate grounds for the disqualification or inhibition of the trial judge. Thus, credence should not be given to the issue of alleged prejudice and partiality of the trial judge.

Petitioner is guilty of the complex crime of robbery with homicide.

Robbery with homicide exists "when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and[,] (4) on the occasion or by reason of the robbery, the crime of homicide, as used in its generic sense, was committed. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery."[16]

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[13] *Id.* at 148.

[14] *People v. Ong*, G.R. Nos. 162130-39, May 5, 2006, 489 SCRA 679, 688.

[15] *Heirs of Generoso A. Juaban v. Bancale*, G.R. No. 156011, July 3, 2008, 557 SCRA 1, 13.

[16] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 436.

In this case, the prosecution successfully adduced proof beyond reasonable doubt that the genuine intention of the petitioner and his companions was to rob the gasoline station. Rodelio testified that at around 12:20 in the afternoon of February 12, 2001, the petitioner and his companions arrived on board a motorcycle at the gas station located at Buliran, San Miguel, Bulacan. While the petitioner stayed on the motorcycle, his companions entered the cashier's office. One of them pulled out a fan knife while the other fired his gun at Janet. After divesting the amount of ₱40,000.00, the man with the gun fired a fatal shot to the head of Janet. The petitioner's companions returned to and boarded their motorcycle, and sped away together.[17]

From the foregoing, it is clear that the overriding intention of the petitioner and his cohorts was to rob the gasoline station. The killing was merely incidental, resulting by reason or on occasion of the robbery.

The petitioner attempts to discredit Rodelio, the eyewitness presented by the prosecution, by asserting that his testimony is in conflict with the statements in his affidavit. In his testimony, Rodelio said that it was one of the men who entered the cashier's office who was holding a gun while in his sworn statement, he alleged that petitioner had a .45 caliber pistol which was poked at him.

Such an argument fails to impress as discrepancies between sworn statements and testimonies made at the witness stand do not necessarily discredit the witness. "Sworn statements/affidavits are generally subordinated in importance to open court declarations because the former are often executed when the affiant's mental faculties are not in such a state as to afford him a fair opportunity of narrating in full the incident which transpired. Testimonies given during trials are much more exact and elaborate. Thus, testimonial evidence carries more weight than sworn statements/ affidavits."[18]

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[17] TSN, September 11, 2001, pp. 10-13.

[18] *People v. Mangat*, 369 Phil. 347, 360 (1999).

"Further, to the extent that inconsistencies were in fact shown, they appear to [this] Court to relate to details of peripheral significance which do not negate or dissolve the positive identification [by the eyewitness of the petitioner and his co-accused] as the perpetrators of the crime."[19]

That Rodelio had to be subpoenaed five times and be arrested in order to testify for the prosecution do not weaken the case against the petitioner and his cohorts. During cross-examination, Rodelio explained that his failure to respond immediately to the subpoena was because he does not know how to go to court. Thus:

Q: Why did you fail to appear before this Honorable Court when you were first summoned to appear before this court?
A: Because my employer was sick, sir.

COURT:
Q: Who was that employer?
A: Ping Buencamino, your Honor.

ATTY. KLIATCHKO:
Q: Assuming that he is sick why did you not go to this Honorable Court?
A: I have no companion. I have no idea.

Q: You have no idea about what?
A: I do not know how to come to this court, sir.[20]

Even assuming that Rodelio was initially reluctant to testify and get involved in the ensuing criminal prosecution against the petitioner and his co-accused, this "is but normal and does not by itself affect [his] credibility."[21]

The petitioner also avers that he was not the person depicted in the cartographic sketch. However, "a cartographic sketch, unlike a photograph, is only intended to give the law enforcers a general idea of the likeness of a suspect and is never expected

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[19] *People v. Daen, Jr.*, 314 Phil. 280, 292 (1995).

[20] TSN, October 11, 2001, p. 4.

[21] *People v. Foncardas*, 466 Phil. 992, 1006 (2004).

to exactly resemble his actual facial appearance. Even the description of the suspect given in the cartographic sketch may not be unerringly exact."[22] What is important is the fact that the petitioner was positively identified by Rodelio as the perpetrator of the crime even without a moustache and curly hair.

We are not likewise impressed with petitioner's assertion that the case against him was weakened with the failure to present Reinerio, the other eyewitness to the commission of the crime and one of the prosecution's proposed witnesses. As a rule, "the prosecution has the exclusive prerogative to determine whom to present as witnesses. [It] need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt."[23] Here, the testimony of Reinerio would merely corroborate the statements of Rodelio on the witness stand, which when considered together with the other evidence presented by the prosecution, established beyond reasonable doubt the culpability of the petitioner and his cohorts. Further, there is nothing on record which would show that Rodelio was actuated by ill motive or hate in imputing a serious offense of robbery with homicide against the petitioner.

We are also not impressed with the petitioner's insistence that his identification in the police lineup was highly irregular. There is simply no factual basis to prove that he was the only suspect in the lineup with handcuffs that prompted Rodelio to point to him as the suspect. It is worth stressing that the police investigators are presumed to have performed their duties regularly and in good faith.[24] In the absence of sufficient proof to overturn this presumption, petitioner's positive identification by Rodelio remains free from any stain of wrongdoing.

Besides, not only did Rodelio identify the petitioner in the police lineup, he also positively identified petitioner when he testified in court.

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[22] *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003).

[23] *People v. Pidoy*, 453 Phil. 221, 228 (2003).

[24] RULES OF COURT, Rule 131, Section 3(m).

The petitioner's contention that he did not conspire with the other accused in the commission of the crime cannot be given credence. There is no doubt that the petitioner participated actively in the commission of the crime. He was positively identified as the driver of the motorcycle with his two male companions on board. They arrived together at the gasoline station. His cohorts then went inside the office to conduct the robbery while he remained on the motorcycle and waited for his cohorts. After his two companions stole the money and killed the cashier, they sped away from the scene of the crime in each other's company using the same motorcycle.

Against the testimony of the prosecution's eyewitness, the petitioner could only rely on the defense of denial. This defense, however, deserves scant consideration since "denial cannot prevail over the positive testimony of a witness. A mere denial, just like alibi, is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who [testified] on affirmative matters."[25]

"The concerted manner [in which the petitioner and his] companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. Where conspiracy is established, it matters not who among the accused actually shot and killed the victim. The consistent doctrinal rule is that when a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing."[26] There was no evidence adduced in this case that petitioner attempted to prevent his companions from shooting the victim. "Thus, regardless of the acts individually performed by [the petitioner] and his co-accused, and applying the basic principle in conspiracy that the 'act of one is the act of all,' [the petitioner] is guilty as a co-conspirator. Being co-

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[25] *People v. Macalaba*, 443 Phil. 565, 578 (2003).

[26] *People v. Reyes*, 369 Phil. 61, 80 (1999).

conspirators, the criminal liabilities of the [petitioner and his co-accused] are one and the same."[27]

The Proper Penalty

The crime of robbery with homicide is punishable under Article 294 (as amended by Republic Act No. 7659) of the Revised Penal Code by *reclusion perpetua* to death. Article 63[28] of the Revised Penal Code states that when the law prescribes a penalty consisting of two indivisible penalties, and the crime is neither attended by mitigating nor aggravating circumstances, the lesser penalty shall be imposed. Considering that no modifying circumstance was proven to have attended the commission of the crime, the trial court correctly sentenced the petitioner to suffer the penalty of *reclusion perpetua*.[29]

The Civil Liabilities

In robbery with homicide, civil indemnity and moral damages in the amount of ₱50,000.00 each is granted automatically in the absence of any qualifying aggravating circumstances.[30] These awards are mandatory without need of allegation and evidence other than the death of the victim owing to the fact of the commission of the crime. In this case, the CA properly awarded the amount of ₱50,000.00 as civil indemnity. In addition, we also award the amount of ₱50,000.00 as moral damages.[31]

To be entitled to compensatory damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable to the injured party. "[R]eceipts should support claims of actual damages."[32] Thus, as correctly held by the trial court

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[27] *People v. Villanueva, Jr.*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 547.

[28] RULES FOR THE APPLICATION OF INDIVISIBLE PENALTIES.

[29] *People v. Musa*, G.R. No. 170472, July 3, 2009, 591 SCRA 619, 643-644.

[30] *Id.* at 644.

[31] See also *People v. Esoy*, G.R. No. 185849, April 7, 2010.

[32] *People v. Guihama*, 452 Phil. 824, 844 (2003).

and affirmed by the CA, the amount of ₱14,500.00 incurred as funeral expenses can be sustained since these are expenditures supported by receipts. Also, the courts below correctly held petitioner liable to return the amount of ₱40,000.00 which was stolen from the gas station before the victim was shot and killed.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01192 that affirmed with modification the Decision of the Regional Trial Court of Malolos, Bulacan, Branch 12, in Criminal Case No. 1632-M-2001 is *AFFIRMED with further MODIFICATION* that petitioner is hereby ordered to pay the heirs of the victim moral damages in the amount of ₱50,000.00.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173292. September 1, 2010]

MEMORACION Z. CRUZ, represented by EDGARDO Z. CRUZ, *petitioner, vs.* **OSWALDO Z. CRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CRITERION TO DETERMINE WHETHER AN ACTION SURVIVES THE DEATH OF A PETITIONER; APPLICATION.— The criterion for determining whether an action survives the death of a petitioner was elucidated in *Bonilla v. Barcena*, to wit: The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action

which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental. If the case affects primarily and principally property and property rights, then it survives the death of the plaintiff or petitioner. In *Sumaljag v. Literato*, we held that a Petition for Declaration of Nullity of Deed of Sale of Real Property is one relating to property and property rights, and therefore, survives the death of the petitioner. Accordingly, the instant case for annulment of sale of real property merits survival despite the death of petitioner Memoracion Z. Cruz.

2. ID.; CIVIL PROCEDURE; RULE WHEN A PARTY DIES DURING THE PENDENCY OF A CASE, EXPLAINED; APPLICATION.— When a party dies during the pendency of a case, Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure necessarily applies. x x x If the action survives despite death of a party, it is the duty of the deceased's counsel to inform the court of such death, and to give the names and addresses of the deceased's legal representatives. The deceased may be substituted by his heirs in the pending action. x x x If no legal representative is named by the counsel of the deceased, or the legal representative fails to appear within a specified period, it is the duty of the court where the case is pending to order the opposing party to procure the appointment of an executor or administrator for the estate of the deceased. The reason for this rule is to protect all concerned who may be affected by the intervening death, particularly the deceased and his estate. x x x We rule that it was error for the RTC to dismiss the case. As mentioned earlier, the petition for annulment of deed of sale involves property and property rights, and hence, survives the death of petitioner Memoracion. The RTC was informed, albeit belatedly, of the death of Memoracion, and was supplied with the name and address of her legal representative, Edgardo Cruz. What the RTC could have done was to require Edgardo Cruz to appear in court and substitute Memoracion as party to the pending case, pursuant to Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure, and established jurisprudence.

APPEARANCES OF COUNSEL

Ricardo C. Neri and *Gerome N. Tubig* for petitioner.
Rondain & Mendiola for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the Court of Appeals' (CA) Decision[2] dated 20 December 2005 and Resolution dated 21 June 2006 in CA-G.R. CV No. 80355. The CA affirmed with modification the Order[3] dated 2 June 1997 of the Regional Trial Court of the National Capital Judicial Region, Branch 30, Manila (RTC).

The Antecedent Facts

The undisputed facts, as summarized by the Court of Appeals, are as follows:

> On October 18, 1993, Memoracion Z. Cruz filed with the Regional Trial Court in Manila a Complaint against her son, defendant-appellee Oswaldo Z. Cruz, for "Annulment of Sale, Reconveyance and Damages."
>
> Memoracion claimed that during her union with her common-law husband (deceased) Architect Guido M. Cruz, she acquired a parcel of land located at Tabora corner Limay Streets, Bo. Obrero, Tondo Manila; that the said lot was registered in her name under TCT No. 63467 at the Register of Deeds of Manila; that sometime in July 1992, she discovered that the title to the said property was transferred by appellee and the latter's wife in their names in August 1991 under TCT No. 0-199377 by virtue of a Deed of

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Portia Aliño-Hormachuelos and Mariano Del Castillo (now a member of the Supreme Court), concurring.

[3] Issued by RTC Judge Senecio O. Ortile.

Sale dated February 12, 1973; that the said deed was executed through fraud, forgery, misrepresentation and simulation, hence, null and void; that she, with the help of her husband's relatives, asked appellee to settle the problem; that despite repeated pleas and demands, appellee refused to reconvey to her the said property; that she filed a complaint against appellee before the office of the *Barangay* having jurisdiction over the subject property; and that since the matter was unsettled, the *barangay* x x x issued x x x a certification to file [an] action in court, now the subject of controversy.

After Memoracion x x x finished presenting her evidence in chief, she died on October 30, 1996. Through a Manifestation, Memoracion's counsel, Atty. Roberto T. Neri, notified the trial court on January 13, 1997 of the fact of such death, evidenced by a certificate thereof.

For his part, appellee filed a Motion to Dismiss on the grounds that (1) the plaintiff's reconveyance action is a personal action which does not survive a party's death, pursuant to Section 21, Rule 3 of the Revised Rules of Court, and (2) to allow the case to continue would result in legal absurdity whereby one heir is representing the defendant [and is a] co-plaintiff in this case.

On June 2, 1997, the trial court issued the appealed Order in a disposition that reads:

> "Wherefore, in view of the foregoing, this case is ordered dismissed without prejudice to the prosecution thereof in the proper estate proceedings."

On October 17, 1997, Memoracion's son-heir, Edgardo Z. Cruz, manifested to the trial court that he is retaining the services of Atty. Neri for the plaintiff. Simultaneously, Atty. Neri filed a Motion for Reconsideration of the June 2, 1997 Order. However, the said motion was subsequently denied by Acting Presiding Judge Cielito N. Mindaro-Grulla [on October 31, 2000].

Thereafter, Edgardo Cruz, as an heir of Memoracion Cruz, filed a notice of appeal in behalf of the deceased plaintiff, signed by Atty. Neri, but the appeal was dismissed by Judge Mindaro-Grulla, [stating that] the proper remedy being *certiorari* under Rule 65 of the Rules of Court. On appellant's motion for reconsideration, Judge Lucia

Pena Purugganan granted the same, stating that the remedy under the circumstances is ordinary appeal.[4]

The Court of Appeals' Ruling

Petitioner Memoracion Z. Cruz, represented by Edgardo Z. Cruz, filed with the Court of Appeals a Petition for Review under Rule 45 of the 1997 Revised Rules of Civil Procedure. On 20 December 2005, the CA rendered judgment affirming with modification the RTC decision. We quote the dispositive portion of the CA's decision below.

WHEREFORE, the appealed Order is **AFFIRMED,** with **MODIFICATION**. The trial court's directive as to the prosecution of the action in the proper estate proceedings is **DELETED**.

SO ORDERED.[5]

Petitioner's Motion for Reconsideration was denied by the CA in its Resolution of 21 June 2006.[6]

Hence, this appeal.

The Issues

The issues for resolution in this case are:

1. Whether the Court of Appeals erred in ruling that Memoracion Z. Cruz's Petition for Annulment of Deed of Sale, Reconveyance and Damages is a purely personal action which did not survive her death; and
2. Whether the Court of Appeals erred in affirming with modification the RTC Order dismissing the Petition for Annulment of Deed of Sale, Reconveyance and Damages.

The Court's Ruling

We find the appeal meritorious.

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[4] *Rollo*, pp. 32-33. Citations omitted.

[5] *Id.* at 39.

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

The Petition for Annulment of Sale, Reconveyance and Damages survived the death of petitioner

The criterion for determining whether an action survives the death of a petitioner was elucidated in *Bonilla v. Barcena*,[7] to wit:

> The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.[8]

If the case affects primarily and principally property and property rights, then it survives the death of the plaintiff or petitioner. In *Sumaljag v. Literato*,[9] we held that a Petition for Declaration of Nullity of Deed of Sale of Real Property is one relating to property and property rights, and therefore, survives the death of the petitioner. Accordingly, the instant case for annulment of sale of real property merits survival despite the death of petitioner Memoracion Z. Cruz.

The CA erred in affirming RTC's dismissal of the Petition for Annulment of Deed of Sale, Reconveyance and Damages

When a party dies during the pendency of a case, Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure necessarily applies, *viz*:

> Sec. 16. *Death of party; duty of counsel.* - Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty

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[7] 163 Phil. 516 (1976). See also *Torres v. Rodellas*, G.R. No. 177836, 4 September 2009, 598 SCRA 390.

[8] *Id*. at 521, citing *Iron Gate Bank v. Brady*, 184 U.S. 665, 22 SCT 529, 46 L.ed. 739 and *Wenber v. St. Paul City Co.*, 97 Feb. 140 R. 39 C.C.A. 79.

[9] G.R. No. 149787, 18 June 2008, 555 SCRA 53, 60.

(30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with this duty shall be a ground for disciplinary action.

The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint a guardian *ad litem* for the minor heirs.

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time, to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. The court charges in procuring such appointment, if defrayed by the opposing party, may be recovered as costs.

The foregoing section is a revision of Section 17, Rule 3 of the old Rules of Court:

SEC. 17. Death of party. - After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs.

If the action survives despite death of a party, it is the duty of the deceased's counsel to inform the court of such death, and to give the names and addresses of the deceased's legal

representatives. The deceased may be substituted by his heirs in the pending action. As explained in *Bonilla:*

> x x x Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of the death of the decedent." From the moment of the death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right be pure or contingent. The right of the heirs to the property of the deceased vests in them even before judicial declaration of their being heirs in the testate or intestate proceedings. When [plaintiff], therefore, died[,] her claim or right to the parcels of land x x x was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case. There is, therefore, no reason for the respondent Court not to allow their substitution as parties in interest for the deceased plaintiff.[10]

If no legal representative is named by the counsel of the deceased, or the legal representative fails to appear within a specified period, it is the duty of the court where the case is pending to order the opposing party to procure the appointment of an executor or administrator for the estate of the deceased. The reason for this rule is to protect all concerned who may be affected by the intervening death, particularly the deceased and his estate.[11]

In the instant case, petitioner (plaintiff) Memoracion Z. Cruz died on 30 October 1996. Her counsel, Atty. Roberto T. Neri, notified the trial court of such death on 13 January 1997, through a Manifestation stating thus:

> COMES NOW the undersigned counsel and to this Honorable Court respectfully gives notice that the plaintiff, Memoracion Z. Cruz, died on October 30, 1996, in Manila as shown by a Certificate of Death, a certified true copy of which is hereto attached as Annex "A" hereof.

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[10] *Bonilla v. Barcena, supra* note 7 at 520-521. Citations omitted.

[11] *Sumaljag v. Literato, supra* note 9 at 62.

The legal representative of the deceased plaintiff is her son EDGARDO CRUZ whose address is at No. 3231-E Tabora St., Bo. Obrero, Tondo, Manila.

x x x x x x x x x[12]

On 24 January 1997, respondent (defendant) Oswaldo Z. Cruz moved to dismiss the case alleging that it did not survive Memoracion's death. The RTC granted the motion to dismiss in the assailed Order dated 2 June 1997.

We rule that it was error for the RTC to dismiss the case. As mentioned earlier, the petition for annulment of deed of sale involves property and property rights, and hence, survives the death of petitioner Memoracion. The RTC was informed, albeit belatedly,[13] of the death of Memoracion, and was supplied with the name and address of her legal representative, Edgardo Cruz. What the RTC could have done was to require Edgardo Cruz to appear in court and substitute Memoracion as party to the pending case, pursuant to Section 16, Rule 3 of the 1997 Revised Rules of Civil Procedure, and established jurisprudence.

We note that on 17 October 1997, Edgardo Cruz filed with the RTC a Manifestation, stating that he is retaining the services of Atty. Roberto T. Neri. We quote:[14]

UNDERSIGNED HEIR of the late Memoracion Z. Cruz respectfully manifests that he is retaining the services of **ATTY. ROBERTO T. NERI** as counsel for the plaintiff.

(Sgd.) EDGARDO Z. CRUZ
Plaintiff

Consistent with our ruling in *Heirs of Haberer v. Court of Appeals*,[15] we consider such Manifestation, signed by Memoracion's heir, Edgardo Cruz, and retaining Atty. Neri's

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[12] Records, pp. 172-173.

[13] The counsel's late filing of the Notice of Death of Memoracion Z. Cruz was not questioned by defendant Oswaldo Cruz.

[14] Records, p. 196.

[15] 192 Phil. 62, 73 (1981).

services as counsel, a *formal substitution* of deceased Memoracion by her heir, Edgardo Cruz. It also needs mention that Oswaldo Cruz, although also an heir of Memoracion, should be excluded as a legal representative in the case for being an adverse party therein.[16]

WHEREFORE, we *GRANT* the petition. We *REVERSE* the Court of Appeals' Decision dated 20 December 2005 and Resolution dated 21 June 2006 in CA-G.R. CV No. 80355. We *REMAND* this case to the Regional Trial Court of the National Capital Judicial Region, Branch 30, Manila, for further proceedings.

SO ORDERED.

Nachura, Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176410. September 1, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **CONRADO O. COLARINA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); MANDATORY APPLICATION OF SECTION 17 THEREOF IN THE DETERMINATION OF JUST COMPENSATION; REITERATED.— The factors for the determination of just compensation in Section 17 of R.A. No. 6657, and consequently

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[16] In *Sumaljag v. Literato*, *supra* note 9, the deceased's sister, although a legal heir, was excluded as a legal representative for being one of the adverse parties in the pending cases.

[*] Designated additional member per Special Order No. 882 dated 31 August 2010.

converted into a formula in A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994, is mandatory. *Land Bank of the Philippines v. Sps. Banal*, as affirmed by our subsequent rulings, did not equivocate.

2. ID.; ID.; ID.; SECTION 17 OF R.A. 6657, AS CONVERTED INTO FORMULA IN A.O. NO. 6, SERIES OF 1992 AND SUPERSEDED BY A.O. NO. 5, SERIES OF 1998, DOES NOT APPLY IN CASE AT BAR; APPLICABLE FORMULA.— We note that A.O. No. 6, Series of 1992 (as amended by A.O. No. 11, Series of 1994) has been superseded by A.O. No. 5, Series of 1998. However, A.O. No. 5, Series of 1998, is not applicable to the present case as the subject properties were assessed and valued prior to its effectivity. A perusal of records of this case readily reveals the Claims Valuation and Processing Form accomplished by petitioner when it reassessed and revaluated the subject properties. The document follows the required formula for valuation of properties under A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994. In fact, even the RTC used the formula of petitioner to compute just compensation based on petitioner's findings on land use of the subject properties. However, the RTC, as well as the CA, was gravely mistaken in using respondent's valuation of the properties contained in Oliva's appraisal report. x x x Clearly from the foregoing, the valuation of the subject properties by petitioner was based on data gathered by DAR and contained in its Field Investigation Report. The data correctly reflected *actual use and produce* of the subject properties and did not factor in potential use as what respondent's appraiser did. In fact, we note that the data obtained by Oliva was based on his unofficial surveys of farmers and Chinese traders. Oliva readily dismisses government valuation as unreliable without proffering evidence to support his statement. This explains the big discrepancy in Oliva's Appraisal Report and petitioner's valuation. While we commend respondent in readily participating in the government's agrarian reform program, our previous rulings preclude us from validating the valuation of the subject properties proffered to, and affirmed by, the SAC. The government cannot be forced to purchase land which it finds no need for, regardless of Oliva's unschooled opinion. Considering respondent's belief that the properties are worth more than the valuation made by the DAR, he can proceed to develop the land excluded by the DAR from

expropriation into its potential use as assessed by Oliva. Thus, replacing the valuation of the subject properties pursuant to the determination of petitioner where the LV was pegged using the formula {CNI x 90%} + {MV x 2}, we arrive at a different amount[.]

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Fe Rosario P. Buelva for respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* assailing the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 68476,[1] which affirmed the decision of the Regional Trial Court (RTC), Branch 3, Legazpi City, Albay, sitting as a Special Agrarian Court (SAC) in Agrarian Case No. 95-01.[2]

The facts are simple.

Respondent Conrado O. Colarina is the registered owner of three (3) parcels of agricultural land which he acquired from their former owner, Damiana Arcega. The parcels of land have a total area of 972,047 square meters with the following description:

TRANSFER CERTIFICATE OF TITLE (TCT) No.	AREA (hectares)	LOCATION
T-86402	12.5718	Herrera, Ligao, Albay
T-86448	48.3062	Herrera, Ligao, Albay
T-86449	36.3267	Amtic, Ligao, Albay

[1] Penned by Associate Justice Vicente Q. Roxas (dismissed), with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 51-59.

[2] Penned by Judge Wenceslao R. Villanueva, Jr.; *id.* at 89-100.

Upon acquisition thereof, respondent manifested his voluntary offer to sell the properties to the Department of Agrarian Reform (DAR) for coverage under Republic Act (R.A.) No. 6657, the Comprehensive Agrarian Reform Law (CARL). Respondent's assessment value of the properties was ₱45,000.00 per hectare.

The DAR, through petitioner Land Bank of the Philippines (LBP), assessed the properties and offered to purchase only 57.2047 hectares out of the 97.2047 hectares voluntarily offered for sale by respondent. The excluded area (40 hectares) fell under the exemptions and exclusions provided in Section 10[3] of the CARL, *i.e.*, all lands with eighteen percent (18%) slope and over. In addition, the LBP assigned the following values to the properties:

TCT No.	Covered Area	Excluded Area	Value
T-86402	6.5718	6	₱ 46,045.60
T-86448	28.3062	20	₱ 208,144.33
T-86449	22.3267	14	₱ 154,394.22

As the LBP's assessment and valuation of the properties was unacceptable to, and rejected by, respondent, he elevated the determination of just compensation of the properties to the Provincial Agrarian Reform Adjudicator (PARAD). Unfortunately for respondent, the PARAD affirmed the valuation set forth by the LBP.

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[3] SEC. 10. *Exemptions and Exclusions.* –

x x x x x x x x x

c) Lands actually, directly and exclusively used and found to be necessary for national defense, school sites and campuses, including experimental farm stations operated by public or private schools for educational purposes, seeds and seedlings research and pilot production center, church sites and convents appurtenant thereto, mosque sites and Islamic centers appurtenant thereto, communal burial grounds and cemeteries, penal colonies and penal farms actually worked by the inmates, government and private research and quarantine centers and all lands with eighteen percent (18%) slope and over, except those already developed, shall be exempt from the coverage of this Act. (*As amended by R.A. 7881*)

Disappointed with the low valuation by petitioner and the DAR, respondent filed a Complaint[4] before the RTC, Branch 3, Legazpi, Albay, for the judicial determination of just compensation.

In refutation, petitioner filed its Answer,[5] denied the material allegations in the Complaint, and alleged that it had correctly assessed and valuated the subject properties consistent with R.A. No. 6657 and DAR Administrative Order (AO) No. 6, Series of 1992.

During pre-trial, LBP manifested that the subject properties may be reassessed and revaluated based on the new guidelines set forth in DAR A.O. No. 11, Series of 1994. Intent on finding a common ground between petitioner and respondent and to amicably settle the case, the SAC ordered the revaluation. The new valuations of the LBP were:

TCT No.	Old Valuation	New Valuation
T-86402	₱ 46,045.60	₱ 51,762.90 at ₱7,876.5178/ha.
T-86448	₱208,144.33	₱259,525.41 at ₱9,168.50/ha.
T-86449	₱154,394.22	₱217,223.60 at ₱9,729.3196/ha.[6]

The foregoing valuation was still rejected by respondent. Hence, trial ensued. To support his Complaint and valuation of the subject properties, respondent presented in evidence his own testimony and that of Carlito M. Oliva (Oliva), then Assistant Provincial Assessor of Camarines Sur and President of the Camarines Chapter of the National Real Estate Association.

As for petitioner, it presented the testimonies of Armel Alcantara (Alcantara), Chief of the Landowners Assistance Division of

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[4] Records, pp. 1-5.

[5] *Id.* at 25-28.

[6] Folder of Exhibits, pp. 184-192.

the LBP, and Melchor Balmaceda, officer of LBP, Sipocot Branch.

The SAC summarized the testimonies of the witnesses as follows:

> Second witness Carlito M. Oliva, x x x testified that in several instances, he was deputized by the Honorable Court under RTC BR. 26 to chair the commission in the determination of the fair market value of properties subject for payment by the government. That the properties involved in this case is composed of three parcels. [T-86402] is situated at Barangay Herrera, Ligao, Albay which contains an area of 12.5718 has.; [T-86449] is also situated in the same *Barangay* with an area of 36.3267 has.; [a]nd [T-86448] is situated at Barangay Amtic, Ligao, Albay with an area of 48.3062 has or a total of 97.2047 has. Upon Mr. Colarina's request, he conducted an investigation and ocular inspection on the subject properties and made a narrative report relative thereto. That his recommendation as the reasonable market value of the properties is at ₱49,201.148/ha or a total of ₱4,788,415.20 using the productivity approach since the subject property is mostly agricultural. That the actual area planted to coconuts is about 43.84%; banana plants is 7.79%; corn land is 1.14%; homelots is 0.50% and 4.97% cogonal, while 5% is non-arable.
>
> x x x x x x x x x
>
> Armel Alcantara testified that x x x before, he was the Division Chief of the Claim, Processing and Payment Division (CPPD) [of the LBP]. As such, he conducts review of claim folders covered by P.D. No. 27, E.O. No. 228 and R.A. No. 6657, most specifically the claim folders under voluntary offer to sell and compulsory acquisition claim folders. That he valued the subject lands owned by [respondent] based on AO No. 11 S. of 1996. Pursuant to the Hon. Court's order dated November 14, 1996. For TCT No. 86448, the area covered is 28.3062 has. [o]ut of 48.3062 has. Because some portion of the property is hilly and mountainous and underdeveloped which exceeded the 18% limit set forth under Sec. 10 of RA 6657. This lot is planted to corn, peanut and cogonal. The corn land is 13 has., peanut land is .25 has., cogonal is 15.0562 has.; the excluded portion which is mountainous and about 25% slope totals 20 has. The factor considered by Land Bank is under Formula No. 2 which is the Capitalized Net Income (CNI) x 90% and the market value per Tax declaration wherein they get the remaining 10%. The CNI was taken from the average

gross production based on the field investigation report multiplied by the selling price from the Department of Agriculture municipal data, arriving at a total CNI of ₱10,291.67 per ha. The market value per Tax declaration was based on the third classification as furnished to Land Bank by the Municipal Assessor's office. The total MVPT as computed by Land Bank is ₱14,193.22, so, 10% of which is ₱1,419.32. After computing the CNI and the MVPT, he applied the applicable formula which is CNI x 90% and the MVPT x 10%. The CNI total is ₱9,262.5 and the MV is ₱1,419.32. Summing up the total amount of the two factors, the value per ha. Arrived at for corn land is ₱10,681.82 per ha. Multiply it by 13 has. For corn land, the total amount is ₱3,535.66. For peanut land, the total amount is ₱3,535.66 and for cogonal where they used the market value per tax declaration multiplied by 2. (sic) the total is ₱117,126.09. Therefore, the total valuation of this 28.3062 has. portion of the property acquired by the government is ₱259,525.41.

For Title No. 86449, 22.3267 has. out of 36.3267 has. [i]s carpable. The 14 has. [w]as excluded because this falls under the hilly and mountainous portion which is about 18% slope. Applying the same rules and regulations, the total valuation for this property is ₱217,223.60.

For Title No. 86402, the area covered is 6.5718 has. [o]ut of 12.5718 has. The area of 6 has. is excluded for it falls above 18% slope. Applying again the same rules and regulations, the total valuation for the 6.5718 has. [a]cquired by the government is ₱51,762.90.

That there are several valuations/formulas provided for under RA 6657 and the Land Bank follows the applicable formula as reflected in the field investigation report. Therefore, their basis in determining which factors will be applied are the result of the field investigation report. After determining the existence of the property, the DAR, Land Bank and the other agencies concerned conducted an ocular inspection of the property being offered for sale under CARP or covered by the CARP. The data in-put were gathered in the field including the number of fruit bearing trees also determined. The production data was also taken and a survey was being conducted in the field on adjacent properties. Said data were compared with the record of the Municipal agriculturist and other officers. That the valuation of the property was based under AO No. 11 existing at the time of the valuation of the property as of November 19, 1996.

Melchor Balmaceda testified that at present he is an officer of Land Bank of the Philippines, Sipocot Branch but before, he was connected with Land Bank VO, Legazpi City Branch as Agrarian Affairs Specialist. As such, he conducts ocular inspection on the properties covered by the CARP, and gathers information relative to land valuation. That sometime in 1991, he together with DAR personnel and BARC Chairman and caretakers of the property conducted an ocular inspection in question in the name of Damian Arcega, the former owner of the property, which property consisted of 3 parcels. That in connection thereto, they made a written report that the property is generally mountainous and majority is planted to coconut. A portion is planted to corn and minimal portion is planted to peanut and there is also a portion which is cogonal where there is no product. That all the areas are carpable. That they gather data information from government agencies and they compute the net income of the properties based on the produce.[7]

Thereafter, the SAC rendered a decision reconciling the conflicting evidence of the parties. The SAC followed the formula of the LBP and its land use classification of the subject properties; the appraisal report on the valuation thereof. It disposed of the case, to wit:

To reconcile the conflicting figures both prayed for by [respondent] and [petitioner] Land Bank as the computation of the value of the properties to be paid to the [respondent], taking into account all the factors in determining just compensation and considering that the taking of private agricultural properties under Agrarian Reform Law is a special kind of eminent domain which is revolutionary in character, the primary goal of which is to grant land to the landless and the need for high production, the just compensation for the lots subject matter of this case, using the value in the [respondent's] appraisal report and the land use of the properties as classified by the Land Bank, are as follows:

1) TCT No. T-86448 – carpable area – 28.3062 has.

Land Use:

A) Corn land
Area = 13.0000 has.
Value/Ha = ₱52,700/has (Per Appraisal Report)

[7] *Rollo*, pp. 91-93.

Computation:
₱52,700/ha x 13.0000 has = ₱685,100.00

B) Peanut

Area = .2500
Value/Ha = ₱60,000/has (Per Appraisal Report)
Computation:
₱60,000.00/has x .2500 has = ₱15,000.00

C) Cogonal

Area = 15.0562 has.
Value/Ha = ₱5,270 (Per Appraisal Report)
Computation:
₱5,270.00/has x 15.0562 has = ₱79,346.17

Total:

Corn land	- ₱685,100.00
Peanut	- 15,000.00
Cogonal	- 79,346.17
	₱779,446.17

2) TCT No. T-86449 – carpable area – 22.3267 has.

Land Use:

A) Corn land

Value/Ha = ₱52,700.00/ha (Per Appraisal Report)
Area = 15.000 has
Computation:
₱52,700.00/has. x 15.0000 has = ₱790,500.00

B) Cogon:

Value/ha = ₱5,270/ha (Per Appraisal Report)
Area = 7.3267 has
Computation:
₱5,270/ha x 7.3267 has = ₱38,611.7

Total:

Corn land	- ₱790,500.00
Cogon	- 38,611.70
	₱829,111.70

3) TCT No. T-86402 – carpable area – 6.5718 has

Land Use:

A) Corn land

Value/ha = ₱52,700/ha (Per Appraisal Report)
Area = 3.0000 has
Computation:
₱52,700/has x 3.0000 has = ₱158,100

B) Cogonal

Value/ha = ₱5,270/ha (Per Appraisal Report)
Area = 3.5718 has
Computation:
₱5,270/ha x 3.5718 has = ₱18,823.28

Total:

Corn land	= ₱158,100.00
Cogonal	= 18,823.38
Total	= ₱176,923.38

Based on the foregoing computation, the just compensation for 1) TCT No. T-86448 with a carpable area of 28.3062 has. is fixed at ₱779,446.17; 2) TCT No. T-86449 with a carpable area of 22.3267 has. is fixed at ₱829,111.70; and for 3) TCT No. T-86402 with a carpable area of 6.5718 has. is fixed at ₱18,823.38.

Thus, the overall valuation of the property is as follows:

TCT No. T-86648	₱ 779,446.17
TCT No. T-86649	829,111.70
TCT No. T-86402	176,923.38
TOTAL	₱1,785,481.25
	==========

WHEREFORE, [petitioner LBP] is ordered to pay [respondent] Conrado Colarina the total sum of ONE MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND FOUR HUNDRED EIGHTY ONE PESOS AND TWENTY-FIVE CENTAVOS (₱1,785,481.25) in case or in bond or in any other mode of payment under Section 18 of RA 6657 otherwise known as the Comprehensive Agrarian Reform Law, at the option of the landowner.

SO ORDERED.[8]

Still dissatisfied with the valuation of just compensation for the subject properties, both parties appealed to the CA. The appellate court affirmed the ruling of the SAC, to wit:

WHEREFORE, premises considered, the August 7, 2000 Decision of the Regional Trial Court of Lega[z]pi City, Albay, Branch 3, in Agrarian Case No. 95-01, is hereby **AFFIRMED**.

SO ORDERED.[9]

Adamant on the accuracy of its computation, petitioner appeals to this Court, positing the following issues:

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN THE FOLLOWING INSTANCES:

I.

WHEN IT AFFIRMED THE REGIONAL TRIAL COURT OF LEGA[Z]PI CITY, BRANCH 3 DECISION DATED AUGUST 7, 2000 WHICH AWARDED ₱1,785,481.25 AS JUST COMPENSATION FOR THE FIFTY-SEVEN-HECTARE PROPERTY, AS THE SAID DECISION FAILED TO CONFORM TO THIS HONORABLE COURT'S RULING IN "*LAND BANK OF THE PHILIPPINES V. SPOUSES VICENTE BANAL AND LEONIDES ARENAS-BANAL*" (G.R. NO. 143276).

II.

WHEN IT TREATED THE TAKING OF AGRICULTURAL LANDS FOR AGRARIAN REFORM PURPOSES AS AN ORDINARY EXPROPRIATION OF PRIVATE PROPERTY FOR PUBLIC USE.[10]

We impale the foregoing into the singular issue of whether the lower courts' computation of just compensation for the subject properties is correct.

We answer in the negative and find the petition impressed with merit.

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[8] *Id.* at 98-100.

[9] *Id.* at 58-59.

[10] *Id.* at 263-264.

As pointed out by petitioner, our ruling in *Land Bank of the Philippines v. Sps. Banal*[11] is definitive on the factors to be considered, and the formula utilized, for the determination of just compensation:

> To begin with, under Section 1 of Executive Order No. 405 (1990), the Landbank is charged "primarily" with "the determination of the land valuation and compensation for all private lands suitable for agriculture under the Voluntary Offer to Sell or Compulsory Acquisition arrangement…" For its part, the DAR relies on the determination of the land valuation and compensation by the Landbank.
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> x x x x x x x x x
>
> A party who disagrees with the decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court "for final determination of just compensation."
>
> In the proceedings before the RTC, it is mandated to apply the Rules of Court and, on its own initiative or at the instance of any of the parties, "appoint one or more commissioners to examine, investigate and ascertain facts relevant to the dispute, including the valuation of properties, and to file a written report thereof x x x." In determining just compensation, the RTC is required to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus:
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> > "Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation."
>
> These factors have been translated into a basic formula in DAR Administrative Order No. 6, Series of 1992, as amended by DAR Administrative Order No. 11, Series of 1994, issued pursuant to the

[11] 478 Phil. 701, 708-710 (2004). (Citations omitted.)

DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

Subsequent rulings of the Court uniformly parleyed that Section 17 of R.A. No. 6657 has been translated into a formula by the DAR through A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994:[12]

A. There shall be one basic formula for the valuation of lands covered by [Voluntary Offer to Sell] or [Compulsory Acquisition] regardless of the date of offer or coverage of the claim:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:	LV	= Land Value
	CNI	= Capitalized Net Income
	CS	= Comparable Sales
	MV	= Market Value per Tax Declaration

The above formula shall be used if all the three factors are present, relevant, and applicable.

A.1 When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A.2 When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A.3 When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of the land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in

[12] See *Land Bank of the Philippines v. Luciano*, G.R. No. 165428, November 25, 2009, 605 SCRA 426; *Land Bank of the Philippines v. Rufino*, G.R. Nos. 175644 and 175702, October 2, 2009, 602 SCRA 399; *Land Bank of the Philippines v. Lim*, G.R. No. 171941, August 2, 2007, 529 SCRA 129; *Land Bank of the Philippines v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495.

that order) approved by LBP within one (1) year from receipt of claimfolder.

x x x x x x x x x

A.6 The basic formula in the grossing-up of valuation inputs such as LO's Offer, Sales Transaction (ST), Acquisition Cost (AC), Market Value Based on Mortgage (MVM) and Market Value per Tax Declaration (MV) shall be:

Grossed-up Valuation Input = Valuation input x Regional Consumer Price Index (RCPI) Adjustment Factor

The RCPI Adjustment Factor shall refer to the ratio of RCPI for the month issued by the National Statistics Office as of the date when the claimfolder (CF) was received by LBP from DAR for processing or, in its absence, the most recent available RCPI for the month issued prior to the date of receipt of CF from DAR and the RCPI for the month as of the date/effectivity/ registration of the valuation input. Expressed in equation form:

$$\text{RCPI Adjustment Factor} = \frac{\text{RCPI for the Month as of the Date of Receipt of Claimfolder by LBP from DAR or the Most recent RCPI for the Month Issued Prior to the Date of Receipt of CF}}{\text{RCPI for the Month Issued as of the Date/Effectivity/Registration of the Valuation Input}}$$

B. Capitalized Net Income (CNI) — This shall refer to the difference between the gross sales (AGP x SP) and total cost of operations (CO) capitalized at 12%.

Expressed in equation form:

$$CNI = \frac{(AGP \times SP) - CO}{.12}$$

Where: CNI = Capitalized Net Income

AGP = Latest available 12-month's gross production immediately preceding the date of offer in case of VOS or date of notice of coverage in case of CA.

SP = The average of the latest available 12-month's selling prices prior to the date of receipt of the claim folder by LBP for processing, such prices to be secured from the Department of Agriculture (DA) and other appropriate regulatory bodies or, in their absence, from the Bureau of Agricultural Statistics. If possible, SP data shall be gathered from the *barangay* or municipality where the property is located. In the absence thereof, SP may be secured within the province or region.

CO = Cost of Operations

Whenever the cost of operations could not be obtained or verified, an assumed net income rate (NIR) of 20% shall be used. Landholdings planted to coconut which are productive at the time of offer/coverage shall continue to use the 70% NIR. DAR and LBP shall continue to conduct joint industry studies to establish the applicable NIR for each crop covered under CARP.

.12 = Capitalization Rate

x x x x x x x x x

C. CS shall refer to any one or the average of all the applicable sub-factors, namely, ST, AC and MVM:

Where: ST = Sales Transactions as defined under Item C.2

AC = Acquisition Cost as defined under Item C.3

MVM = Market Value Based on Mortgage as defined under Item C.4

x x x x x x x x x

D. In the computation of Market Value per Tax Declaration (MV), the most recent Tax Declaration (TD) and Schedule of Unit Market Value (SMV) issued prior to receipt of claimfolder by LBP shall be considered. The Unit Market Value (UMV) shall be grossed up from the date of its effectivity up to the date of receipt of claimfolder by LBP from DAR for processing, in accordance with item II.A.A.6.

In *Land Bank of the Philippines v. Celada*,[13] we declared:

While SAC is required to consider the acquisition cost of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declaration and the assessments made by the government assessors to determine just compensation, it is equally true that *these factors have been translated into a basic formula by the DAR* pursuant to its rule-making power under Section 49 of RA No. 6657. As the government agency principally tasked to implement the agrarian reform program, it is the DAR's duty to issue rules and regulations to carry out the object of the law. DAR AO No. 5, s. of 1998 precisely "filled in the details" of Section 17, RA No. 6657 by providing a basic formula by which the factors mentioned therein may be taken into account. The SAC was at no liberty to disregard the formula which was devised to implement the said provision.

It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same.

In the same vein, *Land Bank of the Philippines v. Lim*[14] did not depart from the previous rulings and explicitly affirmed the mandatory nature of Section 17 of RA No. 6657 and DAR A.O. No. 6092, as amended by DAR A.O. No. 11-94:

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[13] *Supra*, at 506-507. (Citations omitted, emphasis supplied.)

[14] *Supra* note 12, at 134-135.

In *Land Bank of the Philippines v. Spouses Banal*, this Court underscored the **mandatory nature of Section 17 of RA 6657 and DAR AO 6-92, as amended by DAR AO 11-94**, *viz.*:

"In determining just compensation, *the RTC is* ***required*** *to consider several factors enumerated in Section 17 of R.A. 6657, as amended, thus*:

> "Sec. 17. *Determination of Just Compensation*. – In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property, as well as the non-payment of taxes or loans secured from any government financing institution on the said land, shall be considered as additional factors to determine its valuation."

These factors have been translated into a basic formula in [DAR AO 6-92], as amended by [DAR AO 11-94], issued pursuant to the DAR's rule-making power to carry out the object and purposes of R.A. 6657, as amended.

***The formula stated in [DAR AO 6-92], as amended, is as follows*:**

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula *shall* be used if all **the three factors are present**, relevant and applicable.

A.1 When **the CS factor is not present** and CNI and MV are applicable, the formula *shall* be:

LV = (CNI x 0.9) + (MV x 0.1)

x x x x x x x x x

While the determination of just compensation involves the exercise of judicial discretion, however, *such discretion must be discharged within the bounds of the law*. Here, the RTC wantonly disregarded R.A. 6657, as amended, and its implementing rules and regulations. ([DAR AO 6-92], as amended by [DAR AO 11-94]).

x x x x x x x x x

WHEREFORE, x x x. Civil Case No. 6806 is REMANDED to the RTC x x x. ***The trial judge is directed to observe strictly the procedures specified above in determining the proper valuation of the subject property.***

The recent case of *Heirs of Lorenzo and Carmen Vidad and Agvid Construction Co., Inc. v. Land Bank of the Philippines*[15] is most propinquity on the same point:

LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, **as it is the RTC, sitting as a SAC, that could make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations.** LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of RA 6657 and the DAR regulations.

In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17 of RA 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in computing just compensation. DAR AO No. 5, series of 1998, provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where:

LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

[15] G.R. No. 166461, April 30, 2010.

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.

In *Land Bank of the Philippines v. Spouses Banal*, we remanded the case to the SAC for further reception of evidence because the trial court based its valuation upon a different formula and did not conduct any hearing for the reception of evidence.

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim* and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, where we also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulations.[16]

The factors for the determination of just compensation in Section 17 of R.A. No. 6657, and consequently converted into a formula in A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994, is mandatory. *Land Bank of the Philippines v. Sps. Banal*,[17] as affirmed by our subsequent rulings, did not equivocate.

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[16] Emphasis supplied, citations omitted.

[17] *Supra* at note 11.

We note that A.O. No. 6, Series of 1992 (as amended by A.O. No. 11, Series of 1994) has been superseded by A.O. No. 5, Series of 1998. However, A.O. No. 5, Series of 1998, is not applicable to the present case as the subject properties were assessed and valued prior to its effectivity.

A perusal of the records of this case readily reveals the Claims Valuation and Processing Form[18] accomplished by petitioner when it reassessed and revaluated the subject properties. The document follows the required formula for valuation of properties under A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994. In fact, even the RTC used the formula of petitioner to compute just compensation based on petitioner's findings on land use of the subject properties. However, the RTC, as well as the CA, was gravely mistaken in using respondent's valuation of the properties contained in Oliva's appraisal report, *i.e.*, ₱52,700.00/ha.

We note that Oliva's appraisal report did not attach pertinent documents thereto, considering that, as he had testified, he used the productivity approach:

Q Mr. Witness [Oliva] you said that you gave the valuation of the coconut land in that property of Mr. Colarina. What is your valuation to the coconut land per hectare?

WITNESS:

A For the coconut land, the valuation I arrived at for the coconut land is the amount of ₱45,300.00 per hectare. That is the market value of the 4th class coconut land and the improvements already, sir.

Q What about the banana lands?

A The valuation is ₱70,800.00 per hectare, that is the valuation of the land, 4th class banana land including already the improvements.

Q Why did you conclude this high valuation of banana lands?

A Considering that I have compressed all these banana in every hectare, I have a reason to believe that it is a 4th class banana

[18] *Supra* at note 6.

land. And in a 4th class banana land, the price per kilo is only ₱15.00 to ₱30.00 per kilo. The effective number of bananas per hectare is only 600 clusters considering that this is the productivity for a 4th class banana land. The produce annually of 4,000 kilos is very minimal. So at ₱15.00 per kilo, I arrived at a valuation of ₱60,000.00 per hectare. The appraisal, on the other hand, for taxation purposes, we just state there the area actually being planted to bananas not considering the clusters of bananas in one hectare. Banana plantation with this kind of clusters will cost more than this if it will be properly fertilized by the owner. So this banana land is only a 4th class banana land and is about 7.5764 hectares of the subject property with only 4,000 to 8,000 kilos of banana fruits annually.

[Counsel of defendant DAR]

Q What about the corn land area?
A I valued it at ₱52,700.00 per hectare, sir.

Q What is your basis?
A I have also here on page 5 of my report. I have classified the subject portion as a second class corn land. With a production of 101 to 150 cavans per hectare per year and the price of corn which is ₱420.00 per cavan, I arrived at a valuation of ₱52,700 per hectare, sir.

x x x x x x x x x

Q But that is not the data established by the [DAR]?
A That is why I made a separate actual investigation. I made personal interviews with the farmers and so we arrived at this production.

Q So your basis is the information which you gathered from the farmers?
A Considering the kind of soil of the property planted by the farmers to corn, we will have to arrive at this productivity, sir.

Q Did you inquire about the government support price of corn per kilo?
A The government support price is at ₱7.00 or ₱8.00 per kilo, sir.

Q Did you get that from the National Food Authority?

A I got this from the [C]hinese traders because I want to arrive at the open market valuation. I am not prone to adopt the government price as I was deputized by Mr. Colarina [respondent] to appraise his property independently, not as an assessor but as a private appraiser from the open market. And I know that this is still subject for review by the honorable court.

x x x x x x x x x

Q **So do you have the data where you based the valuation?**

A **That was the result of my actual interview with the farmers and traders.**

x x x x x x x x x

Q How much is the valuation you gave to this rootcrops area?

A The subject portion was classified by me as a 3rd class rootcrop land and so I valued it at ₱60,000.00 per hectare, sir.

Q Do you mean to tell this honorable court that this rootcrops land, the banana land and corn land are distinct areas separate from each other?

A **I apprised this honorable court that I appraised this property not exactly on what is being produced in the area. I considered the land itself, the classification of the land, the boundaries there but some are "*ogacon*" (lazy) to cultivate this property. Because I am also an agriculturist and I also have a lot which is planted to this kind of plants and I know what will be the actual produce of the CROPS [inserted in the TSN] with a certain kind of land. If we consider the actual produce, it is very low. Because we are "*ogacon*" (lazy). What I am very much concerned is the kind of the land and then I asked them if we will have to cultivate the property properly, how much are we going to expect.**

Q **Do you mean to impress to us that while you conducted the ocular inspection, there were area which were not cultivated?**

A When I conducted the ocular inspection, I was able to classify an area of around 4.8 hectares which has no value at all, sir.

x x x x x x x x x

Q **So you had the ocular inspection without anybody from the government or from the *barangay* going with you?**

A **Nobody but I told the *barangay* captain of the place that we will be going there for an ocular inspection and from the *barangay* captain, we have learned that that there is a subdivision for sale which is adjoining the subject properties for that much amount also.**

x x x x x x x x x

[On questioning by the SAC]

A (Perusing the report submitted by the Land Bank of the Philippines). This is a very low valuation, your honor.

Q Why?

A Considering that I did not take into consideration the valuation that was done by the Assessor's Office to the schedule of value because as an assessor, in gathering data, we have to base the valuation of every kind of property. It takes us a hard time to consolidate all these things because, first of all, one, the comparative sales approach, for example, your honor, we seldom find the consideration in a certain sale that is the true and actual selling price perhaps because of the implementation of the capital gains tax of the Bureau of Internal Revenue. Most of them are under valued. Now, that is why I based my valuation from the actual procedure. First of all I considered the kind of land thereon and thereby considered also the different kinds of perennial trees or plants and based on the actual interviews I conducted with the farmers, I arrived at the actual produce where I based my computation not really considering the assessor's value because it is only for taxation purposes. Nowhere in the Philippines that the government assessments are reliable.[19]

In stark contrast is the valuation made by witness Alcantara:

Q Mr. Witness, what rule is followed by Land Bank in arriving at the valuation as contained in this exhibit?

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[19] TSN, February 20, 1998, pp. 11-19. (Emphasis supplied.)

A The guidelines followed by Land Bank: properties valued under Administrative Order No. 11 Series of 1996 based on the Honorable Court's Order dated November 14, 1996.

Q In Exh. "1", how many hectares were valued for the contemplated acquisition of the property?

A The area for acquisition under Title No. 86448 is 28.3062 hectares.

Q x x x Will you please explain why only a total of 28.3062 [hectares] was computed in the valuation of the property?

A Some portion of the property is hilly and mountainous which exceeded the 18% limit set forth under Section 10 of R.A. 6657. Said portions of land were mountainous and undeveloped and therefore excluded from acquisition under existing guidelines.

Q What is the basis of said exclusion from coverage?

A Section 10 of R.A. 6657.

Q Will you please explain to us the character, land use and condition of this particular land as described in Exh. "1"?

A The property which contains an area of 48.3062 hectares per title is planted to corn, peanut and a large portion is cogonal. The corn land is 13 hectares, peanut land is .25 hectares and the cogonal is 15.0562 hectares. A hilly portion which is about 18% slope and a mountainous portion which is about 25% slope totals 20 hectares. This portion is the excluded one.

Q Will you please tell this Honorable Court what factors were considered by Land Bank in arriving at the valuation of the property?

A The factor considered by Land Bank is under Formula No. 2 which is the capitalized net income (CNI) x 90% and the market value per tax declaration wherein we get the remaining 10%.

Q There appears a computation for the CNI. Will you please explain how the total value was arrived at?

A CNI for corn was taken from the average gross production based on the field investigation report multiplied by the selling price from the Department of Agriculture

municipal data, arriving at a total CNI of ₱10,291.67 per hectare.

Q What about the computation for the market value per tax declaration (MVPT)? Will you explain how the total valuation for the MVPT was arrived at?

A The market value per tax declaration was based on the third classification as furnished to Land Bank by the Municipal Assessor's Office. The total MVPT as computed by Land Bank is ₱14,193.22, so, 10% of which is ₱1,419.32.

Q Now, after computing the CNI and the MVPT, what steps did you undertake to arrive at the total valuation of the property?

A We applied the applicable formula which is the CNI x 90% and the MVPT x 10%. The CNI total is ₱9,262.5 and the market value is ₱1,419.32. Summing up the total amount of the two factors, the value per hectare arrived at for corn land is ₱10,681.82 per hectare. So, if we will apply the amount arrived at for the value per hectare of corn, ₱10,681.82 x 13 has. for corn land, the total is ₱138,863.66. The for peanut land, the total amount is ₱3,535.66 and for the cogonal land where we used the market value per tax declaration multiplied by 2, the total is ₱117,126.09. Therefore, the total valuation of this 28.3062 portion of the property acquired by the government is ₱259,525.41.

x x x x x x x x x

A The total area acquired for Title No. 86449 is 22.3267 hectares out of 36.267 hectares per title.

Q What is the basis of your exclusion of the 14 hectares?

A This 14 hectares fall also under the hilly and mountainous portion which is about 18% slope.

Q x x x [D]id you apply the same rules and regulations covered by such valuation? Did you apply the same factors?

A Yes.

Q What is the total?

A The total valuation for this property [TCT No. 86449] is ₱217,223.60.

x x x x x x x x x

Q Lastly, in Exh. "3", will you please tell us what is the area acquired for coverage under CARP?

A The area acquired is 6.5718 hectares out of 12.5718 has.

Q What is the area excluded for valuation?

A The area excluded for valuation falling above 18% slope is 6 hectares.

Q x x x [D]id you still adopt the same rules and regulations in computing the valuation?

A The same.

Q What is the total valuation [for TCT No. 86402]?

A The total valuation for Title No. 86402 for the 6.5718 hectares acquired by the government is ₱51,762.90.

x x x x x x x x x

Q Are there any guidelines under the law which limits or defines what can be used in the valuation of the property under the CARP?

A There are several valuations/formulas provided for under R.A. 6657 and Land Bank follows the applicable formula as reflected in the field investigation report. Therefore, our basis in determining which factors will be applied are the result of the field investigation report.

Q Will you please tell this Honorable Court what particular activities are to be taken for the purpose of being able to value the property?

A After determining the existence of the property, the DAR, Land Bank and other agencies concerned conduct an ocular inspection of the property being offered for sale under CARP or covered by the CARP. The data in-put were gathered in the field including the number of fruit bearing trees, they were also determined. The production data is also taken and a survey is being conducted in the field on adjacent properties. Said data were being compared with the record of the Municipal agriculturist and other officers.

Q Last question Mr. Witness, the total valuation of the subject property is as of what point of time?

A The valuation of the property was based under Administrative Order No. 11 existing at the time of the valuation of the property.

x x x x x x x x x

COURT:

When was that?

WITNESS:

November 19, 1996.[20]

Clearly from the foregoing, the valuation of the subject properties by petitioner was based on data gathered by DAR and contained in its Field Investigation Report.[21] The data correctly reflected *actual use and produce* of the subject properties and did not factor in potential use as what respondent's appraiser did. In fact, we note that the data obtained by Oliva was based on his unofficial surveys of farmers and Chinese traders. Oliva readily dismisses government valuation as unreliable without proffering evidence to support his statement. This explains the big discrepancy in Oliva's Appraisal Report and petitioner's valuation.

While we commend respondent in readily participating in the government's agrarian reform program, our previous rulings preclude us from validating the valuation of the subject properties proffered to, and affirmed by, the SAC. The government cannot be forced to purchase land which it finds no need for, regardless of Oliva's unschooled opinion. Considering respondent's belief that the properties are worth more than the valuation made by the DAR, he can proceed to develop the land excluded by the DAR from expropriation into its potential use as assessed by Oliva.

Thus, replacing the valuation of the subject properties pursuant to the determination of petitioner where the LV was pegged using the formula {CNI x 90%} + {MV x 2}, we arrive at a different amount:

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[20] TSN, November 4, 1998, pp. 4-8.

[21] Folder of Exhibits, pp. 193-207.

1) TCT No. T-86448 – carpable area – 28.3062 has.

Land Use:

A) Corn land
Area = 13.0000 has.
Value/Ha = ₱10,681.82/ha
Computation:
₱10,681.82/ha x 13.0000 has = ₱138,863.66

B) Peanut
Area = .2500
Value/Ha = ₱14,142.65/ha
Computation:
₱14,142.65/ha x .2500 has = ₱3,535.66

C) Cogonal
Area = 15.0562 has.
Value/Ha = ₱7,779.26/ha
Computation:
₱7,779.26/ha x 15.0562 has = ₱117,126.09

Total:

Corn land	-	₱ 138,863.66
Peanut	-	3,535.66
Cogonal	-	117,126.09
		₱259,525.41

2) TCT No. T-86449 – carpable area – 22.3267 has.

Land Use:

A) Corn land
Value/Ha = ₱10,681.82/ha
Area = 15.00 has
Computation:
₱10,681.82/ha x 15.0000 has = ₱160,227.30

B) Cogon:
Value/ha = ₱7,779.26/ha
Area = 7.3267 has
Computation:
₱7,779.26/ha x 7.3267 has = ₱56,996.30

Total:

Corn land	- ₱160,227.30
Cogon	- 56,996.30
	₱217,223.60

3) TCT No. T-86402 – carpable area – 6.5718 has

Land Use:

A) Corn land
Value/ha = ₱7,992.31/ha
Area = 3.0000 has
Computation
₱7,992.31/ha x 3.0000 has = ₱23,976.94

B) Cogonal
Value/ha = ₱7,779.26/ha
Area = 3.5718 has
Computation:
₱7,779.26/ha x 3.5718 has = ₱27,785.96

Total:

Corn land	= ₱ 23,976.94
Cogonal	= 27,785.96
Total	= ₱ 51,762.90

TCT No. T-86448	- ₱259,525.41
TCT No. T-86449	217,223.60
TCT No. T-86402	51,762.90
TOTAL	₱ 528,511.91

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WHEREFORE, the petition is hereby *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 68476 and the decision of the Regional Trial Court, Branch 3, Legazpi City, Albay, in Agrarian Case No. 95-01 are *REVERSED* and *SET ASIDE*. Petitioner Land Bank of the Philippines is hereby ordered to pay respondent Conrado O. Colarina the following amounts:

1. ₱259,525.41 for 28.3062 hectares of TCT No. 86448;
2. ₱217,223.60 for 22.3267 hectares of TCT No. 86449; and

3. ₱51,762.90 for 6.5718 hectares of TCT No. 86402.

Petitioner shall pay twelve percent (12%) interest per annum from finality of this judgment until complete satisfaction thereof.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 176657. September 1, 2010]

DEPARTMENT OF FOREIGN AFFAIRS and BANGKO SENTRAL NG PILIPINAS, *petitioners, vs.* **HON. FRANCO T. FALCON, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH 71 OF THE REGIONAL TRIAL COURT IN PASIG CITY and BCA INTERNATIONAL CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; RULE ON HIERARCHY OF COURTS, RELAXED IN VIEW OF TRANSCENDENTAL IMPORTANCE OF AN ISSUE.— Although the direct filing of petitions for *certiorari* with the Supreme Court is discouraged when litigants may still resort to remedies with the lower courts, we have in the past overlooked the failure of a party to strictly adhere to the hierarchy of courts on highly meritorious grounds. x x x The Court deems it proper to adopt a similarly liberal attitude in the present case in consideration of the transcendental importance of an issue raised herein. This is the first time that the Court is confronted with the question of

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[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 882 dated August 31, 2010.

whether an information and communication technology project, which does not conform to our traditional notion of the term "infrastructure," is covered by the prohibition on the issuance of court injunctions found in Republic Act No. 8975, which is entitled "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes." Taking into account the current trend of computerization and modernization of administrative and service systems of government offices, departments and agencies, the resolution of this issue for the guidance of the bench and bar, as well as the general public, is both timely and imperative.

2. ID.; CIVIL PROCEDURE; RULE ON VERIFICATION OF PETITIONS, RELAXED IN THE INTEREST OF JUSTICE.— BCA failed to successfully rebut the presumption that the official acts (of Mr. Custodio and Mr. Zuniga) were done in good faith and in the regular performance of official duty. Even assuming the verifications of the petition suffered from some defect, we have time and again ruled that "[t]he ends of justice are better served when cases are determined on the merits — after all parties are given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections." In other words, the Court may suspend or even disregard rules when the demands of justice so require.

3. ID.; SPECIAL CIVIL ACTIONS; INJUNCTION; E-PASSPORT PROJECT IS NOT AN INFRASTRUCTURE PROJECT THAT IS PROTECTED FROM LOWER COURT ISSUED INJUNCTIONS UNDER R.A. NO. 8975.— Under Republic Act No. 8975, a "service contract" refers to "**infrastructure contracts** entered into by any department, office or agency of the national government with private entities and nongovernment organizations for services related or incidental to the functions and operations of the department, office or agency concerned." On the other hand, the phrase "other related and necessary activities" obviously refers to activities related to a government infrastructure, engineering works, service contract or project under the BOT Law. In other words, to be

considered a service contract or related activity, petitioners must show that the e-Passport Project is an infrastructure project or necessarily related to an infrastructure project. This, petitioners failed to do for they saw fit not to present any evidence on the details of the e-Passport Project before the trial court and this Court. There is nothing on record to indicate that the e-Passport Project has a civil works component or is necessarily related to an infrastructure project. Indeed, the reference to Section 30.4 of the IRR of Republic Act No. 9184 (a provision specific to the procurement of goods) in the BSP's request for interest and to bid confirms that the e-Passport Project is a procurement of goods and not an infrastructure project. Thus, within the context of Republic Act No. 9184 – which is the governing law for the e-Passport Project – the said Project is not an infrastructure project that is protected from lower court issued injunctions under Republic Act No. 8975, which, to reiterate, has for its purpose the expeditious and efficient implementation and completion of government infrastructure projects. x x x [T]he prohibition in Republic Act No. 8975 is inoperative in this case, since petitioners failed to prove that the e-Passport Project is national government project as defined therein. Thus, the trial court had jurisdiction to issue a writ of preliminary injunction against the e-Passport Project.

4. ID.; ID.; ID.; TRIAL COURT'S ISSUANCE OF A WRIT OF INJUNCTION TO ENJOIN THE TERMINATION OF THE AMENDED BUILT-OPERATOR-AND-TRANSFER (BOT) AGREEMENT FOR THE MACHINE READABLE PASSPORT/VISA PROJECT (MRP/V PROJECT) CONSTITUTES GRAVE ABUSE OF DISCRETION; REASONS.— There is no doubt that the MRP/V Project is a project covered by the BOT Law and, in turn, considered a "national government project" under Republic Act No. 8795. Under Section 3(d) of that statute, trial courts are prohibited from issuing a TRO or writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract. The rationale for this provision is easy to understand. For if a project proponent – that the government believes to be in default – is allowed to enjoin the termination of its contract on the ground that it is contesting the validity of said termination, then the government will be unable to enter into

a new contract with any other party while the controversy is pending litigation. Obviously, a court's grant of injunctive relief in such an instance is prejudicial to public interest since government would be indefinitely hampered in its duty to provide vital public goods and services in order to preserve the private proprietary rights of the project proponent. On the other hand, should it turn out that the project proponent was not at fault, the BOT Law itself presupposes that the project proponent can be adequately compensated for the termination of the contract. Although BCA did not specifically pray for the trial court to enjoin the termination of the Amended BOT Agreement and thus, there is no direct violation of Republic Act No. 8795, a grant of injunctive relief as prayed for by BCA will indirectly contravene the same statute. Verily, there is valid reason for the law to deny preliminary injunctive relief to those who seek to contest the government's termination of a national government contract. The only circumstance under which a court may grant injunctive relief is the existence of a matter of extreme urgency involving a constitutional issue, such that unless a TRO or injunctive writ is issued, grave injustice and irreparable injury will result. x x x In the instant case, the State action being assailed is the DFA's termination of the Amended BOT Agreement with BCA. Although the said agreement involves a public service that the DFA is mandated to provide and, therefore, is imbued with public interest, the relationship of DFA to BCA is primarily contractual and their dispute involves the adjudication of contractual rights. The propriety of the DFA's acts, in relation to the termination of the Amended BOT Agreement, should be gauged against the provisions of the contract itself and the applicable statutes to such contract. These contractual and statutory provisions outline what constitutes due process in the present case. In all, BCA failed to demonstrate that there is a constitutional issue involved in this case, much less a constitutional issue of extreme urgency.As for the DFA's purported failure to appropriate sufficient amounts in its budget to pay for liquidated damages to BCA, this argument does not support BCA's position that it will suffer grave and irreparable injury if it is denied injunctive relief. The DFA's liability to BCA for damages is contingent on BCA proving that it is entitled to such damages in the proper proceedings. The DFA has no obligation to set aside funds

to pay for liquidated damages, or any other kind of damages, to BCA until there is a final and executory judgment in favor of BCA. It is illogical and impractical for the DFA to set aside a significant portion of its budget for an event that may never happen when such idle funds should be spent on providing necessary services to the populace. For if it turns out at the end of the arbitration proceedings that it is BCA alone that is in default, it would be the one liable for liquidated damages to the DFA under the terms of the Amended BOT Agreement. With respect to BCA's allegation that the e-Passport Project is grossly disadvantageous to the Filipino people since it is the government that will be spending for the project unlike the MRP/V Project which would have been privately funded, the same is immaterial to the issue at hand. If it is true that the award of the e-Passport Project is inimical to the public good or tainted with some anomaly, it is indeed a cause for grave concern but it is a matter that must be investigated and litigated in the proper forum. It has no bearing on the issue of whether BCA would suffer grave and irreparable injury such that it is entitled to injunctive relief from the courts. In all, we agree with petitioners DFA and BSP that the trial court's issuance of a writ of preliminary injunction, despite the lack of sufficient legal justification for the same, is tantamount to grave abuse of discretion.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Castillo Laman Tan Pantaleon & San Jose and *SEDALAW* for BCA International Corp.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for *Certiorari* and prohibition under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction filed by petitioners Department of Foreign Affairs (DFA) and Bangko Sentral ng Pilipinas (BSP). Petitioners

pray that the Court declare as null and void the Order[1] dated February 14, 2007 of respondent Judge Franco T. Falcon (Judge Falcon) in *Civil Case No. 71079*, which granted the application for preliminary injunction filed by respondent BCA International Corporation (BCA). Likewise, petitioners seek to prevent respondent Judge Falcon from implementing the corresponding Writ of Preliminary Injunction dated February 23, 2007[2] issued pursuant to the aforesaid Order.

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

Being a member state of the International Civil Aviation Organization (ICAO),[3] the Philippines has to comply with the commitments and standards set forth in ICAO Document No. 9303[4] which requires the ICAO member states to issue machine readable travel documents (MRTDs)[5] by April 2010.

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[1] *Rollo*, pp. 84-92.

[2] *Id.* at 93.

[3] The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations which was established on December 7, 1944 by 52 nations whose aim was to assure the safe, orderly and economic development of international air transport. ICAO was created with the signing in Chicago of the *Convention on International Civil Aviation*. ICAO is the permanent body charged with the administration of the principles laid out in the Convention. (see http://www.icao.int/icao/en/m_about.html.)

[4] ICAO's mandate to develop MRTDs is provided by Articles 22, 23 and 37 of the Chicago Convention which oblige Contracting States to develop and adopt international standards for customs, immigration and other procedures to facilitate the border-crossing processes involved in international air transport. In order to address the clearance of increased passengers volumes that came with the emergence of wide body aircraft, ICAO took the initiative and published the first edition of Document No. 9303 in 1980. (http://www2.icao.int/en/MRTD/Pages/Overview.aspx.)

[5] A Machine Readable Travel Document (MRTD) is an international travel document (*e.g.*, a passport or visa) containing eye- and machine-readable data. Each type of MRTD contains, in a standard format, the holder's identification details, including a photograph or digital image, with mandatory identity elements reflected in a two-line machine readable zone (MRZ) printed in Optical Character Recognition-B (OCR-B) style. (*Id.*)

Thus, in line with the DFA's mandate to improve the passport and visa issuance system, as well as the storage and retrieval of its related application records, and pursuant to our government's ICAO commitments, the DFA secured the approval of the President of the Philippines, as Chairman of the Board of the National Economic and Development Authority (NEDA), for the implementation of the Machine Readable Passport and Visa Project (the MRP/V Project) under the Build-Operate-and-Transfer (BOT) scheme, provided for by Republic Act No. 6957, as amended by Republic Act No. 7718 (the BOT Law), and its Implementing Rules and Regulations (IRR). Thus, a Pre-qualification, Bids and Awards Committee (PBAC) published an invitation to pre-qualify and bid for the supply of the needed machine readable passports and visas, and conducted the public bidding for the MRP/V Project on January 10, 2000. Several bidders responded and BCA was among those that pre-qualified and submitted its technical and financial proposals. On June 29, 2000, the PBAC found BCA's bid to be the sole complying bid; hence, it permitted the DFA to engage in direct negotiations with BCA. On even date, the PBAC recommended to the DFA Secretary the award of the MRP/V Project to BCA on a BOT arrangement.

In compliance with the Notice of Award dated September 29, 2000 and Section 11.3, Rule 11 of the IRR of the BOT Law,[6] BCA incorporated a project company, the Philippine

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[6] The relevant portion of Section 11.3, IRR of the BOT Law, states:

Sec. 11.3. *Notice of Award.* – The Notice of Award shall indicate, among others, that the awardee must submit within thirty (30) calendar days from official receipt of the Notice of Award the following:

a. prescribed performance security;

b. proof of commitment of equity contribution as specified by the Agency/LGU and subject to current monetary rules and regulations, and indications of financing resources;

c. in the case of a joint venture/consortium, the agreement indicating that the members are jointly, severally and solidarily liable for the obligations of the project proponent under the contract; or

d. in case a project company is formed, proof of registration in accordance with Philippine laws.

Passport Corporation (PPC) to undertake and implement the MRP/V Project.

On February 8, 2001, a Build-Operate-Transfer Agreement[7] (BOT Agreement) between the DFA and PPC was signed by DFA Acting Secretary Lauro L. Baja, Jr. and PPC President Bonifacio Sumbilla. Under the BOT Agreement, the MRP/V Project was defined as follows:

> ***Section 1.02 MRP/V Project*** – refers to all the activities and services undertaken in the fulfillment of the Machine Readable Passport and Visa Project as defined in the Request for Proposals (RFP), a copy of which is hereto attached as Annex A, including but not limited to project financing, systems development, installation and maintenance in the Philippines and Foreign Service Posts (FSPs), training of DFA personnel, provision of all project consumables (related to the production of passports and visas, such as printer supplies, *etc*.), scanning of application and citizenship documents, creation of data bases, issuance of machine readable passports and visas, and site preparation in the Central Facility and Regional Consular Offices (RCOs) nationwide.[8]

On April 5, 2002, former DFA Secretary Teofisto T. Guingona and Bonifacio Sumbilla, this time as BCA President, signed an Amended BOT Agreement[9] in order to reflect the change in the designation of the parties and to harmonize Section 11.3 with Section 11.8[10] of the IRR of the BOT Law. The Amended BOT Agreement was entered into by the DFA and BCA with the conformity of PPC.

The two BOT Agreements (the original version signed on February 8, 2001 and the amended version signed April 5, 2002) contain substantially the same provisions except for seven additional paragraphs in the whereas clauses and two new

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[7] *Rollo*, pp. 177-200.

[8] *Id.* at 178.

[9] *Id.* at 201-226.

[10] Section 11.8 of the IRR of the BOT Law provides that "[t]he successful bidder should sign the contract within seven (7) calendar days from receipt of the advice of the Agency/LGU that all requirements for award, as provided for in Section 11.3 are fully complied with."

provisions – Section 9.05 on Performance and Warranty Securities and Section 20.15 on Miscellaneous Provisions. The two additional provisions are quoted below:

> ***Section 9.05***. The PPC has posted in favor of the DFA the performance security required for Phase 1 of the MRP/V Project and shall be deemed, for all intents and purposes, to be full compliance by BCA with the provisions of this Article 9.
>
> x x x x x x x x x
>
> ***Section 20.15*** It is clearly and expressly understood that BCA may assign, cede and transfer all of its rights and obligations under this Amended BOT Agreement to PPC, as fully as if PPC is the original signatory to this Amended BOT Agreement, provided however that BCA shall nonetheless be jointly and severally liable with PPC for the performance of all the obligations and liabilities under this Amended BOT Agreement.[11]

Also modified in the Amended BOT Agreement was the Project Completion date of the MRP/V Project which set the completion of the implementation phase of the project within 18 to 23 months from the date of effectivity of the Amended BOT Agreement as opposed to the previous period found in the original BOT Agreement which set the completion within 18 to 23 months from receipt of the NTP (Notice to Proceed) in accordance with the Project Master Plan.

On April 12, 2002, an Assignment Agreement[12] was executed by BCA and PPC, whereby BCA assigned and ceded its rights, title, interest and benefits arising from the Amended BOT Agreement to PPC.

As set out in Article 8 of the original and the Amended BOT Agreement, the MRP/V Project was divided into six phases:

> **Phase 1. Project Planning Phase** – The Project Proponent [BCA] shall prepare detailed plans and specifications in accordance with Annex A of this [Amended] BOT Agreement within three (3) months from issuance of the NTP (Notice to Proceed) [from the date of

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[11] *Rollo*, pp. 214-224.

[12] *Id.* at 227-232.

effectivity of this Amended BOT Agreement]. This phase shall be considered complete upon the review, acceptance and approval by the DFA of these plans and the resulting Master Plan, including the Master Schedule, the business process specifications, the acceptance criteria, among other plans.

x x x x x x x x x

The DFA must approve all detailed plans as a condition precedent to the issuance of the CA [Certificate of Acceptance] for Phase 1.

Phase 2. Implementation of the MRP/V Project at the Central Facility – Within six (6) months from issuance of the CA for Phase 1, the PROJECT PROPONENT [BCA] shall complete the implementation of the MRP/V Project in the DFA Central Facility, and establish the network design between the DFA Central Facility, the ten (10) RCOs [Regional Consular Offices] and the eighty (80) FSPs [Foreign Service Posts].

x x x x x x x x x

Phase 3. Implementation of the MRP/V Project at the Regional Consular Offices – This phase represents the replication of the systems as approved from the Central Facility to the RCOs throughout the country, as identified in the RFP [Request for Proposal]. The approved systems are those implemented, evaluated, and finally approved by DFA as described in Phase 1. The Project Proponent [BCA] will be permitted to begin site preparation and the scanning and database building operations in all offices as soon as the plans are agreed upon and accepted. This includes site preparation and database building operations in these Phase-3 offices.

Within six (6) months from issuance of CA for Phase 2, the Project Proponent [BCA] shall complete site preparation and implementation of the approved systems in the ten (10) RCOs, including a fully functional network connection between all equipment at the Central Facility and the RCOs.

Phase 4. Full Implementation, including all Foreign Service Posts – Within three (3) to eight (8) months from issuance of the CA for Phase-3, the Project Proponent [BCA] shall complete all preparations and fully implement the approved systems in the eighty (80) FSPs, including a fully functional network connection between all equipment at the Central Facility and the FSPs. Upon satisfactory completion of Phase 4, a CA shall be issued by the DFA.

Phase 5. In Service Phase – Operation and maintenance of the complete MRP/V Facility to provide machine readable passports and visas in all designated locations around the world.

Phase 6. Transition/Turnover – Transition/Turnover to the DFA of all operations and equipment, to include an orderly transfer of ownership of all hardware, application system software and its source code and/or licenses (subject to Section 5.02 [H]), peripherals, leasehold improvements, physical and computer security improvements, Automated Fingerprint Identification Systems, and all other MRP/V facilities shall commence at least six (6) months prior to the end of the [Amended] BOT Agreement. The transition will include the training of DFA personnel who will be taking over the responsibilities of system operation and maintenance from the Project Proponent [BCA]. The Project Proponent [BCA] shall bear all costs related to this transfer.[13] (Words in brackets appear in the Amended BOT Agreement)

To place matters in the proper perspective, it should be pointed out that both the DFA and BCA impute breach of the Amended BOT Agreement against each other.

According to the DFA, delays in the completion of the phases permeated the MRP/V Project due to the submission of deficient documents as well as intervening issues regarding BCA/PPC's supposed financial incapacity to fully implement the project.

On the other hand, BCA contends that the DFA failed to perform its reciprocal obligation to issue to BCA a Certificate of Acceptance of Phase 1 within 14 working days of operation purportedly required by Section 14.04 of the Amended BOT Agreement. BCA bewailed that it took almost three years for the DFA to issue the said Certificate allegedly because every appointee to the position of DFA Secretary wanted to review the award of the project to BCA. BCA further alleged that it was the DFA's refusal to approve the location of the DFA Central Facility which prevented BCA from proceeding with Phase 2 of the MRP/V Project.

Later, the DFA sought the opinion of the Department of Finance (DOF) and the Department of Justice (DOJ) regarding

[13] *Id.* at 187-189.

the appropriate legal actions in connection with BCA's alleged delays in the completion of the MRP/V Project. In a Letter dated February 21, 2005,[14] the DOJ opined that the DFA should issue a final demand upon BCA to make good on its obligations, specifically on the warranties and responsibilities regarding the necessary capitalization and the required financing to carry out the MRP/V Project. The DOJ used as basis for said recommendation, the Letter dated April 19, 2004[15] of DOF Secretary Juanita Amatong to then DFA Secretary Delia Albert stating, among others, that BCA may not be able to infuse more capital into PPC to use for the completion of the MRP/V Project.

Thus, on February 22, 2005, DFA sent a letter[16] to BCA, through its project company PPC, invoking BCA's financial warranty under Section 5.02(A) of the Amended BOT Agreement.[17] The DFA required BCA to submit (a) proof of adequate capitalization (*i.e.*, full or substantial payment of stock subscriptions); (b) a bank guarantee indicating the availability of a credit facility of ₱700 million; and (c) audited financial statements for the years 2001 to 2004.

In reply to DFA's letter, BCA, through PPC, informed the former of its position that its financial capacity was already passed upon during the prequalification process and that the Amended BOT Agreement did not call for any additional financial requirements for the implementation of the MRP/V Project. Nonetheless, BCA submitted its financial statements for the years 2001 and 2002 and requested for additional time within which to comply with the other financial requirements which the DFA insisted on.[18]

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[14] *Id.* at 234-237.

[15] *Id.* at 238-239.

[16] *Id.* at 240; erroneously dated as February 22, 2004.

[17] Section 5.02(A) of the Amended BOT Agreement provides:

Section 5.02 – The BCA further warrants to the DFA that:

A. It shall have the necessary capitalization and shall obtain the required financing to carry out the MRP/V Project in accordance with this amended BOT Agreement; x x x. (*Rollo*, p. 208.)

[18] *Rollo*, pp. 241-243.

According to the DFA, BCA's financial warranty is a continuing warranty which requires that it shall have the necessary capitalization to finance the MRP/V Project in its entirety and not on a "per phase" basis as BCA contends. Only upon sufficient proof of its financial capability to complete and implement the whole project will the DFA's obligation to choose and approve the location of its Central Facility arise. The DFA asserted that its approval of a Central Facility site was not ministerial and upon its review, BCA's proposed site for the Central Facility was purportedly unacceptable in terms of security and facilities. Moreover, the DFA allegedly received conflicting official letters and notices[19] from BCA and PPC regarding the true ownership and control of PPC. The DFA implied that the disputes among the shareholders of PPC and between PPC and BCA appeared to be part of the reason for the hampered implementation of the MRP/V Project.

BCA, in turn, submitted various letters and documents to prove its financial capability to complete the MRP/V Project.[20] However, the DFA claimed these documents were unsatisfactory or of dubious authenticity. Then on August 1, 2005, BCA terminated its Assignment Agreement with PPC and notified the DFA that it would directly implement the MRP/V Project.[21] BCA further claims that the termination of the Assignment Agreement was upon the instance, or with the conformity, of the DFA, a claim which the DFA disputed.

On December 9, 2005, the DFA sent a Notice of Termination[22] to BCA and PPC due to their alleged failure to submit proof of financial capability to complete the entire MRP/V Project in accordance with the financial warranty under Section 5.02(A) of the Amended BOT Agreement. The Notice states:

After a careful evaluation and consideration of the matter, including the reasons cited in your letters dated March 3, May 3, and June 20,

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[19] *Id.* at 252-255.

[20] *Id.* at 671-675.

[21] *Id.* at 692.

[22] *Id.* at 256-257.

2005, and upon the recommendation of the Office of the Solicitor General (OSG), the Department is of the view that your continuing default in complying with the requisite bank guarantee and/or credit facility, despite repeated notice and demand, is legally unjustified.

In light of the foregoing considerations and upon the instruction of the Secretary of Foreign Affairs, the Department hereby formally TERMINATE (sic) the Subject Amended BOT Agreement dated 5 April 2005 (sic)[23] effective 09 December 2005. Further, and as a consequence of this termination, the Department formally DEMAND (sic) that you pay within ten (10) days from receipt hereof, liquidated damages equivalent to the corresponding performance security bond that you had posted for the MRP/V Project.

Please be guided accordingly.

On December 14, 2005, BCA sent a letter[24] to the DFA demanding that it immediately reconsider and revoke its previous notice of termination, otherwise, BCA would be compelled to declare the DFA in default pursuant to the Amended BOT Agreement. When the DFA failed to respond to said letter, BCA issued its own Notice of Default dated December 22, 2005[25] against the DFA, stating that if the default is not remedied within 90 days, BCA will be constrained to terminate the MRP/V Project and hold the DFA liable for damages.

BCA's request for mutual discussion under Section 19.01 of the Amended BOT Agreement[26] was purportedly ignored by the DFA and left the dispute unresolved through amicable means within 90 days. Consequently, BCA filed its Request for Arbitration dated April 7, 2006[27] with the Philippine Dispute Resolution

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[23] The Amended BOT Agreement was dated April 2, 2002 and not 2005.

[24] *Rollo*, pp. 697-699.

[25] *Id.* at 258-259.

[26] Section 19.01 of the Amended BOT Agreement provides:

Section 19.01 Dispute Settlement – Any dispute or controversy of any kind whatsoever between the DFA and the BCA (such dispute or controversy being referred to herein as a "Dispute") which may arise out of or in connection with this Agreement, in the first instance shall be settled within ninety (90) days through amicable means, such as, but not limited to, mutual discussion.

[27] *Rollo*, pp. 260-266.

Center, Inc. (PDRCI), pursuant to Section 19.02 of the Amended BOT Agreement which provides:

> ***Section 19.02 Failure to Settle Amicably*** – If the Dispute cannot be settled amicably within ninety (90) days by mutual discussion as contemplated under Section 19.01 herein, the Dispute shall be settled with finality by an arbitrage tribunal operating under International Law, hereinafter referred to as the "*Tribunal*," under the UNCITRAL Arbitration Rules contained in Resolution 31/98 adopted by the United Nations General Assembly on December 15, 1976, and entitled "*Arbitration Rules on the United Nations Commission on the International Trade Law*." The DFA and the BCA undertake to abide by and implement the arbitration award. The place of arbitration shall be Pasay City, Philippines, or such other place as may mutually be agreed upon by both parties. The arbitration proceeding shall be conducted in the English language.[28]

As alleged in BCA's Request for Arbitration, PDRCI is a non-stock, non-profit organization composed of independent arbitrators who operate under its own Administrative Guidelines and Rules of Arbitration as well as under the United Nations Commission on the International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration and other applicable laws and rules. According to BCA, PDRCI can act as an arbitration center from whose pool of accredited arbitrators both the DFA and BCA may select their own nominee to become a member of the arbitral tribunal which will render the arbitration award.

BCA's Request for Arbitration filed with the PDRCI sought the following reliefs:

> 1. A judgment nullifying and setting aside the Notice of Termination dated December 9, 2005 of Respondent [DFA], including its demand to Claimant [BCA] to pay liquidated damages equivalent to the corresponding performance security bond posted by Claimant [BCA];
>
> 2. A judgment (a) confirming the Notice of Default dated December 22, 2005 issued by Claimant [BCA] to Respondent [DFA]; and (b) ordering Respondent [DFA] to perform its obligation under the Amended BOT Agreement dated April 5, 2002 by approving the

[28] *Id.* at 222.

site of the Central Facility at the Star Mall Complex on Shaw Boulevard, Mandaluyong City, within five days from receipt of the Arbitral Award; and

3. A judgment ordering respondent [DFA] to pay damages to Claimant [BCA], reasonably estimated at ₱50,000,000.00 as of this date, representing lost business opportunities; financing fees, costs and commissions; travel expenses; legal fees and expenses; and costs of arbitration, including the fees of the arbitrator/s.[29]

PDRCI, through a letter dated April 26, 2006,[30] invited the DFA to submit its Answer to the Request for Arbitration within 30 days from receipt of said letter and also requested both the DFA and BCA to nominate their chosen arbitrator within the same period of time.

Initially, the DFA, through a letter dated May 22, 2006,[31] requested for an extension of time to file its answer, "without prejudice to jurisdictional and other defenses and objections available to it under the law." Subsequently, however, in a letter dated May 29, 2006,[32] the DFA declined the request for arbitration before the PDRCI. While it expressed its willingness to resort to arbitration, the DFA pointed out that under Section 19.02 of the Amended BOT Agreement, there is no mention of a specific body or institution that was previously authorized by the parties to settle their dispute. The DFA further claimed that the arbitration of the dispute should be had before an *ad hoc* arbitration body, and not before the PDRCI which has as its accredited arbitrators, two of BCA's counsels of record. Likewise, the DFA insisted that PPC, allegedly an indispensable party in the instant case, should also participate in the arbitration.

The DFA then sought the opinion of the DOJ on the Notice of Termination dated December 9, 2005 that it sent to BCA with regard to the MRP/V Project.

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[29] *Id.* at 266; page 7 of the Request for Arbitration.

[30] *Id.* at 711-740.

[31] *Id.* at 741-742.

[32] *Id.* at 743-745.

In DOJ Opinion No. 35 (2006) dated May 31, 2006,[33] the DOJ concurred with the steps taken by the DFA, stating that there was basis in law and in fact for the termination of the MRP/V Project. Moreover, the DOJ recommended the immediate implementation of the project (presumably by a different contractor) at the soonest possible time.

Thereafter, the DFA and the BSP entered into a Memorandum of Agreement for the latter to provide the former passports compliant with international standards. The BSP then solicited bids for the supply, delivery, installation and commissioning of a system for the production of Electronic Passport Booklets or e-Passports.[34]

For BCA, the BSP's invitation to bid for the supply and purchase of e-Passports (the e-Passport Project) would only further delay the arbitration it requested from the DFA. Moreover, this new e-Passport Project by the BSP and the DFA would render BCA's remedies moot inasmuch as the e-Passport Project would then be replacing the MRP/V Project which BCA was carrying out for the DFA.

Thus, BCA filed a Petition for Interim Relief[35] under Section 28 of the Alternative Dispute Resolution Act of 2004 (R.A. No. 9285),[36] with the Regional Trial Court (RTC) of Pasig City,

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[33] *Id.* at 268-269.

[34] *Id.* at 273-275.

[35] *Id.* at 276-286.

[36] Section 28. *Grant of Interim Measure of Protection.* – (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

Branch 71, presided over by respondent Judge Falcon. In that RTC petition, BCA prayed for the following:

> WHEREFORE, BCA respectfully prays that this Honorable Court, before the constitution of the arbitral tribunal in PDRCI Case No. 30-2006/BGF, grant petitioner *interim* relief in the following manner:
>
> (a) upon filing of this Petition, immediately issue an order temporarily restraining Respondents [DFA and BSP], their agents, representatives, awardees, suppliers and assigns (i) from awarding a new contract to implement the Project, or any similar electronic passport or visa project; or (ii) if such contract has been awarded, from implementing such Project or similar projects until further orders from this Honorable Court;
>
> (b) after notice and hearing, issue a writ of preliminary injunction ordering Respondents [DFA and BSP], their agents, representatives, awardees, suppliers and assigns to desist (i) from awarding a new contract to implement the Project or any similar electronic passport or visa project; or (ii) if such contract has been awarded, from implementing such Project or similar projects, and to maintain the *status quo ante* pending the resolution on the merits of BCA's Request for Arbitration; and
>
> (c) render judgment affirming the *interim* relief granted to BCA until the dispute between the parties shall have been resolved with finality.
>
> BCA also prays for such other relief, just and equitable under the premises.[37]

BCA alleged, in support for its application for a Temporary Restraining Order (TRO), that unless the DFA and the BSP

(b) The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

[37] *Rollo*, p. 284; page 9 of the Petition for Interim Relief.

were immediately restrained, they would proceed to undertake the project together with a third party to defeat the reliefs BCA sought in its Request for Arbitration, thus causing BCA to suffer grave and irreparable injury from the loss of substantial investments in connection with the implementation of the MRP/V Project.

Thereafter, the DFA filed an Opposition (to the Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) dated January 18, 2007,[38] alleging that BCA has no cause of action against it as the contract between them is for machine readable passports and visas which is not the same as the contract it has with the BSP for the supply of electronic passports. The DFA also pointed out that the Filipino people and the government's international standing would suffer great damage if a TRO would be issued to stop the e-Passport Project. The DFA mainly anchored its opposition on Republic Act No. 8975, which prohibits trial courts from issuing a TRO, preliminary injunction or mandatory injunction against the bidding or awarding of a contract or project of the national government.

On January 23, 2007, after summarily hearing the parties' oral arguments on BCA's application for the issuance of a TRO, the trial court ordered the issuance of a TRO restraining the DFA and the BSP, their agents, representatives, awardees, suppliers and assigns from awarding a new contract to implement the Project or any similar electronic passport or visa project, or if such contract has been awarded, from implementing such or similar projects.[39] The trial court also set for hearing BCA's application for preliminary injunction.

Consequently, the DFA filed a Motion for Reconsideration[40] of the January 23, 2007 Order. The BSP, in turn, also sought to lift the TRO and to dismiss the petition. In its Urgent Omnibus Motion dated February 1, 2007,[41] the BSP asserted that BCA is not entitled to an injunction, as it does not have a clear right

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[38] *Id.* at 287-289.

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

[40] *Id.* at 313-338.

[41] *Id.* at 339-356.

which ought to be protected, and that the trial court has no jurisdiction to enjoin the implementation of the e-Passport Project which, the BSP alleged, is a national government project under Republic Act No. 8975.

In the hearings set for BCA's application for preliminary injunction, BCA presented as witnesses, Mr. Bonifacio Sumbilla, its President, Mr. Celestino Mercader, Jr. from the Independent Verification and Validation Contractor commissioned by the DFA under the Amended BOT Agreement, and DFA Assistant Secretary Domingo Lucenario, Jr. as adverse party witness.

The DFA and the BSP did not present any witness during the hearings for BCA's application for preliminary injunction. According to the DFA and the BSP, the trial court did not have any jurisdiction over the case considering that BCA did not pay the correct docket fees and that only the Supreme Court could issue a TRO on the bidding for a national government project like the e-Passport Project pursuant to the provisions of Republic Act No. 8975. Under Section 3 of Republic Act No. 8975, the RTC could only issue a TRO against a national government project if it involves a matter of extreme urgency involving a constitutional issue, such that unless a TRO is issued, grave injustice and irreparable injury will arise.

Thereafter, BCA filed an Omnibus Comment [on Opposition and Supplemental Opposition (To the Application for Temporary Restraining Order and/or Writ of Preliminary Injunction)] and Opposition [to Motion for Reconsideration (To the Temporary Restraining Order dated January 23, 2007)] and Urgent Omnibus Motion [(i) To Lift Temporary Restraining Order; and (ii) To Dismiss the Petition] dated January 31, 2007.[42] The DFA and the BSP filed their separate Replies (to BCA's Omnibus Comment) dated February 9, 2007[43] and February 13, 2007,[44] respectively.

On February 14, 2007, the trial court issued an Order granting BCA's application for preliminary injunction, to wit:

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[42] *Id.* at 357-408.

[43] *Id.* at 409-424.

[44] *Id.* at 425-440.

WHEREFORE, in view of the above, the court resolves that it has jurisdiction over the instant petition and to issue the provisional remedy prayed for, and therefore, hereby GRANTS petitioner's [BCA's] application for preliminary injunction. Accordingly, upon posting a bond in the amount of Ten Million Pesos (₱10,000,000.00), let a writ of preliminary injunction issue ordering respondents [DFA and BSP], their agents, representatives, awardees, suppliers and assigns to desist (i) from awarding a new contract to implement the project or any similar electronic passport or visa project or (ii) if such contract has been awarded from implementing such project or similar projects.

The motion to dismiss is denied for lack of merit. The motions for reconsideration and to lift temporary restraining Order are now moot and academic by reason of the expiration of the TRO.[45]

On February 16, 2007, BCA filed an Amended Petition,[46] wherein paragraphs 3.3(b) and 4.3 were modified to add language to the effect that unless petitioners were enjoined from awarding the e-Passport Project, BCA would be deprived of its constitutionally-protected right to perform its contractual obligations under the original and amended BOT Agreements without due process of law. Subsequently, on February 26, 2007, the DFA and the BSP received the Writ of Preliminary Injunction dated February 23, 2007.

Hence, on March 2, 2007, the DFA and the BSP filed the instant Petition for *Certiorari*[47] and prohibition under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction, imputing grave abuse of discretion on the trial court when it granted interim relief to BCA and issued the assailed Order dated February 14, 2007 and the writ of preliminary injunction dated February 23, 2007.

The DFA and the BSP later filed an Urgent Motion for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction dated March 5, 2007.[48]

[45] *Id.* at 92.

[46] *Id.* at 473-484.

[47] *Id.* at 3-485.

[48] *Id.* at 491-495.

On March 12, 2007, the Court required BCA to file its comment on the said petition within ten days from notice and granted the Office of the Solicitor General's urgent motion for issuance of a TRO and/or writ of preliminary injunction,[49] thus:

> After deliberating on the petition for *certiorari* and prohibition with temporary restraining order and/or writ of preliminary injunction assailing the Order dated 14 February 2007 of the Regional Trial Court, Branch 71, Pasig City, in Civil Case No. 71079, the Court, without necessarily giving due course thereto, resolves to require respondents to ***COMMENT*** thereon (not to file a motion to dismiss) within ten (10) days from notice.
>
> The Court further resolves to ***GRANT*** the Office of the Solicitor General's urgent motion for issuance of a temporary restraining order and/or writ of preliminary injunction dated 05 March 2007 and ***ISSUE*** a ***TEMPORARY RESTRAINING ORDER***, as prayed for, enjoining respondents from implementing the assailed Order dated 14 February 2007 and the Writ of Preliminary Injunction dated 23 February 2007, issued by respondent Judge Franco T. Falcon in Civil Case No. 71079 entitled *BCA International Corporation vs. Department of Foreign Affairs and Bangko Sentral ng Pilipinas*, and from conducting further proceedings in said case until further orders from this Court.

BCA filed on April 2, 2007 its Comment with Urgent Motion to Lift TRO,[50] to which the DFA and the BSP filed their Reply dated August 14, 2007.[51]

In a Resolution dated June 4, 2007,[52] the Court denied BCA's motion to lift TRO. BCA filed another Urgent Omnibus Motion dated August 17, 2007, for the reconsideration of the Resolution dated June 4, 2007, praying that the TRO issued on March 12, 2007 be lifted and that the petition be denied.

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[49] *Id.* at 497-502.

[50] *Id.* at 511-1169.

[51] *Id.* at 1931-1965.

[52] *Id.* at 1837.

In a Resolution dated September 10, 2007,[53] the Court denied BCA's Urgent Omnibus Motion and gave due course to the instant petition. The parties were directed to file their respective memoranda within 30 days from notice of the Court's September 10, 2007 Resolution.

Petitioners DFA and BSP submit the following issues for our consideration:

ISSUES

I

WHETHER OR NOT THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE ISSUED THE ASSAILED ORDER, WHICH EFFECTIVELY ENJOINED THE IMPLEMENTATION OF THE E-PASSPORT PROJECT — A NATIONAL GOVERNMENT PROJECT UNDER REPUBLIC ACT NO. 8975.

II

WHETHER OR NOT THE RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING RESPONDENT BCA'S "*INTERIM RELIEF*" INASMUCH AS:

(I) RESPONDENT BCA HAS NOT ESTABLISHED A CLEAR RIGHT THAT CAN BE PROTECTED BY AN INJUNCTION; AND

(II) RESPONDENT BCA HAS NOT SHOWN THAT IT WILL SUSTAIN GRAVE AND IRREPARABLE INJURY THAT MUST BE PROTECTED BY AN INJUNCTION. ON THE CONTRARY, IT IS THE FILIPINO PEOPLE, WHO PETITIONERS PROTECT, THAT WILL SUSTAIN SERIOUS AND SEVERE INJURY BY THE INJUNCTION.[54]

At the outset, we dispose of the procedural objections of BCA to the petition, to wit: (a) petitioners did not follow the hierarchy of courts by filing their petition directly with this Court,

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[53] *Id.* at 1978-1980.

[54] *Id.* at 2185-2186.

without filing a motion for reconsideration with the RTC and without filing a petition first with the Court of Appeals; (b) the person who verified the petition for the DFA did not have personal knowledge of the facts of the case and whose appointment to his position was highly irregular; and (c) the verification by the Assistant Governor and General Counsel of the BSP of only selected paragraphs of the petition was with the purported intent to mislead this Court.

Although the direct filing of petitions for *certiorari* with the Supreme Court is discouraged when litigants may still resort to remedies with the lower courts, we have in the past overlooked the failure of a party to strictly adhere to the hierarchy of courts on highly meritorious grounds. Most recently, we relaxed the rule on court hierarchy in the case of *Roque, Jr. v. Commission on Elections*,[55] wherein we held:

> **The policy on the hierarchy of courts**, which petitioners indeed failed to observe, **is not an iron-clad rule**. For indeed the Court has full discretionary power to take cognizance and assume jurisdiction of special civil actions for *certiorari* and *mandamus* filed directly with it **for exceptionally compelling reasons or if warranted by the nature of the issues** clearly and specifically raised in the petition.[56] (Emphases ours.)

The Court deems it proper to adopt a similarly liberal attitude in the present case in consideration of the transcendental importance of an issue raised herein. This is the first time that the Court is confronted with the question of whether an information and communication technology project, which does not conform to our traditional notion of the term "infrastructure," is covered by the prohibition on the issuance of court injunctions found in Republic Act No. 8975, which is entitled "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary

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[55] G.R. No. 188456, September 10, 2009, 599 SCRA 69.

[56] *Id.* at 112-113, citing *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 285; *Cabarles v. Maceda*, G.R. No. 161330, February 20, 2007, 516 SCRA 303, 320.

Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes." Taking into account the current trend of computerization and modernization of administrative and service systems of government offices, departments and agencies, the resolution of this issue for the guidance of the bench and bar, as well as the general public, is both timely and imperative.

Anent BCA's claim that Mr. Edsel T. Custodio (who verified the Petition on behalf of the DFA) did not have personal knowledge of the facts of the case and was appointed to his position as Acting Secretary under purportedly irregular circumstances, we find that BCA failed to sufficiently prove such allegations. In any event, we have previously held that "[d]epending on the nature of the allegations in the petition, the verification may be based either purely on personal knowledge, or entirely on authentic records, or on both sources."[57] The alleged lack of personal knowledge of Mr. Custodio (which, as we already stated, BCA failed to prove) would not necessarily render the verification defective for he could have verified the petition purely on the basis of authentic records.

As for the assertion that the partial verification of Assistant Governor and General Counsel Juan de Zuniga, Jr. was for the purpose of misleading this Court, BCA likewise failed to adduce evidence on this point. Good faith is always presumed. Paragraph 3 of Mr. Zuniga's verification indicates that his partial verification is due to the fact that he is verifying only the allegations in the petition peculiar to the BSP. We see no reason to doubt that this is the true reason for his partial or selective verification.

In sum, BCA failed to successfully rebut the presumption that the official acts (of Mr. Custodio and Mr. Zuniga) were done in good faith and in the regular performance of official duty.[58] Even assuming the verifications of the petition suffered

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[57] *Aparece v. J. Marketing Corporation,* G.R. No. 174224, October 17, 2008, 569 SCRA 636, 643.

[58] *See* Rules of Court, Rule 131, Section 3(m); *Philippine Agila Satellite, Inc. v. Trinidad-Lichauco,* G.R. No. 142362, May 3, 2006, 489 SCRA 22, 31.

from some defect, we have time and again ruled that "[t]he ends of justice are better served when cases are determined on the merits — after all parties are given full opportunity to ventilate their causes and defenses — rather than on technicality or some procedural imperfections."[59] In other words, the Court may suspend or even disregard rules when the demands of justice so require.[60]

We now come to the substantive issues involved in this case.

On whether the trial court had jurisdiction to issue a writ of preliminary injunction in the present case

In their petition, the DFA and the BSP argue that respondent Judge Falcon gravely abused his discretion amounting to lack or excess of jurisdiction when he issued the assailed orders, which effectively enjoined the bidding and/or implementation of the e-Passport Project. According to petitioners, this violated the clear prohibition under Republic Act No. 8975 regarding the issuance of TROs and preliminary injunctions against national government projects, such as the e-Passport Project.

The prohibition invoked by petitioners is found in Section 3 of Republic Act No. 8975, which reads:

> Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions*. – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:
>
> (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

[59] *Ateneo de Naga University v. Manalo*, 497 Phil. 635, 646-647 (2005).

[60] *See*, for example, *Chuidian v. Sandiganbayan*, G.R. Nos. 156383 & 160723, July 31, 2006, 497 SCRA 327, 339.

(b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

From the foregoing, it is indubitable that no court, aside from the Supreme Court, may enjoin a "national government project" unless the matter is one of extreme urgency involving a constitutional issue such that unless the act complained of is enjoined, grave injustice or irreparable injury would arise.

What then are the "national government projects" over which the lower courts are without jurisdiction to issue the injunctive relief as mandated by Republic Act No. 8975?

Section 2(a) of Republic Act No. 8975 provides:

Section 2. *Definition of Terms*. –

(a) "National government projects" shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government-

owned and-controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

As petitioners themselves pointed out, there are three types of national government projects enumerated in Section 2(a), to wit:

(a) **current and future national government infrastructure projects, engineering works and service contracts**, including projects undertaken by government-owned and – controlled corporations;

(b) **all projects covered by** R.A. No. 6957, as amended by R.A. No. 7718, or **the Build-Operate-and-Transfer (BOT) Law**; and

(c) **other related and necessary activities**, such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement repair and rehabilitation, regardless of the source of funding.

Under Section 2(a) of the BOT Law as amended by Republic Act No. 7718,[61] **private sector infrastructure or development projects are those normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector**, **including but not limited to**, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, **information technology**

[61] An Act Amending Certain Sections of Republic Act No. 6957, Entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes" or the Philippine Build-Operate-Transfer (BOT) Law, Approved on May 5, 1994.

networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency.

In contrast, Republic Act No. 9184,[62] also known as the Government Procurement Reform Act, defines infrastructure projects in Section 5(k) thereof in this manner:

(k) *Infrastructure Projects* - include the construction, improvement, rehabilitation, demolition, repair, restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, **civil works components of information technology projects**, irrigation, flood control and drainage, water supply, sanitation, sewerage and solid waste management systems, shore protection, energy/power and electrification facilities, national buildings, school buildings, hospital buildings and other related construction projects of the government. (Emphasis supplied.)

In the present petition, the DFA and the BSP contend that the bidding for the supply, delivery, installation and commissioning of a system for the production of Electronic Passport Booklets, is a national government project within the definition of Section 2 of Republic Act No. 8975. Petitioners also point to the Senate deliberations on Senate Bill No. 2038[63] (later Republic Act No. 8975) which allegedly show the legislative's intent to expand the scope and definition of national government projects to cover not only the infrastructure projects enumerated in Presidential Decree No. 1818, but also future projects that may likewise be considered national government infrastructure projects, like the e-Passport Project, to wit:

Senator Cayetano. x x x Mr. President, the present bill, the Senate Bill No. 2038, is actually an improvement of P.D. No. 1818 and definitely not a repudiation of what I have earlier said, as my good

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[62] An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and for Other Purposes, Approved on January 18, 2003.

[63] Transcript of Senate Deliberations on Senate Bill 2038 (August 2 and 9, 2000), DFA and BSP Petition; *rollo*, pp. 53-54.

friend clearly stated. But this is really an effort to improve both the scope and definition of the term "government projects" and to ensure that lower court judges obey and observe this prohibition on the issuance of TROs on infrastructure projects of the government.

x x x x x x x x x

Senator Cayetano. That is why, Mr. President, I did try to explain why I would accept the proposed amendment, meaning the totality of the repeal of P.D. 1818 which is not found in the original version of the bill, because of my earlier explanation that the definition of the term 'government infrastructure project' covers all of those enumerated in Section 1 of P.D. No. 1818. And the reason for that, as we know, is we do not know what else could be considered government infrastructure project in the next 10 or 20 years.

x x x So, using the Latin maxim of expression *unius est exclusion alterius*, which means what is expressly mentioned is tantamount to an express exclusion of the others, that is the reason we did not include particularly an enumeration of certain activities of the government found in Section 1 of P.D. No. 1818. Because to do that, it may be a good excuse for a brilliant lawyer to say 'Well, you know, since it does not cover this particular activity, ergo, the Regional Trial Court may issue TRO.

Using the foregoing discussions to establish that the intent of the framers of the law was to broaden the scope and definition of national government projects and national infrastructure projects, the DFA and the BSP submit that the said scope and definition had since evolved to include the e-Passport Project. They assert that the concept of "infrastructure" must now refer to any and all elements that provide support, framework, or structure for a given system or organization, including information technology, such as the e-Passport Project.

Interestingly, petitioners represented to the trial court that the e-Passport Project is a BOT project but in their petition with this Court, petitioners simply claim that the e-Passport Project is a national government project under Section 2 of Republic Act No. 8975. This circumstance is significant, since relying on the claim that the e-Passport Project is a BOT project, the trial court ruled in this wise:

The prohibition against issuance of TRO and/or writ of preliminary injunction under RA 8975 **applies only to national government infrastructure project covered by the BOT Law**, (RA 8975, Sec 3[b] in relation to Sec. 2).

The national government **projects covered under the BOT** are enumerated under Sec. 2 of RA 6957, as amended, otherwise known as the BOT Law. Notably, it **includes "information technology networks and database infrastructure."**

In relation to information technology projects, infrastructure projects refer to the "civil works components" thereof. (R.A. No. 9184 [2003], Sec. 5[c]{sic}).[64]

Respondent BSP's request for bid, for the supply, delivery, installation and commissioning of a system for the production of Electronic Passport Booklets appears to be beyond the scope of the term "civil works." Respondents did not present evidence to prove otherwise.[65] (Emphases ours.)

From the foregoing, it can be gleaned that the trial court accepted BCA's reasoning that, assuming the e-Passport Project is a project under the BOT Law, Section 2 of the BOT Law must be read in conjunction with Section 5(c) of Republic Act No. 9184 or the Government Procurement Reform Act to the effect that only the civil works component of information technology projects are to be considered "infrastructure." Thus, only said civil works component of an information technology project cannot be the subject of a TRO or writ of injunction issued by a lower court.

Although the Court finds that the trial court had jurisdiction to issue the writ of preliminary injunction, we cannot uphold the theory of BCA and the trial court that the definition of the term "infrastructure project" in Republic Act No. 9184 should be applied to the BOT Law.

Section 5 of Republic Act No. 9184 prefaces the definition of the terms therein, including the term "infrastructure project,"

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[64] The definition of "infrastructure" under Republic Act No. 9184 is found in Section 5(k), not Section 5(c).

[65] *Rollo*, pp. 88-89.

with the following phrase: "**For purposes of this Act,** the following terms or words and phrases shall mean or be understood as follows x x x."

This Court has stated that the definition of a term in a statute is not conclusive as to the meaning of the same term as used elsewhere.[66] This is evident when the legislative definition is expressly made for the purposes of the statute containing such definition.[67]

There is no legal or rational basis to apply the definition of the term "infrastructure project" in one statute to another statute enacted years before and which already defined the types of projects it covers. Rather, a reading of the two statutes involved will readily show that there is a legislative intent to treat information technology projects differently under the BOT Law and the Government Procurement Reform Act.

In the BOT Law as amended by Republic Act No. 7718, the national infrastructure and development projects covered by said law are enumerated in Section 2(a) as follows:

SEC. 2. *Definition of Terms*. - The following terms used in this Act shall have the meanings stated below:

(a) *Private sector infrastructure or development projects* - The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates of townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, **information technology networks and database infrastructure**, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development

[66] *Endencia v. David*, 93 Phil. 696, 701 (1953); *Misamis Lumber Co., Inc. v. Collector of Internal Revenue,* 102 Phil. 116, 122 (1957); *Calderon v. Carale*, G.R. No. 91636, April 23, 1992, 208 SCRA 254, 263.

[67] *City of Manila v. Manila Remnant Co., Inc*., 100 Phil. 796, 800 (1957).

projects as may be authorized by the appropriate agency pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.

For the construction stage of these infrastructure projects, the project proponent may obtain financing from foreign and/or domestic sources and/or engage the services of a foreign and/or Filipino contractor: *Provided*, That, in case an infrastructure or a development facility's operation requires a public utility franchise, the facility operator must be a Filipino or if a corporation, it must be duly registered with the Securities and Exchange Commission and owned up to at least sixty percent (60%) by Filipinos: *Provided, further*, That in the case of foreign contractors, Filipino labor shall be employed or hired in the different phases of construction where Filipino skills are available: *Provided, finally*, That projects which would have difficulty in sourcing funds may be financed partly from direct government appropriations and/or from Official Development Assistance (ODA) of foreign governments or institutions not exceeding fifty percent (50%) of the project cost, and the balance to be provided by the project proponent. (Emphasis supplied.)

A similar provision appears in the Revised IRR of the BOT Law as amended, to wit:

SECTION 1.3 - DEFINITION OF TERMS

For purposes of these Implementing Rules and Regulations, the terms and phrases hereunder shall be understood as follows:

x x x x x x x x x

v. **Private Sector Infrastructure or Development Projects** - The general description of infrastructure or Development Projects normally financed, and operated by the public sector but which will now be wholly or partly financed, constructed and operated by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroad and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, public markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure,

education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may otherwise be authorized by the appropriate Agency/LGU pursuant to the Act or these Revised IRR. Such projects shall be undertaken through Contractual Arrangements as defined herein, including such other variations as may be approved by the President of the Philippines.

x x x x x x x x x

SECTION 2.2 - ELIGIBLE TYPES OF PROJECTS

The Construction, rehabilitation, improvement, betterment, expansion, modernization, operation, financing and maintenance of the following types of projects which are normally financed and operated by the public sector which will now be wholly or partly financed, constructed and operated by the private sector, including other infrastructure and development projects as may be authorized by the appropriate agencies, may be proposed under the provisions of the Act and these Revised IRR, provided however that such projects have a cost recovery component which covers at least 50% of the Project Cost, or as determined by the Approving Body:

x x x x x x x x x

h. Information technology (IT) and data base infrastructure, including modernization of IT, geo-spatial resource mapping and cadastral survey for resource accounting and planning. (Underscoring supplied.)

Undeniably, under the BOT Law, wherein the projects are to be privately funded, the entire information technology project, including the civil works component and the technological aspect thereof, is considered an infrastructure or development project and treated similarly as traditional "infrastructure" projects. All the rules applicable to traditional infrastructure projects are also applicable to information technology projects. In fact, the MRP/V Project awarded to BCA under the BOT Law appears to include both civil works (*i.e.*, site preparation of the Central Facility, regional DFA offices and foreign service posts) and non-civil works aspects (*i.e.*, development, installation and maintenance in the Philippines and foreign service posts of a computerized passport and visa issuance system, including creation

of databases, storage and retrieval systems, training of personnel and provision of consumables).

In contrast, under Republic Act No. 9184 or the Government Procurement Reform Act, which contemplates projects to be funded by public funds, the term "infrastructure project" was limited to only the "civil works component" of information technology projects. The non-civil works component of information technology projects would be treated as an acquisition of goods or consulting services as the case may be.

This limited definition of "infrastructure project" in relation to information technology projects under Republic Act No. 9184 is significant since the IRR of Republic Act No. 9184 has some provisions that are particular to infrastructure projects and other provisions that are applicable only to procurement of goods or consulting services.[68]

Implicitly, the civil works component of information technology projects are subject to the provisions on infrastructure projects while the technological and other components would be covered by the provisions on procurement of goods or consulting services as the circumstances may warrant.

[68] Some examples of provisions in the IRR of Republic Act No. 9184 which differentiate among infrastructure projects, goods procurement and consulting services procurement follow:

In Section 13.1, the IRR specifies who may be observers during the bidding process for the different types of procurement activities.

Section 21 sets out different guidelines for the contents of the invitation to bid and the periods for advertising and posting the invitation to bid for each type of procurement activity.

Section 23 enumerates the proponent's eligibility requirements for the procurement of goods and infrastructure projects while the eligibility requirements for consulting services are specified in Section 24.

Section 25 lays down different documentation requirements for bids for each type of procurement activity.

Section 32 sets out the guidelines for bids evaluation for the procurement of goods and infrastructure projects while Section 33 contains the guidelines for bids evaluation for consulting services.

Section 42 states that the contract implementation guidelines for the procurement of goods, infrastructure projects and consulting services are set out in separate annexes (Annexes D, E and F of the IRR).

When Congress adopted a limited definition of what is to be considered "infrastructure" in relation to information technology projects under the Government Procurement Reform Act, legislators are presumed to have taken into account previous laws concerning infrastructure projects (the BOT Law and Republic Act No. 8975) and deliberately adopted the limited definition. We can further presume that Congress had written into law a different treatment for information technology projects financed by public funds *vis-a-vis* privately funded projects for a valid legislative purpose.

The idea that the definitions of terms found in the Government Procurement Reform Act were not meant to be applied to projects under the BOT Law is further reinforced by the following provision in the IRR of the Government Procurement Reform Act:

> **Section 1. Purpose and General Coverage**
>
> This Implementing Rules and Regulations (IRR) Part A, hereinafter called "IRR-A," is promulgated pursuant to Section 75 of Republic Act No. 9184 (R.A. 9184), otherwise known as the "Government Procurement Reform Act" (GPRA), for the purpose of prescribing the necessary rules and regulations for the modernization, standardization, and regulation of the procurement activities of the government. **This IRR-A shall cover all fully domestically-funded procurement activities** from procurement planning up to contract implementation and termination, **except for the following**:
>
> a) Acquisition of real property which shall be governed by Republic Act No. 8974 (R.A. 8974), entitled "An Act to Facilitate the Acquisition of Right-of-Way Site or Location for National Government Infrastructure Projects and for Other Purposes," and other applicable laws; and
>
> **b) Private sector infrastructure or development projects and other procurement covered by Republic Act No. 7718 (R.A. 7718), entitled "An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes," as amended: *Provided, however,* That for the portions financed by the Government, the provisions of this IRR-A shall apply.**

> The IRR-B for foreign-funded procurement activities shall be the subject of a subsequent issuance. (Emphases supplied.)

The foregoing provision in the IRR can be taken as an administrative interpretation that the provisions of Republic Act No. 9184 are inapplicable to a BOT project except only insofar as such portions of the BOT project that are financed by the government.

Taking into account the different treatment of information technology projects under the BOT Law and the Government Procurement Reform Act, petitioners' contention the trial court had no jurisdiction to issue a writ of preliminary injunction in the instant case would have been correct if the e-Passport Project was a project under the BOT Law as they represented to the trial court.

However, petitioners presented no proof that the e-Passport Project was a BOT project. On the contrary, evidence adduced by both sides tended to show that the e-Passport Project was a procurement contract under Republic Act No. 9184.

The BSP's on-line request for expression of interest and to bid for the e-Passport Project[69] from the BSP website and the newspaper clipping[70] of the same request expressly stated that "[t]he two stage bidding procedure under Section 30.4 of the Implementing Rules and Regulation (sic) Part-A of Republic Act No. 9184 relative to the bidding and award of the contract shall apply." During the testimony of DFA Assistant Secretary Domingo Lucenario, Jr. before the trial court, he admitted that the e-Passport Project is a BSP procurement project and that it is the "BSP that will pay the suppliers."[71] In petitioners' Manifestation dated July 29, 2008[72] and the Erratum[73] thereto,

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[69] *Rollo*, pp. 273-275 and 787-789; Annex AA of the Petition and Annex 30 of BCA's Comment.

[70] *Id.* at 790; Annex 31 of BCA's Comment.

[71] *Id.* at 1713; TSN of the hearing held on February 7, 2007.

[72] *Id.* at 2347-2353.

[73] *Id.* at 2354-2358.

petitioners informed the Court that a contract "for the supply of a complete package of systems design, technology, hardware, software, and peripherals, maintenance and technical support, ecovers and datapage security laminates for the centralized production and personalization of Machine Readable Electronic Passport" was awarded to Francois Charles Oberthur Fiduciaire. In the Notice of Award dated July 2, 2008[74] attached to petitioners' pleading, it was stated that the failure of the contractor/ supplier to submit the required performance bond would be sufficient ground for the imposition of administrative penalty under Section 69 of the IRR-A of Republic Act No. 9184.

Being a government procurement contract under Republic Act No. 9184, only the civil works component of the e-Passport Project would be considered an infrastructure project that may not be the subject of a lower court-issued writ of injunction under Republic Act No. 8975.

Could the e-Passport Project be considered as "engineering works or a service contract" or as "related and necessary activities" under Republic Act No. 8975 which may not be enjoined?

We hold in the negative. Under Republic Act No. 8975, a "service contract" refers to "**infrastructure contracts** entered into by any department, office or agency of the national government with private entities and nongovernment organizations for services related or incidental to the functions and operations of the department, office or agency concerned." On the other hand, the phrase "other related and necessary activities" obviously refers to activities related to a government infrastructure, engineering works, service contract or project under the BOT Law. In other words, to be considered a service contract or related activity, petitioners must show that the e-Passport Project is an infrastructure project or necessarily related to an infrastructure project. This, petitioners failed to do for they saw fit not to present any evidence on the details of the e-Passport Project before the trial court and this Court. There is nothing on record to indicate that the e-Passport Project has a civil works component or is necessarily related to an infrastructure project.

[74] *Id.* at 2357.

Indeed, the reference to Section 30.4[75] of the IRR of Republic Act No. 9184 (a provision specific to the procurement of goods) in the BSP's request for interest and to bid confirms that the e-Passport Project is a procurement of goods and not an infrastructure project. Thus, within the context of Republic Act No. 9184 – which is the governing law for the e-Passport Project – the said Project is not an infrastructure project that is protected from lower court issued injunctions under Republic Act No. 8975, which, to reiterate, has for its purpose the expeditious and efficient implementation and completion of government infrastructure projects.

We note that under Section 28, Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004,[76] the grant of an interim measure of protection by the proper court before the constitution of an arbitral tribunal is allowed:

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[75] Section 30.4 of the IRR of Republic Act No. 9184 states:

30.4. **For the procurement of goods** where, due to the nature of the requirements of the project, the required technical specifications/requirements of the contract cannot be precisely defined in advance of bidding, or where the problem of technically unequal bids is likely to occur, a two (2)-stage bidding procedure may be employed. In these cases, the procuring entity concerned shall prepare the bidding documents, including the technical specification in the form of performance criteria only. Under this procedure, prospective bidders shall be requested at the first stage to submit their respective Letter of Intent, eligibility requirements if needed, and initial technical proposals only (no price tenders). The concerned BAC shall then evaluate the technical merits of the proposals received from eligible bidders *vis-à-vis* the required performance standards. A meeting/discussion shall then be held by the BAC with those eligible bidders whose technical tenders meet the minimum required standards stipulated in the bidding documents for purposes of drawing up the final revised technical specifications/requirements of the contract. Once the final revised technical specifications are completed and duly approved by the concerned BAC, copies of the same shall be issued to all the bidders identified in the first stage who shall then be required to submit their revised technical tenders, including their price proposals in two (2) separate sealed envelopes in accordance with this IRR-A, at a specified deadline, after which time no more bids shall be received. The concerned BAC shall then proceed in accordance with the procedure prescribed in this IRR-A. (Emphasis supplied.)

[76] An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes; approved on April 2, 2004.

Sec. 28. *Grant of Interim Measure of Protection*. – (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

(a) The following rules on interim or provisional relief shall be observed:

(1) Any party may request that provisional relief be granted against the adverse party.

(2) Such relief may be granted:

(i) to prevent irreparable loss or injury;

(ii) to provide security for the performance of any obligation;

(iii) to produce or preserve any evidence; or

(iv) to compel any other appropriate act or omission.

(3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.

(4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.

(5) The order shall be binding upon the parties.

(6) Either party may apply with the Court for

> assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.
>
> (7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

Section 3(h) of the same statute provides that the "Court" as referred to in Article 6 of the Model Law shall mean a Regional Trial Court.

Republic Act No. 9285 is a general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. This law allows a Regional Trial Court to grant interim or provisional relief, including preliminary injunction, to parties in an arbitration case prior to the constitution of the arbitral tribunal. This general statute, however, must give way to a special law governing national government projects, Republic Act No. 8975 which prohibits courts, except the Supreme Court, from issuing TROs and writs of preliminary injunction in cases involving national government projects.

However, as discussed above, the prohibition in Republic Act No. 8975 is inoperative in this case, since petitioners failed to prove that the e-Passport Project is national government project as defined therein. Thus, the trial court had jurisdiction to issue a writ of preliminary injunction against the e-Passport Project.

On whether the trial court's issuance of a writ of injunction was proper

Given the above ruling that the trial court had jurisdiction to issue a writ of injunction and going to the second issue raised by petitioners, we answer the question: Was the trial court's issuance of a writ of injunction warranted under the circumstances of this case?

Petitioners' attack on the propriety of the trial court's issuance of a writ of injunction is two-pronged: (a) BCA purportedly has no clear right to the injunctive relief sought; and (b) BCA

will suffer no grave and irreparable injury even if the injunctive relief were not granted.

To support their claim that BCA has no clear right to injunctive relief, petitioners mainly allege that the MRP/V Project and the e-Passport Project are not the same project. Moreover, the MRP/V Project purportedly involves a technology (the 2D optical bar code) that has been rendered obsolete by the latest ICAO developments while the e-Passport Project will comply with the latest ICAO standards (the contactless integrated circuit). Parenthetically, and not as a main argument, petitioners imply that BCA has no clear contractual right under the Amended BOT Agreement since BCA had previously assigned all its rights and obligations under the said Agreement to PPC.

BCA, on the other hand, claims that the Amended BOT Agreement also contemplated the supply and/or delivery of e-Passports with the integrated circuit technology in the future and not only the machine readable passport with the 2D optical bar code technology. Also, it is BCA's assertion that the integrated circuit technology is only optional under the ICAO issuances. On the matter of its assignment of its rights to PPC, BCA counters that it had already terminated (purportedly at DFA's request) the assignment agreement in favor of PPC and that even assuming the termination was not valid, the Amended BOT Agreement expressly stated that BCA shall remain solidarily liable with its assignee, PPC.

Most of these factual allegations and counter-allegations already touch upon the merits of the main controversy between the DFA and BCA, *i.e.*, the validity and propriety of the termination of the Amended BOT Agreement (the MRP/V Project) between the DFA and BCA. The Court deems it best to refrain from ruling on these matters since they should be litigated in the appropriate arbitration or court proceedings between or among the concerned parties.

One preliminary point, however, that must be settled here is whether BCA retains a right to seek relief against the DFA under the Amended BOT Agreement in view of BCA's previous assignment of its rights to PPC. Without preempting any factual

finding that the appropriate court or arbitral tribunal on the matter of the validity of the assignment agreement with PPC or its termination, we agree with BCA that it remained a party to the Amended BOT Agreement, notwithstanding the execution of the assignment agreement in favor of PPC, for it was stipulated in the Amended BOT Agreement that BCA would be solidarily liable with its assignee. For convenient reference, we reproduce the relevant provision of the Amended BOT Agreement here:

> ***Section 20.15***. It is clearly and expressly understood that BCA may assign, cede and transfer all of its rights and obligations under this Amended BOT Agreement to PPC [Philippine Passport Corporation], as fully as if PPC is the original signatory to this Amended BOT Agreement, **provided however that BCA shall nonetheless be jointly and severally liable with PPC for the performance of all the obligations and liabilities under this Amended BOT Agreement.** (Emphasis supplied.)

Furthermore, a review of the records shows that the DFA continued to address its correspondence regarding the MRP/V Project to both BCA and PPC, even after the execution of the assignment agreement. Indeed, the DFA's Notice of Termination dated December 9, 2005 was addressed to Mr. Bonifacio Sumbilla as President of both BCA and PPC and referred to the Amended BOT Agreement "executed between the Department of Foreign Affairs (DFA), on one hand, and the BCA International Corporation and/or the Philippine Passport Corporation (BCA/PPC)." At the very least, the DFA is estopped from questioning the personality of BCA to bring suit in relation to the Amended BOT Agreement since the DFA continued to deal with both BCA and PPC even after the signing of the assignment agreement. In any event, if the DFA truly believes that PPC is an indispensable party to the action, the DFA may take necessary steps to implead PPC but this should not prejudice the right of BCA to file suit or to seek relief for causes of action it may have against the DFA or the BSP, for undertaking the e-Passport Project on behalf of the DFA.

With respect to petitioners' contention that BCA will suffer no grave and irreparable injury so as to justify the grant of

injunctive relief, the Court finds that this particular argument merits consideration.

The BOT Law as amended by Republic Act No. 7718, provides:

SEC. 7. *Contract Termination.* - **In the event that a project is revoked, cancelled or terminated by the Government through no fault of the project proponent** or by mutual agreement, the **Government shall compensate the said project proponent for its actual expenses** incurred in the project **plus a reasonable rate of return** thereon not exceeding that stated in the contract as of the date of such revocation, cancellation or termination: *Provided*, That the interest of the Government in this instances shall be duly insured with the Government Service Insurance System [GSIS] or any other insurance entity duly accredited by the Office of the Insurance Commissioner: *Provided, finally*, That the cost of the insurance coverage shall be included in the terms and conditions of the bidding referred to above.

In the event that the government defaults on certain major obligations in the contract and such failure is not remediable or if remediable shall remain unremedied for an unreasonable length of time, **the project proponent/contractor may**, by prior notice to the concerned national government agency or local government unit specifying the turn-over date, **terminate the contract**. The project proponent/contractor **shall be reasonably compensated by the Government for equivalent or proportionate contract cost as defined in the contract.** (Emphases supplied.)

In addition, the Amended BOT Agreement, which is the law between and among the parties to it, pertinently provides:

Section 17.01 Default – **In case a party commits an act constituting an event of default, the non-defaulting party may terminate this Amended BOT Agreement** by serving a written notice to the defaulting party specifying the grounds for termination and giving the defaulting party a period of ninety (90) days within which to rectify the default. If the default is not remedied within this period to the satisfaction of the non-defaulting party, then the latter will serve upon the former a written notice of termination indicating the effective date of termination.

Section 17.02 Proponents Default – If this Amended BOT Agreement is **terminated by reason of the BCA's default**, **the DFA shall have the following options:**

A. **Allow the BCA's unpaid creditors who hold a lien** on the MRP/V Facility **to foreclose** on the MRP/V Facility. The right of the BCA's unpaid creditors to foreclose on the MRP/V Facility shall be valid for the duration of the effectivity of this Amended BOT Agreement; or,

B. **Allow the BCA's unpaid creditors who hold a lien on the MRP/V Facility to designate a substitute BCA** for the MRP/V Project, provided the designated substitute BCA is qualified under existing laws and acceptable to the DFA. This substitute BCA shall hereinafter be referred to as the "Substitute BCA." The Substitute BCA shall assume all the BCA's rights and privileges, as well as the obligations, duties and responsibilities hereunder; provided, however, that the DFA shall at all times and its sole option, have the right to invoke and exercise any other remedy which may be available to the DFA under any applicable laws, rules and/or regulations which may be in effect at any time and from time to time. The DFA shall cooperate with the creditors with a view to facilitating the choice of a Substitute BCA, who shall take-over the operation, maintenance and management of the MRP/V Project, within three (3) months from the BCA's receipt of the notice of termination from the DFA. The Substituted BCA shall have all the rights and obligations of the previous BCA as contained in this Amended BOT Agreement; or

C. **Take-over the MRP/V Facility and assume all attendant liabilities thereof**.

D. **In all cases of termination due to the default of the BCA, it shall pay DFA liquidated damages** equivalent to the applicable the (sic) Performance Security.

Section 17.03 DFA's Default – If this Amended BOT Agreement is terminated by the BCA by reason of the DFA's Default, **the DFA shall**:

A. **Be obligated to take over the MRP/V Facility** on an "as is, where is" basis, and shall forthwith assume attendant liabilities thereof; and

B. **Pay liquidated damages** to the BCA equivalent to the following amounts, which may be charged to the insurance proceeds referred to in Article 12:

(1) **In the event of termination prior to completion** of the implementation of the MRP/V Project, **damages shall be paid equivalent to the value of completed implementation, minus the aggregate amount of the attendant liabilities assumed by the DFA, plus ten percent (10%) thereof.** The amount of such compensation shall be determined as of the date of the notice of termination and shall become due and demandable ninety (90) days after the date of this notice of termination. Under this Amended BOT Agreement, the term "Value of the Completed Implementation" shall mean the aggregate of all reasonable costs and expenses incurred by the BCA in connection with, in relation to and/or by reason of the MRP/V Project, excluding all interest and capitalized interest, as certified by a reputable and independent accounting firm to be appointed by the BCA and subject to the approval by the DFA, such approval shall not be unreasonably withheld.

(2) **In the event of termination after completion of design, development, and installation of the MRP/V Project, just compensation shall be paid equivalent to the present value of the net income which the BCA expects to earn or realize during the unexpired or remaining term of this Amended BOT Agreement** using the internal rate of return on equity (IRRe) defined in the financial projections of the BCA and agreed upon by the parties, which is attached hereto and made as an integral part of this Amended BOT Agreement as Schedule "1." (Emphases supplied.)

The validity of the DFA's termination of the Amended BOT Agreement and the determination of the party or parties in default are issues properly threshed out in arbitration proceedings as provided for by the agreement itself. However, even if we hypothetically accept BCA's contention that the DFA terminated the Amended BOT Agreement without any default or wrongdoing on BCA's part, it is not indubitable that BCA is entitled to injunctive relief.

The BOT Law expressly allows the government to terminate a BOT agreement, even without fault on the part of the project proponent, subject to the payment of the actual expenses incurred by the proponent plus a reasonable rate of return.

Under the BOT Law and the Amended BOT Agreement, in the event of default on the part of the government (in this case, the DFA) or on the part of the proponent, the non-defaulting party is allowed to terminate the agreement, again subject to proper compensation in the manner set forth in the agreement.

Time and again, this Court has held that to be entitled to injunctive relief the party seeking such relief must be able to show grave, irreparable injury that is not capable of compensation.

In *Lopez v. Court of Appeals*,[77] we held:

> Generally, injunction is a preservative remedy for the protection of one's substantive right or interest. It is not a cause of action in itself but **merely a provisional remedy**, an adjunct to a main suit. **It is resorted to only when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.** The application of the injunctive writ rests upon the existence of an emergency or of a special reason before the main case can be regularly heard. The essential conditions for granting such temporary injunctive relief are that the complaint alleges facts which appear to be sufficient to constitute a proper basis for injunction and that on the entire showing from the contending parties, the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation. Two requisites are necessary if a preliminary injunction is to issue, namely, the existence of a right to

[77] 379 Phil. 743, 749-750 (2000).

be protected and the facts against which the injunction is to be directed are violative of said right. In particular, for a writ of preliminary injunction to issue, the existence of the right and the violation must appear in the allegation of the complaint **and a preliminary injunction is proper only when the plaintiff (private respondent herein) appears to be entitled to the relief demanded in his complaint.** (Emphases supplied.)

We reiterated this point in *Transfield Philippines, Inc. v. Luzon Hydro Corporation*,[78] where we likewise opined:

> Before a writ of preliminary injunction may be issued, there must be a clear showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of the said right. It must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. **Moreover, an injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.** (Emphasis supplied.)

As the Court explained previously in *Philippine Airlines, Inc. v. National Labor Relations Commission*:[79]

> **An injury is considered irreparable** if it is of such constant and frequent recurrence that no fair and reasonable redress can be had therefor in a court of law, or **where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.** It is considered irreparable injury **when it cannot be adequately compensated in damages due to the nature of the injury itself or the nature of the right or property injured or when there exists no certain pecuniary standard for the measurement of damages.** (Emphases supplied.)

It is still contentious whether this is a case of termination by the DFA alone or both the DFA and BCA. The DFA contends

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[78] G.R. No. 146717, November 22, 2004, 443 SCRA 307, 336; citing *Philippine National Bank v. Ritratto Group, Inc.*, 414 Phil. 494, 507 (2001).

[79] 351 Phil. 172, 186 (1998).

that BCA, by sending its own Notice of Default, likewise terminated or "abandoned" the Amended BOT Agreement. Still, whether this is a termination by the DFA alone without fault on the part of BCA or a termination due to default on the part of either party, the BOT Law and the Amended BOT Agreement lay down the measure of compensation to be paid under the appropriate circumstances.

Significantly, in BCA's Request for Arbitration with the PDRCI, it prayed for, among others, "a judgment ordering respondent [DFA] to pay damages to Claimant [BCA], reasonably estimated at ₱50,000,000.00 as of [the date of the Request for Arbitration], representing lost business opportunities; financing fees, costs and commissions; travel expenses; legal fees and expenses; and costs of arbitration, including the fees of the arbitrator/s."[80] All the purported damages that BCA claims to have suffered by virtue of the DFA's termination of the Amended BOT Agreement are plainly determinable in pecuniary terms and can be "reasonably estimated" according to BCA's own words.

Indeed, the right of BCA, a party which may or may not have been in default on its BOT contract, to have the termination of its BOT contract reversed is not guaranteed by the BOT Law. Even assuming BCA's innocence of any breach of contract, all the law provides is that BCA should be adequately compensated for its losses in case of contract termination by the government.

There is one point that none of the parties has highlighted but is worthy of discussion. In seeking to enjoin the government from awarding or implementing a machine readable passport project or any similar electronic passport or visa project and praying for the maintenance of the *status quo ante* pending the resolution on the merits of BCA's Request for Arbitration, BCA effectively seeks to enjoin the termination of the Amended BOT Agreement for the MRP/V Project.

There is no doubt that the MRP/V Project is a project covered by the BOT Law and, in turn, considered a "national government project" under Republic Act No. 8795. Under Section 3(d) of

[80] *Rollo,* p. 266.

that statute, trial courts are prohibited from issuing a TRO or writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract.

The rationale for this provision is easy to understand. For if a project proponent – that the government believes to be in default – is allowed to enjoin the termination of its contract on the ground that it is contesting the validity of said termination, then the government will be unable to enter into a new contract with any other party while the controversy is pending litigation. Obviously, a court's grant of injunctive relief in such an instance is prejudicial to public interest since government would be indefinitely hampered in its duty to provide vital public goods and services in order to preserve the private proprietary rights of the project proponent. On the other hand, should it turn out that the project proponent was not at fault, the BOT Law itself presupposes that the project proponent can be adequately compensated for the termination of the contract. Although BCA did not specifically pray for the trial court to enjoin the termination of the Amended BOT Agreement and thus, there is no direct violation of Republic Act No. 8795, a grant of injunctive relief as prayed for by BCA will indirectly contravene the same statute.

Verily, there is valid reason for the law to deny preliminary injunctive relief to those who seek to contest the government's termination of a national government contract. The only circumstance under which a court may grant injunctive relief is the existence of a matter of extreme urgency involving a constitutional issue, such that unless a TRO or injunctive writ is issued, grave injustice and irreparable injury will result.

Now, BCA likewise claims that unless it is granted injunctive relief, it would suffer grave and irreparable injury since the bidding out and award of the e-Passport Project would be tantamount to a violation of its right against deprivation of property without due process of law under Article III, Section 1 of the Constitution. We are unconvinced.

Article III, Section 1 of the Constitution provides "[n]o person shall be deprived of life, liberty, or property without due process

of law, nor shall any person be denied the equal protection of the laws." Ordinarily, this constitutional provision has been applied to the exercise by the State of its sovereign powers such as, its legislative power,[81] police power,[82] or its power of eminent domain.[83]

In the instant case, the State action being assailed is the DFA's termination of the Amended BOT Agreement with BCA. Although the said agreement involves a public service that the DFA is mandated to provide and, therefore, is imbued with public interest, the relationship of DFA to BCA is primarily contractual and their dispute involves the adjudication of contractual rights. The propriety of the DFA's acts, in relation to the termination of the Amended BOT Agreement, should be gauged against the provisions of the contract itself and the applicable statutes to such contract. These contractual and statutory provisions outline what constitutes due process in the present case. In all, BCA failed to demonstrate that there is a constitutional issue involved in this case, much less a constitutional issue of extreme urgency.

As for the DFA's purported failure to appropriate sufficient amounts in its budget to pay for liquidated damages to BCA, this argument does not support BCA's position that it will suffer grave and irreparable injury if it is denied injunctive relief. The DFA's liability to BCA for damages is contingent on BCA proving that it is entitled to such damages in the proper proceedings. The DFA has no obligation to set aside funds to pay for liquidated damages, or any other kind of damages, to BCA until there is

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[81] *Smith, Bell & Company (Ltd.) v. Natividad*, 40 Phil. 136 (1919); *Central Bank (now Bangko Sentral ng Pilipinas) Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, G.R. No. 148208, December 15, 2004, 446 SCRA 299; *Serrano v. Gallant Maritime Services, Inc.*, G.R. No. 167614, March 24, 2009.

[82] *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727 (1999); *Kuwait Airways Corporation v. Philippine Airlines, Inc.*, G.R. No. 156087, May 8, 2009, 587 SCRA 399.

[83] *Roxas & Co., Inc. v. Court of Appeals*, *id.*; *Brgy. Sindalan, San Fernando, Pampanga v. Court of Appeals*, G.R. No. 150640, March 22, 2007, 518 SCRA 649.

a final and executory judgment in favor of BCA. It is illogical and impractical for the DFA to set aside a significant portion of its budget for an event that may never happen when such idle funds should be spent on providing necessary services to the populace. For if it turns out at the end of the arbitration proceedings that it is BCA alone that is in default, it would be the one liable for liquidated damages to the DFA under the terms of the Amended BOT Agreement.

With respect to BCA's allegation that the e-Passport Project is grossly disadvantageous to the Filipino people since it is the government that will be spending for the project unlike the MRP/V Project which would have been privately funded, the same is immaterial to the issue at hand. If it is true that the award of the e-Passport Project is inimical to the public good or tainted with some anomaly, it is indeed a cause for grave concern but it is a matter that must be investigated and litigated in the proper forum. It has no bearing on the issue of whether BCA would suffer grave and irreparable injury such that it is entitled to injunctive relief from the courts.

In all, we agree with petitioners DFA and BSP that the trial court's issuance of a writ of preliminary injunction, despite the lack of sufficient legal justification for the same, is tantamount to grave abuse of discretion.

To be very clear, the present decision touches only on the twin issues of (a) the jurisdiction of the trial court to issue a writ of preliminary injunction as an interim relief under the actual milieu of this case; and (b) the entitlement of BCA to injunctive relief. The merits of the DFA and BCA's dispute regarding the termination of the Amended BOT Agreement must be threshed out in the proper arbitration proceedings. The civil case pending before the trial court is purely for the grant of interim relief since the main case is to be the subject of arbitration proceedings.

BCA's petition for interim relief before the trial court is essentially a petition for a provisional remedy (*i.e.*, preliminary injunction) ancillary to its Request for Arbitration in PDRCI Case No. 30-2006/BGF. BCA specifically prayed that the trial

court grant it interim relief pending the constitution of the arbitral tribunal in the said PDRCI case. Unfortunately, during the pendency of this case, PDRCI Case No. 30-2006/BGF was dismissed by the PDRCI for lack of jurisdiction, in view of the lack of agreement between the parties to arbitrate before the PDRCI.[84] In *Philippine National Bank v. Ritratto Group, Inc.*,[85] we held:

> A writ of preliminary injunction is an ancillary or preventive remedy that may only be resorted to by a litigant to protect or preserve his rights or interests and for no other purpose during the pendency of the principal action. **The dismissal of the principal action thus results in the denial of the prayer for the issuance of the writ**. x x x. (Emphasis supplied.)

In view of intervening circumstances, BCA can no longer be granted injunctive relief and the civil case before the trial court should be accordingly dismissed. However, this is without prejudice to the parties litigating the main controversy in arbitration proceedings, in accordance with the provisions of the Amended BOT Agreement, which should proceed with dispatch.

It does not escape the attention of the Court that the delay in the submission of this controversy to arbitration was caused by the ambiguity in Section 19.02 of the Amended BOT Agreement regarding the proper body to which a dispute between the parties may be submitted and the failure of the parties to agree on such an arbitral tribunal. However, this Court cannot allow this impasse to continue indefinitely. The parties involved must sit down together in good faith and finally come to an understanding regarding the constitution of an arbitral tribunal mutually acceptable to them.

WHEREFORE, the instant petition is hereby *GRANTED*. The assailed Order dated February 14, 2007 of the Regional Trial Court of Pasig in Civil Case No. 71079 and the Writ of Preliminary Injunction dated February 23, 2007 are *REVERSED*

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[84] PDRCI Letter dated March 28, 2007, *rollo* pp. 1856-57.

[85] *Supra* note 78 at 507.

and *SET ASIDE*. Furthermore, Civil Case No. 71079 is hereby *DISMISSED*.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176748. September 1, 2010]

JUDY O. DACUITAL,[1] **EUGENIO L. MONDANO, JR., JOSEPH GALER,**[2] **MARIANO MORALES, ROBERTO RUANCE, JOSEPH PORCADILLA, RAULITO PALAD, RICARDO DIGAMON, NONITO PRISCO, EULOGIO M. TUTOR, MELVIN PEPITO, HELYTO N. REYES,**[3] **RANDOLF C. BALUDO, ALBERTO EPONDOL, RODELO A. SUSPER,**[4] **EVARISTO VIGORI,**[5] **JONATHAN P. AYAAY, FELIPE ERILLA, ARIS A. GARCIA, ROY A. GARCIA, and RESTITUTO TAPANAN,** *petitioners, vs.* **L.M. CAMUS ENGINEERING CORPORATION and/or LUIS M. CAMUS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; APPEAL MEMORANDUM SIGNED BY ONLY ONE OF THE COMPLAINANTS IS VALID.— [T]he NLRC properly took cognizance of the appeal

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[1] Also referred to in the records as Judy O. Daquital.

[2] Also referred to in the records as Joseph Goles.

[3] Also referred to in the records as Helyton Reyes.

[4] Also referred to in the records as Ridolo A. Susper.

[5] Also referred to in the records as Evaristo Vigor.

of all the named complainants even though it was signed by only one of them. While the right to appeal is a statutory and not a natural right, it is nonetheless an essential part of our judicial system. Courts are, therefore, advised to proceed with caution, so as not to deprive a party of the right to appeal. Litigants should have the amplest opportunity for the proper and just disposition of their cause – free, as much as possible, from the constraints of procedural technicalities. Thus, contrary to respondents' claim, the decision had not attained finality even as to those who did not sign the appeal memorandum.

2. LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; PROJECT EMPLOYMENT; EXPLAINED; TEST TO DETERMINE.— A project employee is assigned to a project which begins and ends at determined or determinable times. Employees who work under different project employment contracts for several years do not automatically become regular employees; they can remain as project employees regardless of the number of years they work. Length of service is not a controlling factor in determining the nature of one's employment. Their rehiring is only a natural consequence of the fact that experienced construction workers are preferred. In fact, employees who are members of a "work pool" from which a company draws workers for deployment to its different projects do not become regular employees by reason of that fact alone. The Court has consistently held that members of a "work pool" can either be project employees or regular employees. The principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.

3. ID.; ID.; ID.; FAILURE TO PRESENT THE INDIVIDUAL PROJECT EMPLOYMENT CONTRACT GIVES RISE TO THE PRESUMPTION THAT EMPLOYEES ARE REGULAR.— Admittedly, respondents did not present the employment contracts of petitioners except that of Dacuital. They explained that it was no longer necessary to present the other contracts since petitioners were similarly situated. Having presented one contract, respondents believed that they sufficiently established petitioners' status as project employees. Even though the absence of a written contract does not by itself grant regular

status to petitioners, such a contract is evidence that petitioners were informed of the duration and scope of their work and their status as project employees. In this case, where no other evidence was offered, the absence of the employment contracts raises a serious question of whether the employees were properly informed at the onset of their employment of their status as project employees. While it is true that respondents presented the employment contract of Dacuital, the contract does not show that he was informed of the nature, as well as the duration of his employment. In fact, the duration of the project for which he was allegedly hired was not specified in the contract. x x x Even if we assume that under the above provision of the contract, Dacuital was informed of the nature of his employment and the duration of the project, that same contract is not sufficient evidence to show that the other employees were so informed. It is undisputed that petitioners had individual employment contracts, yet respondents opted not to present them on the lame excuse that they were similarly situated as Dacuital. The non-presentation of these contracts gives rise to the presumption that the employees were not informed of the nature and duration of their employment. It is doctrinally entrenched that in illegal dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees.

4. ID.; ID.; ID.; FAILURE TO SUBMIT TERMINATION REPORT AS REQUIRED BY DEPARTMENT ORDER NO. 19 WAS AN INDICATION THAT EMPLOYEES WERE NOT PROJECT BUT REGULAR EMPLOYEES.— Department Order No. 19 (as well as the old Policy Instructions No. 20) requires employers to submit a report of an employee's termination to the nearest public employment office everytime the employment is terminated due to the completion of a project. In this case, there was no evidence that there was indeed such a report. LMCEC's failure to file termination reports upon the cessation of petitioners' employment was an indication that petitioners were not project but regular employees.

5. ID.; EMPLOYER AND EMPLOYEE; DISMISSAL OF EMPLOYEE; NON-COMPLIANCE WITH THE TWIN REQUIREMENTS OF

NOTICE AND HEARING RENDERS THE DISMISSAL ILLEGAL.— [R]ecords failed to show that LMCEC afforded petitioners, as regular employees, due process prior to their dismissal, through the twin requirements of notice and hearing. Petitioners were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them, if any. Certainly, petitioners' dismissal was not carried out in accordance with law and was, therefore, illegal.

6. ID.; ID.; ID.; RELIEFS GRANTED TO ILLEGALLY DISMISSED EMPLOYEES; CASE AT BAR.— Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement. Contrary to the conclusion of the NLRC, the backwages due petitioners must be computed from the time they were unjustly dismissed until actual reinstatement to their former positions. Thus, until LMCEC implements the reinstatement aspect, its obligation to petitioners, insofar as accrued backwages and other benefits are concerned, continues to accumulate.

7. ID.; ID.; ID.; ID.; AN OFFICER OF THE CORPORATION CANNOT BE MADE PERSONALLY LIABLE FOR PAYMENT OF BACKWAGES IN THE ABSENCE OF BAD FAITH OR MALICE.— As to respondent Camus' liability as LMCEC president, it is settled that in the absence of malice, bad faith, or specific provision of law, a director or officer of a corporation cannot be made personally liable for corporate liabilities. x x x To be sure, Camus has a personality which is distinct and separate from that of LMCEC. There was no proof that Camus acted in bad faith in dismissing petitioners from employment. The mere fact that he is the president of the company does not make him personally liable for the payment of backwages.

APPEARANCES OF COUNSEL

A.A. Marqueda Law Office for petitioners.
RRV Legal Consultancy Firm for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[6] dated September 25, 2006 and Resolution[7] dated February 14, 2007 in CA-G.R. SP No. 90377.

The case stemmed from the following factual and procedural antecedents:

Respondent L.M. Camus Engineering Corporation (LMCEC) is a domestic corporation duly organized and existing under and by virtue of Philippine laws, engaged in construction, engineering, and air-conditioning business; while respondent Luis M. Camus (Camus) is the company president.

Petitioners Judy O. Dacuital (Dacuital), Eugenio L. Mondano, Jr., Joseph Galer (Galer), Mariano Morales, Roberto Ruance (Ruance), Joseph Porcadilla, Raulito Palad (Palad), Ricardo Digamon (Digamon), Nonito Prisco, Eulogio M. Tutor, Melvin Pepito, Helyto N. Reyes (Reyes), Randolf C. Baludo (Baludo), Alberto Epondol, Rodelo A. Susper, Evaristo Vigori, Jonathan P. Ayaay, Felipe Erilla, Aris A. Garcia (Aris), Roy A. Garcia (Roy), and Restituto Tapanan (Tapanan) were hired by LMCEC as welder, tinsmith, pipefitter, and mechanical employees.[8]

During the months of January, February and March 2001, petitioners were required by LMCEC to surrender their identification cards and ATM cards and were ordered to execute

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[6] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr., concurring; *rollo*, pp. 33-56.

[7] *Id.* at 88-89.

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

contracts of employment. Most of the petitioners did not comply with the directive as they believed that it was only respondents' strategy to get rid of petitioners' regular status since they would become new employees disregarding their length of service. Petitioners were later dismissed from employment.[9]

Hence, the complaint for illegal dismissal and non-payment of monetary benefits filed by petitioners and other LMCEC employees who were similarly situated, namely: Guillermo S. Lucas (Lucas), Alvin Bontugay, Rector Palajos, and Hermes B. Pacatang (Pacatang), against respondents before the National Labor Relations Commission (NLRC). The employees alleged that they were illegally dismissed from employment and that their employer failed to pay them their holiday pay, premium pay for holiday, rest day, service incentive leave pay, and 13th month pay during the existence and duration of their employment. They also averred that they were not provided with sick and vacation leaves.[10]

Respondents denied that petitioners were illegally dismissed from employment. They claimed that petitioners were project employees and, upon the completion of each project, they were served notices of project completion.[11] They clarified that the termination of petitioners' employment was due to the completion of the projects for which they were hired.[12]

Petitioners, however, countered that they were regular employees as they had been engaged to perform activities which are usually necessary or desirable in the usual business or trade of LMCEC. They denied that they were project or contractual employees because their employment was continuous and uninterrupted for more than one (1) year. Finally, they maintained that they were part of a work pool from which LMCEC drew its workers for its various projects.[13]

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[9] *Id.* at 94.

[10] *Id.* at 93.

[11] *Id.* at 94-95.

[12] *Id.* at 97.

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

On July 24, 2002, Labor Arbiter (LA) Lilia S. Savari rendered a decision,[14] the dispositive portion of which reads:

> WHEREFORE, a Decision is hereby rendered declaring the dismissal of the complainants illegal. Corollarily, except for complainant Helyto N. Reyes, who has voluntarily withdrawn his case against the respondents, all the other complainants are hereby ordered to report to respondents for reinstatement but without backwages.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[15]

The LA did not give credence to respondents' claim that petitioners were project employees because of the former's failure to present evidence showing that petitioners' contracts of employment reflected the duration of each project for which they were employed and that respondents duly reported to the Department of Labor and Employment every termination of employment and project. As petitioners' dismissal was without just and valid cause, the LA ruled that their termination from employment was illegal. However, the LA refused to award backwages and other monetary claims on the ground that petitioners' employment was not continuous as they belonged to the regular work pool of LMCEC.[16]

The employees jointly filed a partial appeal to the NLRC, except Pacatang and Lucas who filed their separate appeal. On the other hand, the Administrative Officer of LMCEC issued individual communications to petitioners directing their reinstatement pursuant to the LA decision.[17]

On June 9, 2004, the NLRC modified[18] the LA decision, the dispositive portion of which reads:

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[14] CA *rollo*, pp. 136-145.

[15] *Id.* at 145.

[16] *Rollo*, pp. 97-98.

[17] CA *rollo*, pp. 303-346.

[18] Embodied in a decision rendered by the First Division. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring; *rollo*, pp. 99-115.

WHEREFORE, the employees enumerated above are hereby ordered reinstated with limited backwages, without loss of seniority rights and other privileges.

The computation division of the RAB-NCR is hereby ordered to compute the award as herein established.

SO ORDERED.[19]

The NLRC agreed with the LA that petitioners were illegally dismissed from employment. As a consequence of this pronouncement, the tribunal deemed it proper not only to reinstate them to their original position but also to give them their backwages. However, in view of the delayed resolution of the case that could not be attributed to respondents, the NLRC limited the award of backwages from the date of dismissal up to six (6) months after the case was elevated on appeal on September 23, 2002.[20] The appeal filed by Pacatang and Lucas was dismissed for having been filed out of time.

Respondents and complainants Pacatang and Lucas moved for the reconsideration of the NLRC decision. In a Resolution[21] dated April 11, 2005, the NLRC denied the motion for reconsideration filed by respondents, but granted that of Pacatang and Lucas, thereby entitling the latter to receive backwages.

Petitioners subsequently moved for the execution of the NLRC decision. Respondents, however, filed a Clarificatory Motion and Opposition to the Motion for Issuance of Entry of Judgment and Writ of Execution and for Recomputation of the Monetary Award[22] in view of respondents' petition before the CA and the reinstatement of some of the employees.

In an Order[23] dated August 23, 2005, the NLRC granted the motion. The NLRC took into consideration the fact that some

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[19] *Id.* at 114.

[20] *Id.* at 107-114.

[21] CA *rollo*, pp. 274-278.

[22] *Id.* at 434-437.

[23] *Id.* at 438-440.

of the employees who were earlier dismissed from employment had actually been reinstated. Hence, it limited the award of backwages from illegal dismissal up to the date of actual reinstatement. These employees who were actually reinstated were Galer, Ruance, Palad, Digamon, Aris, Roy, and Baludo.[24]

In the meantime, in their petition before the CA, respondents obtained a favorable decision when the appellate court declared petitioners' termination from employment valid and legal and consequently set aside the award of backwages.[25] The pertinent portion of the decision reads:

> IN VIEW WHEREOF, the Petition is **GRANTED**. The assailed Decision (dated June 9, 2004) of the National Labor Relations Commission is hereby **MODIFIED**. The termination from employment of the public respondents herein are declared valid and legal. Their award of backwages computed from the date of their termination are (sic) **SET ASIDE**.
>
> SO ORDERED.[26]

Contrary to the conclusions of the LA and the NLRC, the CA held that petitioners were project employees as their employment contracts provided that their respective tenures of employment were dependent on the duration of the construction projects. As such employees, their employment could lawfully be terminated upon the completion of the project for which they were hired. Consequently, there was no illegal dismissal.[27] Petitioners' motion for reconsideration was denied on February 14, 2007.[28]

Aggrieved, petitioners come to us seeking a review of the CA Decision, anchored on the following issues:

> I. Whether or not the Findings of the Honorable Labor Arbiter as affirmed by the Honorable National Labor

[24] *Id.* at 439.

[25] *Supra* note 6.

[26] *Id.* at 55.

[27] *Id.* at 52-55.

[28] *Supra* note 7.

Relations Commission should be accorded high respect and finality.

II. Whether or not Petitioners were regular employees of respondent Corporation.

III. Whether or not Complainants were illegally dismissed from their employment.[29]

Petitioners aver that the CA erred in completely disregarding the findings of the LA, as affirmed by the NLRC, in view of the settled rule that findings of fact and conclusions of law of quasi-judicial agencies like the NLRC are generally entitled to great respect and even finality. They also insist that they were regular employees, considering that the services they rendered were not only necessary but also indispensable to LMCEC's business. They likewise claim that they had been in the service for a continuous period and a considerable length of time, and are in fact members of a work pool from which LMCEC draws its workers for its projects. Hence, even if they were initially hired as project employees, they eventually attained the status of regular employees. Petitioners also insist that they were illegally dismissed as their employment was terminated without just and valid cause, and without affording them due process of law. Lastly, petitioners claim that the NLRC had previously rendered decisions in favor of LMCEC employees who were similarly situated, hence, their case should also be decided in favor of labor.[30]

The petition is meritorious.

We discuss first the procedural issues.

Respondents point out that the decision of the LA had attained finality, except as to Palad, because of their failure to appeal. They explain that the Memorandum on Appeal filed with the NLRC was verified only by Palad without stating therein that he did it in representation of the other petitioners. In view of the finality of the NLRC decision, the instant petition should not prosper.

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[29] *Rollo*, p. 432.

[30] *Id.* at 432-443.

We do not agree.

Our pronouncement in *Pacquing v. Coca-Cola Philippines, Inc.*[31] is instructive.

> As to the defective verification in the appeal memorandum before the NLRC, the same liberality applies. After all, the requirement regarding verification of a pleading is formal, not jurisdictional. Such requirement is simply a condition affecting the form of pleading, the non-compliance of which does not necessarily render the pleading fatally defective. Verification is simply intended to secure an assurance that the allegations in the pleading are true and correct and not the product of the imagination or a matter of speculation, and that the pleading is filed in good faith. The court or tribunal may order the correction of the pleading if verification is lacking or act on the pleading although it is not verified, if the attending circumstances are such that strict compliance with the rules may be dispensed with in order that the ends of justice may thereby be served.
>
> Moreover, no less than the Labor Code directs labor officials to use reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities; while Section 10, Rule VII of the New Rules of Procedure of the NLRC provides that technical rules are not binding. Indeed, the application of technical rules of procedure may be relaxed in labor cases to serve the demand of substantial justice. Thus, the execution of the verification in the appeal memorandum by only two complainants in behalf of the other complainants also constitute substantial compliance.[32]

Clearly, the NLRC properly took cognizance of the appeal of all the named complainants even though it was signed by only one of them. While the right to appeal is a statutory and not a natural right, it is nonetheless an essential part of our judicial system. Courts are, therefore, advised to proceed with caution, so as not to deprive a party of the right to appeal. Litigants should have the amplest opportunity for the proper and just disposition of their cause – free, as much as possible,

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[31] G.R. No. 157966, January 31, 2008, 543 SCRA 344.

[32] *Id.* at 356-357. (Citations omitted.)

from the constraints of procedural technicalities.[33] Thus, contrary to respondents' claim, the decision had not attained finality even as to those who did not sign the appeal memorandum.

Now on the substantive aspect.

The issues boil down to whether the CA was correct in concluding that petitioners were project employees and that their dismissal from employment was legal.

We answer in the negative.

Even if the questions that need to be settled are factual in nature, this Court nevertheless feels obliged to resolve them due to the incongruent findings of the NLRC and the LA and those of the CA.[34]

Article 280 of the Labor Code distinguishes a "project employee" from a "regular employee" in this wise:

> Article 280. *Regular and casual employment*.—The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, *except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee* or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.
>
> An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with

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[33] *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism (KILUSAN)-Organized Labor Associations in Line Industries and Agriculture (OLALIA) v. Court of Appeals*, G.R. Nos. 149158-59 and 156668, July 24, 2007, 528 SCRA 45, 62.

[34] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, G.R. No. 170181, June 26, 2008, 555 SCRA 537, 549.

respect to the activity in which he is employed and his employment shall continue while such activity exists.[35]

A project employee is assigned to a project which begins and ends at determined or determinable times.[36] Employees who work under different project employment contracts for several years do not automatically become regular employees; they can remain as project employees regardless of the number of years they work. Length of service is not a controlling factor in determining the nature of one's employment.[37] Their rehiring is only a natural consequence of the fact that experienced construction workers are preferred.[38] In fact, employees who are members of a "work pool" from which a company draws workers for deployment to its different projects do not become regular employees by reason of that fact alone. The Court has consistently held that members of a "work pool" can either be project employees or regular employees.[39]

The principal test used to determine whether employees are project employees is whether or not the employees were assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time the employees were engaged for that project.[40]

Admittedly, respondents did not present the employment contracts of petitioners except that of Dacuital. They explained that it was no longer necessary to present the other contracts

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[35] Emphasis supplied.

[36] *Goma v. Pamplona Plantation, Incorporated*, G.R. No. 160905, July 4, 2008, 557 SCRA 124, 134.

[37] *Abesco Construction and Development Corporation v. Ramirez,* G.R. No. 141168, April 10, 2006, 487 SCRA 9, 14.

[38] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra* note 34, at 550.

[39] *Abesco Construction and Development Corporation v. Ramirez, supra* note 37, at 14.

[40] *Goma v. Pamplona Plantation, Incorporated*, *supra* note 36, at 135; *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, *supra* note 34, at 550.

since petitioners were similarly situated. Having presented one contract, respondents believed that they sufficiently established petitioners' status as project employees.

Even though the absence of a written contract does not by itself grant regular status to petitioners, such a contract is evidence that petitioners were informed of the duration and scope of their work and their status as project employees.[41] In this case, where no other evidence was offered, the absence of the employment contracts raises a serious question of whether the employees were properly informed at the onset of their employment of their status as project employees.[42]

While it is true that respondents presented the employment contract of Dacuital, the contract does not show that he was informed of the nature, as well as the duration of his employment. In fact, the duration of the project for which he was allegedly hired was not specified in the contract. The pertinent provision thereof is quoted hereunder for easy reference:

> 3. In accordance with Policy No. 20 of the Labor Code of the Philippines, parties agree that the effective date of this employment is 4-5-00 up to the duration of the DUCTWORK/ELECTRICAL/ MECHANICAL phase of the project estimated to be finished in the month of _____, 19_____ or earlier.[43]

Even if we assume that under the above provision of the contract, Dacuital was informed of the nature of his employment and the duration of the project, that same contract is not sufficient evidence to show that the other employees were so informed. It is undisputed that petitioners had individual employment contracts, yet respondents opted not to present them on the lame excuse that they were similarly situated as Dacuital. The non-presentation of these contracts gives rise to the presumption that the employees were not informed of the nature and duration of their employment. It is doctrinally entrenched that in illegal

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[41] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra* note 34, at 553.

[42] *Id.*

[43] CA *rollo*, p. 387.

dismissal cases, the employer has the burden of proving with clear, accurate, consistent, and convincing evidence that the dismissal was valid. Absent any other proof that the project employees were informed of their status as such, it will be presumed that they are regular employees.[44]

Moreover, Department Order No. 19 (as well as the old Policy Instructions No. 20) requires employers to submit a report of an employee's termination to the nearest public employment office everytime the employment is terminated due to the completion of a project.[45] In this case, there was no evidence that there was indeed such a report. LMCEC's failure to file termination reports upon the cessation of petitioners' employment was an indication that petitioners were not project but regular employees.

Well-established is the rule that regular employees enjoy security of tenure and they can only be dismissed for just or valid cause and upon compliance with due process, *i.e.*, after notice and hearing. In cases involving an employee's dismissal, the burden is on the employer to prove that the dismissal was legal.[46] This burden was not amply discharged by LMCEC in this case. Being regular employees, petitioners were entitled to security of tenure, and their services may not be terminated except for causes provided by law.[47]

Finally, records failed to show that LMCEC afforded petitioners, as regular employees, due process prior to their dismissal, through the twin requirements of notice and hearing. Petitioners were not served notices informing them of the particular acts for which their dismissal was sought. Nor were they required to give their side regarding the charges made against them, if any. Certainly, petitioners' dismissal was

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[44] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez*, *supra* note 34, at 553.

[45] *Goma v. Pamplona Plantation, Incorporated*, *supra* note 36, at 135.

[46] *Id.* at 136.

[47] *Cocomangas Hotel Beach Resort v. Visca*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 721.

not carried out in accordance with law and was, therefore, illegal.[48]

Article 279 of the Labor Code, as amended, provides that an illegally dismissed employee shall be entitled to reinstatement, full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent from the time his compensation was withheld from him up to the time of his actual reinstatement.[49]

Contrary to the conclusion of the NLRC, the backwages due petitioners must be computed from the time they were unjustly dismissed until actual reinstatement to their former positions. Thus, until LMCEC implements the reinstatement aspect, its obligation to petitioners, insofar as accrued backwages and other benefits are concerned, continues to accumulate.[50]

The fact that petitioners did not appeal the NLRC decision on this matter does not bar this Court from ordering its modification. As held in *Cocomangas Hotel Beach Resort v. Visca*[51]—

> While as a general rule, a party who has not appealed is not entitled to affirmative relief other than the ones granted in the decision of the court below, this Court is imbued with sufficient authority and discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case or to serve the interests of justice or to avoid dispensing piecemeal justice.
>
> Besides, substantive rights like the award of backwages resulting from illegal dismissal must not be prejudiced by a rigid and technical application of the rules. The computation of the award for backwages from the time compensation was withheld up to the time of actual reinstatement is a mere legal consequence of the finding that

[48] *Hanjin Heavy Industries and Construction Co., Ltd. v. Ibañez, supra* note 34, at 559.

[49] *Cocomangas Hotel Beach Resort v. Visca, supra* note 47, at 721.

[50] *Id.*

[51] *Id.*

respondents [petitioners] were illegally dismissed by petitioners [respondents].[52]

As to respondent Camus' liability as LMCEC president, it is settled that in the absence of malice, bad faith, or specific provision of law, a director or officer of a corporation cannot be made personally liable for corporate liabilities.[53]

As held in *Lowe, Inc. v. Court of Appeals,*[54] citing *McLeod v. NLRC*:[55]

> Personal liability of corporate directors, trustees or officers attaches only when (1) they assent to a patently unlawful act of the corporation, or when they are guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders or other persons; (2) they consent to the issuance of watered down stocks or when, having knowledge of such issuance, do not forthwith file with the corporate secretary their written objection; (3) they agree to hold themselves personally and solidarily liable with the corporation; or (4) they are made by specific provision of law personally answerable for their corporate action.[56]

To be sure, Camus has a personality which is distinct and separate from that of LMCEC. There was no proof that Camus acted in bad faith in dismissing petitioners from employment. The mere fact that he is the president of the company does not make him personally liable for the payment of backwages.

Finally, the Court notes that although Tapanan was named as petitioner, he was never included as a complainant before the NLRC. As such, he is not a party to this case. Moreover, as clearly stated in the LA decision, Reyes has voluntarily withdrawn his case against respondents. Thus, although he is

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[52] *Id.* at 722.

[53] *Lowe, Inc v. Court of Appeals*, G.R. Nos. 164813 and 174590, April 14, 2009, 596 SCRA 140.

[54] *Id.*

[55] G.R. No. 146667, January 23, 2007, 512 SCRA 222.

[56] *Lowe, Inc. v. Court of Appeals*, *supra* note 53, at 155.

one of the petitioners here, he is not covered by this Decision. Lastly, some of the petitioners had already been actually reinstated by LMCEC. We emphasize that the computation of their backwages should be up to the date of actual reinstatement.

WHEREFORE, premises considered, the petition is *GRANTED*. The Court of Appeals Decision dated September 25, 2006 and Resolution dated February 14, 2007 in CA-G.R. SP No. 90377 are *REVERSED* and *SET ASIDE*. Petitioners' dismissal from employment is declared illegal and, except Helyto N. Reyes and Restituto Tapanan, they are entitled to full backwages from the time of illegal dismissal until actual reinstatement.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181829. September 1, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SATURNINO VILLANUEVA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF FACTUAL FINDINGS OF THE TRIAL COURT ESPECIALLY WHEN AFFIRMED BY APPELLATE COURT.— At the outset, we must state that we entertain no doubt that appellant thrice raped his daughter, "AAA." We examined the records and we find "AAA's" testimony convincing and

[*] Additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 882 dated August 31, 2010.

straightforward. We therefore have no reason to reverse or modify the findings of the trial court on the credibility of the victim's testimony, more so in this case where the said findings were affirmed by the CA. We also agree with the ruling of the appellate court that appellant could be convicted of rape even without the medical certificate. "In rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things." As stated above, "AAA's" testimony was credible and convincing. As such, appellant's conviction could rest solely on it. The medical certificate would only serve as corroborative evidence.

2. ID.; ID.; OFFER OF EVIDENCE; EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED CANNOT BE CONSIDERED.— We, however, agree with the appellant that both the medical certificate and "AAA's" birth certificate, although marked as exhibits during the pre-trial, should not have been considered by the trial court and the CA because they were not formally offered in evidence. Section 34, Rule 132 of the Rules of Court explicitly provides: "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified." In this case, we note that after the marking of the exhibits during pre-trial, the prosecution did not formally offer the said medical certificate or birth certificate in evidence. In fact, the prosecution rested its case after presenting the testimony of "AAA" without formally offering any documentary exhibit at all. x x x Thus, we find that both the trial court and the CA erred in allowing the admission of "AAA's" medical certificate and birth certificate. The records would show that the lone witness for the prosecution did not identify the said exhibits or explain their contents. When "AAA" was placed on the witness stand, she merely stated that she was 13 years old. No reference was ever made to her birth certificate. The same is true with the medical certificate. After the marking during the pre-trial, the prosecution did not refer to it in any stage of the proceedings. Neither did it present the doctor who prepared the same.

3. ID.; ID.; ADMISSION, WHEN NOT ADMISSIBLE.— [A]ppellant's admission during the pre-trial that "AAA" was a minor below 12 years of age would not help the prosecution's case. First, the trial court found this admission inaccurate as in fact, "AAA" was already above 12 years of age when the rape incident transpired

on June 9, 2002. Second and more important, appellant's admission during pre-trial is not admissible as it violates Section 2, Rule 118 of the Rules of Court which explicitly provides that: "All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and his counsel, otherwise they cannot be used against the accused. x x x." In this case, records would show that the Pre-trial Order was not signed by both appellant and his counsel.

4. CRIMINAL LAW; RAPE; FAILURE TO PROVE THE QUALIFYING CIRCUMSTANCE OF MINORITY.— [W]e find that the prosecution did not present any satisfactory evidence to prove "AAA's" minority. "In the prosecution of criminal cases, x x x, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt."

5. ID.; ID.; PENALTY AND CIVIL LIABILITIES.— [W]e find appellant guilty only of three counts of simple rape the penalty for which is *reclusion perpetua* for each count. Accordingly, the awards of civil indemnity must be reduced to ₱50,000.00 and moral damages to ₱50,000.00. Finally, the award of exemplary damages is proper. "Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape." In this case, the aggravating circumstance of relationship was duly established. Appellant himself admitted when he testified in open court that he is "AAA's" father. However, the award of ₱25,000.00 as exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the November 5, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02210 which affirmed with modification the November 28, 2003 Decision[2] of the Regional Trial Court (RTC) of Tayug, Pangasinan, Branch 51. The CA found appellant Saturnino Villanueva guilty beyond reasonable doubt of three counts of qualified rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay his victim the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, for each count.

Factual Antecedents:

On November 6, 2002, three Informations were filed against appellant for the crime of rape. The accusatory portions of the Informations read:

Crim. Case No. T-3157:

That on or about the 9th day of June, 2002, at dawn, x x x, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is the father of complainant, armed with a bladed weapon, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one "AAA,"[3] a minor 12 years of age, against her will and consent, to the damage and prejudice of said "AAA."

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[1] CA *rollo*, pp. 167-198; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr.

[2] Records of Crim. Case No. T-3157, pp. 69-77; penned by Judge Ulysses Raciles Butuyan.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes;

CONTRARY to Article 335 of the Revised Penal Code, as amended by Republic Act 8353.[4]

Crim. Case No. T-3158:

That on or about the 27th day of September, 1999, in the evening, at x x x, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is the father of complainant, armed with a bladed weapon, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one "AAA," a minor 9 years of age, against her will and consent, to the damage and prejudicie of said "AAA."

CONTRARY to Article 335 of the Revised Penal Code, as amended by Republic Act 8353.[5]

Crim. Case No. T-3159:

That on or about the 28th day of September, 1999, at dawn, at x x x, province of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused who is the father of complainant, armed with a bladed weapon, by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with one "AAA," a minor 9 years of age, against her will and consent, to the damage and prejudice of said "AAA."

CONTRARY to Article 335 of the Revised Penal Code, as amended by Republic Act 8353.[6]

When arraigned on November 14, 2002, appellant pleaded not guilty to all charges.[7]

Republic Act No. 9262, An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children, effective November 5, 2004.

[4] Records of Crim. Case No. T-3157, p. 1.

[5] Records of Crim. Case No. T-3158, p. 1.

[6] Records of Crim. Case No. T-3159, p. 1.

[7] Records of Crim. Case No. T-3157, p. 15.

During pre-trial, the parties stipulated that the appellant is the father of "AAA." It was likewise agreed that "AAA" was below 12 years of age when the rape incidents happened.[8] "AAA's" birth and medical certificates were likewise marked as Exhibits "A" and "C", respectively.[9]

Thereafter, the cases were tried jointly.[10]

Version of the Prosecution

The prosecution presented "AAA" as its witness. "AAA" narrated that when she was about 4 years old, her mother left her in the care of her father, herein appellant. Since then, she had been living with her father.

"AAA" claimed that appellant sexually abused her on September 27 and 28, 1999 and on June 9, 2002. During her testimony, "AAA" narrated that:

PROS. ULANDAY:

Q Will you please state your name, age and other personal circumstances?

WITNESS:

A I am "AAA," 13 years old, out-of-school youth, presently residing at x x x[11]

x x x x x x x x x

PROS. ULANDAY:

Q Madam Witness, do you still remember September 27, 1999?

A Yes, sir.

Q Why do you remember that particular date?

A That was the birthday of my father and the date when he touched me, sir.

x x x x x x x x x

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[8] *Id.* at 28.

[9] *Id.*

[10] *Id.*

[11] TSN, January 22, 2003, pp. 2-3.

Q Who rape[d] you?
A My papa, sir. Witness pointed to the accused.

x x x x x x x x x

PROS. ULANDAY:
Q You claimed that your father touched and used you. How did he begin in touching you?
A He tied me, sir.

x x x x x x x x x

Q What part of your body was x x x tied by your father?
A My mouth, sir.

Q What other parts of your body, if there [are] any?
A My hands and my feet, sir.

PROS. ULANDAY:
My witness is crying, your Honor.[12]

x x x x x x x x x

Q Now, after your father tied you on September 27, 1999, what did he do, if there's any?
A He raped me, sir.

COURT:
Q What do you mean by x x x saying he raped you?

x x x x x x x x x

A He undressed me, sir.

x x x x x x x x x

COURT:
And we make of record that [witness is now] in tears.[13]

x x x x x x x x x

PROS. ULANDAY:
Q Madam Witness, during the last hearing you uttered the word "*incua na*." What do you mean by that?
A He inserted his penis into my vagina, sir.

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[12] TSN, February 5, 2003, pp. 2-4.

[13] TSN, February 19, 2003, pp. 4-6.

Q How long a time did your father [insert] his penis into your vagina?
A About two minutes, sir.

Q At early dawn of September 28, 1999, what happened if any, between you and your father?
A The same, sir.

Q What do you mean by the same?
A That he inserted his penis into my vagina, sir.

Q Before your father inserted his penis into your vagina, what did he do, if there was any?
A He first undressed me, sir.

Q While he was undressing you what were you doing, if any?
A I failed to do any, sir.

Q Why did you fail to do any?
A Because I was afraid, sir.

Q Why were you afraid at the time?
A Because he threatened me, sir.

Q How did he [threaten] you?
A That if I would report the matter to anyone he would kill the person to whom I will report, sir.

Q Do you remember June 9, 2002 at 3:00 o'clock dawn?
A Yes, sir.

Q Why do you remember that particular date?
A Because he again raped me, sir.

Q Who raped you?
A My father, sir.

Q In what particular place [were] you raped?
A In our house, sir.

x x x x x x x x x

Q You claimed that you were raped by your father, how did he rape you?
A He undressed me, sir.

Q What else did he do aside from undressing you?
A He poked a knife at me, sir.

Q And after poking a knife at you, what happened next, if any?
A Then he touched (*kinuti*) me, sir.

Q What part of your body was touched by your father?
A My vagina, sir.

Q How did he touch your vagina?
A He inserted his penis into my vagina, sir.

Q What happened when he inserted his penis into your vagina?
A I cried, sir.[14]

After the presentation of "AAA's" testimony, the prosecution rested its case.

Version of the Defense

The defense presented appellant as its first witness. In his testimony, appellant admitted that "AAA" is his daughter.[15] He also admitted that on September 27 and 28, 1999 and June 9, 2002, he was living in the same house as "AAA."[16] However, when asked regarding the rape charges filed against him by his daughter, appellant denied the same. Thus:

Q And this daughter of your[s] now charge you [with] rape in Crim. Case Nos. T-3157/3158/3159 for allegedly having sexual intercourse with her against her will and consent. What can you say against these charges by your daughter?
A [Those are] not true, sir.[17]

The defense next presented Marcelino Villanueva (Marcelino) who testified that he is the father of the appellant.[18] He claimed that "AAA" filed the rape cases against appellant because the latter forbade her to entertain suitors.[19] Marcelino also alleged

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[14] TSN, February 26, 2003, pp. 2-4.

[15] TSN, April 2, 2003, p. 3.

[16] *Id.* at 3, 5 and 7.

[17] *Id.* at 3.

[18] TSN, July 24, 2003, p. 3.

[19] *Id.*

that after appellant was incarcerated, "AAA" eloped with her 20-year old boyfriend and that "AAA" only separated from her boyfriend when she was brought under the care of the Department of Social Welfare and Development.[20] When asked how old "AAA" was when she allegedly eloped with her boyfriend, Marcelino answered that "AAA" was only 13 years old.[21]

Ruling of the Regional Trial Court

The trial court lent credence to the testimony of "AAA." However, it noted that although it was agreed upon during the pre-trial that "AAA" was a minor below 12 years of age, the fact remains that "AAA" was 12 years, six months and 19 days when she was ravished by the appellant on June 9, 2002.[22] The court below also observed that "AAA has always been a pathetic child of oppression, abuse and neglect" and that "[h]er innocence, tender age, dependence [on appellant] for survival, and her virtual orphanhood sufficed to qualify every sexual molestation perpetrated by her father as rape x x x."[23]

The dispositive portion of the Decision reads:

> WHEREFORE, finding the accused SATURNINO VILLANUEVA guilty beyond reasonable doubt of three counts of rape, defined and penalized by Article 266-A of the Revised Penal Code, perpetrated against [his] daughter on September 27, 1999, September 28, 1999 and June 9, 2002, x x x and as mandated by Article 266-B, same Code, the Court hereby sentences him to suffer the penalty of DEATH for each offense, to indemnify the complainant "AAA" for damages in the amount of ₱50,000.00 per [count], and to pay the costs.
>
> SO ORDERED.[24]

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[20] *Id.* at 5.

[21] *Id.* at 6.

[22] Records of Crim. Case No. T-3157, p. 74.

[23] *Id.* at 77.

[24] *Id.*

Ruling of the Court of Appeals

In his brief filed before the appellate court, appellant claimed that the prosecution failed to present evidence that would overcome the presumption of his innocence. Appellant also alleged that the trial court erred in lending credence to the unrealistic and unnatural testimony of "AAA."[25] He claimed that it was unusual for "AAA" not to offer any resistance to the advances allegedly made by him considering that he was unarmed. According to the appellant, "AAA" should have struggled or at least offered some resistance because she was not completely helpless.[26] Appellant also suggested that "AAA" must have been coached because initially, she did not know the acts which constitute rape. However, during the succeeding hearings, "AAA" allegedly testified in detail the bestial acts committed against her.[27]

Moreover, appellant argued that the prosecution failed to formally offer in evidence the medical certificate and to present the doctor who conducted the medical examination to testify on his findings.[28] Likewise, "AAA's" birth certificate was not formally offered. Neither did the Municipal Civil Registrar who allegedly prepared the same take the witness stand. Thus appellant claimed that assuming he was indeed guilty of the crimes charged, he should only be held liable for simple rape and not qualified rape because the minority of the victim was not duly established.[29] Further, with the passage of Republic Act No. 9346, appellant should not be sentenced to death.[30]

On the other hand, appellee maintained that "AAA's" credibility was beyond doubt[31] and that it was unnecessary

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[25] CA *rollo,* p. 116.

[26] *Id.* at 119.

[27] *Id.*

[28] *Id.* at 120.

[29] *Id.* at 121-122.

[30] *Id.* at 122.

[31] *Id.* at 148.

to offer proof of resistance where the assailant exercised moral ascendancy against his victim, as in this case.[32] Appellee insisted that the crimes committed were three counts of qualified, and not simple, rape considering that "AAA" was a minor and the offender was her father,[33] and that the parties had already stipulated during pre-trial as regards the age of the victim.[34]

On November 5, 2007, the appellate court rendered its Decision disposing thus:

> WHEREFORE, premises considered, the Decision dated 28 November 2003 of the Regional Trial Court of Tayug, Pangasinan, Branch 51 in *Crim. Case Nos. T-3157, T-3158* and *T-3159* finding accused-appellant Saturnino Villanueva guilty beyond reasonable doubt of three (3) counts of qualified rape under Articles 266-A and 266-B is **AFFIRMED** with the **MODIFICATION** that pursuant to Republic Act No. 9346, the penalty of death imposed on appellant is reduced to *reclusion perpetua* for each count of qualified rape, without eligibility for parole under Act No. 4103, as amended. Further, accused-appellant is ordered to pay the private complainant/victim ["AAA"], for each count of qualified rape, the amounts of Php75,000.00 as civil indemnity, Php75,000.00 as moral damages and Php25,000.00 as exemplary damages.
>
> SO ORDERED.[35]

The appellate court found no reason to reverse the findings of the trial court on the credibility of "AAA."[36] Although there were occasions when "AAA" would not immediately answer the questions propounded to her, the CA opined that it was because she was either distressed in recounting her horrible experiences or in tears.[37] The appellate court likewise considered

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[32] *Id.* at 149.

[33] *Id.* at 151-152.

[34] *Id.* at 155.

[35] *Id.* at 196.

[36] *Id.* at 183.

[37] *Id.* at 187.

the fact that "AAA" was only 13 years old when she testified on her harrowing experiences.[38]

The appellate court likewise brushed aside appellant's contention that "AAA" did not offer any resistance. According to the CA, appellant's moral ascendancy over "AAA" substitutes for violence or intimidation.[39]

The CA also concluded that even without the medical certificate, appellant could still be held liable for three counts of rape. His conviction could rest exclusively on the credible testimony of "AAA" and the medical certificate would only be corroborative evidence.[40] Anent the birth certificate, the CA recalled that during pre-trial, the minority of the victim and her relationship with the appellant had already been stipulated upon. Hence, the said elements have been sufficiently alleged in the Informations and proven during trial.[41]

Finally, the CA held that appellant's denial is intrinsically weak and self-serving especially considering "AAA's" credible and straightforward testimony.[42]

Our Ruling

Both the appellant and the appellee opted not to file their supplemental briefs.[43]

The appeal is partly meritorious.

At the outset, we must state that we entertain no doubt that appellant thrice raped his daughter, "AAA." We examined the records and we find "AAA's" testimony convincing and

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[38] *Id.* at 188.

[39] *Id.* at 189.

[40] *Id.* at 191.

[41] *Id.* at 192.

[42] *Id.* at 193.

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

straightforward. We therefore have no reason to reverse or modify the findings of the trial court on the credibility of the victim's testimony, more so in this case where the said findings were affirmed by the CA.

We also agree with the ruling of the appellate court that appellant could be convicted of rape even without the medical certificate. "In rape cases, the accused may be convicted solely on the testimony of the victim, provided the testimony is credible, natural, convincing, and consistent with human nature and the normal course of things."[44] As stated above, "AAA's" testimony was credible and convincing. As such, appellant's conviction could rest solely on it. The medical certificate would only serve as corroborative evidence.

We, however, agree with the appellant that both the medical certificate and "AAA's" birth certificate, although marked as exhibits during the pre-trial, should not have been considered by the trial court and the CA because they were not formally offered in evidence. Section 34, Rule 132 of the Rules of Court explicitly provides: "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In this case, we note that after the marking of the exhibits during pre-trial, the prosecution did not formally offer the said medical certificate or birth certificate in evidence. In fact, the prosecution rested its case after presenting the testimony of "AAA" without formally offering any documentary exhibit at all.

Our ruling in *Heirs of Pedro Pasag v. Parocha*[45] is instructive, thus:

> The rule on formal offer of evidence is not a trivial matter. Failure to make a formal offer within a considerable period of time shall be deemed a waiver to submit it. Consequently, as in this case, any evidence that has not been offered shall be excluded and rejected.

[44] *People v. Valenzuela*, G.R. No. 182057, February 6, 2009, 578 SCRA 157, 168.

[45] G.R. No. 155483, April 27, 2007, 522 SCRA 410.

x x x x x x x x x

The Rules of Court [provide] that 'the court shall consider no evidence which has not been formally offered.' A formal offer is necessary because judges are mandated to rest their findings of facts and their judgment only and strictly upon the evidence offered by the parties at the trial. Its function is to enable the trial judge to know the purpose or purposes for which the proponent is presenting the evidence. On the other hand, this allows opposing parties to examine the evidence and object to its admissibility. Moreover, it facilitates review as the appellate court will not be required to review documents not previously scrutinized by the trial court.

x x x x x x x x x

Thus, the trial court is bound to consider only the testimonial evidence presented and exclude the documents not offered. **Documents which may have been identified and marked as exhibits during pre-trial or trial but which were not formally offered in evidence cannot in any manner be treated as evidence. Neither can such unrecognized proof be assigned any evidentiary weight and value**. It must be stressed that there is a significant distinction between identification of documentary evidence and its formal offer. The former is done in the course of the pre-trial, and trial is accompanied by the marking of the evidence as an exhibit; while the latter is done only when the party rests its case. The mere fact that a particular document is identified and marked as an exhibit does not mean that it has already been offered as part of the evidence. It must be emphasized that any evidence which a party desires to submit for the consideration of the court must formally be offered by the party; otherwise, it is excluded and rejected.[46]

We reiterated the above ruling in *Dizon v. Court of Tax Appeals*[47] where one of the issues presented was whether the Court of Tax Appeals and the CA gravely abused their discretion "in allowing the admission of the pieces of evidence which were not formally offered" by the Bureau of Internal Revenue.[48] In finding the case impressed with merit, the Court held that:

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[46] *Id.* at 412, 416, 419-420. Emphasis supplied.

[47] G.R. No. 140944, April 30, 2008, 553 SCRA 111.

[48] *Id.* at 126.

Under Section 8 of RA 1125, the CTA is categorically described as a court of record. As cases filed before it are litigated *de novo*, party-litigants shall prove every minute aspect of their cases. Indubitably, no evidentiary value can be given the pieces of evidence submitted by the BIR, as the rules on documentary evidence require that these documents must be formally offered before the CTA. x x x

x x x x x x x x x x x

x x x [T]he presentation of the BIR's evidence is not a mere procedural technicality which may be disregarded considering that it is the only means by which the CTA may ascertain and verify the truth of BIR's claims against the Estate. The BIR's failure to formally offer these pieces of evidence, despite CTA's directives, is fatal to its cause. Such failure is aggravated by the fact that not even a single reason was advanced by the BIR to justify such fatal omission. This, we take against the BIR.[49]

We are not unaware that there is an exception to the above-stated rule. In *People v. Mate*,[50] Silvestre Mate (Mate) was charged with the crime of "Kidnapping for Ransom with Murder and Frustrated Murder."[51] During arraignment, he entered a plea of "guilty." The court then propounded clarificatory questions to determine whether the accused understood the consequences of his plea. Immediately thereafter, the trial court promulgated its decision finding the accused guilty as charged and sentenced him to death.[52] It was only after the rendition of the judgment that the trial court conducted hearings for the reception of the prosecution's evidence.[53]

From the prosecution's evidence, it would appear that during the investigation, Mate voluntarily made extra-judicial statements as contained in Exhibits "A", "B", and "J". Also, after his conviction, he appeared as witness for the prosecution against his co-accused where he affirmed his extra-judicial statements

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[49] *Id.* at 126, 129-130.

[50] 191 Phil. 72 (1981).

[51] *Id.* at 74.

[52] *Id.* at 76.

[53] *Id.* at 77.

in Exhibits "A", "B", and "J". However, the state prosecutor failed to formally offer said exhibits.

In debunking the defense's contentions that the trial court erred in rendering a judgment of conviction on Mate even before the prosecution could present its evidence, and in considering the exhibits which were not formally offered, the Court held thus:

> The defense contends that the trial court committed a serious error in rendering judgment of conviction immediately after Mate had pleaded guilty to the crime charged on the basis of his plea of guilty and before receiving any evidence. While the trial court committed an error in rendering judgment immediately after the accused had pleaded guilty, and, thereafter, conducted hearings for the reception of the evidence for the prosecution, such an irregularity, is insufficient to justify the setting aside of the judgment of conviction, considering that it is supported by the judicial and extra-judicial confessions of the accused and by other evidence. x x x
>
> x x x x x x x x x
>
> The defense questions also the failure of the state prosecutor Cornelio Melendres to make a formal offer of his exhibits, although they have been marked and identified. Such an oversight appears trivial because the entire evidence for the prosecution is recorded. Even without the exhibits which have been incorporated into the records of the case, the prosecution can still establish the case because the witnesses properly identified those exhibits and their testimonies are recorded.
>
> Exhibits "A", "B", and "J" are all admissible against Mate because it appears with clarity that he voluntarily and spontaneously gave those narrations without compulsion from anybody. In fact, . . . when he testified against Ben Bohol he affirmed those narrations again.[54]

In *Mato v. Court of Appeals*,[55] we concretized the above ruling by holding that evidence, although not formally offered in evidence, may be "admitted and considered by the trial court provided the following requirements are present, *viz*: first, the

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[54] *Id.* at 81-82.

[55] 320 Phil. 344 (1995).

same must have been duly identified by testimony duly recorded and, second, the same must have been incorporated in the records of the case."[56] In *Ramos v. Dizon*,[57] we deemed the exhibits to have been incorporated into the records because they had been "presented and marked during the pre-trial of the case."[58] Likewise, the first requisite was deemed satisfied because one of the parties therein explained the contents of the exhibits when interrogated by the respondents' counsel.[59]

In the instant case, we find the rulings espoused in *People v. Mate*,[60] *Mato v. Court of Appeals*,[61] and *Ramos v. Dizon*[62] not applicable. Thus, we find that both the trial court and the CA erred in allowing the admission of "AAA's" medical certificate and birth certificate. The records would show that the lone witness for the prosecution did not identify the said exhibits or explain their contents. When "AAA" was placed on the witness stand, she merely stated that she was 13 years old. No reference was ever made to her birth certificate. The same is true with the medical certificate. After the marking during the pre-trial, the prosecution did not refer to it in any stage of the proceedings. Neither did it present the doctor who prepared the same.

Moreover, appellant's admission during the pre-trial that "AAA" was a minor below 12 years of age[63] would not help the prosecution's case. First, the trial court found this admission inaccurate as in fact, "AAA" was already above 12 years of age when the rape incident transpired on June 9, 2002. Second and more important, appellant's admission during pre-trial is

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[56] *Id.* at 350.

[57] G.R. No. 137247, August 7, 2006, 498 SCRA 17.

[58] *Id.* at 31.

[59] *Id.*

[60] *Supra* note 50.

[61] *Supra*.

[62] *Supra*.

[63] Records of Crim. Case No. T-3157, p. 28.

not admissible as it violates Section 2, Rule 118 of the Rules of Court which explicitly provides that: "All agreements or admissions made or entered during the pre-trial conference shall be reduced in writing and signed by the accused and his counsel, otherwise they cannot be used against the accused. x x x." In *People v. Chua Uy*,[64] we held that:

> Even granting for the sake of argument that RAMON admitted during the pre-trial that Exhibits "D" to "D-4", inclusive, and Exhibit "E" contained methamphetamine hydrochloride, the admission cannot be used in evidence against him *because the Joint Order was not signed by RAMON and his counsel.* Section 4 of Rule 118 of the Rules of Court expressly provides:
>
> > SEC. 4. *Pre-trial agreements must be signed.* No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed by his counsel.
>
> Put in another way, to bind the accused the pre-trial order must be signed not only by him but his counsel as well. The purpose of this requirement is to further safeguard the rights of the accused against improvident or unauthorized agreements or admissions which his counsel may have entered into without his knowledge, as he may have waived his presence at the pre-trial conference; eliminate any doubt on the conformity of the accused of the facts agreed upon.

In this case, records would show that the Pre-trial Order was not signed by both appellant and his counsel.

In view of the foregoing, we find that the prosecution did not present any satisfactory evidence to prove "AAA's" minority. "In the prosecution of criminal cases, x x x, nothing but proof beyond reasonable doubt of every fact necessary to constitute the crime with which an accused is charged must be established. Qualifying circumstances or special qualifying circumstances must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its

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[64] 384 Phil. 70, 90-91 (2000).

qualified form. As a qualifying circumstance of the crime of rape, the concurrence of the victim's minority and her relationship to the accused-appellant must be both alleged and proven beyond reasonable doubt."[65]

In view of the foregoing, we find appellant guilty only of three counts of simple rape[66] the penalty for which is *reclusion perpetua* for each count. Accordingly, the awards of civil indemnity must be reduced to ₱50,000.00 and moral damages to ₱50,000.00. Finally, the award of exemplary damages is proper. "Exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. Relationship as an alternative circumstance under Article 15 of the Revised Penal Code is considered aggravating in the crime of rape."[67] In this case, the aggravating circumstance of relationship was duly established. Appellant himself admitted when he testified in open court that he is "AAA's" father. However, the award of ₱25,000.00 as exemplary damages must be increased to ₱30,000.00 in line with prevailing jurisprudence.[68]

WHEREFORE, we find appellant Saturnino Villanueva *GUILTY* of three counts of simple rape and accordingly sentence him to suffer the penalty of *reclusion perpetua* and to indemnify his victim "AAA" the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for each count.

SO ORDERED.

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

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[65] *People v. Lopit*, G.R. No. 177742, December 17, 2008, 574 SCRA 372, 383.

[66] *Id.* at 384.

[67] *Id.* at 385.

[68] *People v. Macapanas*, G.R. No. 187049, May 4, 2010.

SECOND DIVISION

[G.R. No. 182707. September 1, 2010]

SPOUSES ERNESTO LIM and ZENAIDA LIM, *petitioners, vs.* **RUBY SHELTER BUILDERS AND REALTY DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; HOUSING AND LAND USE REGULATORY BOARD (HLURB); JURISDICTION, EXPLAINED.— Section 1 of Presidential Decree 1344 vests in the National Housing Authority (now HLURB) exclusive jurisdiction to hear and decide the following cases: (a) unsound real estate business practices; (b) claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and (c) cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman. This provision must be read in the light of the law's preamble, which explains the reasons for enactment of the law or the contextual basis for its interpretation. The law's introductory clause states that the HLURB exercises regulatory authority over cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision sellers and operators, such as failure to deliver titles to the buyers or titles free from liens and encumbrances.

2. ID.; ID.; ID.; AN ACTION FOR SPECIFIC PERFORMANCE FILED BY SUBDIVISION LOT BUYER AGAINST THE DEVELOPER/ OWNER IS COGNIZABLE BY THE HLURB.— Ruby Shelter never offered any excuse in refusing to deliver the title to the spouses other than the alleged lack of jurisdiction of that body over the action. It did not deny the sale and it obligation to deliver the title of the land to the spouses. The plain fact is that the Lims bought a fourth of a parcel of land from Ruby Shelter for ₱190,000.00. The parties agreed that Ruby Shelter shall cause the subdivision of the lot and upon approval by the Bureau of Lands, execute the deed of sale. Subsequently,

Ruby Shelter gave that deed to the Lims with a promise to give the title once its subdivision plan had been approved. Ruby Shelter later delivered a copy of the approved plan to the Lims showing the segregation of the portion they bought from the rest of the original lot. But Ruby Shelter failed on its promise to deliver the title to the Lims, despite repeated demands. These circumstances clearly present a case for specific performance that the subdivision lot buyers brought against Ruby Shelter, a matter properly cognizable by the HLURB.

3. ID.; ID.; ID.; ID.; CONTROLLING FACT IN DETERMINING HLURB'S JURISDICTION; CASE AT BAR.— Ruby Shelter of course claims that the transaction did not relate to a land developer's contractual and statutory obligations to a buyer of a subdivision lot since the lot that the Lims bought from it did not form part of a subdivision development, the size of a community. It merely subdivided a lot into four and sold one portion to the Lims. But the controlling fact is not the size of the original lot that Ruby Shelter had subdivided but the fact that the Lims bought their portion of that lot from a licensed land developer whose dealings on properties are regulated by the HLURB. The Lims bought their lot relying on the belief that Ruby Shelter, as licensed land developer, shall abide by its duties and obligations under its contract and the laws.

APPEARANCES OF COUNSEL

Lucille Fe R. Maggay-Principe for petitioners.
Nelson Paraiso for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the jurisdiction of the Housing and Land Use Regulatory Board (HLURB) over an action to compel a land developer to deliver a promised title over one-fourth of a subdivided lot.

The Facts and the Case

Sometime in May 2001 petitioners Ernesto and Zenaida Lim (the Lims) bought for ₱190,000.00 a 318-square meter lot that

then formed part of a bigger lot[1] in Barangay Triangulo, Naga City. Respondent Ruby Shelter Builders and Realty Development Corporation (Ruby Shelter), the seller and owner, undertook to subdivide the lot and, upon approval by the Bureau of Lands, execute a deed of absolute sale in favor of the Lims. In December 2001 Ruby Shelter delivered the deed of sale to the spouses with a promise to give them the title to the lot as soon as the subdivision plan had been approved.

Ruby Shelter then caused the approval of a subdivision plan for its lot, dividing it into four, including the one sold to the Lims, identified as Lot 9-E-2-B. But, despite repeated demands, Ruby Shelter did not deliver the Lims' title. Consequently, the latter filed an action against it for delivery of title with damages before the HLURB.

On March 1, 2004 the HLURB Legal Services Group (LSG) rendered a decision for the Lims, which decision the HLURB Board of Commissioners affirmed. On September 5, 2005, acting on Ruby Shelter's appeal, the Office of the President (OP) upheld the HLURB decision, a copy of which Ruby Shelter got on September 20, 2005. On October 11, 2005 the latter filed a motion for leave to be allowed to file an attached belated motion for reconsideration. The OP denied the motion. On December 29, 2005 it further issued an Order declaring its September 5, 2005 decision final and executory.

Notwithstanding the OP's above Order, on January 31, 2006 Ruby Shelter filed a motion for extension of time to file a petition for review with the Court of Appeals (CA). On October 23, 2006 the Lims moved for the issuance of a writ of execution, which the HLURB LSG granted.

Meanwhile, the CA gave due course to Ruby Shelter's petition for review and on December 6, 2007 rendered a decision granting the same and setting aside the OP's rulings. The CA ruled that the HLURB had no jurisdiction over the claim of the spouses, thus, this petition.

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[1] Covered by Transfer Certificate of Title 40386.

The Issue Presented

The sole issue presented in this case is whether or not the Lims' action falls within the jurisdiction of the HLURB.

The Ruling of the Court

The jurisdiction of a court or a quasi-judicial body over the subject matter of the action is determined by the nature of the action pleaded as appearing in the allegations of the complaint.[2] But where the actual issues are evident from the records of the case, then jurisdiction over the subject matter need not depend upon the literal assertions in the complaint, but on the law as applied to established facts based on the evidence that the parties presented in due course.[3]

Section 1 of Presidential Decree 1344[4] vests in the National Housing Authority (now HLURB) exclusive jurisdiction to hear and decide the following cases: (a) unsound real estate business practices; (b) claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and (c) cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lot or condominium unit against the owner, developer, dealer, broker or salesman.

This provision must be read in the light of the law's preamble, which explains the reasons for enactment of the law or the contextual basis for its interpretation. The law's introductory clause states that the HLURB exercises regulatory authority over cases of swindling and fraudulent manipulations perpetrated by unscrupulous subdivision sellers and operators, such as failure

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[2] *Herrera v. Bollos*, 424 Phil. 851, 856 (2002).

[3] *Allied Domecq Phil., Inc. v. Villon*, 482 Phil. 894, 901 (2004), citing *Leoquinco v. Canada Dry Bottling Co. of the Phil., Inc. Employees Association*, 147 Phil. 488, 502 (1971).

[4] Empowering the National Housing Authority to Issue Writ of Execution in the Enforcement of Its Decision under Presidential Decree 957.

to deliver titles to the buyers or titles free from liens and encumbrances.[5]

To determine if the HLURB has jurisdiction over the complaint of the spouses, the law must be interpreted as applied to the facts. Here, Ruby Shelter never offered any excuse in refusing to deliver the title to the spouses other than the alleged lack of jurisdiction of that body over the action. It did not deny the sale and its obligation to deliver the title of the land to the spouses.

The plain fact is that the Lims bought a fourth of a parcel of land from Ruby Shelter for ₱190,000.00. The parties agreed that Ruby Shelter shall cause the subdivision of the lot and upon approval by the Bureau of Lands, execute the deed of sale. Subsequently, Ruby Shelter gave that deed to the Lims with a promise to give the title once its subdivision plan had been approved. Ruby Shelter later delivered a copy of the approved plan to the Lims showing the segregation of the portion they bought from the rest of the original lot. But Ruby Shelter failed on its promise to deliver the title to the Lims, despite repeated demands. These circumstances clearly present a case for specific performance that the subdivision lot buyers brought against Ruby Shelter, a matter properly cognizable by the HLURB.

Ruby Shelter of course claims that the transaction did not relate to a land developer's contractual and statutory obligations to a buyer of a subdivision lot since the lot that the Lims bought from it did not form part of a subdivision development, the size of a community. It merely subdivided a lot into four and sold one portion to the Lims.

But the controlling fact is not the size of the original lot that Ruby Shelter had subdivided but the fact that the Lims bought their portion of that lot from a licensed land developer whose dealings on properties are regulated by the HLURB. The Lims bought their lot relying on the belief that Ruby Shelter, as licensed

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[5] *Cadimas v. Carrion*, G.R. No. 180394, September 29, 2008, 567 SCRA 101, 110.

land developer, shall abide by its duties and obligations under its contract and the laws.

Lastly, the CA committed a grave error in giving due course to Ruby Shelter's petition when the OP's Decision dated September 5, 2005 had already attained finality and had become executory.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES and SETS ASIDE* the Decision of the Court of Appeals in CA-G.R. SP 93138 dated December 6, 2007 and its Resolution dated April 25, 2008, and *REINSTATES* the Decision of the Office of the President dated September 5, 2005 and its Order dated December 29, 2005.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183182. September 1, 2010]

GENTLE SUPREME PHILIPPINES, INC., *petitioner, vs.* **RICARDO F. CONSULTA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUBSTITUTED SERVICE OF SUMMONS IS VALID IF MADE AT THE PARTY'S PLACE OF BUSINESS WITH SOME COMPETENT PERSON IN CHARGE THEREOF; CASE AT BAR.— [T]here is valid substituted service of summons on Consulta at his place of

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 882 dated August 31, 2010.

business with some competent person in charge thereof. According to the sheriff's return, which is *prima facie* evidence of the facts it states, he served a copy of the complaint on Canave, an authorized representative of both Consulta and Sarayba. Besides Consulta's bare allegations, he did not present evidence to rebut the presumption of regularity on the manner that the sheriff performed his official duty. Nor did Consulta present clear and convincing evidence that Canave was not competent to receive the summons and the attached documents for him. In fact, in his petition for annulment of judgment, Consulta said that CTC had been apprised of the civil action through Canave. In other words, Canave was a person charged with authority to receive court documents for the company as well as its officers who held office in that company. Absent contrary evidence, the veracity of the return's content and its effectiveness stand. Further, this Court has ruled that "it is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge." In this case, Canave, a secretary whose job description necessarily includes receiving documents and other correspondence, would have the semblance of authority to accept the court documents.

APPEARANCES OF COUNSEL

Dennis V. Niño for petitioner.
Laguesma Magsalin Consulta and Gastardo for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the service of summons on a corporation and its officers, allegedly done improperly, resulting in the failure of the trial court to acquire jurisdiction over the persons of the defendants and in the nullity of its proceedings.

The Facts and the Case

On September 29, 2005 petitioner Gentle Supreme Philippines, Inc. (GSP) filed a collection case with application for a writ

of preliminary attachment[1] against Consar Trading Corporation (CTC), its president, respondent Ricardo Consulta (Consulta), and its vice-president, Norberto Sarayba (Sarayba) before the Regional Trial Court (RTC) of Pasig City, Branch 68, in Civil Case 70544. GSP alleged that CTC, through Consulta and Sarayba, bought certain merchandise from it but refused to pay for them.

Before summons could be served, the RTC issued a writ of preliminary attachment[2] against the defendants after GSP filed the required bond.[3] Afterwards, the RTC issued summons against the defendants.

On October 11, 2005 as the sheriff failed to serve the summons and copies of the complaint on any of CTC's authorized officers as well as on Consulta and Sarayba, he left copies of such documents with Agnes Canave (Canave) who, according to the sheriff's return,[4] was Sarayba's secretary and an authorized representative of both Sarayba and Consulta.

None of the defendants filed an answer to the complaint. Thus, upon motion,[5] on November 18, 2005 the RTC declared them in default[6] and proceeded to hear GSP's evidence *ex parte*. Meanwhile, the sheriff attached a registered land[7] belonging to Consulta.[8] After trial, the RTC ruled that having defrauded GSP, defendants CTC, Consulta, and Sarayba were solidarily liable for the value of the supplied goods plus attorney's fees and costs of the suit.[9] And upon motion, on

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[1] *Rollo*, pp. 55-66.

[2] *Id.* at 187-191.

[3] *Id.* at 191.

[4] *Id.* at 69.

[5] *Id.* at 135-136.

[6] *Id.* at 140; penned by Judge Santiago G. Estrella.

[7] Covered by TCT 250345.

[8] *Rollo*, pp. 230-232.

[9] *Id.* at 266-269.

January 25, 2006 the RTC issued a writ of execution against the defendants.[10]

On June 9, 2006 respondent Consulta filed a petition for annulment of the RTC decision before the Court of Appeals (CA) in CA-G.R. SP 94817.[11] He alleged 1) that he found out about the case against him only on May 19, 2006 when he received a notice of sale on execution of his house and lot in Marikina City; and 2) that he was not properly served with summons because, although his address stated in the complaint was his regular place of business, Canave, who received the summons, was not in charge of the matter.

Consulta invoked the Court's ruling in *Keister v. Judge Navarro*,[12] that "the rule (on substituted service) presupposes that such relation of confidence exists between the person with whom the copy is left and the defendant and, therefore, assumes that such person will deliver the process to defendant or in some way give him notice thereof." Consulta claimed that Canave was only Sarayba's secretary. Thus, neither the sheriff nor the RTC had basis for assuming that Canave would find a way to let Consulta know of the pending case against him. Consulta concluded that the RTC did not acquire jurisdiction over his person.

In its answer to the petition,[13] GSP insisted on the validity of the service of summons on Consulta. Also, assuming that summons was not properly served, Consulta's ignorance was contrived. His knowledge of the case against him may be proved by the following circumstances:

1. On February 25, 2006 CTC faxed GSP a letter proposing a schedule of payment for the adjudged amounts in the RTC decision. Admittedly, it was only Sarayba who signed the letter. By the rules of evidence, however, the act and declaration of

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[10] *Id.* at 271.

[11] *Id.* at 74-85.

[12] 167 Phil. 567 (1977).

[13] *Rollo*, pp. 90-109.

a joint debtor is binding upon a party.[14] This means that Sarayba's knowledge and admission of the case and the defendants' corresponding liability to GSP was binding on Consulta. Besides, Consulta, together with Sarayba, signed the postdated checks as partial payment of CTC's obligation to GSP;

2. The RTC's sheriff garnished CTC's bank accounts on the day the summons was served. As company president, it was incredulous that Consulta was unaware of the garnishment and the reason for it;

3. Consulta admitted that CTC was properly served with summons through Canave. By that statement, it can be deduced that Canave was in charge of the office, Consulta's regular place of business, signifying proper service of the summons on him.

On March 18, 2008 the CA rendered a decision, holding that the RTC sheriff did not properly serve summons on all the defendants. It ordered the remand of the case to the trial court, enjoining it to take steps to insure the valid service of summons on them.[15]

Respondent Consulta filed a motion for partial reconsideration of the decision but the CA denied it for being late. Petitioner GSP also filed a motion for reconsideration[16] which the CA denied on May 29, 2008 for lack of merit,[17] hence, this petition.

The Issue Presented

The sole issue presented in this case is whether the CA correctly ruled that summons had not been properly served on

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[14] RULES OF COURT, Rule 130, Section 29: The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.

[15] *Rollo*, pp. 41-49.

[16] *Id.* at 174-184.

[17] *Id.* at 51.

respondent Consulta with the result that the RTC did not acquire jurisdiction over his person and that the judgment against him was void.

The Ruling of the Court

First of all, only Consulta brought an action for the annulment of the RTC decision. CTC and Sarayba did not. Consequently, the CA had no business deciding whether or not the latter two were properly served with summons. The right to due process must be personally invoked and its circumstances specifically alleged by the party claiming to have been denied such.[18]

Second, there is valid substituted service of summons on Consulta at his place of business with some competent person in charge thereof. According to the sheriff's return, which is *prima facie* evidence of the facts it states,[19] he served a copy of the complaint on Canave, an authorized representative of both Consulta and Sarayba.[20] Besides Consulta's bare allegations, he did not present evidence to rebut the presumption of regularity on the manner that the sheriff performed his official duty.[21] Nor did Consulta present clear and convincing evidence that Canave was not competent to receive the summons and the attached documents for him.

In fact, in his petition for annulment of judgment, Consulta said that CTC had been apprised of the civil action through Canave.[22] In other words, Canave was a person charged with authority to receive court documents for the company as well

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[18] See *San Pedro v. Ong*, G.R. No. 177598, October 17, 2008, 569 SCRA 767, 783.

[19] *Guanzon v. Arradaza*, G.R. No. 155392, December 6, 2006, 510 SCRA 309, 318, citing *Aboitiz International Forwarders, Inc. v. Court of Appeals*, G.R. No. 142272, May 2, 2006, 488 SCRA 492, 506-507; *Rubia v. Government Service Insurance System*, 476 Phil. 623, 635 (2004); *Spouses Madrigal v. Court of Appeals*, 377 Phil. 345, 352 (1999).

[20] *Rollo*, p. 69.

[21] *Guanzon v. Arradaza*, *supra* note 19.

[22] *Rollo*, p. 74.

as its officers who held office in that company. Absent contrary evidence, the veracity of the return's content and its effectiveness stand.

Further, this Court has ruled that "it is not necessary that the person in charge of the defendant's regular place of business be specifically authorized to receive the summons. It is enough that he appears to be in charge."[23] In this case, Canave, a secretary whose job description necessarily includes receiving documents and other correspondence, would have the semblance of authority to accept the court documents.

It is true that this Court emphasized the importance of strict and faithful compliance in effecting substituted service.[24] It must, however, be reiterated that when the rigid application of rules becomes a conduit for escaping one's responsibility, the Court will intervene to set things right according to the rules.[25]

Further, Consulta does not deny a) that summons had been properly served on Sarayba, his vice-president, through Canave at the company's office; b) that the summons on him was served on the same occasion also through Canave; c) that the sheriff had succeeded in garnishing his company's bank deposits; and d) that his company subsequently made an offer to settle the judgment against it. The Court is not dumb as to believe that Consulta became aware of the suit only when the sheriff served a notice of execution sale covering his house and lot.

WHEREFORE, premises considered, the Court *REVERSES* the Court of Appeals' Decision in CA-G.R. SP 94817 dated March 17, 2008 and *REINSTATES* the Regional Trial Court's Decision in Civil Case 70544 dated December 14, 2005.

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[23] *Guanzon v. Arradaza*, *supra* note 19, citing *Gochangco v. CFI of Negros Occidental*, 241 Phil. 48, 61 (1988).

[24] See *Robinson v. Miralles*, G.R. No. 163584, December 12, 2006, 510 SCRA 678, 684, citing *Paluwagan ng Bayan Savings Bank v. King*, 254 Phil. 56, 58 (1989), [citing *Arevalo v. Quilatan*, 202 Phil. 256, 261 (1982) and *Keister v. Judge Navarro*, *supra* note 12, at 573].

[25] *Robinson v. Miralles*, *supra* note 24; *Arevalo v. Quilatan*, *supra* note 24, at 262; *Keister v. Judge Navarro*, *supra* note 12, at 574.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184799. September 1, 2010]

HEIRS and/or ESTATE OF ATTY. ROLANDO P. SIAPIAN, represented by SUSAN S. MENDOZA, *petitioners, vs.* **INTESTATE ESTATE OF THE LATE EUFROCINA G. MACKAY as represented by DR. RODERICK MACKAY and ENGR. ELVIN MACKAY IN THEIR CAPACITY AS THE NEWLY COURT APPOINTED CO-ADMINISTRATORS,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; CLAIM THEREFOR MAY BE ALLOWED IN INTESTATE PROCEEDINGS.— It is settled that a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his services or in a separate action. But enforcing it in the main case bodes well as it forestalls multiplicity of suits. The intestate court in this case, therefore, correctly allowed Atty. Siapian to interject his claim for attorney's fees in the estate proceedings against some of the heirs and, after hearing, adjudicate the same.

2. ID.; ID.; ID.; ID.; ATTORNEY'S LIEN WAS NEITHER A CLAIM NOR A BURDEN AGAINST THE ESTATE ITSELF.— Since the award of ₱3 million in attorney's fees in favor of Atty. Siapian

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 882 dated August 31, 2010.

had already become final and executory, the intestate court was within its powers to order the Register of Deeds to annotate his lien on the Estate's titles to its properties. The Estate has no cause for complaint since the lien was neither a claim nor a burden against the Estate itself. It was not enforceable against the Estate but only against Arturo, *et al.*, who constituted the majority of the heirs. It is a lien contingent on the intestate court's final determination of Arturo, *et al.*'s shares of what would remain of the estate's properties after payment of taxes and debts.

3. ID.; ID.; ID.; ID.; AN ORDER DIRECTING THE ANNOTATION OF ATTORNEY'S LIEN IS INTERLOCUTORY.— [T]he Estate's petition under Rule 47 of the Rules of Court was not the proper remedy for nullifying the June 18, 1998 order of the intestate court, which directed the annotation of Atty. Siapian's lien on the titles of the Estate's properties. That order is interlocutory. An interlocutory order refers to a ruling respecting some point or matter between the commencement and end of the suit, but is not a final adjudication of the claims and liabilities of the parties that are in dispute in that suit. The June 18, 1998 order only dealt with and resolved the incidental matter of whether to allow the annotation of an attorney's lien on the properties of the Estate. Evidently, that order did not settle any claim for money or impose any liability against any of the parties to the case.

APPEARANCES OF COUNSEL

Pavia & Pavia Law Office for petitioners.

D E C I S I O N

ABAD, *J.*:

This case is about, first, the propriety of hearing and adjudicating a claim for attorney's fees in the case in which the lawyer rendered his services and, second, the need to establish extrinsic fraud or lack of jurisdiction in actions for annulment of judgment or final order.

The Facts and the Case

On May 14, 1994 Eufrocina G. Mackay died intestate in Caloocan City. She left four children: Antonio, Arturo, Domingo, and Elpidio. Another child, Honorato, predeceased Eufrocina.

On July 1, 1994 Antonio filed before the Regional Trial Court (RTC) of Caloocan City a petition for the settlement of Eufrocina's intestate Estate[1] and for his appointment as the Estate's administrator. But the other heirs, namely, Arturo, Domingo, Elpidio, and Honorato (represented by Rolando Mackay), collectively referred to as Arturo, *et al.*, opposed Antonio's appointment as administrator and pushed instead for the appointment of Arturo. To represent them in the case, Arturo, *et al.* engaged the services of Atty. Rolando P. Siapian and agreed to pay him the equivalent of 1% of what they will receive from the Estate. The parties later fixed Atty. Siapian's attorney's fees at ₱3 million.[2]

On November 2, 1994 the intestate court issued an order appointing Antonio and Arturo as co-special administrators of the Estate. About a year and a half later or in April 1996, Arturo, *et al.* told the RTC[3] that they had terminated Atty. Siapian's services. This prompted Atty. Siapian to file a motion,[4] claiming payment of his attorney's fees. He asked the court not to recognize in the meantime any new counsel for Arturo, *et al.* since they illegally terminated his services. The Estate opposed the motion, saying that it cannot be held answerable for Atty. Siapian's claim for attorney's fees against his clients.

On August 1, 1996 the court denied Atty. Siapian's motion on the ground that it had limited jurisdiction and could not resolve issues relating to attorney's fees which was a concern only of the lawyer and his clients. Despite this order, Atty. Siapian

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[1] Docketed as Special Proceeding C-1814, RTC of Caloocan City.

[2] Annex "E" of Petition, *rollo*, p. 75.

[3] Urgent Manifestation, CA *rollo*, pp. 79-80.

[4] Manifestation and Motion, *id.* at 81-82.

filed on September 2, 1996 a motion for enforcement and annotation of his attorney's lien.[5] He also asked the court to: 1) reconsider its August 1, 1996 order; 2) direct Arturo, *et al.* to pay his attorney's fees; and 3) order the Register of Deeds to inscribe his claim as a lien on the titles of the Estate to its properties.

On April 3, 1997 the intestate court granted the motion.[6] The court said that, while the Estate itself cannot be held liable for subject attorney's fees for lack of privity of contract, Arturo, *et al.* should jointly pay the ₱3 million attorney's fees of Atty. Siapian. His clients, said the court, must judiciously and fairly exercise their right to terminate the services of counsel and this cannot be for the purpose of evading an obligation to pay his fees. The court pointed out that Arturo, *et al.* did not present proof that Atty. Siapian was inept and remiss in his duties. Rather, the records showed that he competently handled the case. Arturo, *et al.* appealed[7] the order.

On September 8, 1997, however, the intestate court issued an order, 1) denying due course to the appeal for having been filed beyond the reglementary period and, 2) granting Atty. Siapian's motion for issuance of a writ of execution.[8] Arturo, *et al.* filed a special civil action of *certiorari* before the Court of Appeals (CA). On September 18, 1997 the CA dismissed the petition for their failure to deposit the amount required as payment for costs.[9] On October 11, 1997 the order of dismissal became final and later an entry of judgment was made on its account.[10]

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[5] *Id.* at 85-88.

[6] *Id.* at 69-71.

[7] *Id.* at 281.

[8] *Id.* at 73.

[9] *Id.* at 282.

[10] *Id.* at 283.

On September 17, 1997 Atty. Siapian moved for the entry and inscription of his attorney's lien on the titles of the Estate's properties. Meanwhile, on October 15, 1997 Atty. Siapian died and was substituted by his heirs. On June 18, 1998 the intestate court issued an Order, directing the Register of Deeds of Caloocan City, Quezon City, Marikina City and the Province of Rizal to annotate the attorney's lien of Atty. Siapian on the titles mentioned.[11] The court explicitly stated that the attorney's lien was to affect only the distributive shares of Arturo, *et al*. The latter heirs did not question the order.

Seven years later or on October 10, 2005 Arturo, *et al*. filed before the CA a *Petition for Annulment of Judgment or Final Orders and Resolutions* under Rule 47 of the Rules of Court, asking the CA to declare null and void the following orders for having been issued by the intestate court without jurisdiction:

1) The April 3, 1997 Order, requiring Arturo, *et al* to jointly pay the attorney's fees;

2) The July 4, 1997 Order, denying the motion to reconsider the April 3 order;

3) The September 8, 1997 Order, granting Atty. Siapian's motion for issuance of writ of execution; and

4) The June 18, 1998 order, directing the Register of Deeds to annotate the attorney's lien on the titles of the Estate's property.

On April 22, 2008 the CA rendered a decision, declaring the June 18, 1998 order of the intestate court null and void.[12] The CA ruled that the Estate cannot be held liable for attorney's fees arising out of the dispute between the Estate's beneficiaries and their lawyer. Only Arturo, *et al.*, in their personal capacities, should be held liable to Atty. Siapian. The April 3 and September 8, 1997 orders clearly stated that only they are liable to the lawyer since the Estate was not a party to their fee agreement.

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[11] *Id.* at 74.

[12] *Rollo*, pp. 54-68.

The CA annulled the June 18, 1998 order since it encumbered and made the Estate's properties answerable to Atty. Siapian's claim for attorney's fees.

Further, the CA noted that the late Atty. Siapian failed to fully accomplish the purpose for which his services were engaged and that the shares of Arturo, *et al.* in the properties of the Estate remained to be ascertained. The inventory of assets was still to be completed and the Estate's debts settled. Even so, said the CA, the reasonableness of Atty. Siapian's claim for attorney's fees was yet to be determined. The heirs of Atty. Siapian moved for the reconsideration of the decision but the CA denied the same.[13]

Questions Presented

Petitioner heirs of Atty. Siapian present the following issues:

1. Whether or not the CA erred in effectively setting aside the intestate court's order of April 3, 1997 for Arturo, *et al.* to pay Atty. Siapian's ₱3 million claim for attorney's fees; and

2. Whether or not the CA erred in nullifying the June 18, 1998 order of the intestate court which directed the annotation of the attorney's lien on the titles of the properties of the Estate.

The Court's Rulings

One. It is settled that a claim for attorney's fees may be asserted either in the very action in which a lawyer rendered his services or in a separate action.[14] But enforcing it in the main case bodes well as it forestalls multiplicity of suits. The intestate court in this case, therefore, correctly allowed Atty. Siapian to interject his claim for attorney's fees in the estate proceedings against some of the heirs and, after hearing, adjudicate

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[13] *Id.* at 70-71.

[14] *Traders Royal Bank Employees Union-Independent v. National Labor Relations Commission*, 336 Phil. 705, 713 (1997); *Tolentino v. Hon. Escalona*, 136 Phil. 13, 18 (1969).

the same on April 3, 1997 with an order for Arturo, *et al.* to pay Atty. Siapian the fees of ₱3 million due him.[15]

The record shows that Arturo, *et al.* filed a notice of appeal from the intestate court's April 3, 1997 order but the latter court declined to give due course to it for having been filed out of time.[16] This prompted them to file a special civil action for *certiorari* with the CA.[17] But the latter dismissed the petition for the failure of Arturo, *et al.* to deposit the amount required as payment for costs. The dismissal became final and an entry of judgment was made in the case on September 8, 1997.

Arturo, *et al.* has failed to establish any ground for the CA to annul the April 3, 1997 order. They allege no extrinsic fraud committed in the issuance of that order. Nor were they able to show that the intestate court lacked jurisdiction to adjudicate the claim of Atty. Siapian for attorney's fees. Parenthetically, the Court cannot but give credence to the intestate court's finding that Atty. Siapian competently handled the cause of Arturo, *et al.*[18] up until they terminated his services.

Two. Since the award of ₱3 million in attorney's fees in favor of Atty. Siapian had already become final and executory, the intestate court was within its powers to order the Register of Deeds to annotate his lien on the Estate's titles to its properties. The Estate has no cause for complaint since the lien was neither a claim nor a burden against the Estate itself. It was not enforceable against the Estate but only against Arturo, *et al.*, who constituted the majority of the heirs. It is a lien contingent on the intestate court's final determination of Arturo, *et al.*'s shares of what would remain of the estate's properties after payment of taxes and debts. Thus, the June 18, 1998 order explicitly stated that "***The attorney's lien however shall affect the distributive share of the Oppositors, namely:***

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[15] CA *rollo*, p. 73.

[16] *Id.* at 281.

[17] *Id.* at 282.

[18] *Id.* at 69-71.

***Arturo, Elpidio, Domingo and Ronald, all surnamed Mackay.*"**[19]

At any rate, the Estate's petition under Rule 47 of the Rules of Court was not the proper remedy for nullifying the June 18, 1998 order of the intestate court, which directed the annotation of Atty. Siapian's lien on the titles of the Estate's properties. That order is interlocutory. An interlocutory order refers to a ruling respecting some point or matter between the commencement and end of the suit, but is not a final adjudication of the claims and liabilities of the parties that are in dispute in that suit. The June 18, 1998 order only dealt with and resolved the incidental matter of whether to allow the annotation of an attorney's lien on the properties of the Estate. Evidently, that order did not settle any claim for money or impose any liability against any of the parties to the case.

The Court ruled in *Palanca v. Pecson*[20] that an attorney may cause a statement of his lien to be registered even before the rendition of any judgment, the purpose being merely to establish his right to the lien. The recording of an attorney's lien is distinct from its enforcement, which may only take place after the judgment is secured in favor of the client. The CA therefore erred in declaring null and void the June 18, 1998 order of the intestate court.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. SP 91652 dated April 22, 2008, and *REINSTATES* the June 18, 1998 Order of the Regional Trial Court of Caloocan City in Special Proceeding C-1814.

SO ORDERED.

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

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[19] *Rollo*, p. 119.

[20] 94 Phil. 419, 422 (1954).

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 882 dated August 31, 2010.

THIRD DIVISION

[G.R. No. 186459. September 1, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **NITA EUGENIO *Y* PEJER,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); REQUIREMENTS ON THE CUSTODY AND DISPOSITION OF CONFISCATED DANGEROUS DRUGS; NON-COMPLIANCE THEREWITH SHALL NOT RENDER VOID AND INVALID THE SEIZURE OF AND CUSTODY OVER THE ITEMS; CONDITIONS.— Failing to comply with the provision of Section 21 of R.A. No. 9165 does not necessarily doom the case for the prosecution, however, *People v. Pringas* enlightens: "Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is **justifiable ground** therefor, ***and* as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or innocence of the accused." The Court's pronouncement in *Pringas* is based on the provision of Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 reading: "x x x Provided, further, that non-compliance with these requirements under **justifiable grounds**, as long as the **integrity and evidentiary value of the seized items are properly preserved** by the apprehending officer/team, **shall not render void and invalid such seizures of and custody over said items.**" Clearly, it was necessary for the prosecution to prove that the integrity and evidentiary value of the *shabu* was preserved.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; NOT ESTABLISHED IN CASE AT BAR.— As reflected in the x x x Memorandum of P/Sr. Insp. Chief Villaruel, the time of operation was "on or about 8:30 P.M., 13 May 2003." If the allegedly seized substance-filled sachet

was confiscated at 8:30 p.m., it is highly improbable that it was received at the Crime Laboratory at 8:33 P.M. or a mere three minutes after the seizure, given that appellant was after his arrest first brought to a hospital for physical check up. Doubt is thus engendered on whether the object evidence subjected to laboratory examination and presented in court is the same as that allegedly "sold" by appellant. In fine, the prosecution failed to prove the integrity and evidentiary value of the 0.03 gram specimen. x x x [T]he defense in the present case questioned early on, during the cross examination of PO1 Mariano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165. And the defense raised it again during the offer of evidence by the prosecution x x x. The prosecution having failed to discharge the burden of establishing the guilt of the accused beyond reasonable doubt, the burden of the evidence did not shift to the defense to thus leave it unnecessary to pass upon the defense evidence even if it were considered weak. Appellant's acquittal based on reasonable doubt is then in order.

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.*:

Nita Eugenio *y* Pejer (appellant) was charged before the Regional Trial Court (RTC) of Pasig City[1] for violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the Comprehensive Dangerous Drugs Act of 2002, allegedly committed as follows:[2]

On or about May 13, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell,

[1] Records, pp. 1-2

[2] *Id.*

deliver and give away to PO1 Aldrin Mariano, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law. (underscoring supplied)

From the evidence for the prosecution, the following version is culled:

On the night of May 13, 2003, at around 7:30 p.m., a confidential informant reported to PO1 Aldrin Mariano (PO1 Mariano), officer-on-duty at the Pasig City Hall Detachment, that one *alias* "Aruba" was selling *shabu* at Vicper Compound, Malinao, Pasig City.

P/Sr. Insp. Chief Rodrigo Villaruel at once formed a buy-bust team to conduct an operation composed of, among others, PO3 Amilassan Salisa as team leader, and PO1 Mariano as poseur-buyer. PO1 Mariano, who was given two one hundred peso bills bearing Serial Numbers BT219634 and XN547078 to be used as buy-bust money, wrote his initials "ARM" thereon at the lower left portion.

The operation was recorded in the police blotter and coordinated with the Philippine Drug Enforcement Agency (PDEA) which gave it control number NOC-1305-03-10.[3]

At around 8:00 in the evening, the team, together with the confidential informant, proceeded to the residence of appellant who was standing in front of her house. The informant at once introduced PO1 Mariano as buyer. As appellant inquired how much, PO1 Mariano handed her the two marked bills upon which appellant drew out one substance-filled sachet from the "outside wall" of her house. At that instant, PO1 Mariano removed his cap, the pre-arranged signal for the team members to, as they did, close in.

PO1 Mariano then held appellant's arm, identified himself as a police officer, and apprised her of her constitutional rights

[3] *Id.* at 8.

as he retrieved from her the buy-bust money. He thereafter marked "EXH-A arm/05/13/03" on the substance-filled sachet "sold" to him by appellant.

The buy-bust team brought appellant to the Rizal Medical Center for physical check-up and later to the police detachment office where P/Sr. Insp. Chief Villaruel prepared the following memorandum of May 13, 2003[4] addressed to the Chief of the Eastern Police District Crime Laboratory Office, requesting the conduct of laboratory examination on the seized substance-filled sachet to determine the presence of dangerous drugs and their weight:

1. Respectfully forwarded to your good office herewith/attached (sic) submitted specimen for laboratory examination to wit:

NATURE OF OFFENSE	VIOLATION OF RA 9165
NAME OF SUSPECT	NITA EUGENIO *Y* PEJER, 57 years old, widow, Res. At Vicper Compound, Malinao, Pasig City
D.T.P.O.	On or about **8:30 PM** 13 May 2003 at Vicper Compound, Malinao, Pasig City
ARRESTING OFFICER	Elements of Mayor's Special Action Team/ City Hall Detachment, Pasig City Police Station represented by PO1 Aldrin Mariano
SPECIMEN SUBMITTED	One (1) heat sealed transparent plastic sachet containing undetermined amount of suspected "*shabu*" Marked EXH A ARM 05/13/03

[4] *Id.* at 7.

2. Request acknowledge (sic) receipt.[5] (emphasis and underscoring supplied)

Acting on the above-quoted memorandum, P/Sr. Insp. Annalee R. Forro, Forensic Chemical Officer of the Eastern Police District Crime Laboratory Office, who received the sachet, conducted on the same night of May 13, 2003, at around **8:33 P.M.**, a laboratory examination of the contents of the sachet, the result of which she recorded in Chemistry Report No. D-889-03E[6] wherein she concluded that the substance inside the sachet weighed 0.03 gram and was positive for methamphetamine hydrochloride.

Hence, the filing of the Information against appellant.

Denying the charge against her, appellant gave the following version:

On May 11, 2003, while fetching water from a nearby well, she was, in the presence of family and neighbors, accosted by police officers who brought her to the police station. At the station, she was questioned whether she knew one "Baylene Ramba," to which she replied in the negative. She was later surprised to learn that an Information for violation of R.A. 9165 had been filed against her.

Finding for the prosecution, the trial court, by Decision of May 31, 2005, convicted appellant, disposing as follows:

WHEREFORE, the Court finds accused NITA EUGENIO *y* Pejer @ Aruba GUILTY beyond reasonable doubt of the crime of violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon her the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.

SO ORDERED.[7] (underscoring supplied)

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[5] *Ibid.*

[6] *Id.* at 10.

[7] CA *rollo*, p. 14.

By Decision of September 16, 2008,[8] the Court of Appeals *affirmed* the trial court's decision.

In affirming the trial court's rejection of appellant's defense, the appellate court held:

> . . . As correctly observed by the trial court, the claim that accused-appellant was arrested without reason is not supported by evidence. Not one of the alleged witnesses to the unlawful arrest, including accused-appellant's own daughter, was presented to corroborate the claim. Hence, the court *a quo* is correct in considering the defense incredible for being self-serving and uncorroborated.[9] (underscoring supplied)

In her present appeal, appellant claims, in the main, that there was failure to follow the requirements of Sec. 21 of R.A. No. 9165, hence, it compromised the integrity and evidentiary value of the allegedly seized item.

Sec. 21 of R.A. No 9165 provides:

> **Section 21.** *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources or dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the drugs **shall**, **immediately after seizure and confiscation**, **physically inventory and photograph the same** *in the presence of* the accused or the persons/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected

[8] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente.

[9] *Rollo,* p. 8.

> public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x (emphasis and underscoring supplied)

Appellant specifically claims that no physical inventory and photographing of the specimen took place. Respecting the required conduct of an inventory, since only one sachet was seized, failure to comply therewith may understandably have been rendered unnecessary.

As for the required photograph of the seized item, a reading of the testimony of PO1 Mariano confirms the prosecution's failure to follow such requirement:

Atty. Ronatay:

Q: Are you aware that it is required under the dangerous drugs law that in case of the buy-bust operation, the subject specimen their (*sic*) must be a picture taken on the subject specimen?

A: What I said is that impossible, we have a buy-bust to verify.

Atty. Ronatay:

Your Honor, I think the answer is not responsive to the question. We moved (sic) to strike that out and the witness to answer the question.

Court: Answer the question.

Witness:

A: Not yet ma'am.

Atty. Ronatay:

Q: How many times have you been engaged in buy-bust operation?

A: More or less ten ma'am.

Q: And in those ten cases, was there ever an occasion that the subject specimen, there was a picture taken on that subject specimen?

A: None, ma'am.

Q: Are you also aware Mr. witness that under the dangerous drugs law, it is standard operating procedure that in cases

of operation specifically in a buy-bust operation, there has also be (sic) a presence of the media?

A: I do not know, ma'am.

Q: In this case was **there a media present at the time of the operation?**

A: **None ma'am**.

Q: Are you also aware that under the dangerous drugs law, it is required that there has to be **coordination with the Local Brgy.?**

A: **None ma'am**.[10] (emphasis and underscoring supplied)

Failing to comply with the provision of Section 21 of R.A. No. 9165 does not necessarily doom the case for the prosecution, however. *People v. Pringas* enlightens:

> Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is **justifiable ground** therefor, ***and*** **as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team.** Its non-compliance will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the **preservation of the integrity and the evidentiary value of the seized items**, as the same would be utilized in the determination of the guilt or innocence of the accused.[11] (citation omitted, emphasis, italics and underscoring supplied)

The Court's pronouncement in *Pringas* is based on the provision of Section 21(a) of the Implementing Rules and Regulations[12] of R.A. No. 9165 reading:

> x x x Provided, further, that non-compliance with these requirements under **justifiable grounds**, as long as the **integrity and evidentiary value of the seized items are properly preserved** by the apprehending officer/team, **shall not render void and invalid such seizures of and custody over said items**; (emphasis and underscoring supplied)

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[10] TSN, October 21, 2003, pp. 23-24.

[11] G.R. No. 175928. August 31, 2007, 531 SCRA 828, 842-843.

[12] Took effect on November 27, 2002.

Clearly, it was necessary for the prosecution to prove that the integrity and evidentiary value of the *shabu* was preserved.

As reflected in the above-quoted Memorandum of P/Sr. Insp. Chief Villaruel, the time of operation was "on or about 8:30 P.M., 13 May 2003." If the allegedly seized substance-filled sachet was confiscated at 8:30 p.m., it is highly improbable that it was received at the Crime Laboratory at 8:33 P.M. or a mere three minutes after the seizure, given that appellant was after his arrest first brought to a hospital for physical check-up.

Doubt is thus engendered on whether the object evidence subjected to laboratory examination and presented in court is the same as that allegedly "sold" by appellant. In fine, the prosecution failed to prove the integrity and evidentiary value of the 0.03 gram specimen.

Parenthetically, unlike in *Pringas*, the defense in the present case questioned early on, during the cross examination of PO1 Mariano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165. And the defense raised it again during the offer of evidence by the prosecution, thus:

> Atty. Ronatay:
>
> x x x x x x x x x
>
> Exh. C - we object to its admission as well as the purpose for which they are being offered for being planted evidence, your honor.[13] (underscoring supplied)

The prosecution having failed to discharge the burden of establishing the guilt of the accused beyond reasonable doubt, the burden of the evidence did not shift to the defense to thus leave it unnecessary to pass upon the defense evidence even if it were considered weak. Appellant's acquittal based on reasonable doubt is then in order.

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[13] Exhibit C pertains to the specimen confiscated from appellant which is the plastic sachet containing white crystalline substance or *shabu*., TSN, March 10, 2004, p. 31.

WHEREFORE, the Petition is *GRANTED*. The assailed decision is *REVERSED and SET ASIDE*. Appellant, Nita Eugenio *y* Pejer, is ACQUITED for failure of the prosecution to prove her guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for Women, Mandaluyong City who is directed to cause the immediate release of appellant, unless she is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 187540. September 1, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JESSIE BUSTILLO *y* AMBAL,** *appellant.*

SYLLABUS

CRIMINAL LAW; RAPE; FORCE AND INTIMIDATION; DULY ESTABLISHED IN CASE AT BAR.— Appellant having admitted engaging in carnal knowledge with AAA, the only issue for consideration is whether the sexual act was done through force, violence or intimidation. As did the trial and appellate courts, the Court is not persuaded by appellant's claim of consensuality. The findings and conclusion of the doctor who examined AAA, along with AAA's immediate reporting of the incident to the *barangay* and police authorities before which she at once

[*] Per Special Order No. 879 dated August 13, 2010 in lieu of Associate Justice Arturo D. Brion.

narrated the details thereof, negate consensuality, and confirm AAA's claim that the intercourse was committed with intimidation and force.

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.*:

Jessie Bustillo *y* Ambal (appellant) was convicted of Rape by the Regional Trial Court (RTC) of Quezon City following his indictment thereof in an Information the accusatory portion of which reads:

> That on or about the 19th day of February, 2004 in Quezon City, Philippines, the above-named accused, by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge upon the person of AAA, 16 years old, against her will and without her consent, in violation of said law.
>
> CONTRARY TO LAW.[1]

Gathered from the evidence for the prosecution is the following version:

At around 10:00 o'clock in the evening of February 19, 2004, as then 16 year old AAA[2] was at the bridge at 67 West Riverside

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[1] Records, p. 1.

[2] *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419-420 ". . . in view of recent enactments which unequivocally express the intention to maintain the confidentiality of information in cases involving violence against women and their children, in this case and henceforth, the Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victim-survivors or any other information tending to establish or compromise their identities, as well those of their immediate family or household members, shall not be disclosed."

Street, San Franciso Del Monte, Quezon City "following" her mother who was "selling/vending,"[3] appellant, who had a companion, approached her, introduced himself and later grabbed her by the arms and brought her under the bridge.[4] As appellant forcibly embraced, kissed and undressed her, she cried and pleaded for mercy but to no avail. He in fact warned her that if she made any noise, he would throw her to the river.

Appellant thereupon took off his shortpants and underwear and forcibly inserted his penis into her vagina, rendering her weak and in pain.[5] She thereafter left for home, and together with her sister, immediately sought the help of *barangay* officials and the police[6] who, just as immediately, apprehended appellant at 2:30 a.m. the following day, February 20, 2004. At 3:00 a.m. of the same day, AAA gave a sworn statement reflecting essentially the above account before PO2 Eric Espino Rano at the Baler Police Station, Central Police District Office, Quezon City.[7]

The reporting of the incident and the apprehension of appellant were corroborated by Gener Mendoza, a *barangay tanod*. He added that appellant was apprehended "inside the barracks" after someone pointed to his whereabouts, and that AAA, on seeing appellant, slapped him.

Examination of AAA at 4:00 a.m. also on February 20, 2004 revealed the following pertinent findings and conclusion:

x x x x x x x x x

PHYSICAL INJURIES: Area of multiple abrasions, neck, measuring 23 cm x 8 cm, bisected by posterior midline.

x x x x x x x x x

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[3] Transcript of Stenographic Notes (TSN), Oct. 13, 2005, p. 8.

[4] TSN, May 17, 2004 at 3.

[5] *Id.* at 5.

[6] *Id.* at 6-7.

[7] Exhibit "A", records, p. 7.

HYMEN: deep fresh laceration at 5 o'clock and deep laceration at 8 o'clock.

x x x x x x x x x

PERIURETHRAL AND VAGINAL SMEARS: are positive for spermatozoa.

CONCLUSION: Findings consistent with recent sexual intercourse. Barring unforeseen complications, it is estimated that the above injuries will heal in 7 - 8 days.[8] (underscoring supplied)

Denying the charge and proffering the "sweetheart" defense, appellant, a construction worker, claimed that he courted AAA during two occasions that they met on the bridge; that AAA had told him that she was 18 years old; and that she voluntarily acceded to the sexual intercourse.[9]

Appellant's friend Jessie Templor, who was with him at the bridge, corroborated appellant's claim that AAA was appellant's girlfriend.[10] He added that AAA had twice visited appellant at the construction site where appellant used to work;[11] that on the night of the incident, appellant and AAA talked for about an hour after which the two went under the bridge;[12] and that as he wanted to borrow the cellphone of appellant,[13] he went under the bridge and saw appellant on top of AAA.[14]

In finding for the prosecution, Branch 86 of the Quezon City RTC which convicted appellant, made the following observation:

The childish and innocent demeanor of the complainant convinces the Court that although 16 years of age at the time of the incident,

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[8] Exh. "E", records, p. 57.

[9] TSN, September 25, 2006, pp. 7 & 10.

[10] TSN, August 8, 2006, p. 2.

[11] *Id.* pp. 7-8.

[12] TSN, Aug. 8, 2006, p. 15.

[13] *Id.* at 8.

[14] *Id.* at 9.

she has the mental status of a twelve year old child. She was looking for her mother on the late night of February 19, 2004. When she encountered the accused on the bridge at West Riverside, San Francisco del Monte, Quezon City, she could not understand why he would drag her to a place beneath the bridge. She was asked not to make noise or she would be pushed into the river below. The threat forced her into submission. She was raped on the path-walk causing abrasions to her back (*Exh. "E").* If they were sweethearts as alleged by the accused, they would have gone to a place which would be comfortable for their lovemaking. The fact that complainant suffered from abrasions at her back clearly indicate that she was forced to lie down on the pavement.[15] (underscoring supplied)

Thus, the trial court disposed:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused Jessie Bustillo *y* Ambal, guilty beyond reasonable doubt of the crime of rape and hereby sentences him to suffer the penalty of ***reclusion perpetua*** and to indemnify the private complainant AAA of **₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.**

SO ORDERED.[16] (emphasis supplied)

The Court of Appeals, by Decision[17] of September 16, 2008, *affirmed* the trial court's decision.

Hence, the present petition for review on *certiorari*.

Appellant having admitted engaging in carnal knowledge with AAA, the only issue for consideration is whether the sexual act was done through force, violence or intimidation.

As did the trial and appellate courts, the Court is not persuaded by appellant's claim of consensuality. The findings and conclusion of the doctor who examined AAA, along with AAA's immediate reporting of the incident to the *barangay* and police authorities

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

[16] *Id.* at 21.

[17] Penned Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Edgardo F. Sundiam and Ricardo R. Rosario, *rollo*, pp. 2-19.

before which she at once narrated the details thereof, negate consensuality, and confirm AAA's claim that the intercourse was committed with intimidation and force.

WHEREFORE, the assailed Decision of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188352. September 1, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROLLY DE GUZMAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; NATURE.— The crime of rape is usually committed under a cloak of privacy that only parties directly involved therein can attest to what actually transpired. Expectedly, their testimonies present a complete divergence of factual assertions. During trial, the prosecution and defense clash tooth-and-nail, with the aim to destroy the other's version. The credibility of witnesses with their respective testimonies then becomes the core issue to be resolved by the trial court. In doing so, it is behooved to exercise strict scrutiny and keen observation of witnesses, utilizing its position "to detect a guilty blush, a slight hesitation, a fearful glance, and an anguished cry."

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[*] Per Special Order No. 879 dated August 13, 2010 in lieu of Associate Justice Arturo D. Brion.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.— The recent case of *People v. Felipe Ayade*, thus elucidates: "By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape; that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court."

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT THEREON BY THE TRIAL COURT IS GENERALLY GIVEN THE HIGHEST DEGREE OF RESPECT, IF NOT FINALITY; EXCEPTION.— "[T]he 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 opportunity to 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," unless it had overlooked or disregarded material facts and circumstances which when considered would have affected the result of the case or warrant a departure from its findings.

4. CRIMINAL LAW; RAPE; TESTIMONIES OF VICTIMS WHICH ARE GIVEN IN CATEGORICAL, STRAIGHTFORWARD, SPONTANEOUS, AND FRANK MANNER ARE ENTITLED TO FULL FAITH AND CREDENCE.— AAA was able to clearly convey her story during trial. In tears, she narrated the details

of the assault and pointed to the accused as the violator. Her account was characterized by unequivocal assertions. Not just once, she showed emotional distress as she recalled the harrowing experience that she had suffered at such an early age. Both the trial and appellate courts properly applied the long-standing rule in rape cases that testimonies of victims which are given in a categorical, straightforward, spontaneous, and frank manner are considered worthy of belief, "for no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished." In the absence of ill-motive, "the victim's tale of defloration, simple, candid, straightforward and unflawed by any material inconsistency" is entitled to full faith and credence. This Court cannot lay more emphasis on the fact that these rules find extra significance in a case involving a young and hapless girl, whose innocence was viscously preyed on for lust.

5. ID.; ID.; LACERATIONS, WHETHER HEALED OR FRESH, ARE CONSIDERED THE BEST PHYSICAL EVIDENCE OF FORCIBLE DEFLORATION.— This Court has no doubt that the accused had carnal knowledge of AAA. His attempt to discredit her testimony because of the medico-legal findings of healed lacerations in her *labia* the day after the rape incident is far from convincing. This Court considers lacerations, whether healed or fresh, the best physical evidence of forcible defloration. When such physician's finding of penetration, as in this case, is corroborated by the victim's testimony, there is sufficient reason to conclude that the essential requisite of carnal knowledge exists. Suffice it to state, this Court cannot ignore the fact that along with the positive identification of her offender, AAA was found to have experienced *blunt penetrating trauma to the hymen.*

6. ID.; ID.; MEDICAL EXAMINATION OR MEDICAL REPORT IS NOT INDISPENSABLE TO PROVE THE COMMISSION OF RAPE.— The healed lacerations in the hymen of the victim do not negate the possibility of rape. Provided that there is proof of entry of the male organ into the *labia* of the female organ, findings of healed hymenal laceration, *a fortiori*, become irrelevant. Although the examining physician who issued the medico-legal report did not appear in court for its identification

during trial, conviction of the accused would still be the end-result. Medical examination or medical report is not indispensable to prove the commission of rape, for it is merely corroborative. Here, conviction can stand based only on the credible testimony of the victim.

7. ID.; ID.; FORCE OR INTIMIDATION; ANY DEGREE OF FORCE OR INTIMIDATION THAT COMPELS THE VICTIM'S SUBMISSION TO THE OFFENDER IS SUFFICIENT FOR THE CRIME OF RAPE TO BE COMMITTED.— Although force, threat and intimidation may not have been exerted to the fullest extent, the attendance of these circumstances still categorizes the act of rape. Besides, any degree of force or intimidation that compels the victim's submission to the offender, suffices. In this light, AAA's lack of strong physical resistance does not characterize the ugly incident as a consented one. Accused cannot escape liability by questioning why his victim did not struggle to resist the sexual abuse or shout to call the attention of others. The Court cannot permit this lack of attempt to shift the blame on the victim. Fear, in lieu of force or violence, is subjective and its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime. Different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response that can be expected from those who are confronted with a strange, startling or frightening experience. Jurisprudence recognizes the wide variation of behavioral reactions to sexual assault. The failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or to present proof of struggle.

8. ID.; ID.; ID.; THE TEST IS WHETHER THE THREAT OR INTIMIDATION PRODUCES A REASONABLE FEAR IN THE MIND OF THE VICTIM THAT IF SHE RESISTS, THE THREAT WOULD BE CARRIED OUT.— In *People v. Wilson Dreu*, this Court wrote: "x x x the test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted

unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance."

9. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER THE POSITIVE ASSERTION OF PROSECUTION WITNESSES.— [T]he narration of AAA prevails over the bare denial and weak alibi of the accused. Self-serving statements cannot be accorded greater evidentiary weight than the declaration of a credible witness on affirmative matters. Time-tested is the rule that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value.

10. ID.; ID.; ALIBI; ELEMENTS.— It is well-settled in this jurisdiction that in order to warrant an acquittal by virtue of an alibi, the same must foreclose the possibility that the accused committed the deed. Alibi is an inherently weak defense viewed with suspicion because it is not difficult to fabricate. For the defense of alibi to prosper, the accused must establish two elements – (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.

11. ID.; ID.; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY INCONSISTENCIES ON MATTERS THAT DO NOT RELATE TO THE FACTS CONSTITUTIVE OF THE CRIME CHARGED; CASE AT BAR.— The variance in AAA's *Salaysay* and her oral testimony during direct examination was patently borne out of a young mind's casual indifference to legal documents and its implications. Again, AAA was a mere 12-year-old lass who, in the eyes of the law, was not mature enough to exercise diligence and meticulousness in the conduct of the complaint she filed. Surely, this Court cannot fault her for her puerile approach to legal matters. More importantly, this inconsistency does not relate to the facts constitutive of the crime charged. The accused cannot be allowed to take advantage of this lapse. The circumstances of the rape incident are definitely not altered by whatever it was that her mother asked her to buy on that fateful night. For acquittal to lie, the discrepancies should touch

on significant facts which are crucial to the guilt or innocence of an accused. On the whole, the credibility of AAA remains intact. The effect of the courtroom atmosphere and rigorous questioning took its toll on her as she faced questions that need categorical answers only to be harped on by the defense in a play of semantics. In asking if she wiggled her buttocks during the incident, the defense wanted to elicit from her if she facilitated the entry. Of course, she replied in the negative. The Court finds the suggestion of consented congress and sexual satisfaction on her part preposterous, if not repulsive. Not even a grain of proof tends to suggest her promiscuity, contrary to what the accused wants this Court to believe. In the same vein, the position of her legs during the encounter does not, in any way, detract from her solid assertion that accused forced his penis into her vagina. These and the other alleged minor glitches in her testimony do not impair her truthfulness. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole. The prosecution undoubtedly passed the test. Notably, the inconsistencies even strengthened her credibility, because they eliminate doubts that she had been coached or rehearsed. In *People v. Ireneo Perez*, this Court ruled: "Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect. **Moreover, the inconsistency may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of testimony and the manner in which a witness answers questions.**"

12. CIVIL LAW; DAMAGES; INDEMNITY *EX-DELICTO*, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— [A]side from the award of ₱50,000.00 as indemnity *ex-delicto* and ₱50,000.00 as moral damages, the accused should also pay the amount of ₱30,000.00 as exemplary damages.

13. ID.; ID.; EXEMPLARY DAMAGES; GRANTED NOT ONLY TO DETER OUTRAGEOUS CONDUCT, BUT ALSO WHERE A CRIME IS COMMITTED WITH THE ATTENDANCE OF AN

AGGRAVATING CIRCUMSTANCE; CASE AT BAR.— The award of exemplary damages is proper not only to deter outrageous conduct, but also in view of the aggravating circumstance of minority which was alleged in the information and proved during the trial.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review of the February 26, 2009 Decision[1] of the Court of Appeals, *(CA)* in CA-G.R. CR. H.C. No. 03068, affirming *in toto* the October 24, 2007 Decision[2] of the Regional Trial Court, Branch 89, Quezon City *(RTC)* in Criminal Case No. Q-06-143828. The RTC convicted accused Rolly De Guzman for the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the victim, AAA,[3] the amount of ₱50,000.00 as indemnity and ₱50,000.00 as moral damages, with costs.

The Information against the accused reads:

That on or about the 29th day of October 2006, in Quezon City, Philippines, the said accused, with lewd design, by means of force, violence and intimidation, made upon the person of AAA, a minor, 13 years of age, did then and there willfully, unlawfully and feloniously commit the crime of rape against the person of said AAA, by then and there forcibly bringing her inside a bedroom of a construction

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[1] *Rollo*, p. 2. Penned by Associate Justice Andres B. Reyes, Jr. with Associate Justice Jose C. Reyes, Jr. and Associate Justice Normandie B. Pizzaro, concurring.

[2] Records, pp. 54-61. Penned by Judge Elsa I. De Guzman.

[3] Pursuant to Republic Acts 7160 and 9262 and *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419), the identity and real name of the private complainant are kept undisclosed.

site and had carnal knowledge against her will, which acts debases, degrades, demeans the intrinsic worth and dignity of said AAA, as a human being, to the damage and prejudice of the said offended party, in violation of said law.

CONTRARY TO LAW.[4]

During the trial of the case, the prosecution relied mainly on the testimony of AAA and the documentary evidence consisting of her *Sinumpaang Salaysay*,[5] Certificate of Live Birth and the Initial Medico-Legal Report showing the results of the examination conducted on her by the Philippine National Police Crime Laboratory. For the defense, only the accused took the witness stand.

It appears from the records that at the time of the incident, AAA was a minor having been born on October 23, 1994. She and the accused knew each other as neighbors in Pingkian, Quezon City, where he worked in a construction site near her residence. The accused used to buy ice from her house and so they usually saw each other thrice a week.

The thrust of the prosecution evidence was succinctly recited in the Appellee's Brief[6] submitted to the CA, as follows:

On October 29, 2006 at 7:00 0'clock in the evening, while AAA was outside their house at 28-B Himlayan Road, Pasong Tamo, Quezon City, appellant neighbor Rolly de Guzman and Joel Sabado invited AAA to the construction site where appellant was working. AAA refused to go with them but she was suddenly pushed by Joel Sabado inside the gate of the construction site.

Because of fear, AAA did not shout. Joel instructed AAA to go upstairs and threatened her harm if she would not comply. Thus, she did as told. Appellant went upstairs ahead of her.

Upon reaching the second floor, Joel pushed her inside the room while appellant switched off the light. Appellant then grabbed her

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[4] Records, p. 1.

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

[6] CA *rollo*, Counterstatement of Facts, Appellee's Brief, pp. 87-88.

hand and forcibly took off her pedal pusher and panty. He undressed and put himself on top of her.

AAA struggled and told appellant not to continue his sexual advances. She pushed him, causing him to fall on the floor. She closed her legs to prevent appellant's sexual abuses but the latter managed to insert his penis in her private part.

After consummating the act, appellant instructed AAA to go to her classmate. She obeyed and did not go home that night. The following morning, AAA called her parents over the phone and reported the sexual abuse committed by appellant. Her parents fetched her and reported the incident to the *barangay* office.

On the same day, AAA was investigated at the Police Station 3 and the Medico-Legal Officer who examined AAA prepared a Medico-Legal Report, which disclosed the following:

GENERAL AND EXTRA-GENITAL:

AAA physical built is medium. Her mental status is coherent. Breast is conical in shape with pinkish brown areola and nipples. Her abdomen is soft/flat. Physical injuries: 1. Abrasion, (R) costal region, measures 1 x 1 cm. 11 cm from AML. 2. Abrasion, (L) costal region, measures 2 x 2 cm, 10 cm from AML.

GENITAL:

AAA pubic hair is moderate. Labia Majora is coaptated. Labia Minora is dark brown. Hymen is with deep healed laceration at 3:00 o'clock position and shallow healed laceration at 9:00 o'clock position. Her external vagina orifice has strong resistance to the examining index finger. Vaginal canal is narrow. Cervix is not applicable as well as peri-urethral and vaginal smears.

CONCLUSION:

Medical evaluation shows clear evidence of blunt penetrating trauma to the hymen.

The accused denied the charges. He claimed that on the evening of the alleged incident, he was in the barracks at the construction site with some of his co-workers. At around 8:00 o'clock, the parents of AAA, accompanied by a *barangay tanod*, arrived. They were looking for her as she was then

missing. When asked, the accused replied that he did not know her whereabouts.[7] He conceded that even before she identified him as her assailant, no ill-feelings existed between him and AAA or her parents.

Confronted with two conflicting versions, the trial court narrowed down the issues into one of credibility of the parties. In deciding the case, it was guided by a string of decisions enunciating the principle that a testimony of a child-victim is given full weight and credence, considering that when a woman, especially a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed.[8] The positive identification of the accused as corroborated by the result of the medical examination sufficiently established that indeed, sexual congress between the accused and AAA took place against her will. The trial court refused to accord significance to the defense of denial and found it to be devoid of credence and unworthy of belief.

On October 24, 2007, the trial court rendered its decision finding accused guilty of the crime of rape, defined and penalized under Articles 266-A and 266-B of the Revised Penal Code (RPC).[9] The *fallo* of the decision reads:

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[7] TSN, August 16, 2007, p. 3.

[8] *People v. Anacito Dimanawa*, G.R. No. 184600, March 9, 2010.

[9] Art. 266-A Rape is Committed—

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat, or intimidation;

b. When the offended party is deprived of reason or otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.

WHEREFORE, premises considered, judgment is rendered finding accused Rolly de Guzman *y* Apostol guilty beyond reasonable doubt of the crime of rape defined and penalized under Art. 266-A, RPC, RA 8353, 1997. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*. Being a detention prisoner, he is credited in full of the period of his preventive imprisonment.

Further, accused Rolly de Guzman *y* Apostol is ordered to pay complainant AAA the following:

1) The sum of Fifty Thousand (₱50,000.00) Pesos, Philippine Currency as indemnity; and

2) The sum of Fifty Thousand (₱50,000.00) as and by way of moral damages.

With costs *de oficio*.

SO ORDERED.[10]

Not in conformity, the accused protested his conviction and elevated the case before the CA anchoring his prayer on the following assigned errors:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING UNDUE CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

III

ASSUMING *ARGUENDO* THAT THE APPELLANT RAPED THE PRIVATE COMPLAINANT, THE COURT *A QUO* GRAVELY ERRED IN IMPOSING THE PENALTY OF *RECLUSION PERPETUA*.[11]

Art. 266-B Penalties- Rape under paragraph 1 of Art. 266-A shall be punished by *reclusion perpetua*.

[10] Records, RTC Decision, pp. 60-61.

[11] CA *rollo*, Brief for the Appellant, p. 44.

Essentially, the accused faulted the trial court for giving weight to the victim's testimony which he claimed to have contained numerous inconsistencies and improbabilities enough to create doubt in his favor. He cited the following contradictions which allegedly tainted AAA's credibility: 1] that she initially stated that when he inserted his penis into her vagina, she pushed him, but later she testified that she shoved him first before the penetration; and 2] that she initially wiggled her buttocks before intercourse but later she said that he succeeded in inserting his penis into her vagina even if her legs were closed together.

The accused urged the CA not to believe AAA because of the implausibility of her story. He pointed out that she claimed that she was forced by the accused to go to the construction site by mere dagger looks which could not have seriously intimidated and precluded her from fleeing. If she indeed suffered from sexual abuse, she could have reported her experience to her parents the moment she had the chance but, instead, she went over to her classmate's house and spent the night there. Finally, she could have shouted to catch the attention of neighbors within the vicinity or she could have escaped considering that there was no showing that the premises were enclosed.

Anent the corroborating evidence presented by the prosecution, the accused pointed out that the medico-legal report which indicated healed lacerations in her private part was clearly in conflict with the information stating that the rape incident occurred on October 29, 2006. When she was examined on October 30, 2006, or the day after the supposed rape incident took place, the hymenal lacerations could not have healed yet.

In its February 26, 2009 Decision, the CA rejected these arguments and found no reversible error in the trial court's verdict. Thus, it affirmed the RTC decision *in toto*.

According to the appellate court, respect is due the findings of the trial court because it is in the best position to determine the truth or falsity of testimonies given in trial. Based on the trial judge's unique opportunity to observe the conduct and demeanor of witnesses, the question of credibility is, therefore,

best settled by the trial court. Further, in its own review of the records and transcripts of the case, the CA agreed that all the elements of the crime were established by the prosecution:

> In this case, although the trial court failed to discuss the element of lack of informed consent of the child whether due to the presence of the required circumstances, the records show that it was present and that all the elements of the crime of rape were attendant in this case. x x x It was clear that she was physically forced, albeit not to the fullest extent, to go to where appellant was. Although minimal force was exerted by the appellant to prevail over AAA, there was still force that would make the act fall under the crime of rape.[12]

Apparently aggrieved by the CA decision, the accused comes before this Court. On July 29, 2009, the parties were notified that they may file their respective supplemental briefs. Both the Public Attorney's Office *(PAO)* and the Office of the Solicitor General *(OSG)* manifested[13] their intention not to do so, since all issues had already been addressed in their previous briefs.

In essence, the accused decries his conviction and urges a reversal of the decision. He contends that on the basis of glaring inconsistencies and "factual points which were apparently contrary to human experience"[14] found in AAA's testimony, it was impossible for him to have committed the offense charged. The OSG, on the other hand, maintains that positive identification of the accused prevails over empty refutation and a weak alibi. Mere denial without any strong evidence to support it, can scarcely overcome the positive declaration by the child-victim of the identity of the appellant and his involvement in the crime attributed to him.[15]

After going over the evidentiary records, the Court finds the appeal devoid of merit. Contrary to the contentions raised,

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[12] *Id.*, Decision, pp. 112-113.

[13] *Rollo*, Manifestation dated September 23 and 24, 2009, respectively, pp. 32 and 40.

[14] CA *rollo*, Brief for the Appellant, p. 50.

[15] *Id.*, Brief for the Appellee, p. 94.

the RTC and the CA rendered the assailed decisions in accordance with law and jurisprudence.

The crime of rape is usually committed under a cloak of privacy that only parties directly involved therein can attest to what actually transpired. Expectedly, their testimonies present a complete divergence of factual assertions. During trial, the prosecution and defense clash tooth-and-nail, with the aim to destroy the other's version. The credibility of witnesses with their respective testimonies then becomes the core issue to be resolved by the trial court. In doing so, it is behooved to exercise strict scrutiny and keen observation of witnesses, utilizing its position "to detect a guilty blush, a slight hesitation, a fearful glance, and an anguished cry."[16] The recent case of *People v. Felipe Ayade*,[17] thus elucidates:

> By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.
>
> Complementing the foregoing principles is the rule that the credibility of the victim is always the single most important issue in prosecution for rape; that in passing upon the credibility of witnesses, the highest degree of respect must be afforded to the findings of the trial court.

Apparently mindful of the above principle, the CA correctly adopted the findings of the trial court with respect to AAA's

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[16] *People v. Edgardo Estrada*, G.R. No. 178318, January 15, 2010.

[17] G.R. No. 188561, January 15, 2010, citing *People v. Lilio U. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341.

credibility and the sincerity of her story. Indeed, "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 opportunity to 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,"[18] unless it had overlooked or disregarded material facts and circumstances which when considered would have affected the result of the case or warrant a departure from its findings.

In this case, there is no indication that the trial court neglected, misappreciated, or misapplied significant facts or circumstances which would have justified a different outcome. This Court, therefore, follows suit and declines to disturb the facts already established.

AAA was able to clearly convey her story during trial. In tears, she narrated the details of the assault and pointed to the accused as the violator. Her account was characterized by unequivocal assertions. Not just once, she showed emotional distress as she recalled the harrowing experience that she had suffered at such an early age. Both the trial and appellate courts properly applied the long-standing rule in rape cases that testimonies of victims which are given in a categorical, straightforward, spontaneous, and frank manner are considered worthy of belief, "for no woman would concoct a story of defloration, allow an examination of her private parts and thereafter allow herself to be perverted in a public trial if she was not motivated solely by the desire to have the culprit apprehended and punished."[19] In the absence of ill-motive, "the victim's tale of defloration, simple, candid, straightforward and unflawed by any material inconsistency"[20] is entitled to full faith and credence. This Court cannot lay more emphasis on

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

[19] *Supra* note 16.

[20] *Supra*.

the fact that these rules find extra significance in a case involving a young and hapless girl, whose innocence was viscously preyed on for lust.

A pertinent portion of AAA's testimony[21] reads:

ACP TRESVALLES: (to the witness)

Q: Miss Witness, you said in your last direct-examination that the accused Rolly de Guzman asked you to go with him to the construction site, is that correct?
A: Yes, sir.

Q: How far is the construction site from your house?
A: One house away, sir.

x x x x x x x x x

Q: By the way who were his companions?
A: Joel Sabado, Rommel, the brother of the foreman and the nephew of our neighbor, sir.

Q: Were you able to reach the construction site?
A: Yes, sir.

Q: Who were the person (sic) there, if any, when you reach (sic) that construction site?
A: He was alone, sir.

Q: What happened after you reached the construction site?
A: Something happened that should not happen to me, sir.

COURT

Make it on record that the witness start (sic) crying.

ACP TRESVALLES: (to the witness)

Q: What is this thing that happened?

COURT

Make it on record that the witness continue crying (sic) and find it hard (sic) to immediately answer the question because she was crying.

WITNESS:

He put off the light.

[21] TSN, May 23, 2007, pp. 3-8.

ACP TRESVALLES

Q: After the accused put off the light, what happened?
A: He forcibly took off my pedal pusher, sir.

Q: What happened after he took your pedal pusher?
A: He brought me inside the room and put himself on top of me, sir.

Q: When you said he put himself on top of you, what do you mean by the same?
A: He inserted his private part inside my vagina, sir.

COURT (to the witness)

Q: What did you do when he was doing those things?
A: I pushed him, Your Honor.

ACP TRESVALLES (to the witness)

Q: Was he successful when you pushed the accused?
A: Yes, sir.

Q: You said that the accused inserted his private part to your private part. What did you feel when that happened?
A: It was painful, sir.

COURT (to the witness)

Q: By the way, at what particular time did you push him?
A: I pushed him before he was able to insert his penis, Your Honor.

Q: What happened when you pushed him?
A: *Nalaglag po sya sa higaan*, Your Honor.

ACP TRESVALLES (to the witness)

Q: What happened after that?
A: I told him not to continue, sir.

Q: What was his reaction?
A: He told me that it is only for a while (sic) sir.

Q: And what happened next?
A: He continued to do what he wanted to do, sir.

Q: Where was your panty at that time?
A: When he took off my pedal pusher, it was included, sir.
(underscoring supplied)

Following the CA argument, this Court also finds no badge of untruthfulness in AAA's allegations that she was sexually violated by the accused. The transcript shows that the testimony of the victim has all the earmarks of truth and candid innocence typical of child-rape victims. In other words, she was able to, in simple yet positive language, give details that can only come from a child who has been sexually abused.[22]

This Court has no doubt that the accused had carnal knowledge of AAA. His attempt to discredit her testimony because of the medico-legal findings of healed lacerations in her *labia* the day after the rape incident is far from convincing. This Court considers lacerations, whether healed or fresh, the best physical evidence of forcible defloration. When such physician's finding of penetration, as in this case, is corroborated by the victim's testimony, there is sufficient reason to conclude that the essential requisite of carnal knowledge exists.[23] Suffice it to state, this Court cannot ignore the fact that along with the positive identification of her offender, AAA was found to have experienced *blunt penetrating trauma to the hymen.*

The healed lacerations in the hymen of the victim do not negate the possibility of rape. Provided that there is proof of entry of the male organ into the *labia* of the female organ, findings of healed hymenal laceration, *a fortiori*, become irrelevant. Although the examining physician who issued the medico-legal report did not appear in court for its identification during trial, conviction of the accused would still be the end-result. Medical examination or medical report is not indispensable to prove the commission of rape, for it is merely corroborative. Hence, conviction can stand based only on the credible testimony of the victim.

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[22] *People v. Iñego Las Piñas, Jr.*, 427 Phil. 633 (2002).

[23] *People v. Anthony Rante*, G.R. No. 184809, March 29, 2010.

Although force, threat and intimidation may not have been exerted to the fullest extent, the attendance of these circumstances still categorizes the act as rape. Besides, any degree of force or intimidation that compels the victim's submission to the offender, suffices. In this light, AAA's lack of strong physical resistance does not characterize the ugly incident as a consented one. Accused cannot escape liability by questioning why his victim did not struggle to resist the sexual abuse or shout to call the attention of others. The Court cannot permit this lack of attempt to shift the blame on the victim. Fear, in lieu of force or violence, is subjective and its presence cannot be tested by any hard-and-fast rule but must instead be viewed in the light of the perception and judgment of the victim at the time of the crime. Different people react differently to a given stimulus or type of situation, and there is no standard form of behavioral response that can be expected from those who are confronted with a strange, startling or frightening experience.[24] Jurisprudence recognizes the wide variation of behavioral reactions to sexual assault. The failure of a rape victim to shout, fight back, or escape from the scoundrel is not tantamount to consent or approval because the law imposes no obligation to exhibit defiance or to present proof of struggle. In *People v. Wilson Dreu*,[25] this Court wrote:

> x x x the test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists or does not yield to the desires of the accused, the threat would be carried out. Where resistance would be futile, offering none at all does not amount to consent to the sexual assault. It is not necessary that the victim should have resisted unto death or sustained physical injuries in the hands of the rapist. It is enough if the intercourse takes place against her will or if she yields because of genuine apprehension of harm to her if she did not do so. Indeed, the law does not impose upon a rape victim the burden of proving resistance.

Without a doubt, the narration of AAA prevails over the bare denial and weak alibi of the accused. Self-serving statements

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[24] *People v. Federico Lustre*, 386 Phil. 390, 397 (2000).

[25] 389 Phil. 429 (2000), citing *People v. Fraga*, 386 Phil. 884 (2000).

cannot be accorded greater evidentiary weight than the declaration of a credible witness on affirmative matters. Time-tested is the rule that between the positive assertion of prosecution witnesses and the negative averment of an accused, the former undisputedly deserves more credence and is entitled to greater evidentiary value.[26]

In this case, the accused offered nothing in support of his denial. Despite having listed the names of several persons as his potential witnesses during pre-trial, no one came forward to prove his innocence or seal his alibi. Not a soul took the witness stand for his cause, rendering his denial devoid of substance and evidentiary weight.

Even his defense of alibi does not hold water. He testified that on the evening of the incident, he slept and stayed inside the barracks of the construction site located ten (10) meters away from AAA's house. It is well-settled in this jurisdiction that in order to warrant an acquittal by virtue of an alibi, the same must foreclose the possibility that the accused committed the deed. Alibi is an inherently weak defense viewed with suspicion because it is not difficult to fabricate. For the defense of alibi to prosper, the accused must establish two elements – (1) he was not at the *locus delicti* at the time the offense was committed; and (2) it was physically impossible for him to be at the scene at the time of its commission.[27] The accused failed in this regard. Not only did the alibi of the accused complement AAA's story as to the location of the crime scene and his companion, but it further highlighted his facility to commit the crime.

We now come to the alleged inconsistencies in AAA's testimony. As the court *a quo* did, this Court holds that the said inconsistencies are too minor and inconsequential to bewail:

Q: On October 29, 2006, at around 8:00 o'clock in the evening, where were you?

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[26] *People v. Marianito Monteron*, 428 Phil. 401 (2002).

[27] *Supra* note 23.

A: Because I was selling flowers together with my aunt, I came home at night and ate supper, then my mother asked me to buy sugar.

Q: Were you able to buy sugar?
A: No, sir.

Q: By the way, in what place where you asked by your mother to buy sugar?
A: In front of our house, sir.

COURT:

I thought you were going to buy ice, according to your testimony, now sugar already?

A: *Ano po kasi nagkamali po yong nag-aano ng ano ko po.*

COURT:

And why did you not invite their attention?

A: *Ngayon ko lang po nakita nang ibigay na po sa akin. Umalis na po kami ng* Mama *ko dahil mayroon po kaming lakad.*

COURT:

When did you sign this?
A: October 30.

COURT:

At the time you signed this, did you read this?
A: Yes, your Honor.

COURT:

So, you have seen that your statement here was to buy ice.
A: Yes, your Honor.

COURT:

So, you have seen your statement here: *"Inutusan po ako ng nanay kong bumili ng yelo sa tindahan,"* so *nakita mo ito dahil binasa mo*, why did you not ask the investigating fiscal to change this?

A: Because the one who typed my *Salaysay* Your Honor is no longer available so it was never corrected.

COURT:

And why did you not come back and have it corrected? *Bumalik ka ba doon para ipaayos mo iyan?*

A: *Hindi po. Bumalik po ako sabi raw pirmahan ko daw po iyon sa side po.*

COURT:

Bakit hindi mo sinabi na mali yong yelo, asukal ang bibilhin mo?

A: *Eh, wala naman po si* Ma'm Joyce *po doon.*

COURT:

Bakit hindi mo sinabi doon sa taong nagpaprima (sic) *sa iyo?*

A: *Hindi po nila naano iyon ma'm eh. Basta pirmahan ko na lang daw po.*[28]

The variance in AAA's *Salaysay* and her oral testimony during direct examination was patently borne out of a young mind's casual indifference to legal documents and its implications. Again, AAA was a mere 12-year-old lass who, in the eyes of the law, was not mature enough to exercise diligence and meticulousness in the conduct of the complaint she filed. Surely, this Court cannot fault her for her puerile approach to legal matters. More importantly, this inconsistency does not relate to the facts constitutive of the crime charged. The accused cannot be allowed to take advantage of this lapse. The circumstances of the rape incident are definitely not altered by whatever it was that her mother asked her to buy on that fateful night. For acquittal to lie, the discrepancies should touch on significant facts which are crucial to the guilt or innocence of an accused.[29]

On the whole, the credibility of AAA remains intact. The effect of the courtroom atmosphere and rigorous questioning took its toll on her as she faced questions that need categorical answers only to be harped on by the defense in a play of semantics. In asking if she wiggled her buttocks during the incident, the defense wanted to elicit from her if she facilitated the entry. Of course, she replied in the negative. The Court finds the suggestion of consented congress and sexual satisfaction

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[28] TSN, May 15, 2007, pp. 7-10.

[29] *People v. Alberto Garcia*, 402 Phil. 75 (2001).

on her part preposterous, if not repulsive. Not even a grain of proof tends to suggest her promiscuity, contrary to what the accused wants this Court to believe. In the same vein, the position of her legs during the encounter does not, in any way, detract from her solid assertion that accused forced his penis into her vagina. These and the other alleged minor glitches in her testimony do not impair her truthfulness. The test is whether the testimonies agree on essential facts and whether the respective versions corroborate and substantially coincide with each other so as to make a consistent and coherent whole.[30] The prosecution undoubtedly passed the test. Notably, the inconsistencies even strengthened her credibility, because they eliminate doubts that she had been coached or rehearsed. In *People v. Ireneo Perez*,[31] this Court ruled:

> Minor lapses are to be expected when a person is recounting details of a traumatic experience too painful to recall. The rape victim was testifying in open court, in the presence of strangers, on an extremely intimate matter, which, more often than not, is talked about in hushed tones. Under such circumstances, it is not surprising that her narration was less than letter-perfect. **Moreover, the inconsistency may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of testimony and the manner in which a witness answers questions.** [Emphasis supplied]

On a final note, aside from the award of ₱50,000.00 as indemnity *ex-delicto* and ₱50,000.00 as moral damages, the accused should also pay the amount of ₱30,000.00 as exemplary damages. The award of exemplary damages is proper not only to deter outrageous conduct,[32] but also in view of the aggravating circumstance of minority which was alleged in the information and proved during the trial.

WHEREFORE, the February 26, 2009 Decision of the Court of Appeals, in CA-G.R. CR. H.C. No. 03068, is hereby *AFFIRMED WITH MODIFICATION*. In addition to the award

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[30] *Merencillo v. People*, G.R. Nos. 142369-70, April 13, 2007, 521 SCRA 31, 43.

[31] 337 Phil. 244 (1997).

[32] *People v. Llanas, Jr.*, G.R. No. 190616, June 29, 2010.

of ₱50,000.00 as indemnity *ex-delicto* and ₱50,000.00 as moral damages, the accused is hereby ordered to pay the amount of ₱30,000.00 as exemplary damages.

SO ORDERED.

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

THIRD DIVISION

[A.M. OCA IPI No. 05-2353-RTJ. September 6, 2010]

SENIOR STATE PROSECUTOR EMMANUEL Y. VELASCO, *petitioner, vs.* **JUDGE ADORACION G. ANGELES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; SECOND MOTIONS FOR RECONSIDERATION; GENERALLY NOT GIVEN DUE COURSE BY THE SUPREME COURT; EXCEPTION.— While as a general rule the Court does not give due course to second motions for reconsideration, this is not without exceptions, as when there is an extraordinarily persuasive reason and after an express leave has been obtained, both of which are present in this case. In denying respondent's first motion for partial reconsideration, the Court in its February 22, 2010 Resolution, applied the ruling in *Office of the Court Administrator v. Judge Delia H. Panganiban* where it was held that a Judge's unblemished record will not justify her lapses. However, as correctly pointed out by respondent in her second motion for partial reconsideration, said case should not have

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[*] Designated as additional member in lieu of Justice Diosdado M. Peralta per Special Order No. 882 dated August 31, 2010.

been applied, as it presupposes that respondent indeed committed lapses which her long service and unblemished reputation would not justify while she has always maintained that she had not committed the act complained of, that is, the non-filing of the leaves of absence for May 3 and August 3, 2005 because she did not have to. Indeed, if respondent committed no lapse or violation, then the Court's denial of her first motion for partial reconsideration on the basis of the *Panganiban* decision deserves to be reviewed. After a considered, hard look at the case, the Court finds respondent's second Motion for Partial Reconsideration to be impressed with merit.

2. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE RULES; OMNIBUS RULES ON LEAVE; FILING OF LEAVE OF ABSENCE, NOT REQUIRED IN CASE AT BAR.— Respecting respondent's presence at the trial court on May 3, 2005, while admittedly no subpoena was served on her to appear on said date, that was a re-scheduled date of hearing, the earlier-scheduled hearing having been postponed. There was thus no absolute need for her to be subpoenaed for the purpose. As to the Investigating Judge's observation that assuming that respondent's attendance in the May 3, 2005 hearing was covered by subpoena, she still needed to secure a Certificate of Service because she was the private complainant: The Court notes that this is merely a matter of practice for government employees who need such certification to show to their superiors that they indeed attended the hearing. In any case, the minutes of a hearing show the parties who are present, hence, such certification becomes a mere surplusage.

3. ID.; ID.; ID.; ID.; A CIVIL SERVANT IS REQUIRED TO FILE A LEAVE OF ABSENCE IF HE HAS BEEN ABSENT FOR A FRACTION OF THREE-FOURTHS OR MORE OF A FULL DAY.— Respecting respondent's going to the trial court on August 3, 2005, the same did not require the filing of a leave of absence. The Investigating Justice himself noted that her absence involved only a "fraction of her official time." Section 28 of the Omnibus Rules on Leave [Rule XVI of the Omnibus Rules Implementing Book V of E.O. 292] promulgated by the Civil Service Commission on May, 2008, which reiterates earlier rules governing leaves, provides: x x x " A fraction of one-fourth or more but less than three-fourth shall be considered as **one-**

> **half day** and a fraction of three-fourths or more shall be counted as **one full day** for *purposes of granting leave of absence* (amended by CSC MC No. 41, s. 1998)." For a civil servant to thus be required to file a leave of absence, he/she should have been absent for a fraction of three-fourths or more of a full day. In the present case, complainant failed to prove that respondent was away from her office for at least six hours (3/4 of 8 hours working) on August 3, 2005. Upon the other hand, respondent reported for work in the morning, as shown by copies of orders which she issued in open court on cases calendared for consideration in the morning of August 3, 2005. AT ALL EVENTS, at most, respondent's absence on August 3, 2005 amounted to half-day or undertime under the aforementioned CSC rule which does not require the filing of a leave of absence, albeit it is deductible against vacation leave credits.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Subject of the present Resolution is the second Motion for Partial Reconsideration of this Court's Resolution issued on April 28, 2008 reading:

> The Court resolves to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendation of Associate Justice Magdangal M. de Leon, Court of Appeals, in the attached Sealed Report and Recommendation dated 31 March 2008 (Annex "A"). Accordingly, the Court (1) **REPRIMANDS** respondent Judge Adoracion G. Angeles for her unauthorized absences for failing to file the necessary leave on 3 May 2005 and 3 August 2005, when there were no subpoenas requiring her court attendance at the RTC of Manila, with **WARNING** that a repetition of the same or a similar offense shall be dealt with more severely, and (2) **DISMISSES** the complaint against Judge Adoracion G. Angeles for falsification of certificates of service for lack of merit.[1] (emphasis in the original; underscoring supplied)

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[1] *Rollo,* p. 646.

Respondent, Judge Adoracion G. Angeles, Presiding Judge of the Caloocan Regional Trial Court (RTC), Branch 121 (until her retirement on May 23, 2010), was charged by then Senior State Prosecutor Emmanuel Y. Velasco (petitioner) with violation of Supreme Court Circulars, the Canons of Judicial Ethics and the Code of Judicial Conduct, specifically for unauthorized practice of law, unauthorized absences and falsification of certificate of service.

Per the evaluation of the Office of the Court Administrator[2] the charge of illegal practice of law was deemed without merit, hence, the Court's Third Division by Resolution of June 5, 2006[3] noted the recommendation and referred the complaint, *viz*:

> . . . resolve[d] to ***REFER*** this case to a Presiding Justice of the Court of Appeals for investigation, report and recommendation within sixty (60) days from receipt of the records of this case.[4]

The case was raffled to Court of Appeals Associate Justice Magdangal M. de Leon for investigation, report and recommendation.

By petitioner's allegation, respondent actively participated in the prosecution of Criminal Case No. 04-230908, for libel, which was, on her complaint, filed against him before the Manila RTC, she appearing at Branch 26 thereof (to which the case was raffled) without her filing leaves of absence on the following dates – February 2, 2005, May 3 and 19, 2005, June 14, 15, 22 and 30, 2005, July 12-13, 2005 and August 3 and 11, 2005.

Petitioner thus concluded that when respondent indicated in her Certificates of Service that she had rendered service during the questioned dates, she is guilty of falsification and of violation

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[2] *Vide* Administrative Supervision of Courts Administrative Matter for Agenda, *rollo*, p. 59.

[3] *Ibid.*

[4] *Ibid.*

of Canons 3 and 5 of the Code of Judicial Conduct and Canons 3, 7, 22 and 31 of the Canons of Judicial Ethics.[5]

After concluding his investigation, the Investigating Justice considering only the remaining issues of falsification and incurring unauthorized absences, reported that respondent is guilty of unauthorized absences on May 3 and August 3, 2005. With

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[5] CANON 3. – A JUDGE SHOULD PERFORM OFFICIAL DUTIES WITH HONESTY, AND WITH IMPARTIALITY AND DILIGENCE.

RULE 3.08 — A judge should diligently discharge administrative responsibilities x x x

x x x x x x x x x

CANON 5 – A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES.

Rule 5.07 — A Judge shall not engage in the private practice of law. x x x

and Canons of Judicial Ethics:

3. AVOIDANCE OF APPEARANCE OF IMPROPRIETY — A judge's official conduct should be free from the appearance of impropriety, and his personal behaviour, not only upon the bench and in performance of judicial duties, but also in his everyday life, should be beyond reproach.

x x x x x x x x x

7. PUNCTUALITY – He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses and attorneys is of value and if the judge is unpunctual in his habits, he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

x x x x x x x x x

22. INFRACTIONS OF LAW – The judge should be studiously careful to avoid even the slightest infraction of law, lest it be a demoralizing example to others

x x x x x x x x x

31. SUMMARY OF JUDICIAL OBLIGATION — A judge's conduct should be above reproach and in the discharge of his judicial duties he should be conscientious, studious, thorough, courteous, patient, punctual, just xxx; and he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office.

respect to the rest of the questioned dates, he held that respondent's absence thereon was "legally justified" as she merely complied with the subpoenas issued by the trial court.

On her appearance at the trial court for the May 3, 2005 hearing, respondent asserted, however, that that date was merely an "offshoot" of an earlier postponed hearing which was covered by a subpoena. She thus concluded that a subpoena was not required for her to attend the hearing on May 3, 2005.

As for her appearance at the trial court on August 3, 2005, respondent explained that she went there lunch time on her honest belief that a hearing was set that day, only to be told that it was not, hence, she immediately returned to her office at the Caloocan City RTC and reduced into writing the orders she gave in open court in the cases which were calendared/ heard in the morning.

The Investigating Justice brushed aside respondent's explanation-justifications as lame. He concluded that by not filing "any leave of absence to cover such fraction of her official time devoted to other activities outside of her functions as a Judge, she committed absences that are unauthorized," hence, is guilty of violating Canons 3, 7 and 22 of the Canons of Judicial Ethics, as well as Canon 2 of the Code of Judicial Conduct.

On the charge of falsification of respondent's Certificates of Service, the Investigating Justice dismissed the same as "it was never shown, much less proven, that respondent judge's failure to indicate in her Certificates of Service the fact of her attendance at the court hearings amounted to an obstinate refusal to disclose, or a deliberate concealment of such fact."

The Investigating Justice thus recommended that respondent be *reprimanded* for her unauthorized absences on May 3, 2005 and August 3, 2005 and that the charge of falsification be dismissed.

As reflected early on, the Court, in its above-quoted Resolution of June 5, 2006, adopted the findings of the Investigating Justice and approved his Recommendation.

Respondent filed a Motion for Partial Reconsideration which was denied by Resolution[6] of February 22, 2010 of the Court in this wise:

> Considering the Report and Recommendation dated 4 January 2010 of Investigating Justice Magdangal M. de Leon, Court of Appeals, Manila, on respondent's motion for partial reconsideration of the Resolution dated 28 April 2008, and it appearing that the lone issue raised by respondent in her motion for partial reconsideration is whether she incurred unauthorized absences during her attendance at the hearing in the Regional Trial Court (RTC) of Manila on 3 May 2005 (where her attendance thereat as a private complainant was without subpoena which resulted in her unjustified absence from her own court) and on 3 August 2005 (where respondent failed to file a leave of absence rationalizing that she was out only for a few minutes which she compensated by staying in the office and working beyond office hours and the forfeiture of her leave credits in the name of public service); that since her attendance at the hearing at the RTC of Manila was not in connection with her judicial functions at the RTC of Caloocan, the same should not be considered as an extension of her judicial duties but done in her personal capacity necessitating the filing of leave of absence, and considering further the case of *Office of the Court Administrator vs. Judge Delia H. Panganiban (A.M. No. RTJ-96-1350, 18 August 1997),* where the Court held that neither good faith nor long, unblemished and above average service in the judiciary can fully justify respondent's lapses, and that as an officer of the Court, respondent should conduct herself strictly in accordance with the highest standards of ethics, the Court resolves to **DENY** respondent's motion for partial reconsideration of the Resolution dated 28 April 2008.

Hence, the present second Motion for Partial Reconsideration.[7]

While as a general rule the Court does not give due course to second motions for reconsideration,[8] this is not without exceptions, as when there is an extraordinarily persuasive reason and after an express leave has been obtained, both of which

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[6] *Rollo,* pp. 816-817.

[7] *Id*. at 818-825. The case was raffled to the herein *ponente* after the Justice in the Third Division to whom the case was unloaded inhibited.

[8] Sec. 2, Rule 52 of the Rules of Court.

are present in this case. In denying respondent's first motion for partial reconsideration, the Court in its February 22, 2010 Resolution, applied the ruling in *Office of the Court Administrator v. Judge Delia H. Panganiban* where it was held that a Judge's unblemished record will not justify her lapses. However, as correctly pointed out by respondent in her second motion for partial reconsideration, said case should not have been applied, as it presupposes that respondent indeed committed lapses which her long service and unblemished reputation would not justify while she has always maintained that she had not committed the act complained of, that is, the non-filing of the leaves of absence for May 3 and August 3, 2005 because she did not have to. Indeed, if respondent committed no lapse or violation, then the Court's denial of her first motion for partial reconsideration on the basis of the *Panganiban* decision deserves to be reviewed.

After a considered, hard look at the case, the Court finds respondent's second Motion for Partial Reconsideration to be impressed with merit.

Respecting respondent's presence at the trial court on May 3, 2005, while admittedly no subpoena was served on her to appear on said date, that was a re-scheduled date of hearing, the earlier-scheduled hearing having been postponed. There was thus no absolute need for her to be subpoenaed for the purpose.

As to the Investigating Judge's observation that assuming that respondent's attendance in the May 3, 2005 hearing was covered by subpoena, she still needed to secure a Certificate of Service because she was the private complainant: The Court notes that this is merely a matter of practice for government employees who need such certification to show to their superiors that they indeed attended the hearing. In any case, the minutes of a hearing show the parties who are present, hence, such certification becomes a mere surplusage.

Respecting respondent's going to the trial court on August 3, 2005, the same did not require the filing of a leave of absence. The Investigating Justice himself noted that her absence involved

only a "fraction of her official time." Section 28 of the Omnibus Rules on Leave [Rule XVI of the Omnibus Rules Implementing Book V of E.O. 292] promulgated by the Civil Service Commission on May, 2008, which reiterates earlier rules governing leaves, provides:

> Sec. 28. *Actual service defined.* — The term "actual service" refers to the period of continuous service since the appointment of the official or employee concerned, including the period or periods covered by any previously approved leave with pay.
>
> Leave of absence without pay for any reason other than illness shall not be counted as part of the actual service rendered: Provided, that in computing the length of service of an employee paid on the daily wage basis, Saturdays, Sundays or holidays occurring within a period of service shall be considered as service although he did not receive pay on those days inasmuch as his service was not then required.
>
> A fraction of one-fourth or more but less than three-fourth shall be considered as **one-half day** and a fraction of three-fourths or more shall be counted as **one full day** for *purposes of granting leave of absence* (amended by CSC MC No. 41, s. 1998). (emphasis, italics and underscoring supplied)

For a civil servant to thus be required to file a leave of absence, he/she should have been absent for a fraction of three-fourths or more of a full day. In the present case, complainant failed to prove that respondent was away from her office for at least six hours (3/4 of 8 hours working) on August 3, 2005. Upon the other hand, respondent reported for work in the morning, as shown by copies of orders which she issued in open court on cases calendared for consideration in the morning of August 3, 2005.

AT ALL EVENTS, at most, respondent's absence on August 3, 2005 amounted to half-day or undertime under the aforementioned CSC rule which does not require the filing of a leave of absence, albeit it is deductible against vacation leave credits.[9]

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[9] Sec. 34. *Tardiness and undertime are deducted against vacation leave credits.* – Tardiness and undertime are deducted from vacation leave credits and shall not be charged against sick leave credits, unless the undertime is for health reasons supported by medical certificate and application for leave.

WHEREFORE, the second Motion for Partial Reconsideration of respondent, who in the meantime retired last May 23, 2010, is *GRANTED*. The Resolutions of April 28, 2008 and February 22, 2010 are *SET ASIDE* and another is rendered dismissing the complaint against respondent.

SO ORDERED.

Del Castillo,[*] *Abad,*[**] *Villarama, Jr.*, and *Sereno, JJ.*, concur.

THIRD DIVISION

[G.R. No. 179033. September 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **FELICIANO ANABE *y* CAPILLAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS.— Robbery with homicide has the following elements: "1. the taking of personal property is committed with violence or intimidation against persons; 2. the property taken belongs to another; 3. the taking is characterized by intent to gain or *animo lucrandi*; and 4. by reason of the robbery or on occasion thereof, homicide is committed."

2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; LEGAL PRESUMPTION OF TAKING; WHEN STOLEN PROPERTY IS FOUND IN THE POSSESSION OF ONE, NOT THE OWNER, AND WITHOUT A SATISFACTORY EXPLANATION OF SUCH POSSESSION, HE IS PRESUMED TO BE THE THIEF.— That appellant took the *Tag Heuer* watch of Uy without his

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[*] Additional member per Special Order No. 879 dated August 13, 2010.

[**] Additional member per raffle dated August 25, 2010.

consent and with intent to gain should pose no doubt. Indeed, when stolen property is found in the possession of one, not the owner, and without a satisfactory explanation of such possession, he is presumed to be the thief. Since the legal presumption of taking operated to shift the burden of evidence on appellant to disprove it, his uncorroborated version that he bought the watch from Gemma does not persuade.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO CONVICT.— There being no eyewitness to the crimes charged, Section 4 of Rule 133 of the Rules of Court on circumstantial evidence applies: "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."

4. ID.; ID.; ID.; ID.; A CONVICTION BASED ON CIRCUMSTANTIAL EVIDENCE MUST EXCLUDE EACH AND EVERY HYPOTHESIS CONSISTENT WITH INNOCENCE.— [T]his Court has held that circumstantial evidence suffices to convict an accused **only if** the circumstances proven constitute an **unbroken chain** which leads to one fair and reasonable conclusion pointing to the accused, **to the exclusion of all others**, as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilt. As a corollary to the constitutional precept of presumption of innocence, a conviction based on circumstantial evidence must **exclude each and every hypothesis consistent with innocence**.

5. CRIMINAL LAW; CONSPIRACY; MUST BE SHOWN TO EXIST AS CLEARLY AND CONVINCINGLY AS THE COMMISSION OF THE OFFENSE ITSELF.— Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. Considering the far-reaching consequences of a criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself. While conspiracy need not

be established by direct evidence, it is nonetheless required that it be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of the common unlawful purpose.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A STATE WITNESS MUST BE SUBSTANTIALLY CORROBORATED IN ITS MATERIAL POINTS.— The claim of Felicita that appellant confessed to the killing of Uy must be corroborated to be given credence. Like any other testimony, Felicita's statements cannot be readily accepted hook, line and sinker. More important, the testimony of a state witness must be received with great caution and carefully scrutinized. The rule is that the testimony of a self-confessed accomplice or co-conspirator imputing the blame to or implicating his co-accused cannot, by itself and without corroboration, be regarded as proof of a moral certainty that the latter committed the crime. *It must be substantially corroborated in its material points by unimpeachable testimony and strong circumstances, and must be to such an extent that its trustworthiness becomes manifest.*

7. ID.; CRIMINAL PROCEDURE; TRIAL; DISCHARGE OF AN ACCUSED TO BE A STATE WITNESS; REQUISITES.— Turning an accused into a state witness is not a magic formula that cures all the deficiencies in the prosecution's evidence. The state witness cannot simply allege everything left unproved and automatically produce a conviction of the crime charged against the remaining accused. Corroboration of the account of the state witness is key. It is in fact a requirement for the discharge of an accused to be a state witness under Section 17, Rule 119 of the Rules of Court that the testimony to be given can be substantially corroborated in its material points. "Sec. 17. *Discharge of accused to be state witness*. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that: (a) There is absolute necessity for the testimony of the

accused whose discharge is requested; (b) **There is no other direct evidence** available for the proper prosecution of the offense committed, except the testimony of said accused; (c) The **testimony** of said accused **can be substantially corroborated** in its material points; (d) Said accused does not appear to be the most guilty; and (e) Said accused has not at any time been convicted of any offense involving moral turpitude. Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence."

8. ID.; ID.; ID.; ID.; RULE REQUIRING CORROBORATION; EXCEPTION; APPLIES ONLY IF THE STATE WITNESS IS AN EYEWITNESS.— The Court is not unaware that as an *exception* to the general rule requiring corroboration, the uncorroborated testimony of a state witness may be sufficient when it is shown to be sincere in itself because it is given unhesitatingly and in a straightforward manner and full of details which, by their nature, could not have been the result of deliberate afterthought. This exception, however, applies only if the state witness is an *eyewitness* since the testimony would then be direct evidence. x x x Section 17 of Rule 119 actually assumes that the testimony of the accused sought to be discharged as a state witness would constitute direct evidence (*i.e.*, that he or she is an eyewitness) in that it requires that there is no *other* direct evidence, except the testimony of the said accused.

9. ID.; ID.; ID.; ID.; ID.; WHERE THE STATE WITNESS IS NOT AN EYEWITNESS, THE TESTIMONY PARTAKES OF THE NATURE OF CIRCUMSTANTIAL EVIDENCE AND THE RULE THEREON APPLIES.— Where, as here, the state witness is not an eyewitness, the testimony partakes of the nature of circumstantial evidence. The rule on circumstantial evidence thus applies. If the testimony is uncorroborated, it does not suffice. It cannot merit full credence. Again, the rule on circumstantial evidence requires that, among other things, *there is more than one circumstance* and *the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt*. The circumstantial evidence suffices to convict an accused of the crime charged only if *the circumstances proven constitute an unbroken chain which*

leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.

10. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; MUST EXCLUDE THE POSSIBILITY THAT SOME OTHER PERSON HAS COMMITTED THE OFFENSE.— In the appreciation of circumstantial evidence, the rule is that the circumstances **must be proved**, and not themselves presumed. The circumstantial evidence **must exclude the possibility that some other person has committed the offense charged**. The prosecution has not come forward with any evidence completely discounting the possibility that some person other than appellant could have stabbed Uy to death. It bears reiteration that **at least three persons were present at the crime scene**. Even with Felicita's discharge, the prosecution still needed to exclude the possibility that Conrada was the one who used the recovered kitchen knife to stab Uy to death. It failed to do so, however. Such failure is fatal to its case given that its evidence had already missed that **indispensable nexus between** appellant's **presence** at the crime scene **and** his **participation** in the stabbing of Uy in order to hold him liable therefor as well. *Courts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions.*

11. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— The Court finds that of the previously enumerated elements of robbery with homicide, the first and fourth elements – (1) *the taking of personal property is committed with violence or intimidation against persons*; and (4) *by reason of the robbery or on occasion thereof, homicide is committed* – were **not** established against appellant, the prosecution having merely banked on the strength of a legal presumption that he took the *Tag Heuer* watch without the consent of Uy and with intent to gain. The trial and appellate courts thus erred in convicting appellant of robbery with homicide. The crime committed by appellant is **qualified theft**.

12. ID.; THEFT; DEFINED.— As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. Intent to gain or *animus lucrandi* is an internal act that is

presumed from the unlawful taking by the offender of the thing subject of asportation.

13. ID.; ID.; WHEN QUALIFIED.— Theft becomes qualified when any of the following circumstances is present: "1. the theft is committed by a domestic servant; 2. the theft is committed with grave abuse of confidence; 3. the property stolen is a (a) motor vehicle, (b) mail matter or (c) large cattle; 4. the property stolen consists of coconuts taken from the premises of a plantation; 5. the property stolen is fish taken from a fishpond or fishery; and 6. the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance."

14. ID.; QUALIFIED THEFT; COMMITTED IN CASE AT BAR.— Appellant could not have committed the crime had he not been employed as a house helper of Chan and family. His employers, as well as their relatives who stay at the Chan residence, reposed their trust and confidence in him while he was living thereat. He was allowed an almost unlimited access throughout the house and was even provided his own room. It was this trust and confidence that he exploited to enrich himself. Committed with grave abuse of confidence, the theft cannot but be qualified. Appellant is, however, guilty of qualified theft **only with respect to Uy's *Tag Heuer* watch**, there being no competent evidence of his complicity in the asportation of the other items declared in the Information, including Gemma's ring and bracelet which were in state witness Felicita's possession after she was arrested.

15. ID.; DESTRUCTIVE ARSON; NOT COMMITTED IN CASE AT BAR.— On to the charge for destructive arson, the pertinent portion of Article 320 of the Revised Penal Code, as amended by Republic Act No. 7659, reads: "Art. 320. Destructive Arson. - The penalty of *reclusion perpetua* to death shall be imposed upon **any person who shall burn**: x x x 5. Any building the burning of which is **for the purpose of concealing or destroying evidence of another violation of law**, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance." This charge deserves scant consideration. Appellant being only guilty of qualified theft for stealing the *Tag Heuer* watch of Uy, the "burning" of the house of Chan and family for the purpose of **concealing** or **destroying the evidence** could not be unceremoniously imputed to him. The

Court even fails to appreciate what evidence of qualified theft was left to conceal or destroy after appellant ran away with the *Tag Heuer* watch. The claim of Felicita that appellant, before boarding the getaway taxi, returned to the house to set it on fire is likewise uncorroborated. The findings of police investigators on the damage to the house and adjacent warehouse do not serve to corroborate Felicita's claim as they **only attest to the commission of the crime, not its authorship**. Again, at least three persons were at the crime scene and they all left at the same time. Being uncorroborated, Felicita's account on appellant's authorship of destructive arson does not suffice to convict him.

16. REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; ASSUMES PRIMACY WHEN THE CASE FOR THE PROSECUTION IS AT THE MARGIN OF SUFFICIENCY IN ESTABLISHING PROOF BEYOND REASONABLE DOUBT.— While denial is generally a weak defense looked upon with disfavor, the weakness of the defense cannot be the basis of a conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight. Under this rule, the defense of denial finds its special place and assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt, as in this case.

17. CRIMINAL LAW; QUALIFIED THEFT; PENALTY; TO PROVE THE AMOUNT OF THE PROPERTY TAKEN FOR FIXING THE PENALTY IMPOSABLE AGAINST THE ACCUSED, THE PROSECUTION MUST PRESENT MORE THAN A MERE UNCORROBORATED ESTIMATE.— In the present case, Rosita declared that she could not remember the purchase price of the *Tag Heuer* watch but gave an estimate of more than ₱2,000. This is insufficient to prove the value of the stolen article. *Merida v. People* instructs that to prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the prosecution must present more than a mere uncorroborated "estimate." In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.

18. ID.; ID.; PENALTY IN CASE AT BAR.— [T]he prescribed penalty under Article 309 (6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. Considering, however, that the theft is qualified, the prescribed penalty shall be increased by two degrees, that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years. Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere within the range of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, which is the penalty next lower than the prescribed penalty. The Court finds that the proper penalty is an indeterminate sentence of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

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.*:

In two separate Informations filed with the Regional Trial Court (RTC) of Quezon City, both dated January 15, 1998, Feliciano Anabe *y* Capillan (appellant) and one Felicita Generalao *y* Irgulastion (Felicita), in conspiracy with "another person,"[1] were charged with robbery with homicide[2] and destructive arson.[3]

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[1] Later referred to during the trial as Conrada Salces.

[2] Docketed as Criminal Case No. Q-98-74865, the accusatory portion of which reads:

That on or about the 31st day of December, 1997 in Quezon City, Philippines, the said accused household helpers of one Jose Chan *y* Tan at his residence located at No. 64 Tanggali Street, Barangay San Jose, Quezon City, conspiring and confederating with another person whose identity and other personal circumstances have not as yet been ascertained and mutually helping one another with intent of gain and by means of force, violence against and intimidation of persons, to wit: by entering the *sala* of said

house and for the purpose of enabling said accused to take, steal and carry away cash money and other valuables inside the house, the said accused with intent to kill and taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously and treacherously attack, assault and use personal violence upon one Lam Tiong Uy, caretaker and brother in law of Jose Chan *y* Tan, by then and there stabbing him with a bladed weapon hitting him on the different parts of his body thereby inflicting upon him mortal wounds which was the direct and immediate cause of his death and thereafter the said accused pursuant to their conspiracy with intent of gain did then and there willfully, unlawfully and feloniously take, steal and carry away one (1) Wristwatch – "*Tag Heuer*," One (1) Goldplated bracelet with undetermined value from Lam Tiong Uy and the following personal belongings, to wit:

Cash Money - ₱30,000.00

Two (2) Bulova wristwatch – ₱24,000.00

One (1) Michael Giorgio wristwatch - ₱8,000.00

One (1) diamond ring – ₱10,000.00

Three (3) jade ring – ₱45,000.00

One (1) pair earring – ₱3,000.00

Two (2) pair of gold earring – ₱6,000.00

One (1) pearl necklace – ₱10,000.00

One (1) gold pendant – ₱6,000.00

belonging to one JOSE CHAN *Y* TAN and;

One (1) gold ring – ₱2,200.00

One (1) gold bracelet – ₱1,500.00

belonging to Gemma Chan

all valued in the total amount of ₱145,700.00, Philippine Currency, to the damage and prejudice of said offended parties and to the heirs of Lam Tiong Uy represented by Rosita Uy.

(Copied verbatim, records, pp. 1-2; underscoring supplied.)

[3] docketed as Criminal Case No. Q-98-74866, the accusatory portion of which reads:

That on or about the 31st day of December, 1997 in Quezon City, Philippines, the above-named accused, conspiring and confederating with another person whose true name and real identity have not as yet been ascertained and mutually helping one another with intent to cause damage did then and there willfully, unlawfully and maliciously set fire to the house of one JOSE CHAN *Y* TAN located at No. 64 Tanggali Street, Barangay San Jose, this city, thereby destroying said house including personal properties contained therein, said accused knowing fully well that said house

When arraigned, appellant and Felicita pleaded not guilty.[4]

FELICITA, who turned state witness,[5] gave the following version:[6]

Felicita, appellant and a certain Conrada were house helpers of one Jose Chan (Chan). When Chan and family departed in December 1997 for a vacation abroad, Chan's brother-in-law Lam Tiong Uy (Uy), on Chan's request, stayed with the Chans' two-storey house at Tanggale Street, Barangay San Jose, Quezon City.

At around 8:00 p.m. of December 31, 1997, appellant instructed Felicita and Conrada to repair to their room while he sat beside Uy who was watching television. After about an hour, Conrada went to the dining room and saw appellant holding a knife. As Felicita followed, she saw the dead body of Uy lying on the floor covered with a mat, and as she noticed a bloodstained knife on the table, she exclaimed, "you killed *Kuya Tony*!," which appellant admitted.

Appellant at once instructed Felicita and Conrada to leave the house, otherwise they would be suspected of killing Uy. Appellant then hailed a taxi which the three of them boarded after he had gone back to the house to set it on fire. They headed for a pier in Tondo, Manila and boarded a boat that brought them to Masbate where they stayed in appellant's house for a week.

On Felicita's request, appellant brought her to her province, Butuan. Felicita told her mother of the incidents in which she had no participation. She was soon brought to *Bombo Radio* where she surrendered.

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was owned and inhabited by herein offended party and as a result said Jose Chan *y* Tan suffered losses and damages in the amount of ₱10,000,000.00, Philippine Currency, to the damage and prejudice of the said offended party.

(Copied *verbatim*, records, pp. 16-17)

[4] Records, p. 24.

[5] *Id.* at 146-147.

[6] TSN of August 27, 1999, pp. 3-11.

Prosecution witness **CHAN** declared that when he and his family left for Singapore on December 30, 1997, the only persons in their house were appellant, Felicita, Conrada and his brother-in-law Uy; and that they returned to the country on January 1, 1998 after learning that their house got burned the previous night.[7] **Gemma Chan** (Gemma), daughter of Chan, gave essentially the same testimony.[8]

ROSITA UY (Rosita), Uy's widow, testified on, among other things, the damages she suffered as a result of her husband's death including moral damages of over ₱3,000,000 and funeral expenses of ₱200,000.[9]

By the account of another prosecution witness, **SPO1 CARLOS VILLARIN** (Villarin) of the Central Police District (CPD) in La Loma, Quezon City,[10] when he arrived at about 10:40 p.m. of December 31, 1997 at the house of Chan to conduct an investigation, the second floor of the house and an adjacent warehouse were totally burned and he found the lifeless body of Uy at the living room, lying face down with multiple stab wounds. He and CPD officers SPO2 Eduardo Taveso (Taveso) and SPO4 Juanito Legaspi (Legaspi) later went to Butuan City, where they picked up appellant and Felicita and brought them to the CPD in La Loma, Quezon City.[11]

At the police station, Rosita identified the *Tag Heuer* wrist watch then worn by appellant as belonging to her late husband Uy,[12] while Gemma identified the ring and bracelet then worn by Felicita as among her missing pieces of jewelry.[13]

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[7] TSN of November 5, 1998, pp. 2-9.

[8] TSN of November 20, 1998, pp. 3-9.

[9] TSN of January 29, 1999, pp. 3-9.

[10] TSN of March 30, 1998, pp. 3-28.

[11] TSN of February 25, 1998, p. 8.

[12] TSN of January 29, 1999, p. 11.

[13] TSN of November 20, 1998, pp. 10-12.

SFO1 SAMUEL TADEO (Tadeo), who conducted an investigation of the incident, declared that he found out that the fire was ignited by a rice cooker left plugged inside a room on the second floor, right wing of the house, which suffered the most extensive damage; that 60% to 70% of the house was damaged; and that 90% of the adjoining warehouse was likewise destroyed.[14]

NAZARIO FERNANDEZ, JR. of the Scene of the Crime Operation (SOCO) of the Philippine National Police (PNP) Crime Laboratory attested that he and his team also went to the house of Chan on December 31, 1997; that, led by Tadeo, they found the dead body of Uy at the living room with multiple stab wounds and an incised wound on the neck; and that at the back of the house, they recovered a knife which tested positive for human blood.[15]

MA. CRISTINA FREYRA, a medico-legal officer of the PNP Crime Laboratory who conducted an autopsy on the body of Uy, found that the cause of the death of Uy, who sustained 16 stab wounds, four incised wounds and one contusion, was hemorrhage.[16]

ROGELIO DAGOC, family driver of the Chans, attested that the knife recovered by the SOCO team was familiar to him as appellant used it every day for cutting chicken.[17]

Upon the other hand, **APPELLANT** gave the following account:[18]

At about 8:00 p.m. of December 31, 1997, while appellant was inside his room, Conrada entered it crying. When he asked her why, she answered "We have to leave." When he further asked why, she just said "*Si Kuya kasi*." He, Conrada and Felicita thus left via taxi and headed for Lucena City, where

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[14] TSN of June 19, 1998, pp. 2-15.

[15] TSN of July 10, 1998, pp. 2-9.

[16] TSN of August 13, 1998, pp. 5, 8.

[17] TSN of August 20, 1998, p. 7.

[18] TSN of December 8, 2000, pp. 2-7.

they boarded a boat bound for, and arrived at, Masbate. They thereafter proceeded to Butuan, where he was arrested and detained until Quezon City policemen brought him and Felicita to the CPD. Conrada was able to flee.

Respecting the *Tag Heuer* watch which was found in his possession, appellant claimed that he bought it from Gemma.

By consolidated Decision of April 2, 2001,[19] Branch 86 of the Quezon City RTC convicted appellant as charged – robbery with homicide and destructive arson – disposing as follows, quoted verbatim:

> WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused FELICIANO ANABE guilty beyond reasonable doubt of the crime of robbery with homicide and destructive arson and hereby sentences him to suffer the penalty of ***reclusion perpetua*** for each of the offense charged and to indemnify the private complainant Jose Chan the amount of Seven Million Two Hundred Thousand Pesos (₱7,200,000.00) representing the damages suffered by his residential building, Thirty Thousand Pesos (₱30,000.00) cash money and One Hundred Twelve Thousand Pesos (₱112,000.00) representing the pieces of jewelry lost by said complainant less the value of the jewelry returned to Gemma Chan, plus moral damages in the amount of ₱50,000.00, with costs.
>
> The accused Anabe is also ordered to indemnify Rosita Uy the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity plus funeral expenses in the amount of ₱200,000.00 and moral damages in the amount of ₱50,000.00 plus costs.
>
> The wrist watch belonging to Lam Tiong Uy is hereby ordered returned to his widow Rosita Uy, while the jewelry belonging to Gemma Chan is ordered returned to her. (emphasis and underscoring in the original)

Appellant, whose appeal to this Court was transferred to the Court of Appeals[20] conformably with *People v. Mateo*,[21] faulted the trial court

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[19] Records, pp. 252-266.

[20] *Rollo*, p. 2.

[21] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 656-658.

I

. . . IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE ACCUSED-TURNED-STATE-WITNESS FELICITA GENERALAO.

II

. . . IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE THE WEAKNESS OF THE PROSECUTION'S EVIDENCE.

By Decision of August 31, 2006,[22] the appellate court *affirmed* the trial court's Decision, hence, the present appeal.[23]

In separate Manifestations, both the People and appellant informed that they were dispensing with the filing of supplemental briefs, deeming their briefs earlier filed sufficient.[24]

To appellant, Felicita was merely motivated by her desire to exculpate herself. At any rate, he argues that there was no corroborative evidence to substantiate Felicita's testimony on material points. He thus posits that his conviction should not be based on the alleged weakness of his defense, but on proof of guilt beyond reasonable doubt.[25]

The People, on the other hand, maintain that a credible testimony from an accused-turned-state-witness suffices even if uncorroborated; and that the testimony of Felicita, apart from being credible, was confirmed by the findings of police investigators.[26]

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[22] Penned by Associate Justice Ramon M. Bato, Jr., with the concurrence of Associate Justices Jose L. Sabio, Jr. and Rosalinda Asuncion-Vicente; *CA rollo,* pp. 132-141.

[23] *Id.* at 146.

[24] *Rollo,* pp. 18-23.

[25] *Vide* Appellant's Brief, *CA rollo,* pp. 61-78.

[26] *Vide* Appellee's Brief, *id.* at 105-123.

The Court dismisses the appeal, but **modifies** the crime committed by appellant, and deletes the monetary awards and damages.

Robbery with homicide has the following elements:

1. the taking of personal property is committed with violence or intimidation against persons;
2. the property taken belongs to another;
3. the taking is characterized by intent to gain or *animo lucrandi*; and
4. by reason of the robbery or on occasion thereof, homicide is committed.[27]

That appellant took the *Tag Heuer* watch of Uy without his consent and with intent to gain should pose no doubt. Indeed, when stolen property is found in the possession of one, not the owner, and without a satisfactory explanation of such possession, he is presumed to be the thief.[28] Since the legal presumption of taking operated to shift the burden of evidence on appellant to disprove it, his uncorroborated version that he bought the watch from Gemma does not persuade.

The Court finds, however, that the prosecution evidence is insufficient to support the conclusion that appellant also committed violence against Uy in order to effect the felonious taking.

There being no eyewitness to the crimes charged, Section 4 of Rule 133 of the Rules of Court on circumstantial evidence applies:

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

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[27] *People v. Dela Cruz*, G.R. No. 174658, February 24, 2009, 580 SCRA 212, 222-223.

[28] *Pil-ey v. People*, G.R. No. 154941, July 9, 2007, 527 SCRA 76, 86.

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (italics in the original)

In amplifying the above-listed conditions, this Court has held that circumstantial evidence suffices to convict an accused **only if** the circumstances proven constitute an **unbroken chain** which leads to one fair and reasonable conclusion pointing to the accused, **to the exclusion of all others**, as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilt.[29]

As a corollary to the constitutional precept of presumption of innocence, a conviction based on circumstantial evidence must **exclude each and every hypothesis consistent with innocence**.[30]

In convicting appellant of robbery with homicide, the trial court reasoned, quoted verbatim:

The **death of Lam Tiong Uy caused by stab and incise wounds in vital parts of his body** proves beyond dispute that violence was applied upon his person. The **subsequent recovery of his wrist watch** in the possession of accused Anabe indicates that said accused obtained possession of said jewelry through violence. The claim of Anabe that he purchased the watch from Gemma Chua is not only unbelievable, but also ridiculous. x x x

The death weapon used against the victim was **probably the kitchen knife** (Exhibit "T") used by Anabe in cutting chicken and meat as helper in the Chan residence. x x x The position of the blood stains located about 10 centimeters from the pointed tip of the knife coincides with the depths of most of the wounds sustained by the victim strongly indicating that the knife was the lethal weapon.

The **testimony of [Felicita] that Anabe admitted to her and Conrada Salces that he killed Lam Tiong Uy** convinces the Court

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[29] *People v. Castro*, G.R. No. 170415, September 19, 2008, 566 SCRA 92, 100.

[30] *Ibid.*

beyond doubt that Anabe killed Lam Tiong Uy. x x x **Escape of the accused** from the scene of the crime indicates strong consciousness of guilt.

The destruction of the Chan residence after the robbery with homicide was committed is clearly arson and the perpetrator was Anabe. [Felicita] testified that Anabe admitted to her that he plugged-in the rice cooker inside the room of Gemma Chan. Arson investigators theorized that the rice cooker was loaded with clothing which overheated and started the fire. The Court finds the theory believable. x x x[31] (emphasis supplied)

In affirming the Decision of the trial court, the appellate court found the following circumstances sufficient to sustain appellant's conviction: appellant ordered Felicita and Conrada to go inside their room while he kept Uy company in the living room; when Felicita (*sic*) and Conrada next saw appellant, he was already holding a bloodstained knife[32] and Uy was already dead; appellant told them that they had to go with him or else they would be suspected of killing Uy; the blood in the kitchen knife was found to be human blood; and during the confrontation at the CPD, appellant was wearing Uy's *Tag Heuer* watch.[33]

The Court at once notes that, based on the earlier-quoted portion of its decision, the trial court readily inferred appellant's commission of violence on Uy from the following findings: (1) the death of Uy was caused by stab and incised wounds in vital parts of his body; and (2) the *Tag Heuer* watch belonging to Uy was recovered from appellant.

To be sure, however, that appellant committed the felonious taking does not mean that he also committed the violence, even assuming that both occurred on the same occasion. No legal presumption obtains here. The allegation that appellant committed violence on Uy must be proved beyond reasonable doubt.

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[31] Records, pp. 263-264.

[32] Felicita claimed that it was Conrada who saw appellant holding a bloodstained knife.

[33] *CA rollo,* p. 140.

Notatu dignum is the fact that at least two persons other than appellant were proven to be with Uy in Chan's house on December 31, 1997. While conspiracy was alleged in the Informations, it was *not* established during the trial.

Conspiracy as a basis for conviction must rest on nothing less than a moral certainty. Considering the far-reaching consequences of a criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, *i.e.*, it must be shown to exist as clearly and convincingly as the commission of the offense itself. While conspiracy need not be established by direct evidence, it is nonetheless required that it be proved by clear and convincing evidence by showing a series of acts done by each of the accused in concert and in pursuance of the common unlawful purpose.[34]

In the present case, there is want of evidence to show the concerted acts of appellant, Conrada and Felicita (albeit already discharged) in pursuing a common design — to rob Uy. The prosecution in fact appears to have abandoned the theory of conspiracy altogether, no evidence thereof having been presented. *Absent proof of conspiracy, appellant may only be held accountable for acts that are imputable to him* ***with moral certainty***.

The claim of Felicita that appellant confessed to the killing of Uy must be corroborated to be given credence. Like any other testimony, Felicita's statements cannot be readily accepted hook, line and sinker. More important, the testimony of a state witness must be received with great caution and carefully scrutinized. The rule is that the testimony of a self-confessed accomplice or co-conspirator imputing the blame to or implicating his co-accused cannot, by itself and without corroboration, be regarded as proof of a moral certainty that the latter committed the crime. *It must be substantially corroborated in its material points by unimpeachable testimony and strong circumstances,*

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[34] *People v. Mapalo*, G.R. No. 172608, February 6, 2007, 514 SCRA 689, 710-711.

and must be to such an extent that its trustworthiness becomes manifest.[35]

Was Felicita's testimony regarding appellant's confession corroborated by the prosecution's other evidence?

After scouring the records, the Court finds in the negative. The only other evidence purportedly linking appellant to the commission of violence on Uy is the bloodstained kitchen knife (allegedly seen by Conrada being held by appellant; seen by Felicita on the kitchen table; and recovered by the police at the back of the house). The measure of the extent of blood stains in the knife may have coincided with the depths of most of the wounds sustained by Uy. The Court fails to see, however, how it warrants the conclusion that appellant inflicted those wounds. Even gratuitously crediting the *hearsay* claim of Felicita that Conrada saw appellant holding it, there is lack of proof that he was the only person who held the knife at the crime scene.

Felicita's testimony on appellant's confession being uncorroborated, the question is whether it can stand alone and be given full credence.

Turning an accused into a state witness is not a magic formula that cures all the deficiencies in the prosecution's evidence. The state witness cannot simply allege everything left unproved and automatically produce a conviction of the crime charged against the remaining accused. Corroboration of the account of the state witness is key. It is in fact a requirement for the discharge of an accused to be a state witness under Section 17, Rule 119 of the Rules of Court that the testimony to be given can be substantially corroborated in its material points.

Sec. 17. *Discharge of accused to be state witness*. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn

[35] *People v. Sunga*, G.R. No. 126029, March 27, 2003, 399 SCRA 624, 647-648.

statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) **There is no other direct evidence** available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The **testimony** of said accused **can be substantially corroborated** in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (emphasis and underscoring supplied)

The Court is not unaware that as an *exception* to the general rule requiring corroboration, the uncorroborated testimony of a state witness may be sufficient when it is shown to be sincere in itself because it is given unhesitatingly and in a straightforward manner and full of details which, by their nature, could not have been the result of deliberate afterthought.[36] This exception, however, applies only if the state witness is an *eyewitness* since the testimony would then be direct evidence. The above-quoted Section 17 of Rule 119 actually assumes that the testimony of the accused sought to be discharged as a state witness would constitute direct evidence (*i.e.*, that he or she is an eyewitness) in that it requires that there is no *other* direct evidence, except the testimony of the said accused.

Where, as here, the state witness is not an eyewitness, the testimony partakes of the nature of circumstantial evidence. The rule on circumstantial evidence thus applies. If the testimony is uncorroborated, it does not suffice. It cannot merit full credence. Again, the rule on circumstantial evidence requires that, among

[36] *Id.* at 654.

other things, *there is more than one circumstance* and *the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.* The circumstantial evidence suffices to convict an accused of the crime charged only if *the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the guilty person.*

The uncorroborated testimony of Felicita does not suffice to establish that appellant committed violence on Uy. Neither does appellant's flight. The fact remains that the three persons present at around the time the crime was committed **all fled** thereafter. Appellant's involvement in every element of the crime charged must still be proved beyond reasonable doubt.

In the appreciation of circumstantial evidence, the rule is that the circumstances **must be proved**, and not themselves presumed. The circumstantial evidence **must exclude the possibility that some other person has committed the offense charged**.[37]

The prosecution has not come forward with any evidence completely discounting the possibility that some person other than appellant could have stabbed Uy to death. It bears reiteration that **at least three persons were present at the crime scene**. Even with Felicita's discharge, the prosecution still needed to exclude the possibility that Conrada was the one who used the recovered kitchen knife to stab Uy to death. It failed to do so, however. Such failure is fatal to its case given that its evidence had already missed that **indispensable nexus between** appellant's **presence** at the crime scene **and** his **participation** in the stabbing of Uy in order to hold him liable therefor as well.

Courts must judge the guilt or innocence of the accused based on facts and not on mere conjectures, presumptions, or suspicions.[38]

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[37] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318-319.

[38] *People v. Galvex*, G.R. No. 157221, March 30, 2007, 519 SCRA 521, 551.

The Court finds that of the previously enumerated elements of robbery with homicide, the first and fourth elements – (1) *the taking of personal property is committed with violence or intimidation against persons*; and (4) *by reason of the robbery or on occasion thereof, homicide is committed* – were **not** established against appellant, the prosecution having merely banked on the strength of a legal presumption that he took the *Tag Heuer* watch without the consent of Uy and with intent to gain. The trial and appellate courts thus erred in convicting appellant of robbery with homicide.

The crime committed by appellant is **qualified theft**.

As defined, theft is committed by any person who, with intent to gain, but without violence against, or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent.[39] Intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking by the offender of the thing subject of asportation.[40]

As reflected earlier, from appellant's possession of the stolen *Tag Heuer* watch of Uy, the unlawful taking and intent to gain follow.

Theft becomes qualified when any of the following circumstances is present:

1. the theft is committed by a domestic servant;

2. the theft is committed with grave abuse of confidence;

3. the property stolen is a (a) motor vehicle, (b) mail matter or (c) large cattle;

4. the property stolen consists of coconuts taken from the premises of a plantation;

5. the property stolen is fish taken from a fishpond or fishery; and

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[39] REVISED PENAL CODE, Art. 308, par. 1.

[40] *Matrido v. People*, G.R. No. 179061, July 13, 2009, 592 SCRA 534, 541-542.

6. the property was taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[41]

Appellant could not have committed the crime had he not been employed as a house helper of Chan and family. His employers, as well as their relatives who stay at the Chan residence, reposed their trust and confidence in him while he was living thereat. He was allowed an almost unlimited access throughout the house and was even provided his own room. It was this trust and confidence that he exploited to enrich himself. Committed with grave abuse of confidence, the theft cannot but be qualified.

Appellant is, however, guilty of qualified theft **only with respect to Uy's *Tag Heuer* watch**, there being no competent evidence of his complicity in the asportation of the other items declared in the Information, including Gemma's ring and bracelet which were in state witness Felicita's possession after she was arrested.

On to the charge for destructive arson, the pertinent portion of Article 320 of the Revised Penal Code, as amended by Republic Act No. 7659, reads:

Art. 320. Destructive Arson. - The penalty of *reclusion perpetua* to death shall be imposed upon **any person who shall burn**:

x x x x x x x x x

5. Any building the burning of which is **for the purpose of concealing or destroying evidence of another violation of law**, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance. (emphasis supplied)

This charge deserves scant consideration. Appellant being only guilty of qualified theft for stealing the *Tag Heuer* watch of Uy, the "burning" of the house of Chan and family for the purpose of **concealing** or **destroying the evidence** could not be unceremoniously imputed to him. The Court even fails

[41] *People v. Sison*, G.R. No. 123183, January 19, 2000, 322 SCRA 345, 364.

to appreciate what evidence of qualified theft was left to conceal or destroy after appellant ran away with the *Tag Heuer* watch.

The claim of Felicita that appellant, before boarding the getaway taxi, returned to the house to set it on fire is likewise uncorroborated. The findings of police investigators on the damage to the house and adjacent warehouse do not serve to corroborate Felicita's claim as they **only attest to the commission of the crime, not its authorship**. Again, at least three persons were at the crime scene and they all left at the same time. Being uncorroborated, Felicita's account on appellant's authorship of destructive arson does not suffice to convict him.

While denial is generally a weak defense looked upon with disfavor, the weakness of the defense cannot be the basis of a conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight. Under this rule, the defense of denial finds its special place and assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt,[42] as in this case.

In fine, appellant cannot be convicted of destructive arson.

Finally, for the proper penalty for the single crime of qualified theft, Articles 309 and 310 of the Revised Penal Code provide:

> Art. 309. Penalties. — Any person guilty of theft shall be punished by:
>
> 1. The penalty of *prisión mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional ten thousand pesos, but the total of 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 *prisión mayor* or *reclusión temporal*, as the case may be.

[42] *Vide People v. Fabito,* G.R. No. 179933, April 16, 2009, 585 SCRA 591, 613.

2. The penalty of *prisión correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prisión correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prisión correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Art. 310. Qualified theft. — The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding articles, ...

In the present case, Rosita declared that she could not remember the purchase price of the *Tag Heuer* watch but gave an estimate of more than ₱2,000.[43] This is insufficient to prove the value of the stolen article.

Merida v. People[44] instructs that to prove the amount of the property taken for fixing the penalty imposable against the accused under Article 309 of the Revised Penal Code, the

[43] TSN of January 29, 1999, p. 13.

[44] G.R. No. 158182, June 12, 2008, 554 SCRA 366, 382.

prosecution must present more than a mere uncorroborated "estimate." In the absence of independent and reliable corroboration of such estimate, the courts may either apply the minimum penalty under Article 309 or fix the value of the property taken based on the attendant circumstances of the case.

Accordingly, the prescribed penalty under Article 309 (6) of the Revised Penal Code is *arresto mayor* in its minimum and medium periods. Considering, however, that the theft is qualified, the prescribed penalty shall be increased by two degrees, that is, to *prision correccional* in its medium and maximum periods or two (2) years, four (4) months and one (1) day to six (6) years.

Taking into account the Indeterminate Sentence Law, the minimum term shall be taken from anywhere within the range of four (4) months and one (1) day to two (2) years and four (4) months of *arresto mayor*, which is the penalty next lower than the prescribed penalty.

The Court finds that the proper penalty is an indeterminate sentence of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum.

Respecting the trial court's awards of money and damages, affirmed by the appellate court, they cease to have any basis in light of the return of the *Tag Heuer* watch. They are thus deleted.

WHEREFORE, the Decision of August 31, 2006 of the Court of Appeals in CA-G.R. CR-HC No. 00928 is *AFFIRMED* with *MODIFICATION*. Feliciano Anabe *y* Capillan is found guilty beyond reasonable doubt of qualified theft and is sentenced to suffer the indeterminate penalty of four (4) months and one (1) day of *arresto mayor*, as minimum, to two (2) years, four (4) months and one (1) day of *prision correccional*, as maximum. He is acquitted of destructive arson.

It appearing from the records that Anabe has been incarcerated since April 2001 or for more than the maximum penalty for qualified theft, the Director of the Bureau of Corrections is

ORDERED to cause his IMMEDIATE RELEASE from custody, unless he is being held for some other lawful cause, and to INFORM this Court within five (5) days from receipt of this Decision of the date he was actually released from confinement.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183829. September 6, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PATERNO LASANAS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; THE PROSECUTION NEED NOT PRESENT EACH AND EVERY WITNESS AS LONG AS IT MEETS THE QUANTUM OF PROOF NECESSARY TO ESTABLISH THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.— The prosecution has the exclusive prerogative to determine whom to present as witnesses. It need not present each and every witness as long as it meets the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. That AAA's brother was not presented does not thus infirm the case for the prosecution for, among other things, his testimony would have been merely corroborative. x x x Respecting appellant's argument that the medical certificate can not be used to corroborate AAA's testimony in light of

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[*] Per Special Order No. 879 dated August 13, 2010 in lieu of Associate Justice Arturo D. Brion.

Dr. Sevilla's failure to take the witness stand, suffice it to state that she was no longer available at the time of the trial. The hospital's head of its Obstetrics and Gynecology Department, Dr. Helen Peralta Yambao, however, identified the signature of Dr. Sevilla on the certificate.

2. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; DETERMINED BY THE CREDIBILITY, NATURE AND QUALITY OF THE TESTIMONY.— It need not be underlined that the weight and sufficiency of evidence are determined by the credibility, nature, and quality of the testimony. That explains why an accused in rape cases may be convicted solely on the basis of the uncorroborated testimony of the victim where such testimony is clear, positive, convincing and consistent with human nature and the normal course of things, as in AAA's testimony.

3. CRIMINAL LAW; RAPE; A MEDICAL EXAMINATION IS NOT INDISPENSABLE TO SUCCESSFUL PROSECUTION OF RAPE.— [A] medical examination is not indispensable to successful prosecution of rape. AAA's testimony on direct examination, standing alone, proves appellant's guilt beyond reasonable doubt. Notably, appellant did *not* cross examine her, sufficient time and opportunity afforded him notwithstanding, which thus prompted the trial court to declare him to have waived his right to cross-examine.

4. REMEDIAL LAW; EVIDENCE; ALIBI; WHEN TO PROSPER AS A DEFENSE.— The appellant's alibi fails to persuade especially gains light from the fact that it was not physically impossible for him to have been at the house of AAA. Recall that his house is only about 100 meters away from AAA's. "The settled rule is that for alibi to prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime, or in its immediate vicinity, at the time of its commission."

5. ID.; ID.; CREDIBILITY OF WITNESSES; IN RAPE CASES, IT IS UNNATURAL FOR A MOTHER TO USE HER DAUGHTER AS AN INSTRUMENT OF MALICE OR REVENGE, SPECIALLY IF IT SUBJECTS THE

DAUGHTER TO EMBARRASSMENT AND EVEN STIGMA.— As for appellant's insinuation that the charge against him was trumped-up as it could have been the result of a grudge that AAA's mother harbored against him, it does not persuade. It is unnatural for a mother to use her daughter as an instrument of malice or revenge, especially if, as it did here, subjects a daughter to embarrassment and even stigma.

6. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; NOT AWARDED WHERE A CRIME HAS NOT BEEN COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.— The Court deletes the award of exemplary damages, the crime not having been committed with one or more aggravating circumstances.

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.*:

By Information filed on February 23, 1995 before the Regional Trial Court (RTC) of Cotabato City, Paterno Lasanas (appellant) was charged with rape allegedly committed as follows:

That on or about 4:00 o'clock in the afternoon of August 28, 1994, at Barangay Mirab, Municipality of Upi, Province of Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of force and intimidation, did then and there willfully, unlawfully and feloniously, have carnal knowledge with [AAA] against her will.[1]

The prosecution gave the following version of the incident:

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[1] Records at 1.

On August 28, 1994, at 4:00 o'clock in the afternoon,[2] while the then 14 year old[3] AAA[4] was fixing clothes inside the room at the second floor of their house at Barangay Mirab, Upi, Maguindanao, her then 39 year old uncle (first cousin of her mother-herein appellant)[5] arrived and entered the room, grabbed her by the shoulders and pulled her down.[6] As AAA lay sprawled on the floor, appellant removed her underwear,[7] undressed himself, went on top of her and forced his penis into her vagina amidst her loud cries for help.[8]

AAA's pleas were heard by her then 17 year old brother BBB[9] who went to the room, grabbed and held appellant who, however, told him "*Ipus ka lang hindi ka magsuguid sang guinikanan mo*."[10]

AAA's mother, to whom AAA reported the incident later in the afternoon upon her arrival, immediately reported to the police authorities who promptly responded and apprehended appellant in his house still in the same afternoon.

Eight days after the incident or on September 5, 1994,[11] AAA was physically examined by one Dr. Loribel Ann Sevilla (Dr. Sevilla) at the Cotabato Regional Hospital. The examination yielded findings of fresh complete hymenal laceration at 3 o'clock and 9 o'clock positions.[12]

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[2] Transcript of Stenographic Notes (TSN), January 25, 1996, p. 6.

[3] Records, p. 6.

[4] *People v. Cabalquinto.* G.R. No. 167693, September 19, 2006, 502 SCRA 419, 425-426 ". . . in cases involving violence against women and their children . . . the Court shall withhold the real name of the victim survivor and shall use fictitious initials instead to represent her."

[5] TSN, June 24, 2002, pp. 8-9.

[6] TSN, January 25, 1996, pp. 7-8.

[7] *Id.* at 8.

[8] *Id.* at 8-9.

[9] Records, p. 9.

[10] *Id.* Translated to English, it reads: "Don't create noise. Don't tell your parents."

[11] TSN, October 15, 1998, pp. 6-7.

[12] *Id.* at 10.

Denying the accusation, appellant proffered alibi, claiming that at the time of the incident, he was at his house, which is about 100 meters away from AAA's,[13] preparing dinner which he and his family partook at 5:00 p.m. His wife Editha Lasanas corroborated his claim as did his first cousin Heidi Libresa.

Appellant ventured that the accusation was propelled by a petty quarrel that he had with AAA's mother early that month arising from his refusal to haul corn for her,[14] during which quarrel AAA's mother "st[umbled] down and collapsed."[15]

By Decision of September 18, 2003, Branch 13 of the Cotabato RTC found appellant guilty beyond reasonable doubt of Rape, disposing as follows:

> WHEREFORE, in view of all the foregoing, the Court finds Paterno Lasanas guilty beyond reasonable doubt of the crime of Rape and hereby imposes upon him the penalty of *Reclusion Perpetua*.
>
> Further, he is hereby ordered to indemnify the victim [AAA] the amount of ₱50,000.00 as civil indemnity plus an additional amount of ₱25,000.00 as and for moral damages and ₱25,000.00 as and for exemplary damages.
>
> SO ORDERED.

Before the Court of Appeals to which appellant appealed, he faulted the trial court:

> I
>
> … IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.
>
> II
>
> … IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE. (underscoring supplied)

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[13] *Vide* September 1, 1994 Sworn Statement of Joan, records, p. 7.

[14] TSN, June 24, 2002, p. 14.

[15] *Id.* at 13.

By Decision[16] of November 22, 2007, the appellate court *affirmed* the trial court's decision but *increased* the award of moral damages to ₱50,000, consistent with prevailing jurisprudence.[17] Thus the appellate court disposed:

> WHEREFORE, the judgment finding appellant guilty of the crime of Rape, imposing upon him the penalty of *Reclusion Perpetua* and directing him to pay the amount of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, is hereby **AFFIRMED**, with the **MODIFICATION** that the amount of moral damages the appellant is adjudged to pay is increased from ₱25,000.00 to ₱50,000.00.
>
> SO ORDERED.[18] (emphasis in the original)

Hence, the present appeal.

Appellant brands AAA's version as not only implausible but contrary to human experience. He cites AAA's claim that her brother heard her cries for help and went to her rescue while she was being raped, yet the prosecution never called him to testify.

Appellant goes on to argue that the medical certificate showing hymenal lacerations in AAA cannot strengthen her claim as Dr. Sevilla who examined her was not presented in court.[19]

Appellant's appeal fails.

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[16] Penned by Associate Justice Michael P. Elbinias and concurred in by Associate Justices Teresita Dy-Liacco Flores and Rodrigo F. Lim, Jr., CA *rollo*, pp. 103-110.

[17] *People v. Guillermo*, G.R. No. 177138, January 26, 2010, 611 SCRA 169; *People v. Corpuz*, G.R. No. 175836, January 20, 2009, 577 SCRA 465; *People v. Quitoriano*, G.R. No. 118852, January 20, 1997, 266 SCRA 373, 378); *People v. Laray*, G.R. No. 101809, February 20, 1996, 253 SCRA 654, 672; *People v. Sanchez*, G.R. Nos. 98402-04, November 16, 1995, 250 SCRA 14, 30; *People v. Malunes*, G.R. No. 114692, August 14, 1995, 247 SCRA 317, 327.

[18] CA *rollo*, pp. 109-110.

[19] *People v. Turco, Jr.*, G.R. No. 137757, August 14, 2000, 337 SCRA 714, 730 *citing People v. Bernaldez*, G.R. No. 109780, August 17, 1998, 294 SCRA 317, 334.

The prosecution has the exclusive prerogative to determine whom to present as witnesses. It need not present each and every witness as long as it meets the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt.

That AAA's brother was not presented does not thus infirm the case for the prosecution for, among other things, his testimony would have been merely corroborative.

It need not be underlined that the weight and sufficiency of evidence are determined by the credibility, nature, and quality of the testimony.[20] That explains why an accused in rape cases may be convicted solely on the basis of the uncorroborated testimony of the victim where such testimony is clear, positive, convincing and consistent with human nature and the normal course of things,[21] as in AAA's testimony.

Respecting appellant's argument that the medical certificate can not be used to corroborate AAA's testimony in light of Dr. Sevilla's failure to take the witness stand, suffice it to state that she was no longer available at the time of the trial. The hospital's head of its Obstetrics and Gynecology Department, Dr. Helen Peralta Yambao, however, identified the signature of Dr. Sevilla on the certificate.

AT ALL EVENTS, a medical examination is not indispensable to successful prosecution of rape.[22] AAA's testimony on direct examination, standing alone, proves appellant's guilt beyond reasonable doubt. Notably, appellant did *not* cross examine

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[20] *People v. Malate*, G.R. No. 185724, June 5, 2009, 588 SCRA 817, 825 *citing People v. Abo*, G.R. No. 107235, March 2, 1994, 230 SCRA 612, 619.

[21] *People v. Islabra*, G.R. Nos. 152586-87, March 30, 2004, 426 SCRA 547, 551.

[22] *People v. Escoton*, G.R. No. 183577, February 1, 2010, 611 SCRA 233 *citing People v. Ugang*, 431 Phil. 552 (2002); *People v. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341, 352-353; *People v. Salazar*, G.R. Nos. 98121-22, July 5, 1996, 258 SCRA 55, 63; *People v. Saldivia*, G.R. No. 55346, November 13, 1991, 203 SCRA 461, 467; *People v. Lacaba*, G.R. No. 13059, November 17, 1999, 318 SCRA 301, 314.

her,[23] sufficient time and opportunity afforded him notwithstanding, which thus prompted the trial court to declare him to have waived his right to cross-examine.[24]

As for appellant's alibi, it crumbles. On direct examination, he claimed to have been, at about 4:00 p.m. of August 28, 1994, the time AAA claimed to have been raped, in his house preparing dinner which he and his family partook at 5:00 p.m. following which he slept at 6:00 p.m. On cross examination, however, he declared that he did not sleep at 6:00 p.m. because the policemen arrived and went with them. His following feeble explanation on his flip flop, quoted *verbatim*, does not persuade:

> (Pros. Dimaraw to Paterno Lasanas on Cross-Examination)
>
> Q But your testimony is very clear during the *direct* examination, you said you slept at 6:00 and during the *cross* examination, you also said that you slept at 6:00 of August 28, 1994.
>
> A As I said, normally we used to sleep at 6:00 but on that particular day, I was not able to sleep at 6:00 because I was brought by the police in their house.
>
> COURT: (To the witness on clarificatory questioning)
>
> Q Why did you say in the *direct* examination that on August 28, 1994 after you through eating between 5:30 to 5:40 you sent to sleep at 6:00.
>
> A That's it, sir, because at 6:00 we normally go to sleep but only that particular date that we were not able to sleep because the police suddenly arrived in our house and brought me to their house.[25] (italics and underscoring supplied)

That appellant's alibi fails to persuade especially gains light from the fact that it was not physically impossible for him to

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[23] Cross-examination was set on the following dates: August 5, 1996, September 11, 1996 and September 16, 1996.

[24] *Rollo,* p. 22.

[25] TSN, June 24, 2002, p. 19.

have been at the house of AAA.[26] Recall that his house is only about 100 meters away from AAA's.

> The settled rule is that for alibi to prosper, it is not enough to prove that the appellant was somewhere else when the crime was committed, but he must likewise demonstrate that he could not have been physically present at the place of the crime, or in its immediate vicinity, at the time of its commission.[27] (underscoring supplied)

As for appellant's insinuation that the charge against him was trumped-up as it could have been the result of a grudge that AAA's mother harbored against him, it too does not persuade. It is unnatural for a mother to use her daughter as an instrument of malice or revenge, especially if, as it did here, subjects a daughter to embarrassment and even stigma.

A word on damages. The Court deletes the award of exemplary damages, the crime not having been committed with one or more aggravating circumstances.[28]

WHEREFORE, the assailed Decision of the Court of Appeals is *AFFIRMED* with *MODIFICATION* by deleting the award of exemplary damages. In all other respects, the decision is affirmed.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[26] *People v. Bato*, G.R. No. 134939, February 16, 2000, 325 SCRA 671, 679; *People v. Saban*, G.R. No. 110559, November 24, 1999, 319 SCRA 36, 46; *People v. Reduca*, G.R. Nos. 126094-95, January 21, 1999, 301 SCRA 516, 534.

[27] *People v. Dinglasan*, G.R. No. 101312, January 28, 1997, 267 SCRA 26, 43.

[28] Article 2230, CIVIL CODE.

[*] Additional member per Special Order No. 879 dated August 13, 2010.

EN BANC

[G.R. No. 182555. September 7, 2010]

LENIDO LUMANOG and AUGUSTO SANTOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 185123. September 7, 2010]

CESAR FORTUNA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 187745. September 7, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO2 CESAR FORTUNA *y* ABUDO, RAMESES DE JESUS *y* CALMA, LENIDO LUMANOG *y* LUISTRO, JOEL DE JESUS *y* VALDEZ and AUGUSTO SANTOS *y* GALANG,** *accused,* **RAMESES DE JESUS *y* CALMA and JOEL DE JESUS *y* VALDEZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; FORM AND CONTENTS OF JUDGMENTS; A JUDGMENT SHALL CLEARLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.— The Constitution commands that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." Judges are expected to make complete findings of fact in their decisions and scrutinize closely the legal aspects of the case in the light of the evidence presented. They should avoid the tendency to generalize and form conclusions without detailing the facts from which such conclusions are deduced. Section 2, Rule 120 of the 1985 Rules on Criminal Procedure, as amended, likewise provides: " Sec. 2. *Form and contents of judgments*. — The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly **a statement of the facts proved or admitted by the accused and**

the law upon which the judgment is based. x x x" We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction, notwithstanding the laconic and terse manner in which they were written; and even if "there (was left) much to be desired in terms of (their) clarity, coherence and comprehensibility," provided that they eventually set out the facts and the law on which they were based, as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability; or discussed the facts comprising the elements of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty; or quoted the facts narrated in the prosecution's memorandum, but made their own findings and assessment of evidence, before finally agreeing with the prosecution's evaluation of the case. In the same vein, we have expressed concern over the possible denial of due process when an appellate court failed to provide the appeal the attention it rightfully deserved, thus depriving the appellant of a fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being. 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 trial court. 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.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; MEMORANDUM DECISIONS; CONSIDERED VALID.— In *Bank of the Philippine Islands v. Leobrera,* we held that though it is not a good practice, we see nothing illegal in the act of the trial court completely copying the memorandum submitted by a party, provided that the decision clearly and distinctly states sufficient findings of fact and the law on which they are based. In another case where we upheld the validity of memorandum decisions,

we nevertheless took occasion to remind judges that it is still desirable for an appellate judge to endeavor to make the issues clearer and use his own perceptiveness in unraveling the *rollo* and his own discernment in discovering the law. No less importantly, he must use his own language in laying down his judgment.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF PERSONS UNDER CUSTODIAL INVESTIGATION; ENSHRINED IN ARTICLE III, SECTION 12 OF THE 1987 CONSTITUTION.— The rights of persons under custodial investigation are enshrined in Article III, Section 12 of the 1987 Constitution, which provides: "Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and ***to have competent and independent counsel preferably of his own choice.*** If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. (2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited. (3) Any confession or admission obtained in violation of this or Section 17 hereof (right against self-incrimination) shall be inadmissible in evidence against him. (4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation for the rehabilitation of victims of tortures or similar practices, and their families."

4. ID.; ID.; ID.; ID.; CUSTODIAL INVESTIGATION; REFERS TO THE CRITICAL PRE-TRIAL STAGE WHEN THE INVESTIGATION IS NO LONGER A GENERAL INQUIRY INTO AN UNSOLVED CRIME, BUT HAS BEGUN TO FOCUS ON A PARTICULAR PERSON AS A SUSPECT.— Custodial investigation refers to the critical pre-trial stage when the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular person as a suspect. Police officers claimed that appellants were apprehended as a result of "hot pursuit" activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19,

1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with the identities of his conspirators and where they could be found.

5. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 7438; REINFORCES THE CONSTITUTIONAL MANDATE PROTECTING THE RIGHTS OF PERSONS UNDER CUSTODIAL INVESTIGATION.— R.A. No. 7438, approved on May 15, 1992, has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read: "SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers*.— a. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel. b. Any public officer or employee, or anyone acting under his order or his place, who **arrests, detains or investigates any person for the commission of an offense** shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided by with a competent and independent counsel. x x x f. As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law."

6. ID.; ID.; ID.; ID.; RIGHT TO COUNSEL; MUST BE OBSERVED FROM THE MOMENT A POLICE OFFICER TRIES TO ELICIT ADMISSIONS OR CONFESSIONS OR EVEN PLAIN INFORMATION FROM A SUSPECT.— Settled is the rule that the moment a police officer tries to elicit admissions or confessions or even plain information from a suspect, the latter should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel. The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements.

7. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; CONFESSION; NOT VALID AND NOT ADMISSIBLE IN EVIDENCE WHEN IT IS OBTAINED IN VIOLATION OF ANY OF THE RIGHTS

OF PERSONS UNDER CUSTODIAL INVESTIGATION.— To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the rights of persons under custodial investigation.

8. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF PERSONS UNDER CUSTODIAL INVESTIGATION; RIGHT TO COUNSEL; THE PHRASE *"PREFERABLY OF HIS OWN CHOICE,"* EXPLAINED.— Since Joel was provided with a lawyer secured by CPDC investigators from the IBP-Quezon City chapter, it cannot be said that his right to a counsel "preferably of his own choice" was not complied with, particularly as he never objected to Atty. Sansano when the latter was presented to him to be his counsel for the taking down of his statement. The phrase "*preferably of his own choice*" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest. Thus, while the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel – or where the preferred lawyer is not available – is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.

9. ID.; ID.; ID.; ID.; ID.; REQUIRES A COMPETENT AND INDEPENDENT COUNSEL.— The question really is whether or not Atty. Sansano was an independent and competent counsel as to satisfy the constitutional requirement. We held that the modifier *competent and independent* in the 1987 Constitution is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained

to him by a diligent and capable lawyer. An effective and vigilant counsel necessarily and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.

10. ID.; ID.; ID.; ID.; ID.; AFFORDED IN ORDER TO PREVENT THE USE OF DURESS AND OTHER UNDUE INFLUENCE IN EXTRACTING CONFESSIONS FROM A SUSPECT IN A CRIME.— The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused. The accused is entitled to effective, vigilant and independent counsel. Where the prosecution failed to discharge the State's burden of proving with clear and convincing evidence that the accused had enjoyed effective and vigilant counsel before he extrajudicially admitted his guilt, the extrajudicial confession cannot be given any probative value.

11. ID.; ID.; ID.; RIGHT TO SPEEDY DISPOSITION OF CASES; A VIOLATION THEREOF MUST BE DETERMINED BASED ON THE FACTS AND CIRCUMSTANCES PECULIAR TO EACH CASE.— Section 16, Article III of the 1987 Constitution provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies." This protection extends to all citizens and covers the periods before, during and after trial, affording broader protection than Section 14(2), which guarantees merely the right to a speedy trial. However, just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays, which render

rights nugatory. x x x It must be stressed that in the determination of whether the right to speedy disposition of cases has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. A mere mathematical reckoning of the time involved would not be sufficient. Under the circumstances, we hold that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive. In several cases where it was manifest that due process of law or other rights guaranteed by the Constitution or statutes have been denied, this Court has not faltered to accord the so-called "radical relief" to keep accused from enduring the rigors and expense of a full-blown trial. In this case, however, appellants are not entitled to the same relief in the absence of clear and convincing showing that the delay in the resolution of their appeal was unreasonable or arbitrary.

12. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREOF BY THE LOWER COURT IS ACCORDED THE HIGHEST RESPECT.— [T]he testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court. Indeed, when it comes to credibility of witnesses, this Court accords the highest respect, even finality, to the evaluation made by the lower court of the testimonies of the witnesses presented before it. This holds true notwithstanding that it was another judge who presided at the trial and Judge Jaime N. Salazar, Jr. who penned the decision in this case heard only some witnesses for the defense.

13. ID.; ID.; ID.; THE VALIDITY OF THE TRIAL COURT'S DECISION THEREON IS NOT IMPAIRED BY THE FACT THAT THE JUDGE WHO HEARD THE EVIDENCE WAS NOT HIMSELF THE ONE WHO PENNED THE DECISION.— It is axiomatic that the fact alone that the judge who heard the evidence was not the one who rendered the judgment, but merely relied on the record of the case, does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies, not having heard all the witnesses speak or observed their deportment and manner of testifying. Verily, a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his

decision. Such reliance does not violate substantive and procedural due process. We have ruled in *People v. Rayray* that the fact that the judge who heard the evidence was not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not *per se* render his decision void. The validity of a decision is not necessarily impaired by the fact that its *ponente* only took over from a colleague who had earlier presided at the trial. This circumstance alone cannot be the basis for the reversal of the trial court's decision.

14. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; CARRIES MORE WEIGHT THAN AN AFFIDAVIT.— The trial judge x x x found that Alejo did not waver in his detailed account of how the assailants shot Abadilla who was inside his car, the relative positions of the gunmen and lookouts, and his opportunity to look at them in the face. Alejo immediately gave his statement before the police authorities just hours after the incident took place. Appellants make much of a few inconsistencies in his statement and testimony, with respect to the number of assailants and his reaction when he was ordered to get down in his guard post. But such inconsistencies have already been explained by Alejo during cross-examination by correcting his earlier statement in using number four (4) to refer to those persons actually standing around the car and two (2) more persons as lookouts, and that he got nervous only when the second lookout shouted at him to get down, because the latter actually poked a gun at him. It is settled that affidavits, being *ex-parte*, are almost always incomplete and often inaccurate, but do not really detract from the credibility of witnesses. The discrepancies between a sworn statement and testimony in court do not outrightly justify the acquittal of an accused, as testimonial evidence carries more weight than an affidavit.

15. ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONY OF THE PRINCIPAL WITNESS FOR THE PROSECUTION IS ENTITLED TO FULL FAITH AND CREDIT WHEN THERE IS NO EVIDENCE THAT HE WAS ACTUATED BY IMPROPER MOTIVE.— Case law has it that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.

16. ID.; ID.; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; TOTALITY OF CIRCUMSTANCES TEST; DETERMINES THE ADMISSIBILITY OF OUT-OF-COURT IDENTIFICATION OF SUSPECTS.— In *People v. Teehankee, Jr.*, we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, thus: "Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. . . In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' **opportunity to view the criminal** at the time of the crime; (2) the witness' **degree of attention** at that time; (3) the **accuracy of any prior description** given by the witness; (4) the **level of certainty** demonstrated by the witness at the identification; (5) the **length of time between the crime and the identification**; and, (6) **the suggestiveness of the identification procedure**."

17. ID.; ID.; ID.; ID; POLICE LINE-UP IDENTIFICATION; THE INADMISSIBILITY THEREOF SHOULD NOT NECESSARILY FORECLOSE THE ADMISSIBILITY OF AN INDEPENDENT IN-COURT IDENTIFICATION.— Examining the records, we find nothing irregular in the identification made by Alejo at the police station for which he executed the *Karagdagang Sinumpaang Salaysay* dated June 21, 1996, during which he positively identified Joel de Jesus and Lorenzo delos Santos as those lookouts who had pointed their guns at him demanding that he buck down at his guardhouse. In any case, the trial court did not rely solely on said out-of-court identification considering that Alejo also positively identified appellants during the trial. Thus, even assuming *arguendo* that Alejo's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may have attended it. We have held that the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification.

18. ID.; ID.; ID.; ID.; THE DANGER SIGNALS WHICH GIVE WARNING THAT THE IDENTIFICATION MAY BE ERRONEOUS EVEN THOUGH THE METHOD USED IS PROPER ARE NOT PRESENT IN CASE AT BAR.— We x x x found none of the danger signals enumerated by Patrick M. Wall, a well-known authority in eyewitness identification, which give warning that the identification may be erroneous even though the method used is proper. The danger signals contained in the list, which is not exhaustive, are: "(1) the witness originally stated that he could not identify anyone; (2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police; (3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (4) before identifying the accused at the trial, the witness erroneously identified some other person; (5) other witnesses to the crime fail to identify the accused; (6) before trial, the witness sees the accused but fails to identify him; (7) before the commission of the crime, the witness had limited opportunity to see the accused; (8) the witness and the person identified are of different racial groups; (9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved; (10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; (11) several persons committed the crime; and (12) the witness fails to make a positive trial identification."

19. ID.; ID.; ID.; ID.; TOTALITY-OF-CIRCUMSTANCES TEST; APPLIED IN CASE AT BAR.— Alejo positively identified Joel de Jesus in a line-up at the police station and again inside the courtroom as the first lookout who pointed a gun at him. Though his estimate of Joel's age was not precise, it was not that far from his true age, especially if we consider that being a tricycle driver who was exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age. Moreover Alejo's description of Lumanog as dark-skinned was made two (2) months prior to the dates of the trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having a fair complexion and was 40 years old, the private prosecutor manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of trial.

Applying the totality-of-circumstances test, we thus reiterate that Alejo's out-of-court-identification is reliable, for reasons that, *first,* he was very near the place where Abadilla was shot and thus had a good view of the gunmen, not to mention that the two (2) lookouts directly approached him and pointed their guns at them; *second,* no competing event took place to draw his attention from the event; *third,* Alejo immediately gave his descriptions of at least two (2) of the perpetrators, while affirming he could possibly identify the others if he would see them again, and the entire happening that he witnessed; and *finally*, there was no evidence that the police had supplied or even suggested to Alejo that appellants were the suspects, except for Joel de Jesus whom he refused to just pinpoint on the basis of a photograph shown to him by the police officers, insisting that he would like to see said suspect in person. More importantly, Alejo during the trial had positively identified appellant Joel de Jesus independently of the previous identification made at the police station. Such in-court identification was positive, straightforward and categorical.

20. ID.; CRIMINAL PROCEDURE; JUDGMENTS; THE ACQUITTAL OF A CO-ACCUSED DOES NOT NECESSARILY BENEFIT THE OTHER ACCUSED.— A verdict of acquittal is immediately final; hence, we may no longer review the acquittal of accused Lorenzo delos Santos. However, the acquittal of their co-accused does not necessarily benefit the appellants. We have ruled that accused-appellant may not invoke the acquittal of the other conspirators to merit the reversal of his conviction for murder.

21. ID.; EVIDENCE; ADMISSIBILITY; OBJECT EVIDENCE; BALLISTIC EXAMINATION; NOT A PREREQUISITE FOR CONVICTION.— A ballistic examination is not indispensable in this case. Even if another weapon was in fact actually used in killing the victim, still, appellants Fortuna and Lumanog cannot escape criminal liability therefor, as they were positively identified by eyewitness Freddie Alejo as the ones who shot Abadilla to death. As this Court held in *Velasco v. People* – "As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible

eyewitnesses to the crime inasmuch as it is corroborative in nature. **The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction.** The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, **since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt.**"

22. ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE WITNESSES.— Alibi is the weakest of all defenses, for it is easy to fabricate and difficult to disprove, and it is for this reason that it cannot prevail over the positive identification of the accused by the witnesses. x x x Deeply embedded in our jurisprudence is the rule that positive identification of the accused, where categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants, whose testimonies are not substantiated by clear and convincing evidence. However, none of the appellants presented clear and convincing excuses showing the physical impossibility of their being at the crime scene between 8:00 o'clock and 9:00 o'clock in the morning of June 13, 1996. Hence, the trial court and CA did not err in rejecting their common defense of *alibi.*

23. ID.; ID.; ALIBI; TO BE VALID, THE DEFENSE OF ALIBI MUST BE SUCH THAT IT WOULD HAVE BEEN PHYSICALLY IMPOSSIBLE FOR THE PERSON CHARGED WITH THE CRIME TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF ITS COMMISSION.— To be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.

24. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; ACCUSED'S FAILURE TO TESTIFY IN HIS DEFENSE CANNOT BE CONSIDERED AGAINST HIM, BUT IT MAY HELP IN DETERMINING HIS GUILT.— As to the failure of appellant Lumanog to take the witness stand, indeed the grave charges of murder and illegal possession of firearms would have normally impelled an accused to testify in his defense, particularly when his life is at stake. As this Court observed in *People v. Delmendo*: "An adverse inference may also be deduced from appellant's failure to take the witness stand. While his failure to testify cannot be considered against him, it may however help in determining his guilt. '**The unexplained failure of the accused to testify, under a circumstance where the crime imputed to him is so serious that places in the balance his very life and that his testimony might at least help in advancing his defense, gives rise to an inference that he did not want to testify because he did not want to betray himself.**' An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, may justify an inference that he is not innocent. Thus, we have the general principle that when an accused is silent when he should speak, in circumstances where an innocent person so situated would have spoken, on being accused of a crime, his silence and omission are admissible in evidence against him. Accordingly, it has been aptly said that silence may be assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession."

25. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE SUDDEN AND UNEXPECTED ATTACK ON AN UNSUSPECTING VICTIM BY THE PERPETRATOR OF THE CRIME, DEPRIVING THE VICTIM OF ANY CHANCE TO DEFEND HIMSELF OR TO REPEL THE AGGRESSION.— As regards the presence of treachery as a qualifying circumstance, the evidence clearly showed that the attack on the unsuspecting victim — who was inside his car on a stop position in the middle of early morning traffic when he was suddenly fired upon by the appellants — was deliberate, sudden and unexpected. There was simply no chance for Abadilla to survive the ambush-slay,

with successive shots quickly fired at close range by two (2) armed men on both sides of his car; and much less to retaliate by using his own gun, as no less than 23 gunshot wounds on his head and chest caused his instantaneous death. As we have consistently ruled, the essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or to repel the aggression, thus insuring its commission without risk to the aggressor and without any provocation on the part of the victim.

26. ID.; ID.; EVIDENT PREMEDITATION; THE ESSENCE OF EVIDENT PREMEDITATION IS THAT THE EXECUTION OF THE CRIME IS PRECEDED BY COOL THOUGHT AND REFLECTION UPON THE RESOLUTION TO CARRY OUT CRIMINAL INTENT WITHIN A SPAN OF TIME SUFFICIENT TO ARRIVE AT A CALM JUDGMENT.— Evident premeditation was x x x properly appreciated by the trial court, notwithstanding the inadmissibility of Joel de Jesus's extrajudicial confession disclosing in detail the pre-planned ambush of Abadilla, apparently a contract killing in which the perpetrators were paid or expected to receive payment for the job. As correctly pointed out by the CA, Alejo had stressed that as early as 7:30 in the morning of June 13, 1996, he already noticed something unusual going on upon seeing the two (2) lookouts (appellants Joel de Jesus and Lorenzo delos Santos) walking to and fro along Katipunan Avenue in front of the building he was guarding. True enough, they were expecting somebody to pass that way, who was no other than Abadilla driving his Honda Accord. After the lapse of more or less one (1) hour, he already heard successive gunshots, while in his guard post, from the direction of the middle lane where Abadilla's car was surrounded by four (4) men carrying short firearms. All the foregoing disclosed the execution of a pre-conceived plan to kill Abadilla. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out criminal intent within a span of time sufficient to arrive at a calm judgment.

27. ID.; MURDER; PENALTY; CASE AT BAR.— The CA correctly modified the death penalty imposed by the trial court. At the time the crime was committed, the penalty for murder was *reclusion perpetua* to death. Since the penalty is composed

of two (2) indivisible penalties, then for the purpose of determining the imposable penalty, Article 63 of the Revised Penal Code, as amended, must be considered. It provides in part: "1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied." With the presence of the aggravating circumstance of treachery and there being no mitigating circumstance, the higher penalty of death should be imposed. In view, however, of the passage of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006, the imposition of the death penalty has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellants shall be *reclusion perpetua*.

28. ID.; REPUBLIC ACT NO. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES); ELIGIBILITY FOR PAROLE; INAPPLICABLE IN CASE AT BAR.— Notwithstanding the reduction of the penalty imposed on appellants, they are not eligible for parole following Section 3 of x x x [R.A. No. 9346] which provides: "SECTION 3. 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." Appellants' attack on the constitutionality of the above provision on grounds of curtailment of the President's absolute power to grant executive clemency, imposition of an inhuman punishment and violation of equal protection clause, is utterly misplaced. As succinctly explained by this Court in *People v. Gardon* "We should point out that the benefit of parole cannot be extended to Gardon even if he committed the crimes for which he is now convicted prior to the effectivity of R.A. No. 9346. Sec. 2 of the Indeterminate Sentence Law provides that the law 'shall not apply to persons convicted of offenses punished with death penalty or life-imprisonment.' Although the law makes no reference to persons convicted to suffer the penalty of *reclusion perpetua* such as Gardon, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to *reclusion perpetua*. In *People v. Enriquez*, we declared: *[R]eclusion perpetua* is the only penalty that can be imposed against the

appellants. As correctly argued by the Solicitor General, Act No. 4103, otherwise known as the *Indeterminate Sentence Law*, cannot be applied in the case of appellants considering the proscription in Sec. 2 thereof, *viz*: x x x Indeed, in *People v. Asturias, Serrano v. Court of Appeals, People v. Lampaza* and *People v. Tan*, to name a few cases, we in effect equated the penalty of *reclusion perpetua* as synonymous to life-imprisonment for purposes of the Indeterminate Sentence Law, and ruled that the latter law does not apply to persons convicted of offenses punishable with the said penalty. Consequently, we affirm the Court of Appeals in not applying the Indeterminate Sentence Law, and in imposing upon appellants the penalty of *reclusion perpetua* instead. *Reclusion perpetua* is an indivisible penalty without a minimum or maximum period. Parole, on the other hand, is extended only to those sentenced to divisible penalties as is evident from Sec. 5 of the Indeterminate Sentence Law, which provides that it is only after 'any prisoner shall have served the minimum penalty imposed on him' that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole." Further, we cite the concurring opinion of Mr. Justice Dante Tinga in *People v. Tubongbanua*, addressing the issue herein raised by appellants, to wit: "No constitutional sanctities will be offended if persons previously sentenced to death, or persons sentenced to *reclusion perpetua*, are denied the benefit of parole conformably to Section 3 of Rep. Act No. 9346. **As to persons previously sentenced to death, it should be remembered that at the time of the commission of the crime, the penalty attached to the crime was death. To their benefit, Rep. Act No. 9346 reduced the penalty attached to the crime to *reclusion perpetua.*** Yet such persons cannot claim the benefit of parole on the basis of the *ex post facto* clause of the Constitution, since an *ex post facto* law is one which, among others, 'changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed.' Rep. Act No. 9346 had the effect of 'inflicting' a lighter punishment, not a greater punishment, than what the law annexed to the crime when committed."

29. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MANDATORY AND GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME.— Civil indemnity is mandatory and granted to the heirs

of the victim without need of proof other than the commission of the crime. We have ruled that even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. As explained in *People v. Salome*, while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by the law for a heinous offense is still death, and the offense is still heinous. Accordingly, the heirs of Col. Rolando N. Abadilla is entitled to civil indemnity in the amount of ₱75,000.00.

30. ID.; ID.; ACTUAL DAMAGES; AWARDED IN CASE AT BAR.— The grant of actual damages representing burial expenses, funeral services and cost of repair of the Honda car, is likewise in order, being duly supported by receipts.

31. ID.; ID.; MORAL DAMAGES; NOT INTENDED TO ENRICH A PLAINTIFF AT THE EXPENSE OF THE DEFENDANT.— [M]oral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial judge or appellate court justices.

32. ID.; ID.; EXEMPLARY DAMAGES; JUSTIFIED WHEN A CRIME IS COMMITTED WITH AN AGGRAVATING CIRCUMSTANCE, EITHER QUALIFYING OR GENERIC.— As to exemplary damages, the same is justified under Article 2230 of the New Civil Code when a crime is committed with an aggravating circumstance, either qualifying or generic.

BERSAMIN, *J.*, *concurring opinion:*

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; WHEN CONSIDERED UNRELIABLE.— I do not disagree that the Court properly dismissed as unreliable the positive out-of-court and in-court identifications made in *People v. Rodrigo*. The established facts and circumstances

in that case fully warranted the ultimate acquittal of Rodrigo, for the presumption of innocence in his favor was not overcome without his reliable identification as one of the robbers. Yet, I cannot join Mr. Justice Carpio's reliance on *People v. Rodrigo*, because the established facts and circumstances there were not similar to those herein. *People v. Rodrigo* was a prosecution for robbery with homicide. There, the Court acquitted Lee Rodrigo, one of the three alleged robbers, because his out-of-court identification by the victim's wife, the lone eyewitness for the State, was held to be defective based on the "totality of the circumstances" and did not come up to the standard for reliable photographic identification set in *People v. Pineda*. The Court particularly took into account that Rodrigo had been a stranger to the eyewitness, who had not known him prior to the identification; that the eyewitness had only a very brief encounter with the robbers (there being no direct evidence on the time the actual robbery and the accompanying homicide had taken); that she (eyewitness) had already known the name of Rodrigo long before she positively identified him, due to a neighbor of hers having told her that one of the malefactors had been Lee Rodrigo; that she could not have focused solely on the robber, because she had actually been closer in proximity to another malefactor; that she had made the out-of-court identification based on Rodrigo's photograph more than a month after the commission of the crime; and that she had been inconsistent on the precise role that Rodrigo had played in the commission of the crime. The Court noted in *People v. Rodrigo* that the eyewitness, being the wife of the victim and thus an aggrieved party, had hardly been a disinterested witness whose testimony should be equated to or treated as that from a detached party; and concluded that "based on the above considerations, that Rosita's (eyewitness) photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo (accused) as one of the three robbers xxx [and] based on the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime." In contrast, the records of the present case show that impermissible suggestion did not precede Alejo's out-of-court positive identification of De Jesus as one of the perpetrators of the crime.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE RELIABILITY OF THE ACTUAL IDENTIFICATION OF THE PERPETRATOR MAY BE DETERMINED BY MORE AND BETTER CIRCUMSTANCES OTHER THAN THE INITIAL SKETCH OF A POLICE ARTIST.— To state that a police sketch of the killer bore no resemblance to any of the accused is to make a very *subjective* assessment. It is worth nothing in forensic determination. At any rate, a discrepancy between a police artist's sketch of a perpetrator of a crime based on descriptions of witnesses at the scene of the crime, on one hand, and an actual identification of the perpetrator by an eyewitness given in court, on the other hand, is a very minimal factor of doubt on the reliability of the identification. In any criminal prosecution there are more and better circumstances to consider other than the initial sketch of a police artist for determining the reliability of an identification. We have to remember that a police artist's sketch of a perpetrator of a crime is initially for purposes of pursuing an investigation, and has seldom any impact on the case after that.

3. ID.; ID.; ID.; THE VERACITY AND WEIGHT OF THE WITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR ARE NOT IMPAIRED BY DISCREPANCIES RELATING TO MINOR AND COLLATERAL MATTERS.— [W]hatever were the perceived discrepancies in Alejo's recollection of the event and the persons involved in it related only to minor and collateral matters, and did not diminish the veracity and weight of his positive identification of the accused as the heartless assailants of the victim. That the laws of physics and our daily human experience easily explained the *perceived* discrepancies affirms that such discrepancies were not factors of doubt that depreciated, but rather increased, Alejo's value as an eyewitness. For, as all courts ought to know, no person who may be a witness in court possesses perfect faculties of observation or unerring senses of perception. Thus, the courts are often reminded to disregard discrepancies in testimony when the essential integrity of the State's evidence in its material whole is not damaged by such discrepancies. The courts are instructed instead to regard the discrepancies as erasing the suspicion that the testimony was rehearsed or contrived. Verily, honest inconsistencies usually serve to strengthen rather than destroy the witness' credibility.

4. ID.; ID.; ID.; A CONSIDERABLE LENGTH OF TIME THAT CAN AFFECT THE INTEGRITY OF TESTIMONY SOLELY BASED ON RECOLLECTION CANNOT BE DEFINED WITH CONSISTENCY.— Alejo testified in court for the first time on August 20, 1996, or only over two months *following* the commission of the crime. Yet, Mr. Justice Carpio regards the interval as "a considerable length of time" that rendered unreliable Alejo's recollection of the significant circumstances of the crime, particularly the identities of the malefactors. I concede that what is "considerable length of time" that can affect the integrity of testimony solely based on recollection cannot be defined with any consistency. In my long experience as a trial judge for over 16 years, however, I *never* regarded the short period of only slightly over two months *between* the commission of the crime *and* the court testimony of an eyewitness as "a considerable length of time" sufficient to warp and distort testimonial recollection. In this particular instance, that the eyewitness was a trained security guard is even a better reason to hold that the lapse of over two months from the commission of the crime to the time of his giving testimony did not weaken his recollection. In fact, I find that Alejo remained consistent and unshaken in his recollection of the circumstances of people, acts and place, despite his standing as a witness in court for nine days (*that is*, August 20, 21, 22, 28 and 29, and September 3, 4, 5 and 17, all in 1996). My finding is based on his not wavering or not varying from his earlier eyewitness account of the crime despite his *exhaustive* cross examination on eight of those nine days.

5. ID.; ID.; ID.; THE TESTIMONY OF THE WITNESS IN CASE AT BAR IS GIVEN FULL FAITH AND CREDIT.— That Alejo had the full opportunity to *take in* the circumstances of the killing of the victim and should be accorded the highest reliance is beyond question. He had a close proximity to the vehicle of the victim and to the accused. His vantage point from his elevated position inside the guardhouse gave him a frontal view of the commission of the crime. The circumstances played out like a scene from an action-packed movie right before his very eyes, as confirmed by the trial court's ocular inspection of the scene of the crime. His boldness in looking at what was happening in his presence until finally forced at gunpoint to look away was made plausible by his being a security guard

then on duty in that area. The insinuation that Alejo could not have observed enough and thus could not reliably recall the persons and events in view of the fleeting character of the encounter was at best speculative. We should not ignore that Alejo was a security guard who had undergone some professional training that included how to respond to a crime committed within his area of responsibility. With his training investing him an appreciation of the crucial importance of identification and discernment, he was not likely affected by the excitement of the startling situation, unlike an untrained observer. x x x How good a vantage point did Alejo have when he witnessed the crime was ascertained during the ocular inspection of the scene of the crime conducted by the trial judge on September 26, 1996. The ocular inspection *confirmed* that the car of the victim was not directly in front of the guard house, but a few meters further down the road to the right; and that Alejo's stool, relative to the front portion of the store facing Katipunan Avenue, positioned him at an angle towards the car of the victim and the southbound direction, *i.e.*, White Plains/ Blue Ridge area. With himself taking the position of Alejo inside the guardhouse, the trial judge then observed for the record that he "can see the car very clearly even if the car would be moved back by another segment also xxx and the Court observes that from the guard post the faces of the persons beside the car are very clear." The trial judge also recorded that *even if* Alejo had been *tagilid ang upo*, the means to observe the goings-on for anyone in *that* position of Alejo were still unhampered x x x.

6. ID.; ACTIONS; JUDGMENTS; THE VALIDITY OF A DECISION IS NOT IMPAIRED WHEN ITS WRITER ONLY TOOK OVER FROM ANOTHER JUDGE WHO HAD EARLIER PRESIDED AT THE TRIAL; EXCEPTION; NOT PRESENT IN CASE AT BAR.— That the judge who wrote the decision had not heard all the testimonies of the prosecution witnesses did not taint or disturb the decision, or did not necessarily render it assailable, for, after all, he had before him the records of the trial, including the transcripts of the stenographic notes (TSNs). This, among others, explains why all trial courts are required to be courts of record. The validity of a decision is not impaired when its writer only took over from another judge who had earlier presided at the trial, unless there is a clear showing of grave abuse of discretion in the appreciation of the facts. No

such grave abuse of discretion was shown herein. The trial records demonstrate, on the contrary, that the factual findings of the trial court and the assessment of the credibility of Alejo as an eyewitness rested on a most careful and thorough study of the evidence adduced by both parties. Indeed, although he did not observe the demeanor of Alejo as a witness, the writing judge (Judge Jaime N. Salazar) was not entirely deprived of a proper sense of Alejo's demeanor considering that the TSNs were replete with the *detailed* manifestations on Alejo's appearance, behavior, deportment, disposition, and mien during the many days of his testimony that the various counsel of both parties zealously put on record for memorialization. Indeed, a decision rendered by a judge who has not himself received the evidence during the trial and has relied on the TSNs of the trial is as good and binding as one rendered by a judge who has seen and heard the witnesses as they testified in court. It is up to the party disagreeing with the dispositions contained in the former's decision to establish that the rendering judge ignored some facts or misappreciated material evidence. A mere generalized attack against such decision should not diminish its value as a judicial adjudication. Otherwise, we would frequently have the undesirable situation of the accused forcing the trial judge receiving the evidence and observing the demeanor of the witnesses to self-inhibit from the case once the State completed the presentation of its evidence in order to prevent another judge from rendering the proper judgment against the accused.

7. ID.; EVIDENCE; ILL-MOTIVE; THE MERE IMPUTATION OF ILL-MOTIVE WITHOUT PROOF IS SPECULATIVE AT BEST.— Mr. Justice Abad imputes to Alejo the ill-motive to fabricate his testimony in order to favor the Prosecution and the family of the victim due to the latter's sheltering him and extending to him some financial or economic benefits. He implies that Alejo not only disregarded his earlier physical descriptions of the two armed men involved in the commission of the crime, but actually enhanced his impression of the actual shooting in consideration of his intervening affinity with the victim's family. The mere imputation of ill-motive *without proof* was *speculative* at best. To start with, that the family of the victim *might have* extended economic or financial support to Alejo did not necessarily warrant the presumption of bias on the part of Alejo as a witness. There was no evidence showing that *any* such

support was for the purpose of unduly influencing his testimony. Likelier than not, the support was only an expression of the family's appreciation for his cooperation in the public prosecution of the culprits, or for his resolve to ensure the successful prosecution of the perpetrators.

8. ID.; ID.; FINGERPRINT EXAMINATION; THE EXPERT TESTIMONY ON THE FINGERPRINTS IN CASE AT BAR IS CONCLUSIVE.— Worth clarifying is that the Defense did not present in this case *any* credible evidence, exculpatory or otherwise, on the fingerprints. Although the Defense presented Mrs. Remedios Dedicatoria, a fingerprints expert, to testify on the fingerprints lifted from the vehicles involved in this case, her testimony on the matter turned out to be untrustworthy in view of her admission on cross examination that she had not been present or involved in the lifting of the fingerprints from either the hijacked KIA Pride or the victim's Honda Accord. In fact, she had no contact with the vehicles x x x. Moreover, Mrs. Dedicatoria was exposed as a lying witness. In a clear attempt to conceal from the trial court her failure to *personally* lift the fingerprint marks off the hijacked KIA Pride, she professed to know the whereabouts of the vehicle. On cross examination, however, her prevarication was exposed x x x. As the records reveal, the perpetrators had *abandoned* the hijacked KIA Pride on Aguinaldo Street in Project 4, Quezon City, near its intersection with J.P. Rizal Street. The vehicle was, therefore, nowhere on Katipunan Avenue; neither was it anywhere near the Honda Accord of the victim, least of all a mere 15-20 meters away from the latter vehicle. Nonetheless, even assuming that Mrs. Dedicatoria was a competent witness, certain factors might still render her testimony on the absence of fingerprints inconclusive, namely: (*a*) Fingerprints made on smooth surfaces (like the exterior of the vehicles) could easily be wiped off, or erased; (*b)* If the fingerprints of the victim and of Lumanog were not found on the door handle of the victim's car, the simple explanation was that the victim and Lumanog possibly lifted the handle from its underside. It is notable that, as Mrs. Dedicatoria admitted, no examination was made on the underside of said handle; and (*c*) No thorough examination for fingerprints was done on the cars, considering that even the victim was said not to have left any fingerprints on the Honda Accord despite his having owned and driven it on the fatal day. In fine, the Dactyloscopy Report and the expert testimony of Mrs.

Dedicatoria were inconclusive, and should not be relied upon to disprove the actual presence of the accused in the place and scene of the crime at the time of its commission.

9. ID.; ID.; JUDICIAL NOTICE; UNWARRANTED IN CASE AT BAR.— The urging to take judicial notice of the fact that the victim was a natural target of the ABB for being the former head of the Metropolitan Command Intelligence and Security Group (MISG) of the Philippine Constabulary during the Marcos regime is unwarranted. The victim's heading the MISG was not material to the question of whether or not the State established beyond reasonable doubt the guilt of all the accused herein for the crime charged. Taking judicial notice that the victim was a natural target of the ABB is even improper, considering that such fact could not be reasonably inferred from his having headed the MISG during the Marcos regime. For sure, that the victim was a natural target of the ABB was neither a matter of public knowledge, nor capable of unquestionable demonstration, nor ought to be known to judges by reason of their judicial functions. Lastly, the Court no less, albeit on another occasion, already declared that "appellations or opprobriums" would not sway it against the victim, Col. Rolando N. Abadilla, observing: "The Court is not unaware that accused-respondent Abadilla, rightly or wrongly, is identified with the violent arm of the past regime. To many, he is regarded with unusual ease and facility as the 'hit man' of that regime. The Court, however, is not swayed by appellations or opprobriums. Its duty, as a temple of justice, is to accord to every man who comes before it in appropriate proceedings the right to due process and the equal protection of the laws."

CARPIO, *J., dissenting opinion:*

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; GUIDELINES IN DETERMINING THE ADMISSIBILITY AND RELIABILITY THEREOF.— In *People v. Teehankee*, the Court laid down the guidelines to determine the admissibility and reliability of an out-of-court identification, thus: "In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted **the totality of circumstances test** where they consider the following factors, ***viz***: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time;

(3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and **(6) the suggestiveness of the identification procedure.**"

2. ID.; ID.; ID.; PHOTOGRAPHIC IDENTIFICATION; RULES.— [I]n an out-of-court identification, among the factors to be considered is the suggestiveness of the procedure. In this case, the police resorted to a photographic identification of Joel, who was the first suspect to be apprehended and who provided the identities of the other accused. In *People v. Pineda*, the Court explained the rules in proper photographic identification procedure, to wit: "Although showing mug shots of suspects is one of the established methods of identifying criminals, the procedure used in this case is unacceptable. **The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect. The second rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.** Thus: [W] here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, 'That's the man that did it,' what he may actually mean is, 'That's the man whose photograph I identified.' x x x A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph."

3. ID.; ID.; ID.; ID.; ID.; ID.; NOT COMPLIED WITH IN CASE AT BAR.—Alejo was first shown a photograph of Joel before Alejo pinpointed Joel as one of the suspects. The police showed only one photograph, that of Joel's, highlighting the fact that the police primed and conditioned Alejo to identify Joel as one of the murderers of Abadilla. The police focused on Joel as one

of the suspects, prior to Alejo's identification. The police did not show Alejo any other photograph, only that of Joel's. Assuming Alejo refused to glance at Joel's photograph, which is quite unbelievable, the fact that he was shown only one photograph violates standard operating procedures in criminal investigations. Clearly, the police, in showing Alejo only a photograph of Joel, instead of a series of photographs arranged in an unsuspicious manner, breached the recognized rules in photographic identification. Undoubtedly, this procedure seriously corrupted the identification process with impermissible suggestion.

4. ID.; ID.; CREDIBILITY OF WITNESSES; THE PROPER IDENTIFICATION OF THE ACCUSED IS NECESSARY ESPECIALLY WHEN THIS IDENTIFICATION IS MADE BY A SOLE WITNESS AND THE JUDGMENT IN THE CASE TOTALLY DEPENDS ON THE RELIABILITY OF THE IDENTIFICATION.— In *People v. Rodrigo*, the Court, speaking thru Justice Arturo Brion, acquitted the accused for failure of the prosecution to identify the accused as the perpetrator of the crime, which identification is extremely crucial to the prosecution's burden of proof. Stressing the importance of a proper identification of the accused, most especially **"when the identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification," just like in this case,** the Court held: "The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused." x x x **The clear import of *Rodrigo* is that an out-of-court identification, made by the lone witness, who was subjected to impermissible photographic suggestion, fatally tainted the subsequent in-court identification made by the same witness. Accordingly, the testimony of such witness on the identification of the accused, by itself, cannot be considered as proof beyond reasonable doubt of the identity of the perpetrator of the crime. Without proof beyond reasonable doubt of the identity of the perpetrator, the accused deserves an acquittal.**

5. ID.; ID.; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; PHOTOGRAPHIC IDENTIFICATION; A HIGHLY SUGGESTIVE IDENTIFICATION RESULTS IN A DENIAL OF THE ACCUSED'S RIGHTS TO DUE PROCESS.— [A] highly suggestive identification results in a denial of the accused's right to due process since it effectively and necessarily deprives the accused of a fair trial. In *Rodrigo*, the Court stated: "The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists."

6. ID.; ID.; ID.; ID.; ID.; MUST BE DEVOID OF ANY IMPERMISSIBLE SUGGESTIONS IN ORDER TO PREVENT A MISCARRIAGE OF JUSTICE.— In *Pineda*, the Court pointed out the dangers a photographic identification spawns: an impermissible suggestion and **the risk that the eyewitness would identify the person he saw in the photograph and not the person he saw actually committing the crime.** x x x Due process dictates that the photographic identification must be devoid of any impermissible suggestions in order to prevent a miscarriage of justice. In *People v. Alcantara*, the Court declared: "Due process demands that identification procedure of criminal suspects must be free from impermissible suggestions. As appropriately held in *US vs. Wade*, '**the influence of improper suggestion upon identifying witness probably accounts for more miscarriages of justice than any other single factor**.'" Therefore, the police's act of showing a single photograph to Alejo, prior to "identifying" Joel as a suspect, corrupted the identification procedure with impermissible suggestion. Through this illegal procedure, the police, purposely or otherwise, suggested and

implanted on Alejo's mind that Joel was one of the perpetrators, thereby violating Joel's right as an accused to due process. Not only did the police disregard recognized and accepted rules in photographic identification, they likewise transgressed the clear mandate of the Constitution that "No person shall be deprived of life, liberty, or property without due process of law." More particularly, the police violated Section 14(1) of the Constitution which provides: "No person shall be held to answer for a criminal offense without due process of law."

7. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF PERSONS UNDER CUSTODIAL INVESTIGATION; RIGHT TO COUNSEL; AN ACCUSED IS GENERALLY NOT ENTITLED TO THE ASSISTANCE OF COUNSEL IN A POLICE LINE-UP; EXCEPTION.— In *People v. Escordial*, the Court pertinently ruled: "As a rule, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of the custodial inquest. However, the cases at bar are different inasmuch as accused-appellant, having been the focus of attention by the police after he had been pointed to by a certain Ramie as the possible perpetrator of the crime, was already under custodial investigation when these out-of-court identifications were conducted by the police. An out-of-court identification of an accused can be made in various ways. In a show-up, the accused alone is brought face to face with the witness for identification, while in a police line-up, the suspect is identified by a witness from a group of persons gathered for that purpose. **During custodial investigation, these types of identification have been recognized as 'critical confrontations of the accused by the prosecution' which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings 'might well settle the accused's fate and reduce the trial itself to a mere formality.' We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him.**" As stated in *Escordial*, generally, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of custodial investigation. **An exception to this rule is when the accused had been the focus of police attention at the start of the investigation**. The line-up in this case squarely falls under this exception. It was

established that Joel was already a suspect prior to the police line-up. In fact, even before Joel's apprehension, the police had already zeroed in on Joel as one of Abadilla's killers. As such, Joel was entitled to counsel during the police line-up. However, there is no question that Joel was not assisted by counsel, whether of his own choice or provided by the police, during the line up. As Joel's identification was uncounseled, it cannot be admitted in evidence for grossly violating Joel's right to counsel under Section 12(1) of the Constitution.

8. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; OUT-OF-COURT IDENTIFICATION; THE TESTIMONY OF THE WITNESS REGARDING THE INADMISSIBLE IDENTIFICATION CANNOT BE ADMITTED AS WELL.— [T]he Court held in *Escordial* that the testimony of the witness regarding the inadmissible identification cannot be admitted as well, thus: "Here, accused-appellant was identified by Michelle Darunda in a show-up on January 3, 1997 and by Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda in a police line-up on various dates after his arrest. Having been made when accused-appellant did not have the assistance of counsel, these out-of-court identifications are inadmissible in evidence against him. **Consequently, the testimonies of these witnesses regarding these identifications should have been held inadmissible for being 'the direct result of the illegal lineup 'come at by exploitation of [the primary] illegality.'"**

9. ID.; ID.; ID.; ID.; SOME OF THE DANGER SIGNALS WHICH GIVE WARNING THAT THE IDENTIFICATION MAY BE ERRONEOUS EVEN THOUGH THE METHOD USED IS PROPER ARE PRESENT IN CASE AT BAR.— Citing Patrick M. Wall, the majority enumerated the danger signals which give warning that the identification may be erroneous even though the method used is proper. Contrary to the majority, some of these danger signals are present in this case: (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) the limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

10. ID.; ID.; ID.; ID.; THE TESTIMONIES OF THE WITNESSES ON THE IDENTIFICATION OF THE ACCUSED SHOULD BE HELD INADMISSIBLE FOR BEING THE DIRECT RESULT OF AN ILLEGAL POLICE ACTIVITY.— In *Escordial*, the Court stated that the testimonies of the witnesses on the identification of the accused should be held inadmissible for being "the direct result of the illegal lineup 'come at by exploitation of [the primary] illegality.'" Here, being a direct result of an illegal police activity, that is the coerced extraction of a confession from Joel, the subsequent in-court identification by Alejo of Lumanog, Rameses, Fortuna and Santos must be rejected. The testimony of Alejo on the identification of the accused as perpetrators of the crime cannot be given any weight. Alejo's in-court identification of Lumanog, Rameses, Fortuna, and Santos was fatally tainted because the identity of the suspects came from a coerced confession of Joel, who himself was identified as a suspect through a fatally defective impermissible suggestion to Alejo. **In short, Alejo's identification of Joel was fatally defective; Alejo's identification of Lumanog, Rameses, Fortuna and Santos was also fatally defective. Both identification directly emanated from illegal police activities – impermissible suggestion and coerced confession.** Without any credible evidence of their identification as the perpetrators of the crime, Lumanog, Rameses, Fortuna, Santos, and Joel must therefore be acquitted.

11. ID.; ID.; CREDIBILITY OF WITNESSES; POSITIVE IDENTIFICATION OF THE ACCUSED MADE BY A CREDIBLE WITNESS IS REQUIRED TO SUSTAIN A CONVICTION.— To give credence to Alejo's in-court identification of the accused is to admit and give probative value to the coerced confession of Joel. Clearly, the publication of the pictures of the accused in the newspapers and television came directly from the coerced confession of Joel. Alejo would not have been able to identify the accused without the pictures of the accused that were taken by media as a result of the coerced confession of Joel. Inexplicably, the majority fails to consider this extensive media exposure of the accused in ascertaining the reliability and admissibility of Alejo's testimony on the identities of the accused. The majority ignores the fact that Alejo had seen the accused in print and on television, guaranteeing Alejo's in-court identification of the accused as the perpetrators of

the crime. The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the murderers. Such doubts are sufficient to rule that Alejo's in-court identification of the accused as the perpetrators of the crime is neither positive nor credible. "It is not merely any identification which would suffice for conviction of the accused. It must be positive identification made by a credible witness, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender."

12. ID.; CRIMINAL PROCEDURE; ARREST; THE WARRANTLESS ARREST IN CASE AT BAR DOES NOT FALL WITHIN THE AMBIT OF HOT PURSUIT.— The police arrested Joel, without any warrant, on 19 June 1996 or six days after the killing. **Six days is definitely more than enough to secure an arrest warrant, and yet the police opted to arrest Joel and the other accused, without any warrant, claiming that it was conducted in "hot pursuit."** In law enforcement, "hot pursuit" can refer to an immediate pursuit by the police such as a car chase. Certainly, the warrantless arrrest of Joel, made six days after the murder, does not fall within the ambit of "hot pursuit."

13. ID.; ID.; ID.; WARRANTLESS ARREST, NOT JUSTIFIED IN CASE AT BAR.— The pertinent provisions of Rule 113 of the Rules on Criminal Procedure on warrantless arrest provide: "Sec. 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person: a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense; b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another." None of the above instances is present in this case: (1) the accused were not arrested in *flagrante delicto*; (2) the arrest was not based on personal knowledge of the arresting officers that there is probable cause that the accused were the authors of the crime which had just been committed; (3) the accused were not prisoners who have escaped from custody serving final judgment or temporarily confined

while their case is pending. There is no question that all the accused were apprehended several days after the crime while doing ordinary and unsuspicious activities. There is also no question that the police had no personal knowledge of probable cause that the accused were responsible for the crime which had been committed. The third situation is inapplicable since the accused are not prison escapees. Considering these facts, there is indeed no justification for the warrantless arrests effected by the police in their so-called "hot pursuit." Such warrantless arrest, therefore, amounts to a violation of Section 2, Article III of the Constitution x x x.

14. CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF PERSONS UNDER CUSTODIAL INVESTIGATION; SECTION 12(2), ARTICLE III OF THE CONSTITUTION, VIOLATED IN CASE AT BAR.— The speedy resolution of a crime is never a license for the police to apprehend any person and beat him to admit his participation in a gruesome crime. In this case, without any credible evidence linking the accused to the murder, the police blindly resorted to careless investigation and unlawful apprehension of innocent men. Worse, the police apparently tortured the accused to answer for the brutal slaying of Abadilla. Indisputably, torturing the accused to extract incriminating confessions is repugnant to the Constitution. Section 12(2), Article III of the Constitution expressly provides "[n]o torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against [an accused]." The blatant and unacceptable transgression of the accused's constitutional rights, for the sake of delivering speedy, but false, justice to the aggrieved, can never be countenanced. This Court can never tolerate official abuses and perpetuate the gross violation of these rights. The presumption that a public officer had regularly performed his official duty can at no instance prevail over the presumption of innocence.

15. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING CRIMINAL CASES.— In reviewing criminal cases, the Court must carefully determine and establish "*first*, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and *second*, all the elements constituting the

crime were duly proven by the prosecution to be present." The inexistence of any of these two factors compels us to acquit the accused.

ABAD, *J., dissenting opinion:*

REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TESTIMONY OF THE WITNESS IN CASE AT BAR IS NOT SUFFICIENTLY CREDIBLE TO SUPPORT THE FINDING OF GUILT OF ALL THE ACCUSED.— In addition to what Justice Carpio pointed out in his separate dissenting opinion, Alejo's testimony does not inspire belief for the following reasons–1. Alejo said that he noticed earlier that morning de Jesus and delos Santos walking to and fro by his guard post. Since the behavior of the two men seemed to Alejo unusual, his trained mind did not put them down in the category of ordinary pedestrians waiting for a ride or companions. Innocent pedestrians did not walk to and fro on the same place on the sidewalk for an extended period (more than an hour) without inviting suspicion. Yet, Alejo did not, as his training would have made him, take any step to anticipate some trouble like informing the establishment he was guarding about it or writing a note on his logbook of the description of the two men. 2. Alejo claimed that he actually saw four men shoot at the driver of a black car on the street facing his building. But this is doubtful since, admittedly, he was seated at his guard post with his back slightly turned towards the street. He said, "*tagilid ang upo ko*," and demonstrated this during the ocular inspection. As a matter of fact, he confessed that "at the start of the shooting, I did not see because I was still seated and the next gun reports I stood up and then I saw." Alejo claimed then seeing the four accused already in the position described in Exhibit H. Clearly, then, Alejo did not see the men fire their guns at Colonel Abadilla. If Alejo were to be believed, the shots alerted him to the trouble and it was their noise that made him turn towards the street at the direction of the shooting. Indeed, he said that as he looked what he saw were the four assassins standing two at each side of the car's front seats. The shooting had stopped. 3. Besides, Alejo said that he looked in the direction of the ambush after he heard the volley of shots. But this could not be accurate because it was right after those shots were fired that Joel de Jesus pointed a gun at him and

told him to get out of the outpost and go down from it. How could Alejo see which of four other accused stood at what side of Colonel Abadilla's car when his attention was at Joel de Jesus who was threatening to shoot him if he did not come out of his outpost? Alejo of course claimed that he was not intimidated. He did not budge and continued to watch what was going on. His courage is surprising, however, since guns had been fired so close to him at someone in a car on the street and now he sees a gun pointed directly at him. Since Alejo chose not to fight back, it seems odd that he would dare one of the men to shoot him for not obeying the order for him to step out of the out post. 4. Alejo claimed that Lumanog grabbed Colonel Abadilla by the neck, reached out for the latter's clutch bag in the car, and pulled the colonel out of the car before dropping him on the pavement. But if Lumanog held a gun with one hand and held the colonel's neck by the other, what hand did he use to reach out for the clutch bag in the car? 5. Alejo testified that when Joel de Jesus, one of the two men on the sidewalk, pointed a gun at him and cried out: "*Dapa, walang makikialam!*," all four men who fired their guns at Colonel Abadilla turned their faces towards Alejo on the sidewalk, enabling the latter to see their faces clearly. But this is a strained scenario. How could Alejo in such infinitesimal second pay attention to de Jesus pointing a gun at him and commanding him to go out of his guard post and lie face down on the ground and at the same time examine the faces of each of the four men surrounding Colonel Abadilla's car, one after the other, to remember their identities? 6. At best, Alejo had but a glimpse of those who took part in shooting down Colonel Abadilla. But the police remedied this. After arresting the several accused in the case, the police first took their pictures at the police headquarters. Now, rather than call Alejo to make a direct identification of the accused from a police lineup and rule out any possibility of suggestion and mistake, the police investigators first showed him the pictures of the men they nabbed. This is admission that the police needed to prepare Alejo with those pictures before showing to him the accused who had been in their custody all along. It is very well known that the police, bent on their theory of a case, would sometimes falsely tell the supposed eyewitness that those in the pictures had already confessed to the crime. It takes little subtle convincing to make a witness believe that the person or persons

on the pictures were the ones he saw commit the crime and that, unless he identified them, they would walk out free. Naturally, later at the police lineup, the witness when asked would unhesitatingly identify the men he saw on the pictures. His point of reference would be the men on the pictures rather than his recollection of the persons he saw or did not see at the crime scene. 7. It was rush hour when the incident happened and Katipunan Avenue was filled with traffic. It was most unlikely for the assassins who surrounded Colonel Abadilla's car to pose exclusively for Alejo, turning their faces towards him in unison as if he was going to take a class picture of them from the sidewalk. The street was teeming with other cars and people in them. The assassins had enough to watch out for, the least of which was the sidewalk where they knew they had lookouts protecting them from any kind of interference. Being housed and paid allowances by the victim's family enabled Alejo to substantially alter the previous descriptions he gave to the police of some of the accused. Further, he got to look with plenty of time at the faces of those who fired their guns at Colonel Abadilla and, despite the threats to his life by two men on the sidewalk who had their guns on him, he could remember with remarkable details the shooting of the victim on the street. 8. The assassins fled on a hijacked vehicle. When this was recovered, none of the fingerprint marks on that vehicle matched any of those of the accused. Men would lie but object evidence like fingerprints would not. 9. One cannot ignore the fact that, based on the ballistics report, a slug recovered from the body of Colonel Abadilla matched a slug recovered from the body of a known victim of the Alex Boncayao Brigade (ABB) of the New People's Army. This is clear evidence of the truth of the ABB's claim, told the media, that they were the ones responsible for Colonel Abadilla's death. Again, physical evidence cannot lie; it is a silent witness that could not be housed and bought. Since none of the accused had been identified with the ABB, they could not have been involved in that killing. The Court should also have taken judicial notice of the fact that, as former head of the dreaded Metropolitan Command Intelligence and Security Group of President Marcos' Philippine Constabulary, Colonel Abadilla had always been a natural target of the communist's death squad, the ABB. Indeed, there had been reports of its previous attempts to kill him. I have more than reasonable doubt for not being taken in by Alejo's testimony.

> Those who saw the daylight shooting of Colonel Abadilla did not know the assassins by face. How the police got to identify and pick up the particular accused in this case from their homes or places of work to be shown to the witnesses as their prime suspects is a mystery that the prosecution did not bother to tell the trial court. I can only assume that this is the handy work of police informers, those who made a living of snitching on criminals and saving the police from the shame of having another crime, a crime called to such tremendous public attention because of the identity of the slain victim, left unsolved.

APPEARANCES OF COUNSEL

Vicente Dante P. Adan for petitioners in G.R. No. 182555.
Gimenez Law Office for petitioners in G.R. No. 185123.
Law Office of Dante S. David for Joel de Jesus.
M.M. Lazaro & Associates for the family of the late Col. Rolando N. Abadilla.
Public Attorney's Office and *Analyn V. Virtusio* for Rameses De Jesus.
The Solicitor General for respondent.
Leandro M. Azarcon for Augusto Santos.
Arlene G. Lapuz-Ureta for Cesar Fortuna.

D E C I S I O N

VILLARAMA, JR., *J.*:

For review is the Decision[1] dated April 1, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00667 which affirmed with modification the Joint Decision[2] dated July 30, 1999 of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case Nos. Q-96-66679, Q-96-66680, Q-96-66682, Q-96-66683 and Q-96-66684.

The consolidated cases arose in connection with the killing of former Chief of the Metropolitan Command Intelligence and

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[1] Penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Regalado E. Maambong and Celia C. Librea-Leagogo.

[2] Penned by Judge Jaime N. Salazar, Jr.

Security Group of the Philippine Constabulary, now the Philippine National Police (PNP), Colonel Rolando N. Abadilla ("Abadilla"), who was ambushed in broad daylight while driving his car along Katipunan Avenue, Quezon City.

The Facts

On June 13, 1996, at around 8:00 o'clock in the morning, Abadilla left his house at Soliven I, Loyola Grand Villas, Loyola Heights, Quezon City and drove his car, a black Honda Accord with Plate No. RNA-777. Soon after he left, his wife Susan Abadilla received a phone call from him and they briefly talked. Just a few minutes after their conversation, she received another phone call from Abadilla's tailor who was asking about her husband because, according to him, he heard a radio broadcast report that Abadilla met an accident.[3]

Meanwhile, at about 8:40 a.m., Senior Police Officer (SPO) 2 Arthur Ortiz, the desk officer on duty at Station 8 of the Central Police District Command (CPDC) located at P. Tuazon Blvd., Project 4, Quezon City, answered a telephone call from a male person who reported a shooting incident along Katipunan Avenue. Station Commander Police Chief Inspector (Insp.) Edward Villena, together with his investigators SPO2 Wahab Magundacan, Police Officer (PO) 2 Gerardo Daganta and PO1 Ronald Francisco immediately boarded a PNP marked vehicle and headed towards Katipunan Avenue.[4]

Upon reaching the area at 8:45 a.m., they saw several onlookers around and near a black Honda Accord with Plate No. RNA-777 on a stop position in the middle lane of Katipunan Avenue facing south going to Libis. They found the victim's bloodied and bullet-riddled body partly slumped onto the pavement at the car's left door, which was open. The front windshield and sliding glass windows on the left and right side were shattered; a hole was seen on the glass window of the left rear door,

[3] TSN, September 18, 1996, pp. 31-35.

[4] TSN, August 1, 1996, pp. 14-22; TSN, August 6, 1996, pp. 14-19; TSN, August 7, 1996, pp. 11-13.

apparently pierced by a bullet. Glass splinters were scattered inside the car and on the pavement at both sides of the car. On orders of Chief Insp. Villena, PO2 Daganta and PO1 Francisco assisted by a certain Cesar Espiritu, immediately brought the victim to the Quirino Memorial Hospital in Project 4, Quezon City. SPO2 Magundacan was instructed to stay behind to cordon the area for the start of the investigation while Chief Insp. Villena went to their station to get his camera.[5] After ten (10) minutes, Chief Insp. Villena returned and took pictures of the crime scene, and also of the victim at the hospital.[6] SPO2 Magundacan was able to pick up several spent shells and two (2) slugs, apparently fired from .45 and 9 mm. pistols.[7] A sketch was prepared by PO2 Daganta who also interviewed some of the witnesses present at the crime scene.[8] The spot report and list of recovered items (including a Philippine Military Academy gold ring on which was engraved the name "Rolando N. Abadilla") were later prepared by SPO2 Magundacan at the police station.[9]

On the same day, witnesses Cesar F. Espiritu (who was driving his car ahead of the victim), Aurora Urbano (Metro Aide), Ani C. Icot (house gardener of the Abadilla family, Freddie Alejo (security guard posted at Eliscon Electrical Supply store located at 211 Katipunan Avenue) and Minella Alarcon (college professor at Ateneo de Manila University) gave their respective statements before the Criminal Investigation Division of the Central Police District Command (CID-CPDC), PNP-National Capital Region (NCR) at Camp Karingal, Sikatuna Village, Quezon City, while the statement of Merlito Herbas (security guard posted at the Blue Ridge Realty Corporation located at

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[5] TSN, August 1, 1996, pp. 22-34; TSN, August 6, 1996, pp. 19-23, 35-37; TSN, August 7, 1996, pp. 13-16.

[6] TSN, August 7, 1996, pp. 17-26; Exhibits "A" to "A-9", folder of exhibits, pp. 6-9. Also Exhibits "29" to "35" for the Defense, pp. 356-362.

[7] TSN, August 1, 1996, pp. 41-46.

[8] TSN, August 1, 1996, pp. 40-41; TSN, August 6, 1996, pp. 30-61; Exhibit "D", folder of exhibits, p. 13.

[9] TSN, August 1, 1996, pp. 55-59; TSN, August 6, 1996, pp. 75-76; Exhibits "B" and "C", folder of exhibits, pp. 10-12.

No. 219 Katipunan Avenue, Quezon City) was taken at Station No. 8, CPDC at P. Tuazon Blvd., Proj. 4, Quezon City.[10]

Based on their accounts, the black Honda Accord with Plate Number RNA-777 was caught in traffic while traversing Katipunan Avenue going to Santolan at past 8:00 o'clock in the morning of June 13, 1996. While on a stop position, four (4) men armed with handguns surrounded the said car and fired several successive shots at the man inside it. One (1) of the men who were positioned at the left side of the car opened its door and took something inside. He grabbed the victim by the neck and dropped his body down towards the pavement at the left door. When there were already several people who had come out to see what was happening, one of the suspects shouted, "*Walang gagalaw…Dapa!*"

Minella Alarcon, who was then with her son-in-law on board her white KIA Pride, was following the victim's car (at other side or diagonal line) at the time of the incident. After the shooting, two (2) of the armed men who fired at the victim's car approached their car and pounded at it saying "*Baba…Baba*!" Terrified, she and her son-in-law got off and crawled towards the side of the street. The assailants then boarded the KIA Pride and went away to the direction of an alley along Katipunan Avenue. Her car was later recovered, as it was found abandoned along Aguinaldo Street near the corner of J.P. Rizal Street, Project 4, Quezon City, still with bloodstains on the car door.[11]

The victim was pronounced dead on arrival at the hospital. The victim's identity was confirmed by Susan Abadilla who had rushed to the hospital. Chief Insp. Villena escorted her in bringing the victim's body to the PNP Crime Laboratory in Camp Crame for the autopsy requested by the CPDC, PNP-NCR, Camp Karingal.[12] From the testimony and medico-legal

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[10] Records, Vol. I, pp. 27-40.

[11] Records, Vol. I, pp. 39-40; See also Exhibits "37" to "45-B-1" for the Defense, folder of exhibits, pp. 363-371.

[12] TSN, August 7, 1996, pp. 26-28; TSN, September 18, 1996, pp. 36-37.

report of Dr. Jesusa N. Vergara, it was disclosed that the victim died of hemorrhage as a result of multiple gunshot wounds, mostly in the head and chest, and also sustained abrasions, contusions, lacerated skin, hematoma and incised wounds or cuts in the skin caused by glass splinters.[13]

Records indicate that immediately after the incident, elements of the CPDC, PNP-NCR at Camp Karingal were already coordinating with investigators of Station 8-CPDC who had turned over to said office the evidence gathered and referred the witnesses present at the crime scene.[14] As a result of follow-up operations, Joel de Jesus, *alias* "Tabong", was apprehended on June 19, 1996 at his house at Dahlia St., Fairview, Quezon City. He executed his *Sinumpaang Salaysay* dated June 20, 1996 and *Karagdagang Sinumpaang Salaysay* dated June 21, 1996.[15]

In his first statement, Joel de Jesus narrated that on June 13, 1996 at 6:30 in the morning after parking his tricycle at the corner of Regalado and Camaro Streets, Fairview, he was fetched by Lorenzo "Larry" delos Santos who was his neighbor at Ruby St. Larry was accompanied by his nephew Ogie, and a certain "Tisoy" who drove the owner-type jeep. Larry told him they were going to kill a big-time personality (*"may titirahin na malaking tao"*), whose name was Abadilla, and that they were going to ambush the latter at Katipunan Avenue. The ambush would be carried out by Joel, Larry, Tisoy, Ram (de Jesus), Cesar who was a policeman, and four (4) others. That same morning, they proceeded to Katipunan Avenue on board Larry's owner-type jeep without a plate and a Mitsubishi L-300 van. They carried .45 and 9 mm. pistols; Joel used a .38 caliber revolver. According to Joel, he only acted as lookout; Lorenzo, Ram and Cesar were the ones who fired shots, while

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[13] TSN, September 10, 1996, p. 97; Exhibit "Q", folder of exhibits, pp. 34-35.

[14] Testimony of P/Insp. Rogelio Castillo - TSN, August 7, 1996, pp. 54-124.

[15] Exhibits "E" and "N", folder of exhibits, pp. 14-20, 30.

Tisoy focused on a security guard at a store. After the shooting, they separated ways: the owner-type jeep he was riding in headed towards Santolan; Cesar's group split so that three (3) of them rode the L-300 van and the three (3) others boarded a car stolen from a woman driver. Upon reaching Commonwealth Avenue and Tandang Sora, they stopped at Glori Supermarket where all the firearms used were returned to the group, including the revolver earlier given to Joel. It was already dusk when Lorenzo dropped him off at the tricycle parking area at Camaro St.[16]

Joel further stated that the ambush-slay of Abadilla was planned by the group three (3) days before, when they met at the house of Ram de Jesus also in Fairview near his house. Although he did not know the identity of the person who masterminded the ambush-slay of Abadilla, he described the mastermind as the one (1) who opened Abadilla's car and pulled Abadilla from the inside of the car, and he was also the one (1) who drove the L-300 van. Lorenzo told him he should not worry because Lorenzo would take care that he would be compensated for his participation. When they reached Katipunan Avenue, they alighted from their respective vehicles to wait for Abadilla. The L-300 van where the mastermind and Cesar rode was just behind Abadilla's car. There was no more order given to fire because when traffic stopped the vehicles on the road, those in the L-300 van just got down, positioned themselves and fired upon Abadilla. The mastermind not only fired at Abadilla from outside the latter's car, he even made sure Abadilla was dead, as half of his body went inside the car, firing again at Abadilla before finally dropping him to the ground. Joel added that he just remained silent after the incident, for which he did not earn anything and was threatened by one (1) of those who were in the L-300 van whose name he did not know.[17]

In his second statement, Joel pointed to his cohorts in a police line-up inside the CID-CPDC, PNP-NCR, Camp Karingal,

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

[17] *Id.*, at pp. 18-19.

Quezon City where he positively identified Rameses de Jesus ("Ram"), Cesar Fortuna, Lenido Lumanog and PO2 Romeo Costibolo as among those who participated in the ambush-slaying of Abadilla on June 13, 1996.[18]

The afore-named suspects identified by Joel were apprehended during further follow-up operations conducted on June 20, 1996 by "Task Force Rolly" subsequently formed by the PNP after the lead initially provided by him. As mentioned in the Joint Affidavit executed by Police Senior Inspector (P/Sr. Insp.) Ronello N. Navarro, Police Inspector (P/Insp.) Ferdinand A. Marticio, SPO4 Wilfredo G. Galvan and SPO1 Allan dela Cruz dated June 21, 1996, as early as June 15, 1996, or two (2) days after the ambush-slay of Abadilla, their investigation already established the identities of a number of suspects through photo files and forensic sketches of suspects provided by eyewitnesses.[19] Said arresting officers were also able to seize certain firearms and other pieces of evidence, to wit:

> 4. That after SPO2 cesar Fortuna revealed the whereabouts of the slain victim's stolen cal .45 pistol, we conducted a follow up in a gunsmith located at Sampaloc, Manila on 21 June 1996, from where we held for investigation, one –
>
> DANTE MONTEVIRGEN *y* VILLANUEVA, 37 years old, married, self-employed/gunsmith, native of Pula, Oriental Mindoro and with given address at 1412 Riverside Street, Commonwealth Avenue, Bgy. Holy Spirit, Quezon City.
>
> 5. That upon confrontation said subject person surrendered two (2) cal .45 pistols whom suspect Cesar Fortuna allegedly brought to him for repair/tampering of serial numbers, to wit:
>
> (a) 1- COLT MARK IV cal .45 pistol Gov't Model
>
> SN-66B5574; and

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[18] *Id.*, at p. 30.

[19] Exhibit "1" for the Defense (Fortuna), folder of exhibits, pp. 99-101; Records, Vol. I, pp. 60-62.

(b) 1-COLT MARK IV cal .45 pistol Series 70

SN-647048.

6. On the same day, 21 June 1996, after SPO2 Cesar Fortuna expressed willingness to surrender the motorcycle allegedly used in casing and surveillance upon the deceased victim, we took said motorcycle at Gate 2 of Camp Crame along Santolan Road (Col Bony Serrano Avenue), Quezon City, to wit:

1- Unit, KAWASAKI motorcycle without license plate, chassis No. C-5121696, Motor No. 658 122951

7. That the aforenamed subject person together with the property/ articles recovered were turned over to the Police Headquarters for investigation and appropriate action;

x x x x x x x x x[20]

With respect to Lorenzo delos Santos, he also executed a statement dated June 21, 1996 admitting his participation in the ambush-slay of Abadilla on June 13, 1996, and pointing to Rameses de Jesus as the mastermind and also named the following suspects: "POGS" whose real name was Lenido Lumanog, Joel de Jesus *alias* "Tabong", Cesar Fortuna and four (4) others whom he did not know. He said that he was just brought along by Rameses de Jesus and was further threatened that if he would not go with them, they would kill his family. He claimed that he merely acted as a lookout. As similarly recounted by Joel, Lorenzo stated that the group used an L-300 van, a car and a jeep in going to Katipunan Avenue in the morning of June 13, 1996. Joel had a .45 cal pistol, Cesar a .38 revolver, Lenido a 9 mm., a certain Manuel dela Rosa who did not get out of the vehicle, carried a .38 cal revolver, and Lorenzo, also a .38 cal revolver. Rameses, Joel, Cesar and Lenido were the ones who shot Abadilla. After the shooting, the group left him behind and he just walked on the street before taking a taxi ride to the Bureau of Customs. Lorenzo maintained that he was not given any money. He was just picked up from his house at Ruby St., Fairview Subdivision by Rameses, Lenido, Cesar and Joel. He was made to board Rameses' car with a

[20] *Id.*, at p. 100.

warning that if he did not join the group, they would throw a hand grenade at his family.[21]

In his *Karagdagang Salaysay* dated June 21, 1996, security guard Freddie Alejo positively identified Joel and Lorenzo during a police line-up. Alejo confirmed these two (2) as the persons he saw from his guard post walking to and fro before the shooting incident. They were also the ones who shouted that no one (1) should interfere at the time the four (4) armed men were firing shots at Abadilla.[22]

SPO2 Cesar Fortuna *y* Abudo, Rameses de Jesus *y* Calma, Lorenzo delos Santos *y* Dela Cruz, Lenido Lumanog *y* Luistro, Joel de Jesus *y* Valdez and Arturo Napolitano *y* Caburnay were charged in Criminal Case No. Q-96-66679 with theft of the alleged gun owned by the late Abadilla (Colt Mark IV cal .45 pistol SN-66BS574), a gold-plated Omega wristwatch and a wallet containing an undetermined amount of cash plus calling cards and other important papers, all of which were supposedly stolen by them after killing Abadilla.[23]

On the other hand, Lorenzo delos Santos *y* Dela Cruz, SPO2 Cesar Fortuna *y* Abudo and Rameses de Jesus *y* Calma were respectively charged with illegal possession of firearms (Presidential Decree No. 1866) in Criminal Case Nos. Q-96-66680, Q-96-66682 and Q-96-66683.[24]

All the seven (7) named accused in Criminal Case No. Q-96-66684 were indicted for Murder under the following Information:

That on or about the 13th day of June, 1996 in Quezon City, Philippines, the above-named accused, conspiring together, confederating with several other persons whose true names, identities, whereabouts have not as yet been ascertained and mutually helping with one another, did then and there, wilfully, unlawfully and feloniously with intent to kill, with evident premeditation, treachery,

[21] Exhibit "S", folder of exhibits, pp. 37-38.

[22] Exhibit "M", folder of exhibits, p. 29.

[23] Records, Vol. I, pp. 2-3.

[24] *Id.*, at pp. 4-9.

in consideration of a price, reward or promise, and taking advantage of superior strength, attack and employ personal violence upon the person of COL. ROLANDO ABADILLA *y* NOLASCO by then and there shooting the latter with the use of different kinds of firearms, hitting him on the different parts of his body, thereby causing the instant and immediate cause of his death, to the damage and prejudice of the heirs of the said COL. ROLANDO ABADILLA *y* NOLASCO.

Contrary to law.[25]

When arraigned, all the accused pleaded not guilty to the murder charge.

In view of the dismissal of the criminal cases for illegal possession of firearms (P.D. No. 1866) and theft (Criminal Case Nos. Q-96-66679, Q-96-66680, Q-96-66682 and Q-96-66683),[26] our discussion of the proceedings before the trial court will be confined to the case for murder against Fortuna, Lumanog, Joel de Jesus, Rameses de Jesus and Santos.

Evidence for the Prosecution

The prosecution presented the testimonies of police officers who conducted the investigation and follow-up operations up to the actual apprehension of suspects in the killing of Abadilla: SPO2 Wahab Magundacan, PO2 Gerardo Daganta, Maj. Edward Villena, P/Insp. Rogelio Castillo, SPO2 Jose Garcia, Jr., SPO3 Romeo De Guzman, SPO2 Pio Tarala, Atty. Florimond Rous, P/Sr. Insp. Jose B. Macanas and P/Insp. Ferdinand Marticio.

The testimonies of P/Insp. Castillo, SPO2 Garcia, SPO2 Tarala, Atty. Rous and P/Sr. Insp. Macanas were given in court in the light of serious allegations of torture, forced confessions and violations of constitutional rights raised by the accused, which were widely reported in the media and brought before the Commission of Human Rights (CHR) and eventually to Amnesty International-USA.

P/Insp. Castillo, testifying on cross-examination, admitted that accused Joel de Jesus was apprehended by members of

[25] *Id.,* at pp. 10-12.

[26] Records, Vol. 3, pp. 1014-1020 and 1027.

his squad led by Lt. Rodolfo on June 19, 1996, but said suspect was not presented to him until noontime of the next day, June 20, 1996. He did not ask his men if Joel had been subjected to investigation and if he was, whether he was assisted by counsel. He explained that there were still then follow-up operations in which they needed Joel. As for the press conference wherein Joel was presented together with then Secretary Barbers and General Recaredo Sarmiento, he learned about it only later.[27]

The witness declared that the constitutional mandate and requirements under Republic Act (R.A.) No. 7438 had been complied with because he secured the services of a counsel during the interrogation of then suspect Joel de Jesus when his sworn statement was taken on June 20, 1996. He had informed the said suspect of his right to counsel in the presence of CID personnel and when he brought him to the office of Atty. Confesor R. Sansano of the Integrated Bar of the Philippines (IBP) located at the second floor of the Hall of Justice, Quezon City Hall. Asked why it occurred to him to bring the suspect to the IBP, the witness replied that he believed IBP was a private, not a government, institution. He also asked Joel — who was allowed to make a telephone call, although he was not aware if Joel made any such call — whether he had his own lawyer. He recalled asking Joel if he was willing to go with them to the City Hall, because he had asked to secure the services of counsel. There had been instances when the IBP lawyers assisted some suspects brought by the CPDC. The CPDC provided the typewriter and papers to be used and in this case, Atty. Sansano accommodated them in using the facilities of the IBP Chapter office. Joel executed his statement, with SPO2 Jose L. Garcia, Jr. propounding the questions. They started taking his statement at 1:10 p.m. of June 20, 1996 at Room 235, IBP Office, Quezon City Hall of Justice in the presence of Atty. Sansano and a number of people inside said office.[28] He was apprised for the first time about a suspect (Joel) who was just apprehended when he called their office

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[27] TSN, August 15, 1996, pp. 14, 31-39, 57-62.

[28] *Id.*, at pp. 46, 64-67, 70-83.

upon arriving home on the night of June 19, 1996. The information was given to him by the desk sergeant and thereupon he gave instruction to contact the witness and include that suspect in a line-up. He then informed their Chief regarding this development. When he asked for the whereabouts of this suspect, he was given the reply that the suspect was still with their squad conducting follow-up operations.[29]

P/Insp. Castillo recounted that he reported to the office at 8:00 o'clock in the morning of June 20, 1996 and Joel was actually presented to him by Lt. Rodolfo at 10:00 o'clock that same morning, in the presence of CID men. He told Joel he was being implicated in the case, to which Joel replied "*Sir, lookout lang naman ako, sir.*" This initial questioning of Joel took place at the investigation room of the CID, where there were other private complainants talking to investigators, and there were a number of policemen around who were not in uniform. He advised Joel that he was free to use the telephone, and although Joel had no relatives present at that time, he warned Joel that his case was serious and he must seek the services of counsel. He first thought of the legal assistance provided by the City Attorney, then that by the Public Attorney's Office (PAO), and lastly by the IBP. Between 12:30 and 1:00 p.m., he and his men, together with Joel in a separate vehicle, left the CID to go to the Quezon City Hall. They scouted for a lawyer and inquired from the IBP chapter office. They found Atty. Florimond Rous and the lady counsel at a hearing in a courtroom. Atty. Rous advised them to wait for Atty. Sansano, who apparently was the head of the IBP chapter office. He was moving in and out of the office while the statement of Joel was being taken in the presence of Atty. Sansano. Before that, Atty. Sansano talked to Joel alone, after which they were called in again for the taking of the statement at 2:00 p.m. They left City Hall at past 4:00 or 5:00 that afternoon.[30]

SPO2 Garcia, Jr. testified that he was a member of the CID-CPDC at Camp Karingal. On June 20, 1996 when he

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[29] *Id.*, at pp. 85-99.

[30] *Id.*, at pp. 99-122, 125-141, 145-154.

reported for duty, he was assigned by P/Insp. Castillo to take down the statement of Joel de Jesus. While still inside the office of P/Insp. Castillo, he asked Joel if his statement was voluntary and what kind of statement he was going to give. Joel answered that his statement was voluntary and he wanted to be included as state witness in the Abadilla case. Together with Joel, SPO2 Tarala and SPO1 Edilberto Nicanor, he took lunch at the back of their office before proceeding to the Quezon City Hall at around 12:00 o'clock noon, with P/Insp. Castillo who said that Joel's statement would be taken infront of a counsel. At the Hall of Justice lobby, P/Insp. Castillo instructed them to guard Joel as he would look for a counsel. After more or less 25 to 30 minutes, P/Insp. Castillo came back and they proceeded to the second floor of the office of the IBP chapter. They were met by a lady secretary, and afterwards he saw P/Insp. Castillo talking to a lawyer whom he came to know as Atty. Rous. It seemed Atty. Rous could not decide on what P/Insp. Castillo told him and said he (Atty. Rous) would first ask the permission of Atty. Sansano. They waited for Atty. Sansano, who arrived in about twenty (20) to twenty-five (25) minutes. Atty. Sansano and P/Insp. Castillo talked for about five (5) minutes and thereafter, Atty. Sansano requested them to leave, because he would talk personally to Joel. Atty. Sansano and Joel talked inside the room for five (5) to ten (10) minutes. Thereafter, he, P/Insp. Castillo, SPO2 Tarala and SPO1 Edilberto Nicanor went inside the room and that was the time Atty. Sansano announced that Joel was ready for the taking of his statement.[31]

SPO2 Garcia, Jr. further testified that he took down the statement of Joel using a typewriter in the office of Atty. Sansano. He brought said typewriter near the table of Atty. Sansano and a chair to sit on beside Joel. Joel was seated infront of the desk where Atty. Sansano was sitting. After completing the taking down of the statement, he gave it to Joel and asked the latter to read it. Joel read the typewritten statement and when he finished reading, he gave the same to Atty. Sansano. Atty. Sansano read all the contents of the document and asked Joel

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[31] TSN, September 24, 1996, pp. 5-28.

if he understood it, to which he answered "Yes, sir." Atty. Sansano then asked Joel if he was willing to sign the statement, to which the latter again replied in the affirmative. Joel signed the statement in his presence and also that of Atty. Sansano, who likewise signed it in his presence. SPO2 Garcia, Jr. also identified his own signature and that of SPO1 Nicanor who signed the statement in his presence. From the office of Atty. Sansano, they proceeded to the fourth floor in the office of Prosecutor Ramon Gerona before whom Joel subscribed his statement. After reading the statement, Fiscal Gerona explained to Joel in Tagalog the consequences of the statement he executed. Joel was calm and said he was only a lookout in the crime. Earlier, before propounding questions to Joel at the office of Atty. Sansano, the latter addressed Joel in Tagalog: "*Joel naiintindihan mo na ang mga itinatanong sa iyo ng mga pulis? Ito ba sarili mo o boluntaryo ba 'tong statement mo na ito hindi ka ba nila tinakot, sinaktan o anupaman?*" While Joel was answering his questions, Atty. Sansano halted him from typing the answer given by Joel to ask the latter if he could understand the question propounded to him. The witness was also asked to identify Joel de Jesus inside the courtroom.[32]

On cross-examination, SPO2 Garcia, Jr. affirmed that before the taking down of the statement, he had explained to Joel the consequences of his being a state witness, in accordance with the instruction of P/Insp. Castillo. He specifically explained to Joel: "*Itong statement na ito ay puwedeng gamitin laban o panig sa 'yo sa alinmang hukuman dito sa Pilipinas. Ikaw ba ay nakahandang tumestigo sa mga sasabihin ng tao dito sa statement mo na ito na magiging laban sa kanila.*" Joel told him, "Yes, sir." P/Insp. Castillo had told him that Joel was to turn state witness before the latter was brought to the IBP Office. When P/Insp. Castillo had returned to the lobby of the Hall of Justice, he told them that the only person present who would act as Joel's counsel would be located at the IBP Office, and Joel would be brought there. It was his first time to meet Atty. Sansano. As to whether Joel was also assisted

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[32] *Id.,* at pp. 29-71.

by Atty. Rous when he was investigated on June 21, 1996, the witness said he did not know.[33] Regarding the portion of the statement dated June 20, 1996 wherein he asked Joel about a pending case against him, which Joel identified as a rape case, he denied having knowledge of any such pending case before the taking of the statement. He also did not ask Joel if he already had a counsel, or if Joel already knew Atty. Sansano. Another lawyer, Atty. Rous, was actually present when he was taking Joel's statement at the office of Atty. Sansano, who was also present throughout the time he was taking down the statement of Joel. He did not hear Joel mention the name of another lawyer to Atty. Sansano, specifically that of Atty. David as suggested by defense counsel.[34]

SPO2 Tarala testified that as a member of the PNP Station in Kamuning, Quezon City, assigned at the CID, he came to investigate accused Lorenzo delos Santos on June 21, 1996. On that day, after lunch, he was instructed by P/Insp. Castillo to proceed to the Public Assistance and Reaction Against Crime (PARAC), Dallas Bldg. in Tomas Morato Avenue, because one (1) of the suspects in the Abadilla slaying was apprehended by the PARAC follow-up team and was supposed to give his statement. So he went there together with SPO1 Primo Borito and PO3 Ramil Hatchero. Upon arriving at said office, he met P/Sr. Insp. Macanas, who called a person he introduced as Lorenzo delos Santos. Before taking down the statement of Lorenzo, he advised the latter of his rights under the law, warning that any statement he would make could be used against him in any court of law, so that he had the right not to answer any question which to his mind would incriminate him. Lorenzo responded by saying that he wanted to give a statement and to be a state witness. When Lorenzo asked if he could use a telephone at the information table, he said yes. Lorenzo then called his office because he was a customs broker, and also called up a relative who was a certain Col. Sala (Col. Milagros Sala), a Quezon City police official. He told Lorenzo that he

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[33] *Id.*, at pp. 78-97.

[34] TSN, September 25, 1996, pp. 93-113, 135-137.

should have a lawyer of his choice during the taking down of his statement. He prodded Lorenzo to call the lawyer, whom Lorenzo knew to be always at the City Hall. They then proceeded to the Quezon City Hall to look for that lawyer at the Office of the City Attorney. However, Lorenzo was not able to find said lawyer; he asked somebody (a woman) who referred them to the Hall of Justice. After failing to find the person Lorenzo was looking for to be his counsel, an old man, a vendor suggested to them to go upstairs at the IBP Office. The lady secretary of the IBP chapter office introduced them to Atty. Florimond Rous, who then asked him and his companions to step out of the room so Atty. Rous could talk to Lorenzo. Atty. Rous and Lorenzo talked for ten (10) to fifteen (15) minutes, after which they were called again to enter the office. His two (2) companions were left outside and he was told by Atty. Rous that he had already apprised Lorenzo of his rights, but Lorenzo still wanted to give a statement.[35]

Upon the instruction of Atty. Rous, he took down the statement of Lorenzo, the three (3) of them in one (1) corner of the room while over at the receiving area there were the secretary and a lady lawyer. The statement of Lorenzo was in Tagalog, typewritten in question-and-answer form. Each time after he had asked a question, Atty. Rous would in turn ask Lorenzo if he wanted to answer it, and Lorenzo would answer yes. He was at the typewriter, and the two (2) (Atty. Rous and Lorenzo) were in front of him, seated across each other. The taking of the statement started at about 3:10 in the afternoon and was finished in more than one (1) hour. He asked Lorenzo to read first his statement, and then Atty. Rous read it also. Next, they went up to the office of Fiscal Refuerzo, but was referred by the secretary to the inquest fiscal on duty, Fiscal Ben dela Cruz. At his office, Fiscal dela Cruz asked Lorenzo to stand in front of him and asked if the statement was voluntarily given by him, if what was contained therein was true, and if he was ready to swear before him. Lorenzo answered yes, and the subscribing of his statement before Fiscal dela Cruz was also

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[35] TSN, October 3, 1996, pp. 23-46; TSN, October 8, 1996, pp. 19-20.

witnessed by Atty. Rous.[36] Lorenzo had earlier told him and his companions at the PARAC office that his participation in the ambush-slay of Abadilla was that of a lookout, and that he was only forced to join the group because of the threat to his family.[37]

SPO2 Tarala admitted that the first time he went to the IBP Office at the Hall of Justice was on June 20, 1996 when SPO2 Garcia, Jr. took the statement of Joel de Jesus. Since only SPO2 Garcia, Jr. and Joel stayed inside the room, he and his companion just walked around.[38]

Atty. Rous testified that he was one (1) of the free legal aid counsels of the Free Legal Aid Committee of the IBP-Quezon City Chapter. One (1) of their primary duties was to assist indigents in their cases, and aside from this, they were also tasked to assist the various suspects during custodial investigations in the various investigations of different agencies, such as the CIS and PNP. He recalled handling at least ten (10) to fifteen (15) of such custodial investigations. On June 21, 1996, he assisted a person by the name of Lorenzo delos Santos accompanied by a police investigator (whose name he could no longer remember) from the Central Police District, who told him that the said suspect was willing to make a confession and asked if he could assist him during his custodial investigation. He identified Lorenzo inside the courtroom.[39] The police investigator had informed him of the charge against Lorenzo, which was the killing of Abadilla.[40]

Before the start of the investigation of Lorenzo, Atty. Rous related that he asked the policeman to leave him and Lorenzo. When the investigators were gone, he asked Lorenzo to remove his shirt so he could see if there were any tell-tale marks of

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[36] TSN, October 3, 1996, pp. 47-68.

[37] TSN, October 8, 1996, pp. 38-41.

[38] TSN, October 9, 1996, pp. 66-67.

[39] TSN, October 15, 1996, pp. 10-17.

[40] *Id.*, at pp. 45-48.

any harm or specific mark upon him. Having satisfied himself that there were no such mark on the suspect's body, Atty. Rous began interviewing him. He asked Lorenzo if he was willing to execute a confession, and Lorenzo answered he was willing to do so. He then asked Lorenzo if he was willing to have him as his counsel. Evidently, Lorenzo wanted him to be his counsel during the custodial investigation for the taking of his statement. Convinced that Lorenzo was giving his statement without any pressure or force, they started the investigation proper. The police investigator who accompanied Lorenzo to their office was the one (1) who had propounded questions in Tagalog and typed the answers given by Lorenzo also in Tagalog. He was just within hearing distance and was present during the entire time of the taking of Lorenzo's statement. Afterwards, he let Lorenzo read the typewritten statement, and he asked Lorenzo if those were the questions given to him and the answers he had given, to which he replied in the affirmative. He further asked Lorenzo if he was willing to sign the statement without pressure, and Lorenzo said he was willing to sign the same. He asked Lorenzo to sign his statement before the office of Prosecutor Ben dela Cruz. Prosecutor dela Cruz first read the statement and then asked Lorenzo if he was willing to sign the same, and he answered in the affirmative. Lorenzo signed the statement in their presence; he and Prosecutor dela Cruz also signed it.[41]

Atty. Rous further testified on cross-examination, that after the police investigator and Lorenzo had left, a few minutes later, some other investigators arrived at their office, bringing along Joel de Jesus. This Joel de Jesus had given a statement the previous day, June 20, 1996, and he was told that Joel would be giving this time a supplemental statement. The investigators apprised Joel of his constitutional rights before the taking down of his statement. He was not sure if Lorenzo and the police investigator had actually left already, and he could not remember exactly what transpired at this point. The defense counsel noted the absence of the word "competent" to qualify the word

[41] *Id.,* at pp. 17-39.

"counsel" in the preliminary portion of Lorenzo's statement. Atty. Rous described the answers given by Lorenzo as spontaneous, and he did not recall any hesitancy on the part of the latter. He maintained that he found no contusions or abrasions on Lorenzo's body.[42]

P/Sr. Insp. Macanas testified that he was then assigned at the PARAC as its operations officer. They were closely coordinating with and sharing evidence for case build-up operations with the CPDC in the investigation of the killing of Abadilla. On June 19, 1996, at around 3:00 o'clock in the afternoon, they were directed to proceed to the CPDC headquarters in view of an information that a certain suspect *alias* "Tabong" was already located while repairing his tricycle somewhere in Fairview, during which he was identified by an eyewitness, security guard Alejo who went there with CPDC operatives. At the time this radio message was received, they were within the vicinity of Fairview, and the CPDC gave the signal for them to accost said suspect. He was present when "Tabong," who was later identified as Joel de Jesus, was arrested by the joint elements of the CPDC and PARAC. Joel was turned over to the CID-CPDC at about past 4:00 p.m. Subsequently, their superior, P/Sr. Supt. Bartolome Baluyot, informed them of revelations given by Joel, for which they were called in again for joint follow-up operations. They brought Joel to Fairview along Ruby St. where Joel's supposed companions, namely: one *alias* "Ram", Lorenzo delos Santos, Ogie and one (1) *alias* "Cesar", could be found. Joel first pointed to the house of Ram (Rameses de Jesus), but they did not find him there; instead they found a man named Cesar Fortuna, whom Joel pointed to in front of said house. They immediately apprehended Fortuna and identified themselves. He informed Fortuna that he was being implicated by Joel in the killing of Col. Abadilla. Fortuna introduced himself as a policeman assigned with the Traffic Management Command (TMC). As a standard procedure, they informed Fortuna of his constitutional rights and then brought him to the CPDC for investigation. At the time, Fortuna

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[42] *Id.,* at pp. 100-164.

had a gun (caliber .38) tucked in his waist, which they confiscated.[43]

P/Sr. Insp. Macanas further testified that in the course of their follow-up operations, with information being provided by Joel, they were also able to arrest another suspect *alias* "Larry", whom they met at a dark alley. Upon being pointed to by Joel, they apprehended Larry who was later identified as Lorenzo delos Santos, frisked him and found in his possession a cal .38 Smith and Wesson, for which he could not present any license or document. They brought Lorenzo to the CID-CPDC. He identified both Lorenzo and Fortuna inside the courtroom.[44] On cross-examination, the witness admitted they had no warrant of arrest when they went to Fairview to locate the suspects, as it was a "hot person" case ordered by their superior and requiring the immediate arrest of suspects identified by witnesses like, in this case, Joel. Joel had admitted to the CID-CPDC investigators his participation in the Abadilla killing. After accosting Joel at Camaro St., whom they identified through a photograph, and before taking him to the CID-CPDC, he informed Joel that he was identified as one (1) of the suspects in the killing of Col. Abadilla; that he had a right to remain silent; that anything he will say could be used against him; he had the right to counsel of his own choice, and if he could not afford one, the government would provide him. As to Lorenzo, he was arrested past midnight of June 20, 1996; they had brought Joel along while moving to locate Lorenzo.[45] He was just at the back of those operatives who actually arrested Lorenzo.[46]

The principal witness for the prosecution was **Freddie Alejo**, who testified that as a security guard employed by Provider Security Agency, he was then assigned at 211 Katipunan Avenue, Blue Ridge, Quezon City. On June 13, 1996, he reported for duty at 7:00 o'clock in the morning. By 7:30 a.m., he noticed

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[43] TSN, November 12, 1996, pp. 12-45.

[44] TSN, November 28, 1996, pp. 3-13.

[45] *Id.*, at pp. 14-36.

[46] TSN, December 10, 1996, pp. 25-43.

two (2) men walking back and forth in front of his post. He was shown by the prosecutor some photographs taken of the parking area he was then guarding, his guard post beside the building and the street in front of said building (Exhibits "G", "H", "I" and "J"[47]).

Alejo recounted that there was a man riding in a black car who was shot by four (4) persons in front of the building he was guarding. The car was in the middle lane of the road, and the car's specific location was found in one (1) of the photographs (Exhibit "H-4"[48]). One (1) of the two (2) persons he earlier saw walking back and forth in front of him pointed a gun at him (the position of said man was marked as Exhibit "H-5"[49]). That man was holding a short gun and he told Alejo to come down ("*Baba!*"), but he did not budge. He then saw one (1) of the assailants (No. 1 in Exhibit "H"[50]), the one (1) standing on the left side of the car (left front door), grab the victim by the neck, get the clutch bag of the victim inside the car, pull said victim out of the car, and drop him on the road. He then heard another shot coming from said attacker (No. 1). Another man (No. 5 in Exhibit "H"[51]) shouted: *"Dapa…walang makikialam!"* and the rest of the four (4) men (marked as Nos. 2, 3 and 4 in Exhibit "H"[52]) faced him (witness Alejo). Next, the companion of No. 5, who was earlier walking back and forth in front of him (marked as No. 6 in Exhibit "H"[53]), pointed a gun at him. This time, he did come down, lowering his body and bowing his head inside the guardhouse. The witness identified the suspects inside the courtroom as the persons he saw and marked as No. 5 (**Joel de Jesus**) the first one who pointed a gun at him shouting "*Baba ka!*"; No. 1 who grabbed

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[47] Folder of exhibits, pp. 22-25.

[48] *Id.*, at p. 23.

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

the victim, got his clutch bag and pulled him out of the car (**Lenido Lumanog**); No. 2 (**Rameses de Jesus**); No. 6 the second person who pointed a gun at him (**Lorenzo delos Santos**); No. 4 (**Augusto Santos**) and No. 3 who was positioned at the right front door of the victim's car (**Cesar Fortuna**). Nos. 1 and 3 (Lumanog and Fortuna) were the ones who shot the victim with short firearms, while No. 2 (Rameses) was just standing and facing the victim with a gun in his hand, and No. 4 (Augusto) was also just standing facing the driver and holding a short gun. It was probably less than a minute when the gunfire stopped, and he stood up at his guard post. The assailants were no longer in sight and he saw the car's window shattered. He identified the victim's black car as shown in photographs (Exhibits "A-1" to "A-4"[54]).[55]

Alejo further testified that he was one (1) of those asked by the policemen who arrived regarding the incident. He was told to go to Station 8, which was just near the place. At Station 8, another security guard of an adjacent building was also being investigated. Thereafter, the police officers brought him to Camp Karingal, along with the other security guard.[56]

On cross-examination, Alejo described his guard post as elevated; and two (2) arm's length on the left and right side, there was an alley just beside the guard post which was at the corner.[57] The victim's car was in front of the building he was guarding, at a slightly slanted direction from it ("*Lihis po ng konti*"). His view was toward the direction of the front door of the car (rear end). From where he was at the time, the car was at a distance of more or less ten (10) meters. The first time one (1) of the suspects pointed a gun at him, he was not scared. He saw four (4) men standing around the victim's car, two (2) on the left side, and two (2) on the right side. He saw

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[54] Folder of exhibits, p. 23.

[55] TSN, August 20, 1996, pp. 11-69.

[56] *Id.*, at pp. 70-75.

[57] *Id.*, at pp. 114-120.

only two (2) of them (the ones at the front left and right sides of the car) shooting at the car; they were carrying short firearms. One (1) of these two (2) got the clutch bag (at the left front side of the car), grabbed the victim by the neck and shot him once before dropping him down the road. Even if he could not see the gun when that assailant pulled the victim from the car, he knew that the victim was shot again, because he saw a gun smoke just beside the left side of the car where the victim was dropped. The second man who pointed a gun at him shouted "*Dapa!*" and thereupon his companions (the ones at the right rear side, left rear side, and front right side) faced him for less than a minute. Because at that precise moment the gun was not yet poked at him, he was able to recognize their faces. When finally the gun was pointed at him, he became nervous and bowed down his head inside the guard house. The color of the clutch bag taken from the victim was black. He could see the inside of the car from his guard post because the car's glass window was not tinted and, besides, his position was elevated or higher than the height of the car.[58] He confirmed the contents of his *Sinumpaang Salaysay* (Exhibit "L") before policeman Edilberto Nicanor on June 13, 1996 taken at the CID-PNP, Camp Karingal at 1:55 p.m. or barely four (4) hours after the shooting incident.[59]

Alejo further testified on cross-examination that on June 19, 1996 at around 2:00 o'clock in the afternoon, he was fetched by four (4) policemen at his agency in Monumento and they told him they were going to Fairview. Before this, in the afternoon of June 18, 1996, they showed him a picture of a man wearing eyeglasses, but he told them he would not point a man in photographs, but would like to see the man in person. That was the second time he saw Joel de Jesus since the shooting incident on June 13, 1996. He executed a supplemental statement on June 21, 1996 when he identified said suspect in a police line-up.[60]

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[58] TSN, August 21, 1996, pp. 27-28, 39-43, 45-60, 71-72, 75-87.

[59] TSN, August 29, 1996, pp. 4-10.

[60] TSN, September 3, 1996, pp. 10-11, 13-22, 27, 80-82.

On September 26, 1996, the trial court conducted an ocular inspection of the place where the shooting incident took place, in the presence of the prosecutors, defense counsel, Alejo and Maj. Villena. Alejo was asked to demonstrate his exact location, the relative positions of the assailants and the victim's car, and the entire incident he had witnessed in the morning of June 13, 1996. The Presiding Judge who took the same position of Alejo in the guardhouse made the following observations:

COURT:

> From this position, the Presiding Judge can see the car very clearly even if the car would be moved back by another segment of the cement or even if it is forwarded by another segment also, as segment can accommodate one car of the likes of Honda Accord and the Court observes that from the guard post the faces of the persons beside the car are very clear.

x x x x x x x x x

COURT:

> The Court observed that from where the witness Alejo was he can still see the whole car as it has been moved back per the directive of Major Villena.

x x x x x x x x x

COURT:

> The Court adds that from the position of the witness, Freddie Alejo, the Court can still see faces behind the car which can accommodate another car.

x x x x x x x x x

COURT:

> The front right window has been rolled down and also the back right window of the car have been rolled down with the left front door opened, the Court can observed the two (2) front seats particularly the upper portion, meaning the head rest and the back rest, half of the back rest, all the head rest can be seen.

x x x x x x x x x

INTERPRETER:

(measuring the distance from the guardhouse to the black car).

The measurement from the foot of the guardpost up to the right front door of the black car is fifteen (15) meters.

x x x x x x x x x

INTERPRETER:

(Measuring the distance between the *bodega* to the black car)

The measurement from the front portion of the *bodega* (papaya) to the side of the black car is 11.8 meters.

x x x x x x x x x

INTERPRETER:

The measurement…the distance from where suspect No. 6 was standing to the guard house when measured is 7.34 meters, your Honor.

x x x x x x x x x

INTERPRETER:

The distance from where suspect No. 5 was standing up to the guard house is 5.17 meters.

x x x x x x x x x

COURT:

After the demonstration while witness Alejo was demonstrating how [suspect No. 2] got the clutch bag and how [suspect No. 2] grabbed the neck of the driver of the black car, the Judge was at the guard post and saw for himself that [Alejo] clearly saw the taking of the clutch bag even if the untinted windows were closed and the pulling of the driver of the black car.[61]

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[61] TSN, September 26, 1996, pp. 21-22, 43-44, 46-47, 61-62, 69.

P/Insp. Castillo, on re-direct examination testified that Atty. Sansano actively assisted Joel de Jesus during the time the latter's *Sinumpaang Salaysay* was being taken by SPO2 Garcia, Jr. There were questions propounded to Joel which Atty. Sansano had told Joel not to answer, and advice was given by said counsel. They left Quezon City Hall at about 5:00 o'clock in the afternoon and returned to the CPDC headquarters. He maintained that all the accused were brought before the City Prosecutor for inquest proceedings prior to the filing of the information in court.[62]

Susan Samonte-Abadilla testified that their family incurred expenses for the burial of her husband, repair of the Honda Accord and loss of the .45 cal. gold cup pistol and Omega watch during the shooting of her husband. She further testified that she was very shocked and saddened by the tragic death of her husband. Because she led a practically sheltered life, it was difficult for her, as it was the older children who were now taking care of their businesses, which were attended to by her husband when he was still alive. Three (3) of her eight (8) children were still studying (Ana, 14; Nico, 13; and BJ, 10), and one had just graduated last March 1997.[63]

Merlito Herbas, in his *Karagdagang Salaysay* dated June 21, 1996, identified Joel de Jesus in a police line-up at the CID-CPDC, Camp Karingal, as one (1) of those men who shot the victim on June 13, 1996.[64] However, not having been presented by the prosecution as witness, he testified for the defense declaring that none of those whom he saw during the shooting incident was present inside the courtroom. He produced a list of amounts he had received from Mayor Abadilla, totaling ₱30,000.00 in support of his claim that Mayor Abadilla did not fulfill his promise to give him exactly the same salary he was receiving as security guard (₱6,000.00 monthly only instead of the ₱8,000.00 he used to receive as monthly pay), although he

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[62] TSN, September 17, 1996, pp. 16-21.

[63] TSN, September 18, 1996, pp. 28-30, 36-39, 41-55.

[64] Exhibit "EE", folder of exhibits, p. 315.

admitted having stayed for free inside the Abadilla compound from July 11, 1996 up to November 26, 1996. He was later told that he would no longer be presented as witness because the testimony of Alejo would be sufficient.[65]

Defense Evidence

All the accused raised the defense of *alibi*, highlighted the negative findings of ballistic and fingerprint examinations, and further alleged torture in the hands of police officers and denial of constitutional rights during custodial investigation.

P/Insp. Reynaldo D. de Guzman, firearms examiner and Chief of the Firearms Division of the PNP Crime Laboratory, testified that he conducted an examination of the slug recovered from the body of Col. Abadilla, as per request of the CPDC for cross-matching with a bullet also recovered from the body of another shooting victim, Suseso de Dios, *i.e.*, whether or not they were fired from one (1) and the same firearm.[66] The result of their microscopic examination was that the aforesaid bullets were fired from the same firearm.[67]

Dr. Jesse Rey Cruel, medico-legal officer of the CHR, testified that he examined accused Cesar Fortuna, Rameses de Jesus, Lenido Lumanog on June 25, 1996 and Lorenzo delos Santos on July 3, 1996. His findings showed that their bodies bore the following injuries: "(1) Fortuna - abrasions on forearm, elbow and knee; contusions on chest area; and incised wounds on the waist and legs;[68] (2) Rameses - contusions on chest, abdomen, knee and thigh areas;[69] (3) Lumanog - contusions on abdomen and lumbar region, and a horizontal lacerated wound

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[65] TSN, February 20, 1998, pp. 58-68, 73-79, 84-85, 91-92, 103-105; Exhibit "48" ("U" for Prosecution), folder of exhibits, p. 188.

[66] Exhibits "2-F-19" and "2-F-20" and "3", folder of exhibits, pp. 106-108, 111; TSN, December 10, 1997, pp. 15-27.

[67] TSN, December 10, 1997, pp. 40-42; Exhibits "2" to "2-F-14", folder of exhibits, pp. 102-105.

[68] Exhibit "5", folder of exhibits, p. 112.

[69] Exhibit "6", *Id.* at p. 113.

on the forehead;[70] and (4) Lorenzo - abrasions on the arms, contusions in thigh and knee, petechia marks (minute hemorrhages) between chest/abdomen and the penis, discoloration on right arm, and new scars on left arm, right foot and second toe."[71] All said wounds required not more than nine (9) days of medical attendance. The defense also presented pictures taken at the time of the examination.[72] On cross-examination, Dr. Cruel opined that it was possible the injuries could have been self-inflicted and pointed out that the injury on the forehead of Lumanog was not complained of.[73]

Remedios Dedicatoria, a fingerprint examiner at the PNP Crime Laboratory testified on the results stated in a Dactyloscopy Report No. F-086-96 comparison of the latent prints lifted from the Honda Accord with Plate No. RNA-777, Kia Pride PTZ-401 and Mitsubishi Lancer car with the standard fingerprints of the accused. The only match was found in the specimen fingerprint of Rameses de Jesus with respect to the fragmentary prints lifted from the Mitsubishi Lancer car. None of the fingerprints of the accused is identical with the latent prints lifted from the Honda Accord and Kia Pride.[74] On cross-examination, the witness stated that if a person had touched the car and rubbed it, there would be no fingerprint that could be lifted therefrom. She also admitted that no latent print was taken from inside the Honda Accord nor was there any fingerprint taken of the late Rolando Abadilla (only two [2] fingerprints were taken from his car). When asked if a person opened the car holding only the back portion of the handle, the witness answered that there would likewise be no fingerprint on the outside of the car.[75]

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[70] Exhibit "8", *Id.* at p. 116.

[71] Exhibit "7", *Id.* at p. 114.

[72] Exhibits "7-A", "7-B", "9-a" to "9-g", *Id.* at pp. 115, 117-121; TSN, December 11, 1997, pp. 16-17, 26-149.

[73] TSN, December 11, 1997, pp. 174-183.

[74] TSN, January 9, 1998, pp. 12-13, 29-43, 92-98.

[75] *Id.*, at pp. 119-132.

Joel de Jesus testified that on June 19, 1996, at around 3:00 o'clock in the afternoon, he was at their street corner fixing his tricycle and was with Arturo Napolitano and Felicisimo Herrera. A van stopped and six (6) armed men alighted from it, among whom he recognized Antonio Rodolfo, Pio Tarala and Dario Añasco (whom he came to know when they charged him with rape on January 17, 1994, from which charge he was acquitted on June 19, 1996). He even greeted said cops, but they forced him into the van, and handcuffed and blindfolded the three (3) of them. They were brought to a certain house where they were boxed, kicked and slammed on the wall. When his blindfold was removed, the police officers were forcing him to admit that he killed Abadilla. Capt. Rodolfo was also there and he later identified the rest of those who picked him up as Romulo Sales, Lt. Castillo, Bartolome Baluyot, Major Reyes and Cataluña. After he denied having anything to do with the killing, PO2 Tarala tried to suffocate him with a plastic bag. He could not breathe and lost consciousness. Recounting his ordeal in tears, the witness said that for one (1) hour his captors repeatedly inserted a plastic bag and boxed him. A younger looking man then slapped him saying that they had ambushed his father. While detained, he was only given water to drink and not allowed to contact his relatives. He was asked to sign by Lt. Castillo a seven (7)-page document, torturing him if he refused to do so. There were already other signatures on the edge and every page of said document (*Sinumpaang Salaysay* dated June 20, 1996). He denied the contents of this statement but admitted that he was brought to the IBP Office, Quezon City Hall. After signing, he heard Lt. Castillo call somebody saying, "*Parating na kami dyan.*" He was then made to board a vehicle and was taken to the Quezon City Hall where a man wearing *barong tagalog* was waiting, asking if he was Joel de Jesus. When Lt. Castillo answered in the affirmative, the man just signed the document. He denied having met Atty. Confesor Sansano, nor was he told of his right to the assistance of counsel; he even told them the name of his lawyer at that time, but they just said, "*Mas marunong ka pa sa amin.*"[76]

[76] TSN, September 9, 1998, pp. 9-32.

Testifying on cross-examination, Joel insisted that on June 13, 1996, he went home at around 10:00 o'clock in the evening. He started plying his route at 6:00 o'clock in the morning; he was hired *(inarkila*) by a passenger who asked him to bring her to an *albularyo* in Roosevelt Avenue, Novaliches. He admitted this was the first time he mentioned this, as it was not mentioned in his Affidavits[77] which were prepared by the police. Atty. Lupino Lazaro assisted him in filing charges against the police officers and Atty. Hector Corpuz before the Department of Justice (DOJ). He admitted that he did not say anything about the illegality of his arrest and the torture he suffered prior to his arraignment.[78] On re-direct examination, he denied having executed the *Karagdagang Salaysay* dated June 21, 1996 before the IBP lawyer, because at this time he was still detained in a safehouse where he remained until June 25, 1996. He was just forced to sign said document; after signing it, he heard Lt. Castillo say to one (1) Fiscal Soler, "*Fiscal, salamat*." Thereafter, he and the other accused were presented in a press conference as suspects in the Abadilla slaying inside Camp Crame. During this time, he pointed to Lorenzo delos Santos and Augusto Santos, because they were his enemies at their place. He only pointed to them out of fear that he might be salvaged by the police and because of the torture. He really did not know Abadilla nor was he at any time within the vicinity of Katipunan Avenue on June 13, 1996. He knew Rameses de Jesus, being his longtime neighbor, and also Lumanog who ran for councilor in their place. All he knows was that his co-accused were picked up from their place, and he saw them only during the press conference. He affirmed the contents of the *Sinumpaang Salaysay* he executed before Police Major (Pol. Maj.) Escote with the assistance of Atty. Lazaro.[79]

Joel admitted that he was the one (1) who pointed out Cesar Fortuna and Rameses de Jesus to the PARAC investigators. He confirmed that he was known as "Tabong" in their locality.

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[77] Exhibits "5" and "6", folder of exhibits, pp. 112-113.

[78] TSN, September 9, 1998, pp. 33-43.

[79] TSN, August 26, 1998, pp. 40-61.

He also filed a complaint before the CHR against the same police officers.[80]

Cesar Fortuna testified that he was a member of the PNP assigned at Cagayan de Oro City. He came to Manila on June 7, 1996, as he was ordered by his superior, Col. Roberto Sacramento, to attend to the documents required for reassignment of some of their companions (as evidenced by a used Super Ferry ticket and an unused return ticket for June 20, 1996). On June 11, 1996, he went to the PNP Directorate for Personnel at the office of Insp. Oscar Alcala. However, on the night of June 19, 1996, he was arrested by PARAC operatives while he was at the house of an acquaintance, Rameses de Jesus, in Ruby St., Fairview. He had brought for repair a Ford Maverick Model '69 registered in the name of Col. Sacramento. At 11:00 o'clock in the evening, his mechanic road-tested the car, but since he was left alone, he decided to go to the house of Rameses which was near the shop. Several armed policemen arrived and entered the house of Rameses. Not finding Rameses there, they asked him instead to go along with them. He was made to board an owner-type jeep and immediately blindfolded. After one (1) hour, they arrived at a place which he was told was the office of PARAC. Somebody approached him and he felt a lighter's flame touch his chin. He then identified himself as a policeman, but was only told: "*Walang pulis pulis dito.*" They kept on asking him where Rameses could be found. Still blindfolded, he led them to Palmera Subdivision where he knew Rameses had another house. Upon reaching Palmera, his blindfold was removed, but he was unable to locate the house until they went home at 5:00 p.m. In the morning of June 20, 1996, the policemen told him that he was just confusing them (*nililito*), but he explained that he had been to that house only once. The driver of the Honda Civic was already angry at him and inserted a .45 cal. pistol in his mouth. They went back to the PARAC office, and he was interrogated about the Abadilla killing. He was informed that he was being implicated as somebody had pointed at him.When he still denied having any knowledge about the ambush-slay, he was repeatedly suffocated with a plastic

[80] TSN, September 9, 1998, pp. 21-29.

bag placed on his head while he was handcuffed and blindfolded. After one (1) hour and due to hardship he suffered, he just told them he would admit whatever it was they wanted him to admit. He said that he acted as a look-out. They had him copy a prepared sketch and when his blindfold was finally removed, someone introduced himself as Col. Bartolome Baluyot who told him he just had to obey and he would not be hurt. Maj. George Reyes arrived, looked at the sketch and said it was not the place where Col. Abadilla was ambushed. He was blamed for that fiasco even as he said it was they who prepared the sketch. After an hour, they returned to Palmera Subdivision, Novaliches and this was already between 2:00 and 3:00 p.m. After rounding the area, he found the house, but Rameses was not there. He was made to sit the whole night in the kitchen.[81]

Fortuna continued to narrate that on June 21, 1996, he was made to lie down on a bench covered with a GI sheet and was asked where the firearm of Col. Abadilla was. When he answered that he really did not know about it, they electrocuted him and poured cold water on his body. He told them that if they needed a gun, he had a gun in Sampaloc, a .45 cal licensed firearm. Thereupon, they asked him to go to that place where Dante Montevirgen was the gunsmith. Only the policemen alighted from the vehicle and talked to Montevirgen. He saw that Montevirgen gave them two (2) firearms, after which they went back to the PARAC office. On his licensed firearm, he just brought this for repair on May 10, 1996, saying "*ayaw mag-automatic*," while the other gun belonged to Capt. Regis, and these were covered by receipts. Next, they asked him about the Rolex watch of Col. Abadilla. When he denied having any knowledge about it, he was again electrocuted. He had filed a complaint before the CHR for the injuries inflicted on him and the violation of his rights. Aside from this case and the charge of illegal possession of firearms, he was also charged with an administrative case and a criminal complaint for carnapping (of the KIA Pride). The carnapping complaint was dismissed by Assistant Prosecutor Amolin on September 23, 1996. The

[81] TSN, September 16, 1998, pp. 4-30; Exhibits "54"to "58", folder of exhibits, pp. 205-209.

Decision issued by P/Sr. Supt. Rodolfo N. Caisip of the PNP Headquarters Traffic Management Group also dismissed Administrative Case No. 96-09-03. He insisted that on the morning of June 13, 1996, he was at Camp Crame following up the reassignment papers of his colleagues, showing the letter-order issued by Col. Sacramento. He saw PO3 Ramon Manzano at the Office of the Directorate for Personnel at about 9:00 o'clock in the morning. He left said office as soon as he got the folder, signed their logbook, gave it to SPO4 Mercado of the Office of PNP Personnel Highway Patrol. Then he went home to eat before proceeding to the Metro Traffic Force, Central District at the office of Col. Juanito de Guzman at Roces St., Quezon City, at around 2:00 o'clock in the afternoon, for the renewal of the license of Col. Sacramento's driver.[82] He also filed with the CHR an administrative complaint against those police officers who had illegally arrested, detained and tortured him.

Fortuna further testified that PARAC operatives seized his Kawasaki motorcycle which he had left inside Camp Crame because it had no fender. However, the certificate of registration was lost since it had been in custody of the police; the Land Transportation Office (LTO) registration paper was locked inside, and he forgot what its plate number was. He admitted that he was able to use said motorcycle in June 1996 even with the missing fender. He left the motorcycle at Gate 2, Camp Crame before leaving for Cagayan de Oro City; as to his car, he left it at Pier 2. He admitted that he was the same person charged with kidnapping and serious illegal detention with ransom in Criminal Case No. 96-312, which was filed on July 15, 1996 in Mabalacat, Pampanga against him, Lumanog and Rameses by a certain Dr. Jesusa dela Cruz. Said case was transferred to the Quezon City RTC in the same *sala* of the presiding judge in this case. The filing of this case destroyed his reputation as a police officer and affected his children, who stopped going to school. He admitted though that he had once been dishonorably discharged from the service as a result of an extortion case

[82] TSN, September 16, 1998, pp. 31-74; Exhibits "59" to "70-C", "80", folder of exhibits, pp. 210-228, 245.

filed against him. He had appealed his case and he was reinstated on August 20, 1983. A memorandum dated June 25, 1996 was issued by Col. Sacramento to attest to his moral character and loyalty to the service.[83] He admitted that he never raised the issue of the legality of his arrest or the torture he suffered while in detention, during his arraignment. When confronted with his sworn statement submitted to the CHR, he admitted that he did not mention therein the pouring of cold water on his body, that he was asked to make a sketch of Katipunan Avenue, that a .45 cal pistol was inserted into his mouth and that there was no firearm confiscated from him at the time of his arrest. When he was apprehended on the night of June 19, 1996 at the house of Rameses at Ruby St., he was half-naked standing outside at the balcony. He saw someone's hand, but not the whole body of that person to whom he was shown that night, and he just heard from the policemen he had been positively identified.[84]

Fortuna's claim that he was at Camp Crame following up papers in the morning of June 13, 1996 was corroborated by Oscar Alcala (Chief Clerk of the Recruitment and Selection Division) and SPO2 Ramon Manzano (Office of the Directorate for Personnel and Recruitment). However, Alcala could not present the particular logbook containing the record of the documents and transaction with Fortuna, as it could not be located, as it got lost after the office renovation in the early part of 1997. A xerox copy of the logbook entry was presented in court (Exhibit "70").[85] However, said witness admitted he was not the custodian of the said logbook, and he did not have personal knowledge of the date and time of the entries in Exhibit "70"; it was also SPO2 Manzano who xeroxed the said logbook entry.[86] Manzano confirmed that he personally saw Fortuna

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[83] TSN, November 17, 1998, pp. 13-18, 24-27, 31-38, 43-69; Exhibits "LL" and "76", folder of exhibits, pp. 326, 234-235.

[84] TSN, November 24, 1998, pp. 6-10, 14-16; Exhibit "65", folder of exhibits, pp. 217-220.

[85] TSN, October 21, 1998, pp. 5-13; folder of exhibits, p. 228.

[86] TSN, October 21, 1998, pp. 19-20, 25-33.

in the morning of June 13, 1996, between 9:00 and 9:30, when Fortuna retrieved the papers he earlier submitted in May 1996.[87]

On further cross-examination, Fortuna admitted that he never told his lawyer (Atty. Ramonito M. Delfin) when they brought his complaint before the CHR that he had documents to prove he was at Camp Crame in the morning of June 13, 1996. He explained that the matter did not enter his mind because he had no food and no sleep for several days: "At the time my *salaysay* was taken from me, everything was still fresh and there were so many things that I wanted to say but I was not able to say because *masama pa ang aking pakiramdam.*" Neither did he mention it to Fiscal Refuerzo who interviewed him after the press conference, as they did not ask him about it.[88] He had brought up such matter with his lawyer in another case not before the *sala* of the presiding judge in this case.[89]

Lorenzo delos Santos testified that on June 13, 1996, he left his house at Fairview and boarded a bus bound for Quiapo. Upon reaching Quiapo, he heard mass in Quiapo Church until around 8:30 a.m. He arrived in their office at Binondo on June 13, 1996 at 9:30 a.m. He remembered going to the office of the Felipe Santos Brokerage in the same building to check on the date of arrival of a certain shipment. Thereafter, he went back to his office and stayed there until 2:30 p.m. He left his place of work about 4:30 in the afternoon and went to a client who invited him to drink at the house of his brother somewhere in Quezon City. On June 19, 1996, at around 11:00 o'çlock in the evening, several persons suddenly barged into his house while he and his wife were sleeping. Sgt. Bela introduced himself, and he was slapped and handcuffed and the house was searched. They took his .38 cal revolver which was licensed. He was blindfolded, made to board a car and taken to a safehouse where he was tied and tortured (suffocation with plastic bag and electrocution). He was told that he was pointed to by Joel, but he explained to them that Joel was his opponent in a court

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[87] *Id.*, at pp. 35-37, 47-48.

[88] TSN, November 25, 1998, pp. 6-13.

[89] *Id.*, at p. 17.

case (for grave threats, physical injuries and trespassing).[90] He also answered their questions regarding his co-accused. He told them that he used to see Rameses when he brings his children to school and came to know Lumanog when he ran as city councilor, while he did not know Fortuna. After the interrogation, he was again subjected to torture and he felt weak; this lasted up to June 21, 1996. On June 21, 1996, he was brought to a field *(bukid)* where he was forced to sign a paper. He was then brought to the Quezon City Hall of Justice at the second floor and instructed that he should just walk along. There were two (2) women inside aside from policemen, and he was elbowed by a policeman to sign a document. He signed it out of fear, and the document was handed by the policemen to a man who entered the room, whom he later came to know as Atty. Florimond Rous. He was brought to another floor at the Fiscal's Office while he was still limping. Somebody there asked why he was in that condition, but one (1) of his police companions elbowed him so he just said it was nothing. A man who was probably the Fiscal signed the document, and they left at around 5:00 in the afternoon.[91] Lorenzo admitted he had an owner-type jeep, which was registered in his own name, but said jeep had been mortgaged to Danilo Lintag since May 27, 1996.[92]

Lorenzo presented as witness Edith Lingan, an employee of Felipe M. Santos, who corroborated his alibi.[93]

Augusto Santos testified that on June 13, 1996 at around 7:00 o'clock in the morning, he accompanied his brother-in-law Jonas Ayhon whose wife, his sister, gave birth on June 11, 1996 at the Jose Fabella Hospital at Sta. Cruz, Manila. He stayed there until 2:00 o'clock in the afternoon. On June 26, 1996, five (5) men suddenly barged into their house. He was

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[90] Exhibits "6", "6-A" and "7", folder of exhibits, pp. 381, 382-384, 405, 406-408.

[91] TSN, December 2, 1998, pp. 6-27.

[92] TSN, December 9, 1998, pp. 3-6.

[93] TSN, January 28, 1999, pp. 5-10.

hit in the neck with a .45 cal. pistol, blindfolded and brought outside where he was beaten. They had no warrant of arrest but were forcing him to admit that Joel de Jesus gave him big money and that he knew what it was. He told them that he did not know anything, and that Joel was his enemy, as his *Tito* Lorenzo had a quarrel with Joel in which he helped his *Tito*. He confirmed the contents of the *Sinumpaang Salaysay* dated July 3, 1996 which he executed at Camp Crame, and also presented a copy of the birth certificate of the baby delivered by his sister at Fabella Hospital.[94]

Jonas Padel Ayhon corroborated the foregoing testimony of his brother-in-law, Augusto "Ogie" Santos, whose half-sister was his wife.[95]

Rameses de Jesus testified that on June 12, 1996 at 7:00 o'clock in the evening, he and Lumanog left for Mabalacat, Pampanga on board the latter's brand new Mitsubishi Lancer, together with Romeo Costibollo, Manny dela Rosa and Boni Mandaro. They arrived in Mabalacat at about 10:00 o'clock in the evening and after resting they started digging in front of the church, inside the compound of the Tiglao family, Lumanog's in-laws. They dug until 4:00 o'clock in the morning of June 13, 1996. Thereafter, they slept and woke up at around 10:00 o'clock in the morning. They helped in the preparations for the celebration of the wedding anniversary of the Tiglaos. After eating lunch, they drank liquor. They returned to Manila only on June 14, 1996 at 7:00 p.m. On June 19, 1996, they went back to Pampanga and returned to Manila on June 20, 1996. At around 10:00 p.m., they proceeded to Fairview, Quezon City to visit the sick child of Romeo Costibollo who was then confined at Fairview Polymedic Hospital. After Costibollo and Lumanog alighted from their car and while he was parking infront of the hospital, several armed men came. Two (2) men approached him from behind and asked him if Costibollo and Lumanog were his companions. When he replied yes, he was pushed inside the

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[94] TSN, January 7, 1999, pp. 4-17; Exhibits "1", "2" and "3", folder of exhibits, pp. 398-400.

[95] TSN, January 28, 1999, pp. 34-38.

car; Costibollo and Lumanog were handcuffed. Without any warrant, they were apprehended, blindfolded and taken to a place where he was tortured. They were forcing him to admit that he and his companions killed "*Kabise*" who was the ex-governor of Ilocos Norte. Despite his denials they continued to torture him by electrocution and suffocation with a plastic bag. A policeman arrived with Fortuna, who was asked how much Ram gave them, to which Fortuna replied "₱10,000.00." He got mad at Fortuna and cursed him for telling such a lie. After two (2) days, he was brought to Camp Karingal still blindfolded. He was again tortured for two (2) days, the policemen forcing him to admit he participated in the killing of Col. Abadilla. When he could no longer bear the torture, he finally admitted to Insp. Castillo that he took part in the Abadilla ambush-slay. When the one (1) interviewing him asked how he did it, he just said that Fortuna came to his house with an owner-type jeep and two (2) other persons, and that they rode to Dau, Pampanga and headed to Tarlac, on their way to Ilocos to kill Abadilla. Insp. Castillo got angry, saying that he was just fooling them and he was again hit.[96]

Rameses continued to narrate that after two (2) or three (3) days' stay at Camp Karingal, he and the other accused were presented at a press conference. During the inquest conducted by Fiscal Refuerzo, he saw Freddie Alejo for the first time, and also his co-accused Lumanog, Fortuna, Lorenzo, Joel and Augusto. As far as he knew, they had brought the matter of the torture they suffered in the hands of policemen to the DOJ.[97]

On cross-examination, Rameses was shown a medical certificate issued by Dr. Servillano B. Ritualo III at the PNP General Hospital, Camp Crame, but he said he could no longer remember the date he was examined by said doctor. He confirmed that Fortuna was renting a room in his house together with his mistress "Baby." When confronted with his *Sinumpaang Salaysay* dated June 26, 1996 he executed before the CHR,

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[96] TSN, March 9, 1999, pp. 2-49.

[97] TSN, March 18, 1999, pp. 3-10.

he admitted that there was no mention therein of their treasure-hunting trip to Pampanga on June 12 to 15, 1996. He said he was never asked about it. He likewise admitted that he was included in the kidnapping charge filed in Mabalacat, but asserted that it was trumped-up ("*Ipinatong po sa akin yan ni Col. Baluyot*").[98]

The Trial Court's Verdict

On August 11, 1999, the trial court promulgated a Joint Decision dated July 30, 1999, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered as follows:

x x x x x x x x x

V. In Criminal Case No. Q-96-66684, for Murder,:

1. Accused Arturo Napolitano *y* Caburnay is hereby ACQUITTED;

2. Accused SPO2 Cesar Fortuna *y* Abudo, Rameses de Jesus *y* Calma, Leonardo Lumanog *y* Luistro (*a.k.a.* Leonido or Lenido), Joel de Jesus *y* Valdez, and Augusto Santos *y* Galang are hereby found GUILTY beyond reasonable doubt as co-principals of the crime of MURDER as defined and penalized in the Revised Penal Code for the death of ex-Col. Rolando Abadilla *y* Nolasco with the aggravating circumstances of treachery (absorbing abuse of superior strength) and evident premeditation and they are hereby sentenced to suffer the penalty of DEATH;

3. Accused Lorenzo delos Santos *y* dela Cruz is hereby ACQUITTED.

On the civil aspect, accused SPO2 Cesar Fortuna *y* Abudo, Rameses de Jesus *y* Calma, Leonardo Lumanog *y* Luistron (a.k.a. Leonido or Lenido), Joel de Jesus *y* Valdez and Augusto Santos *y* Galang are hereby ordered jointly and solidarily to pay the heirs of the deceased ex-Col. Rolando Abadilla *y* Nolasco the following:

1. As actual damages, the sum of ₱294,058.86;

2. As indemnity damages, the sum of ₱50,000.00;

3. As moral damages, the sum of ₱500,000.00;

[98] *Id.*, at pp. 10-20; Exhibits "PP", "QQ", "SS" and "TT", folder of exhibits, pp. 333-342.

4. As exemplary damages, the sum of ₱500,000.00.

The firearm, one (1) Smith & Wesson .38 caliber revolver with Serial No. 980974, subject of Case No. Q-96-66680 is hereby ordered returned to Lorenzo delos Santos *y* dela Cruz.

The firearm, one (1) Amscor .38 caliber revolver with Serial No. 21907, subject of Case No. Q-96-66683 is hereby ordered forwarded to the PNP Firearms and Explosives Division, Camp Crame, Quezon City for safekeeping in accordance with law and as said firearm belongs and is licensed to accused Leonardo Lumanog *y* Luistro (*a.k.a.* Leonido or Lenido) who has been sentenced in Case No. Q-96-66684 for Murder, until further orders from this court.

Costs against the accused.

Let the entire records of these cases be transmitted forthwith to the Honorable Supreme Court for automatic review, in accordance with law and the Rules of Court.

SO ORDERED.[99]

The trial court was firmly convinced that the prosecution succeeded in establishing the identities of accused Joel, Rameses, Lumanog, Fortuna and Augusto as the perpetrators in the fatal shooting of Abadilla in the morning of June 13, 1996. It found that both security guards Alejo and Herbas confirmed the presence of Joel de Jesus in the crime scene. However, with respect to the positive identification of all the five (5) accused, namely, Joel de Jesus, Rameses de Jesus, Cesar Fortuna, Lenido Lumanog and Augusto Santos, the trial court gave more credence to the testimony of Alejo than the declaration on the witness stand of Herbas who had backtracked on his earlier statement dated June 21, 1996 wherein he pointed to Joel as one (1) of those participants in the shooting incident.

In doubting the credibility of Herbas, the trial court stressed that Herbas was obviously disgruntled at the Abadilla family's failure to give him the promised salary, and circumstances showed that his need for job and money colored his perception and

[99] Records, Vol. 3, pp. 1027-1028.

attitude in testifying for the defense. Moreover, despite the impression he had given to the police and the Abadilla family that he could identify the four (4) persons who surrounded Col. Abadilla's car, Herbas could not have really been able to recognize the faces of the ambushers for three (3) reasons: (1) he was on the ground when he turned his head (*lumingon*) towards where the gunshots were being fired and quite a lot of vehicles in traffic stopped at the time; (2) the whole incident, as far as Herbas observed, happened in seconds only; and (3) Herbas was three (3) Meralco posts away from the ambush site. All these factors combined, according to the trial court, could not have given Herbas enough time and opportunity to clearly see those who ambushed Abadilla, and hence he was really a poor and inadequate witness either for the prosecution or the defense.[100]

Compared to Herbas, the trial court found the eyewitness testimony of Alejo more credible due to his elevated position at his guard post and the fact that the ambush had taken place before his very eyes, so near that one (1) of the conspirators had to order him to lie flat (which obviously he could not do because of the narrow space inside his guard house), and which appeared to be the reason why a second order came for him to get down from the guard house, to which he nervously complied. From his vantage point, Alejo sufficiently and in a detailed manner recognized the relative positions and participations of the ambushers, each of whom he had identified as Rameses, Fortuna, Lumanog, Augusto and Joel, both in the police line-up and again inside the courtroom during the trial.[101]

The trial court also found that the statements of Joel, in which he admitted his participation in the crime assisted by Atty. Sansano and in the presence of the IBP personnel and police investigators, were not flawed by intimidation or violence when obtained and sworn to before the fiscal. The common defense of *alibi* put up by all the accused was rejected by the trial court, holding that (1) the alleged treasure-hunting trip made by Lumanog

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[100] CA *rollo*, Vol. II, p. 1021.

[101] *Id.*, at pp. 1022.

and Rameses was incredible and unpersuasive, as it was contrary to ordinary human experience; (2) Fortuna's claim was weak, the logbook entry on his supposed transaction in the Office of the Directorate for Personnel and Recruitment at Camp Crame was a mere photocopy, and also, as in the case of Rameses, he never mentioned such digging activity in Pampanga in the sworn complaint he had filed before the CHR; (3) Augusto's *alibi* was supported only by his brother-in-law, and it was simply not usual for menfolk, instead of women, in our family culture, to fetch a woman who had just given birth at the hospital, aside from the observation that Augusto could have gone straight to Fabella Hospital in Sta. Cruz, Manila instead of going first to Buendia, Makati before 7:00 a.m. to fetch his brother-in-law. With respect to Lumanog, the trial court pointed out that his silence and failure to testify in court, despite the evidence implicating him in the murder of Abadilla, justified an inference that he was not innocent.[102]

On August 25, 1999, Lumanog filed a motion for reconsideration.[103] On September 2, 1999, Joel filed a motion for new trial based on newly discovered evidence to present two witnesses, Merevic S. Torrefranca and Rosemarie P. Caguioa, who offered to testify on the whereabouts of Joel on the day of the incident.[104] Lumanog likewise filed a motion for new trial for the presentation of a new witness, who was allegedly on board a taxi immediately behind Abadilla's car, and who clearly saw that those who perpetrated the gruesome crime were not the accused.[105] In his Supplement to the Motion for Reconsideration, Lumanog assailed the inconsistencies in the declarations of Alejo, and the non-presentation of eyewitnesses Minella Alarcon and Metro Aide Aurora Urbano. In addition, Lumanog pointed to well-publicized statements of the Alex Boncayao Brigade (ABB), which claimed responsibility for the killing of Abadilla, but the investigation got sidetracked by another

[102] *Id.*, at pp. 1024-1025.

[103] Records, Vol. 4, pp. 1039-1049.

[104] *Id.*, at pp. 1050-1056.

[105] *Id.*, at pp. 1099-1103.

angle — that a political rival of Abadilla paid money for a contract assassination. He contended that the police opted for the path of least resistance by rounding up the usual suspects, indeed another glaring example of our law enforcers' strategy of instituting trumped-up charges against innocent people just to comply with their superior's directive to accelerate solving an ambush-slay case.[106] In additional pleadings filed by his new counsel, Lumanog reiterated the ABB's assassination theory in the light of more recent press statements issued by said group describing the accused as mere fall guys of the police to project an image of efficiency.[107]

On January 25, 2000, the trial court issued an Order ruling on the pending motions:

> WHEREFORE, premises considered, the court resolves:
>
> 1. to DENY the Motion for Reconsideration by accused Lenido Lumanog;
> 2. to DENY the Motion for New Trial by accused Joel de Jesus;
> 3. to consider the Motion for New Trial by accused Lenido Lumanog as abandoned and/or withdrawn;
> 4. to DENY the Supplement to the Motion for Reconsideration by accused Lenido Lumanog as well as his addendum thereto and his Manifestation and Motion dated December 15, 1999 to allow him to introduce additional evidence in support of his Supplement to the Motion for Reconsideration;
> 5. to DENY the Manifestation and Submission dated December 14, 1999 by accused Lenido Lumanog;
> 6. and to ORDER the immediate transmittal of the records of these cases to the Honorable Supreme Court for automatic review pursuant to law, the Rules of Court and the Joint Decision of this court dated July 30, 1999.
>
> SO ORDERED.[108]

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[106] *Id.*, at pp. 1183-1201.

[107] *Id.*, at pp. 1215-1228, 1248-1269.

[108] *Id.*, at p. 1320.

On January 19, 2000, Fr. Roberto P. Reyes, parish priest of the Parish of the Holy Sacrifice, University of the Philippines at Diliman, Quezon City, assisted by Atty. Neri J. Colmenares, filed an "Urgent Independent Motion for Leave of Court to Present Vital Evidence." Fr. Reyes claimed that an ABB personality came to him confessing that the ABB was responsible for the killing of Abadilla and gave him an object (Omega gold wristwatch) taken from said victim, which can be presented as evidence in this case to prove the innocence of the accused who were erroneously convicted by the trial court and save them from the penalty of death.[109]

After due hearing, the trial court denied the said motion of Fr. Reyes, holding that the latter's proposed testimony could not be considered an exception to the hearsay rule, considering that: (1) it cannot be said that the person who allegedly approached Fr. Reyes was unable to testify, as said person was simply unwilling to face in a court of law the legal consequences of whatever admissions he made to Fr. Reyes; (2) the alleged admission was made long after trial had ended and long after the court had promulgated its decision, at which time the public and persons interested in the outcome of the case knew already what were the court's findings and conclusions of fact; and (3) going by the advertised image of the ABB as an ideologically motivated group that would shoot to death public officers and private individuals perceived by its ranking cadres as corrupt, the court found it hard to believe that ABB gunman would in full view of idealist comrades and everybody else, would open Abadilla's car and steal that watch, and remain unscathed for his unproletarian act by his peers in the organization.[110] The trial court, however, ordered that the Omega wristwatch allegedly belonging to the late Col. Abadilla, the copy of the motion for leave to present vital evidence and the transcript of the proceedings on January 26, 2000 be attached to the records of the case as part of the offer of proof of the defense.

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[109] *Id.*, at pp. 1270-1273.

[110] *Id.*, at pp. 1355-1362.

Two (2) more pleadings were filed by Lumanog's counsel just before the records of Criminal Case No. Q-96-66684 were transmitted to this Court for automatic review, namely, a Final Submission to This Court dated February 8, 2000, together with an attached copy of the letter of Lt. Gen. Jose M. Calimlim of the Armed Forces of the Philippines (AFP) Intelligence Service regarding an unsuccessful operation of the ABB to kill Col. Abadilla, and Final Manifestation to This Court dated February 9, 2000.[111]

Lumanog challenged before this Court the validity of the Orders dated January 25, 26, and 28, 2000 allegedly issued with grave abuse of discretion on the part of the trial judge who thereby denied the accused the opportunity to introduce evidence on the alleged role of the ABB in the ambush-slay of Col. Abadilla. On September 7, 2001, we denied his petition for *certiorari* in G.R. No. 142065,[112] as we thus held:

> A perusal of the pieces of evidence, except the Omega wristwatch, which are sought to be presented by the petitioners in a new trial are not newly discovered evidence because they were either available and could have been presented by the defense during the trial of the case with the exercise of due diligence, such as the alleged newspaper reports and AFP/PNP intelligence materials on Col. Abadilla. The wristwatch allegedly belonging to the late Col. Abadilla is immaterial to the case of murder while the testimony of F. Roberto Reyes on the turn over of the said wristwatch by an alleged member of the ABB who purportedly knows certain facts about the killing of Col. Abadilla would be hearsay without the testimony in court of the said alleged member of the ABB. The document which granted amnesty to Wilfredo Batongbakal is irrelevant to the killing of Col. Abadilla inasmuch as Batongbakal does not appear privy to the actual commission of the crime of murder in the case at bar. If at all, those pieces of additional evidence will at most be merely corroborative to the defense of alibi and denial of herein petitioners. Petitioners' alternative prayer that this Court "itself

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[111] *Id.*, at pp. 1365-1371.

[112] *Lumanog v. Salazar, Jr.*, 364 SCRA 719.

conduct hearings and receive evidence on the ABB angle" is not well taken for the reason that the Supreme Court is not a trier of facts.[113]

Accused-petitioner's motion for reconsideration of the above decision was denied with finality on November 20, 2001.[114] On September 17, 2002, this Court likewise denied for lack of merit the motion for new trial and related relief dated April 26, 2002 filed by counsel for said accused-petitioner.[115]

Pursuant to our decision in *People v. Mateo*,[116] this case was transferred to the Court of Appeals for intermediate review on January 18, 2005.[117]

Ruling of the CA

On April 1, 2008, the CA rendered the assailed decision, thus:

> WHEREFORE, in the light of the foregoing, the impugned decision is AFFIRMED with the MODIFICATION that the accused-appellants are sentenced each to suffer *reclusion perpetua* without the benefit of parole.
>
> In all other respects, the lower court's decision is AFFIRMED.
>
> Costs against appellants.
>
> SO ORDERED.[118]

The CA upheld the conviction of the accused-appellants based on the credible eyewitness testimony of Alejo, who vividly recounted before the trial court their respective positions and participation in the fatal shooting of Abadilla, having been able to witness closely how they committed the crime. On the sufficiency of prosecution evidence to establish appellants' guilt

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[113] *Id.*, at pp. 725-726.

[114] CA *rollo*, Vol. I, pp. 244-245.

[115] *Id.*, at p. 388.

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

[117] CA *rollo*, Vol. II, pp. 1583-1584.

[118] *Id.*, at p. 1797.

beyond reasonable doubt and the scant weight of their defense of *alibi,* as well as the allegations of torture and intimidation in the hands of the police investigator and negative results of ballistic and fingerprint tests, the CA ruled as follows:

> Despite a lengthy and exhaustive cross-examination by the defense counsel, eyewitness Alejo stuck to the essentials of his story, including the identification of the persons who killed Col. Abadilla. He was only ten (10) meters away from the *locus crimini.* Standing on an elevated guardhouse, he had a close and unobstructed view of the whole incident. He was in a vantage position to clearly recognize Col. Abadilla's assailants, more so because the crime happened in clear and broad daylight.
>
> Even standing alone, Alejo's positive and unequivocal declaration is sufficient to support a conviction for murder against appellants. Indeed, the testimony of a single witness, when positive and credible, is sufficient to support a conviction even for murder. For there is no law requiring that the testimony of a simple *[sic]* witness should be corroborated for it to be accorded full faith and credit. The credible testimony of a lone witness(es) assumes more weight when there is no showing that he was actuated by improper motive to testify falsely against the accused, as in the case of Freddie Alejo.
>
> x x x x x x x x x
>
> …appellants failed to prove that it was physically impossible for them to be at the *locus delicti* or within its immediate vicinity at the time the crime was committed.
>
> In the case of Joel de Jesus, he maintains that he was driving his tricycle on a special chartered trip for a passenger going to Roosevelt, Novalichez, Quezon City. But, it was not impossible for him to have also gone to Katipunan Avenue, which is also part of Quezon City; not to mention the fact that with his tricycle, he could have easily moved from one place to another.
>
> The testimonies of Rameses de Jesus and Leonido Lumanog that they were treasure hunting in Mabalacat, Pampanga on the day in question, lack credence as they are unsupported by the testimonies of independent witnesses. At any rate, Rameses de Jesus admitted that they were using the new car of Leonido Lumanog. Hence, it was not physically impossible for them to travel to Quezon City via the North Expressway at the time the crime took place.

Augusto claims that he was at the Fabella Hospital in Sta. Cruz, Manila, and his alibi was corroborated by his brother-in-law, Jonas Padel Ayhon, who is not an impartial witness. Where nothing supports the alibi except the testimony of a relative, it deserves scant consideration.

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Finally, Cesar Fortuna claims that he was in Camp Crame on the day the murder took place. But it was not impossible for him to have gone to Katipunan Road, Blue Ridge, which is relatively near Camp Crame when the shooting happened around 8:40 in the morning. After the shooting, he could have easily and quickly transferred to Camp Crame between 9:00 and 9:30 in the morning of the same day.

In any event, appellants' alibis were belied by the positive identification made by prosecution eyewitness Freddie Alejo.

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Further, appellants' allegations that the police authorities maltreated them, and forcibly extracted their extra-judicial confessions do not exculpate them from criminal liability. For one, their conviction was not based on their extra-judicial confessions, but on their positive identification of Freddie Alejo as the authors of the crime. Such positive identification is totally independent of their extra-judicial confessions. For another, the Constitutional guarantees contained in the Bill of Rights cannot be used as a shield whereby a person guilty of a crime may escape punishment. Thus, the Supreme Court in *Draculan vs. Donato,* held:

> "x x x. *Pangalawa, ang mga karapatan ng mga mamamayan na natatala sa Saligang Batas (sa Bill of Rights) ay hindi mga paraan upang ang isang tunay na may pagkakasala na labag sa batas, ay makaligtas sa nararapat na pagdurusa. Ang tunay na layunin ng mga tadhanang iyon ng Saligang Batas ay walang iba kundi tiyakin na sinumang nililitis ay magkaroon ng sapat na pagkakataon at paraan na maipagtanggol ang sarili, bukod sa pagbabawal ng pagtanggap ng katibayan* (evidence) *laban sa kanya na bunga ng pagpipilit, dahas at iba pang paraang labag sa kanyang kalooban.*"

To repeat, assuming that appellants' allegations of torture were true, the same do not exculpate them from liability for the crime which

the People had adequately established by independent evidence, neither was their claim that the results of the ballistics test purportedly showing that the bullets and bullet shells found in the crime scene did not match with any of the firearms supposedly in their possession. But these ballistic results are inconclusive and can never prevail over appellants' positive identification by eyewitness Freddie Alejo as the persons who perpetrated the ambush-slay of Col. Abadilla. Besides, there is no showing that the firearms supposedly found in appellants' possession long after the incident were the same ones they used in the ambush-slay.[119]

In its Resolution[120] dated October 28, 2008, the CA denied the motions for reconsideration respectively filed by Fortuna and Joel de Jesus.[121]

Rameses de Jesus and Joel de Jesus filed notices of appeal[122] (G.R. No. 187745), while Fortuna (G.R. No. 185123), and Lumanog and Augusto Santos (G.R. No. 182555) filed their respective petitions for review. On August 6, 2009, G.R. No. 187745 was ordered consolidated with the already consolidated petitions in G.R. Nos. 182555 and 185123.[123] In view of the judgment of the CA imposing the penalty of *reclusion perpetua,* said petitions for review are treated as appeals, in accordance with A.M. No. 00-5-03-SC *(Amendments to the Revised Rules of Criminal Procedure to Govern Death Penalty Cases*)[124] which provides under Rule 124 (c):

(c) In cases where the Court of Appeals imposes *reclusion perpetua,* life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. The judgment may be appealed to the Supreme Court by notice of appeal filed with the Court of Appeals.

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[119] *Id.*, at pp. 1792-1795.

[120] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Regalado E. Maambong and Romeo F. Barza.

[121] CA *rollo*, Vol. II, pp. 2027-2028.

[122] *Id.*, at pp. 2036-2037, 2046-2047.

[123] *Rollo* (G.R. No. 187745), pp. 40-48.

[124] Effective October 15, 2004.

Appellants' Arguments

Lenido Lumanog and Augusto Santos set forth the following arguments in their memorandum, which basically reflect the same issues raised by appellants in the memorandum filed in G.R. No. 182555:

1. The Court of Appeals did not make a real and honest review of the appealed case. There was a failure of appellate review, rendering its decision void.

2. The affirmation of the conviction over-relies on the testimony of one alleged eyewitness, Freddie Alejo.

3. The affirmation of the conviction misappreciates the alibi evidence for the defense.

4. The affirmation of conviction gravely erred when it unduly disregarded other pieces of vital evidence.

5. The penalty imposed by the Court of Appeals is unconstitutional.[125]

On his part, Fortuna alleges that:

I. The Honorable Court of Appeals committed serious error and gravely abused its discretion when it affirmed the conviction of the petitioner and his co-accused based solely on the incredible and contradicted eyewitness account of Security Guard (S/G) Alejo.

II. The Honorable Court of Appeals seriously erred and gravely abused its discretion in not considering the defense of petitioner herein despite the weakness of the evidence of the prosecution.

III. The Honorable Court seriously erred in favoring the prosecution on the ballistic test showing that the bullets and bullet shells found in the crime scene did not match with any firearms supposedly in petitioner's possession; evidence which was supposed to support the theory of the prosecution. When such physical evidence did not favor the prosecution's theory the same was still taken against the petitioner.

IV. The Honorable Court of Appeals seriously erred in disregarding allegations and proof of torture and maltreatment

[125] *Rollo* (G.R. No. 182555), p. 285.

by police officers against the petitioner in affirming his conviction.[126]

Appellants assail the wholesale adoption, if not verbatim copying, by the CA of the factual narration, as well as the arguments for and disposition of the merits of the case from the Consolidated Brief for the Appellees, which in turn is based on the memorandum submitted by the private prosecutors to the trial court. This anomaly, according to the appellants, which was aggravated by the insufficient findings of fact and absence of actual discussion of the assignment of errors raised by each appellant before the CA, resulted in the failure of intermediate review without any independent findings and resolution of important issues of the case, thus rendering the CA decision void. Hence, appellants seek not just to overturn or reverse the CA decision but also to declare it null and void, by way of "radical relief" from this Court.

On the merits, appellants principally contend that the CA gravely erred in its over-reliance on the problematic identification provided by the prosecution's lone eyewitness, security guard Alejo. The CA simply did not rule on questions concerning the credibility of said eyewitness through the "totality of circumstances" test. They also fault the CA for misappreciating their common defense of *alibi*, thus disregarding exculpatory documentary evidence including negative results of ballistic and fingerprint examinations, and evidence of torture which appellants had suffered in the hands of police investigators. Equally deplorable is the trial and appellate courts' refusal to admit evidence coming from underground revolutionary forces, in particular the ABB which claimed responsibility for the killing of Col. Abadilla, a notorious military henchman during the martial law era. Appellants maintain that violations of constitutional rights have been held as a ground for acquittal or dismissal in certain cases. In one (1) case, the long delay in the termination of preliminary investigation was found to be violative of the

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[126] *Rollo* (G.R. No. 185123), pp. 30, 41-42 and 44.

accused's constitutional rights to procedural due process and speedy disposition of cases and was cause for the dismissal of the case by this Court as a matter of "radical relief."

Finally, the appellants argue that the penalty of *reclusion perpetua* "without the benefit of parole" meted by the CA pursuant to Sec. 3 of R.A. No. 9346 is unconstitutional. Article III, Section 19 (1) of the 1987 Constitution provides that "any death penalty imposed shall be reduced to *reclusion perpetua.*" There is no mention of "without the benefit of parole" or "shall not be eligible for parole" therein.

Appellants contend that the questioned provisions of R.A. No. 9346 constitute encroachments or dilutions of the President's broad, if not near absolute, constitutional power of executive clemency, based not only on Article VII, Sec. 19, but also on constitutional tradition and jurisprudence. Although the said section does not explicitly mention "parole" as a form of executive clemency, constitutional tradition and jurisprudence indicate it to be such. In *Tesoro v. Director of Prisons*,[127] for instance, it was held that the power to pardon given to the President by the Constitution includes the power to grant and revoke paroles. The aforesaid provision of R.A. No. 9346 also inflicts an inhuman punishment, which is prohibited by the Constitution, and also violates the equal protection clause of the Bill of Rights.

Our Ruling

Once again, this Court upholds the constitutional mandate protecting the rights of persons under custodial investigation. But while we strike down the extrajudicial confession extracted in violation of constitutionally enshrined rights and declare it inadmissible in evidence, appellants are not entitled to an acquittal because their conviction was *not* based on the evidence obtained during such custodial investigation. Even without the extrajudicial confession of appellant Joel de Jesus who was the first to have been arrested, the trial court's judgment is affirmed, as the testimonial and documentary evidence on record have established the guilt of appellants beyond reasonable doubt.

[127] 68 Phil. 154 (1939).

CA Decision meets the constitutional standard

The Constitution commands that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."[128] Judges are expected to make complete findings of fact in their decisions and scrutinize closely the legal aspects of the case in the light of the evidence presented. They should avoid the tendency to generalize and form conclusions without detailing the facts from which such conclusions are deduced.[129]

Section 2, Rule 120 of the 1985 Rules on Criminal Procedure, as amended, likewise provides:

> Sec. 2. *Form and contents of judgments*. — The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly **a statement of the facts proved or admitted by the accused and the law upon which the judgment is based**.
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> x x x x x x x x x. [EMPHASIS SUPPLIED.]

We have sustained decisions of lower courts as having substantially or sufficiently complied with the constitutional injunction, notwithstanding the laconic and terse manner in which they were written; and even if "there (was left) much to be desired in terms of (their) clarity, coherence and comprehensibility," provided that they eventually set out the facts and the law on which they were based, as when they stated the legal qualifications of the offense constituted by the facts proved, the modifying circumstances, the participation of the accused, the penalty imposed and the civil liability; or discussed the facts comprising the elements

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[128] Art. VIII, Sec. 14, 1987 Constitution.

[129] *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004, 428 SCRA 283, 305, citing Administrative Circular No. 1 issued on January 28, 1988.

of the offense that was charged in the information, and accordingly rendered a verdict and imposed the corresponding penalty; or quoted the facts narrated in the prosecution's memorandum, but made their own findings and assessment of evidence, before finally agreeing with the prosecution's evaluation of the case.[130]

In the same vein, we have expressed concern over the possible denial of due process when an appellate court failed to provide the appeal the attention it rightfully deserved, thus depriving the appellant of a fair opportunity to be heard by a fair and responsible magistrate. This situation becomes more ominous in criminal cases, as in this case, where not only property rights are at stake but also the liberty if not the life of a human being.[131] 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 trial court. 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.[132]

In *Bank of the Philippine Islands v. Leobrera*,[133] we held that though it is not a good practice, we see nothing illegal in the act of the trial court completely copying the

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[130] *Yao v. Court of Appeals*, G.R. No. 132428, October 24, 2000, 344 SCRA 202, 215-216, citing *People v. Bongbahoy*, G.R. No. 124097, June 17, 1999, 308 SCRA 383, *People v. Landicho*, G.R. No. 116600, July 3, 1996, 258 SCRA 1, 26, *People v. Sadiosa*, G.R. No. 107084, May 15, 1998, 290 SCRA 92, 107 and *People v. Gastador*, G.R. No. 123727, April 14, 1999, 305 SCRA 659, 670.

[131] See *Yao v. Court of Appeals*, *supra* at 218, citing *Romero v. Court of Appeals*, No. 59606, January 8, 1987, 147 SCRA 183.

[132] *Yao v. Court of Appeals*, *supra* at 219.

[133] G.R. No. 137147, January 29, 2002, 375 SCRA 81.

memorandum submitted by a party, provided that the decision clearly and distinctly states sufficient findings of fact and the law on which they are based.[134] In another case where we upheld the validity of memorandum decisions, we nevertheless took occasion to remind judges that it is still desirable for an appellate judge to endeavor to make the issues clearer and use his own perceptiveness in unraveling the *rollo* and his own discernment in discovering the law. No less importantly, he must use his own language in laying down his judgment.[135]

Perusing the CA decision, we hold that it cannot be deemed constitutionally infirm, as it clearly stated the facts and law on which the ruling was based, and while it did not specifically address each and every assigned error raised by appellants, it cannot be said that the appellants were left in the dark as to how the CA reached its ruling affirming the trial court's judgment of conviction. The principal arguments raised in their Memorandum submitted before this Court actually referred to the main points of the CA rulings, such as the alleged sufficiency of prosecution evidence, their common defense of *alibi*, allegations of torture, probative value of ballistic and fingerprint test results, circumstances qualifying the offense and modification of penalty imposed by the trial court. What appellants essentially assail is the *verbatim* copying by the CA of not only the facts narrated, but also the arguments and discussion including the legal authorities, in disposing of the appeal. On such wholesale adoption of the Office of the Solicitor General's position, as well as the trial court's insufficient findings of fact, appellants anchor their claim of failure of intermediate review by the CA.

We now proceed to the other substantive issues presented by appellants.

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[134] *Id.* at 86, citing *Hernandez v. Court of Appeals*, G.R. No. 104874, December 14, 1993, 228 SCRA 429, 435 and *Valdez v. Court of Appeals*, G.R. No. 85082, February 25, 1991, 194 SCRA 360.

[135] See *Francisco v. Permskul*, G.R. No. 81006, May 12, 1989, 173 SCRA 324 (1989), cited in *ABD Overseas Manpower Corporation v. NLRC*, G.R. No. 117056, February 24, 1998, 286 SCRA 454, 463.

Rights of Accused During Custodial Investigation

The rights of persons under custodial investigation are enshrined in Article III, Section 12 of the 1987 Constitution, which provides:

> Sec. 12 (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and ***to have competent and independent counsel preferably of his own choice.*** If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or section 17 hereof (right against self-incrimination) shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violation of this section as well as compensation for the rehabilitation of victims of tortures or similar practices, and their families. [EMPHASIS SUPPLIED.]

Extrajudicial Confession of Joel de Jesus Not Valid

Custodial investigation refers to the critical pre-trial stage when the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular person as a suspect.[136] Police officers claimed that appellants were apprehended as a result of "hot pursuit" activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already

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[136] *People v. Rodriguez,* G.R. No. 129211, October 2, 2000, 341 SCRA 645, 654, citing *People v. Domantay,* G.R. No. 130612, May 11, 1999, 307 SCRA 1, 15 and *People v. Andan,* G.R. No. 116437, March 3, 1997, 269 SCRA 95.

considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with the identities of his conspirators and where they could be found.

R.A. No. 7438,[137] approved on May 15, 1992, has reinforced the constitutional mandate protecting the rights of persons under custodial investigation. The pertinent provisions read:

> SEC. 2. *Rights of Persons Arrested, Detained or under Custodial Investigation; Duties of Public Officers.—*
>
> a. Any person arrested, detained or under custodial investigation shall at all times be assisted by counsel.
>
> b. Any public officer or employee, or anyone acting under his order or his place, who **arrests, detains or investigates any person for the commission of an offense** shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer private with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided by with a competent and independent counsel.
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> x x x x x x x x x
>
> f. As used in this Act, "custodial investigation" shall include the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law. [EMPHASIS SUPPLIED.]

Police officers claimed that upon arresting Joel, they informed him of his constitutional rights to remain silent, that any information he would give could be used against him, and that he had the right to a competent and independent counsel, preferably, of his own choice, and if he cannot afford the services of counsel

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[137] Otherwise known as "An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof."

he will be provided with one (1). However, since these rights can only be waived in writing and with the assistance of counsel, there could not have been such a valid waiver by Joel, who was presented to Atty. Sansano at the IBP Office, Quezon City Hall only the following day and stayed overnight at the police station before he was brought to said counsel.

P/Insp. Castillo admitted that the initial questioning of Joel began in the morning of June 20, 1996, the first time said suspect was presented to him at the CPDC station, even before he was brought to the IBP Office for the taking of his formal statement. Thus, the possibility of appellant Joel having been subjected to intimidation or violence in the hands of police investigators as he claims, cannot be discounted. The constitutional requirement obviously had not been observed. Settled is the rule that the moment a police officer tries to elicit admissions or confessions or even plain information from a suspect, the latter should, at that juncture, be assisted by counsel, unless he waives this right in writing and in the presence of counsel.[138] The purpose of providing counsel to a person under custodial investigation is to curb the police-state practice of extracting a confession that leads appellant to make self-incriminating statements.[139]

Even assuming that custodial investigation started only during Joel's execution of his statement before Atty. Sansano on June 20, 1996, still the said confession must be invalidated. To be acceptable, extrajudicial confessions must conform to constitutional requirements. A confession is not valid and not admissible in evidence when it is obtained in violation of any of the rights of persons under custodial investigation.[140]

Since Joel was provided with a lawyer secured by CPDC investigators from the IBP-Quezon City chapter, it cannot be

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[138] *People v. Rapeza*, G.R. No. 169431, April 4, 2007, 520 SCRA 596, 623, citing *People v. Delmo*, 439 Phil. 212 (2002), cited in *People v. Dueñas, Jr.*, G.R. No. 151286, March 31, 2004, 426 SCRA 666.

[139] *Id*. at 630.

[140] *People v. Muleta*, G.R. No. 130189, June 25, 1999, 309 SCRA 148, 160.

said that his right to a counsel "preferably of his own choice" was not complied with, particularly as he never objected to Atty. Sansano when the latter was presented to him to be his counsel for the taking down of his statement. The phrase "*preferably of his own choice*" does not convey the message that the choice of a lawyer by a person under investigation is exclusive as to preclude other equally competent and independent attorneys from handling the defense; otherwise the tempo of custodial investigation would be solely in the hands of the accused who can impede, nay, obstruct the progress of the interrogation by simply selecting a lawyer who, for one reason or another, is not available to protect his interest.[141] Thus, while the choice of a lawyer in cases where the person under custodial interrogation cannot afford the services of counsel – or where the preferred lawyer is not available – is naturally lodged in the police investigators, the suspect has the final choice, as he may reject the counsel chosen for him and ask for another one. A lawyer provided by the investigators is deemed engaged by the accused when he does not raise any objection against the counsel's appointment during the course of the investigation, and the accused thereafter subscribes to the veracity of the statement before the swearing officer.[142]

The question really is whether or not Atty. Sansano was an independent and competent counsel as to satisfy the constitutional requirement. We held that the modifier *competent and independent* in the 1987 Constitution is not an empty rhetoric. It stresses the need to accord the accused, under the uniquely stressful conditions of a custodial investigation, an informed judgment on the choices explained to him by a diligent and capable lawyer.[143] An effective and vigilant counsel necessarily

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[141] *People v. Mojello,* G.R. No. 145566, March 9, 2004, 425 SCRA 11, 18, citing *People v. Barasina,* G.R. No. 109993, January 21, 1994, 229 SCRA 450.

[142] *Id.,* at 18, citing *People v. Continente,* G.R. Nos. 100801-02, August 25, 2000, 339 SCRA 1.

[143] *People v. Suela,* G.R. Nos. 133570-71, January 15, 2002, 373 SCRA 163, 182, citing *People v. Deniega,* G.R. No. 103499, December 29, 1995, 251 SCRA 626, 638-639 and *People v. Santos,* G.R. No. 117873, December 22, 1997, 283 SCRA 443.

and logically requires that the lawyer be present and able to advise and assist his client from the time the confessant answers the first question asked by the investigating officer until the signing of the extrajudicial confession. Moreover, the lawyer should ascertain that the confession is made voluntarily and that the person under investigation fully understands the nature and the consequence of his extrajudicial confession in relation to his constitutional rights. A contrary rule would undoubtedly be antagonistic to the constitutional rights to remain silent, to counsel and to be presumed innocent.[144]

Atty. Sansano, who supposedly interviewed Joel and assisted the latter while responding to questions propounded by SPO2 Garcia, Jr., did not testify on whether he had properly discharged his duties to said client. While SPO2 Garcia, Jr. testified that Atty. Sansano had asked Joel if he understood his answers to the questions of the investigating officer and sometimes stopped Joel from answering certain questions, SPO2 Garcia, Jr. did not say if Atty. Sansano, in the first place, verified from them the date and time of Joel's arrest and the circumstances thereof, or any previous information elicited from him by the investigators at the station, and if said counsel inspected Joel's body for any sign or mark of physical torture.

The right to counsel has been written into our Constitution in order to prevent the use of duress and other undue influence in extracting confessions from a suspect in a crime. The lawyer's role cannot be reduced to being that of a mere witness to the signing of a pre-prepared confession, even if it indicated compliance with the constitutional rights of the accused. The accused is entitled to effective, vigilant and independent counsel.[145] Where the prosecution failed to discharge the State's

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[144] *Id.*, at pp. 181-182, citing *People v. Labtan*, G.R. No. 127493, December 8, 1999, 320 SCRA 140, 159.

[145] *People v. Peralta*, G.R. No. 145176, March 30, 2004, 426 SCRA 472, 481-482, citing *People v. Binamira*, G.R. No. 110397, August 14, 1997, 277 SCRA 232, 238; *People v. Ordoño*, G.R. No. 132154, June 29, 2000, 334 SCRA 673, 688; *People v. Rodriguez*, G.R. No. 129211, October 2, 2000, 341 SCRA 645, 653; *People v. Rayos*, G.R. No. 133823, February

burden of proving with clear and convincing evidence that the accused had enjoyed effective and vigilant counsel before he extrajudicially admitted his guilt, the extrajudicial confession cannot be given any probative value.[146]

With respect to the other appellants, they were likewise entitled to the rights guaranteed by the Constitution when they were brought to the police station as suspects and were, therefore under custodial investigation.[147] However, they cannot simply rely on those violations of constitutional rights during custodial investigation, which are relevant only when the conviction of the accused by the trial court is based on the evidence obtained during such investigation.[148] As for the matters stated in the extrajudicial confession of appellant Joel, these were not the basis for appellants' conviction. It has to be stressed further that no confession or statement by appellants Fortuna, Lumanog, Augusto and Rameses was used as evidence by the prosecution at the trial.

After a thorough and careful review, we hold that there exists sufficient evidence on record to sustain appellants' conviction even without the extrajudicial confession of appellant Joel de Jesus.

Allegations of Torture and Intimidation

The Court notes with utmost concern the serious allegations of torture of appellants who were dubbed by the media as the "Abadilla 5." This was brought by appellants before the CHR which, in its Resolution dated July 26, 1996, did not make any

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7, 2001, 351 SCRA 336, 344; and *People v. Patungan,* G.R. No. 138045, March 14, 2001, 354 SCRA 413, 424.

[146] *People v. Paule,* G.R. Nos. 118168-70, September 11, 1996, 261 SCRA 649.

[147] See *People v. Hijada,* G.R. No. 123696, March 11, 2004, 425 SCRA 304.

[148] *People v. Sabalones,* G.R. No. 123485, August 31, 1998, 294 SCRA 751, 790.

categorical finding of physical violence inflicted on the appellants by the police authorities. The CHR, however, found *prima facie* evidence that respondent police officers could have violated R.A. No. 7438, particularly on visitorial rights and the right to counsel, including the law on arbitrary detention, and accordingly forwarded its resolution together with records of the case to the Secretary of Justice, Secretary of the Department of Interior and Local Government, the PNP Director General and the Ombudsman to file the appropriate criminal and/or administrative actions against the person or persons responsible for violating the human rights of the suspects as the evidence may warrant.[149] As per the manifestation of appellants, the DOJ, after conducting a preliminary investigation, referred the matter to the Ombudsman in 2004. As of July 2007, the case before the Ombudsman docketed as OMB-P-C-04-1269/CPL-C-04-1965 was still pending preliminary investigation.[150]

Right to Speedy Disposition of Cases

Appellants further cite the comment made by the United Nations Human Rights Committee in its Communication No. 1466/2006 that under the circumstances, there was, insofar as the eight (8)-year delay in the disposition of their appeal in the CA was concerned, a violation of Article 14, paragraph 3 (c) of the *International Covenant on Civil and Political Rights* (1966). It provides that in the determination of any criminal charge against him, everyone shall be entitled, as among the minimum guarantees provided therein, "to be tried without undue delay."[151]

Section 16, Article III of the 1987 Constitution provides that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative

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[149] Exhibit "79", folder of exhibits, pp. 237-243.

[150] Letter-reply dated of Ombudsman addressed to Atty. Soliman M. Santos, Jr., Annex "F" of Memorandum for Petitioners, *rollo* of G.R. No. 182555, p. 442.

[151] Addendum to Petition, CA *rollo*, Vol. II, pp. 1975-1985.

bodies."[152] This protection extends to all citizens and covers the periods before, during and after trial, affording broader protection than Section 14(2), which guarantees merely the right to a speedy trial.[153] However, just like the constitutional guarantee of "speedy trial," "speedy disposition of cases" is a flexible concept. It is consistent with delays and depends upon the circumstances. What the Constitution prohibits are unreasonable, arbitrary and oppressive delays, which render rights nugatory.[154]

In this case, the records of Criminal Case No. Q-96-66684 were transmitted to this Court for automatic review on February 11, 2000. On September 7, 2001, this Court rendered a decision dismissing the Petition for *Certiorari* (Rule 65) and for Extraordinary Legal and Equitable Relief (G.R. No. 142065). By June 2004, all appeal briefs for the present review had been filed and on July 6, 2004, appellants filed a Consolidated Motion for Early Decision. On December 13, 2004, they filed a Motion for Early Decision.[155]

By resolution of January 18, 2005, we transferred this case to the CA for intermediate review, conformably with our pronouncement in *People v. Mateo* decided on July 7, 2004. Appellants' Urgent Motion for Reconsideration of Transfer to the Court of Appeals filed on February 24, 2005 was denied on March 29, 2005. A similar request filed on June 2, 2005 was likewise denied by our Resolution dated July 12, 2005.[156] At the CA, appellants also moved for early resolution of their appeal after the case was submitted for decision on November

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[152] Sec. 16, Article III.

[153] *Abadia v. Court of Appeals*, G.R. No. 105597, September 23, 1994, 236 SCRA 676, 682, cited in *Licaros v. Sandiganbayan*, G.R. No. 145851, November 22, 2001, 370 SCRA 394, 407.

[154] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 146-147, citing *Caballero v. Alfonso, Jr.*, G.R. No. L-45647, August 21, 1987, 153 SCRA 153, 163.

[155] CA *rollo*, Vol. II, pp. 1530-1531 and 1580.

[156] *Id.*, at pp. 1581-1582, 1605-1609.

29, 2006. The case remained unresolved due to a number of factors, such as the CA internal reorganization and inhibition of some Justices to whom the case was re-raffled.[157] Before the retirement of the *ponente*, Justice Agustin S. Dizon, the CA's Sixteenth Division finally rendered its decision on April 1, 2008. Appellants' motion for reconsideration was denied by the Special Former Sixteenth Division on October 28, 2008.

It must be stressed that in the determination of whether the right to speedy disposition of cases has been violated, particular regard must be taken of the facts and circumstances peculiar to each case. A mere mathematical reckoning of the time involved would not be sufficient.[158] Under the circumstances, we hold that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.

In several cases where it was manifest that due process of law or other rights guaranteed by the Constitution or statutes have been denied, this Court has not faltered to accord the so-called "radical relief" to keep accused from enduring the rigors and expense of a full-blown trial.[159] In this case, however, appellants are not entitled to the same relief in the absence of clear and convincing showing that the delay in the resolution of their appeal was unreasonable or arbitrary.

Credibility of Eyewitness Testimony

Time and again, we have held that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is

[157] *Id.,* at pp. 1728-1761.

[158] *Gaas v. Mitmug,* G.R. No. 165776, April 30, 2008, 553 SCRA 335, 342-343, citing *Mendoza-Ong v. Sandiganbayan,* G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423, 425-426.

[159] *Uy v. Adriano,* G.R. No. 159098, October 27, 2006, 505 SCRA 625, 652-653, citing *Mendoza-Ong v. Sandiganbayan,* G.R. Nos. 146368-69, October 18, 2004, 440 SCRA 423; *Dimayacyac v. Court of Appeals,* G.R. No. 136264, May 28, 2004, 430 SCRA 121; *Dela Peña v. Sandiganbayan,* 412 Phil. 921 (2001); *Dansal v. Hon. Fernandez, Sr.,* 383 Phil. 897, 908; *Duterte v. Sandiganbayan,* 352 Phil. 557 (1998); and *Tatad v. Sandiganbayan,* G.R. Nos. 72335-39, March 21, 1998, 159 SCRA 70.

clear, straightforward and worthy of credence by the trial court.[160] Indeed, when it comes to credibility of witnesses, this Court accords the highest respect, even finality, to the evaluation made by the lower court of the testimonies of the witnesses presented before it. This holds true notwithstanding that it was another judge who presided at the trial and Judge Jaime N. Salazar, Jr. who penned the decision in this case heard only some witnesses for the defense. It is axiomatic that the fact alone that the judge who heard the evidence was not the one who rendered the judgment, but merely relied on the record of the case, does not render his judgment erroneous or irregular. This is so even if the judge did not have the fullest opportunity to weigh the testimonies, not having heard all the witnesses speak or observed their deportment and manner of testifying.[161]

Verily, a judge who was not present during the trial can rely on the transcript of stenographic notes taken during the trial as basis of his decision. Such reliance does not violate substantive and procedural due process.[162] We have ruled in *People v. Rayray*[163] that the fact that the judge who heard the evidence was not himself the one who prepared, signed and promulgated the decision constitutes no compelling reason to jettison his findings and conclusions, and does not *per se* render his decision void. The validity of a decision is not necessarily impaired by the fact that its *ponente* only took over from a colleague who had earlier presided at the trial. This circumstance alone cannot be the basis for the reversal of the trial court's decision.[164]

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[160] *People v. Rivera,* G.R. No. 139185, September 29, 2003, 412 SCRA 224, 236.

[161] *Concepcion v. Court of Appeals,* G.R. No. 120706, January 31, 2000, 324 SCRA 85, 92.

[162] *Serna v. Court of Appeals,* G.R. No. 124605, June 18, 1999, 308 SCRA 527, 533, citing *People v. Espanola,* G.R. No. 119308, April 18, 1997, 271 SCRA 689, 716.

[163] G.R. No. 90628, February 1, 1995, 241 SCRA 1, 8-9.

[164] *Pilipinas Shell Petroleum Corporation v. Gobonseng, Jr.*, G.R. No. 163562, July 21, 2006, 496 SCRA 305, 320.

In giving full credence to the eyewitness testimony of security guard Alejo, the trial judge took into account his proximity to the spot where the shooting occurred, his elevated position from his guardhouse, his opportunity to view frontally all the perpetrators for a brief time — enough for him to remember their faces (when the two [2] lookouts he had earlier noticed walking back and forth infront of his guard post pointed their guns at him one [1] after the other, and later when the four [4] armed men standing around the victim's car momentarily looked at him as he was approached at the guardhouse by the second lookout), and his positive identification in the courtroom of appellants as the six (6) persons whom he saw acting together in the fatal shooting of Abadilla on June 13, 1996. The clear view that Alejo had at the time of the incident was verified by Judge Jose Catral Mendoza (now an Associate Justice of this Court) during the ocular inspection conducted in the presence of the prosecutors, defense counsel, court personnel, and witnesses Alejo and Maj. Villena.

The trial judge also found that Alejo did not waver in his detailed account of how the assailants shot Abadilla who was inside his car, the relative positions of the gunmen and lookouts, and his opportunity to look at them in the face. Alejo immediately gave his statement before the police authorities just hours after the incident took place. Appellants make much of a few inconsistencies in his statement and testimony, with respect to the number of assailants and his reaction when he was ordered to get down in his guard post. But such inconsistencies have already been explained by Alejo during cross-examination by correcting his earlier statement in using number four (4) to refer to those persons actually standing around the car and two (2) more persons as lookouts, and that he got nervous only when the second lookout shouted at him to get down, because the latter actually poked a gun at him. It is settled that affidavits, being *ex-parte*, are almost always incomplete and often inaccurate, but do not really detract from the credibility of witnesses.[165] The discrepancies between a sworn statement

[165] *People v. Silvano*, G.R. No. 125923, January 31, 2001, 350 SCRA 650, 660.

and testimony in court do not outrightly justify the acquittal of an accused,[166] as testimonial evidence carries more weight than an affidavit.[167]

As to appellants' attempt to discredit Alejo by reason of the latter's acceptance of benefits from the Abadilla family, the same is puerile, considering that the trial court even verified for itself how Alejo could have witnessed the shooting incident and after he withstood intense grilling from defense lawyers. Case law has it that where there is no evidence that the principal witness for the prosecution was actuated by improper motive, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.[168]

The trial judge also correctly rejected appellants' proposition that the eyewitness testimony of security guard Herbas should have been given due weight and that other eyewitnesses should have been presented by the prosecution, specifically Cesar Espiritu and Minella Alarcon, who allegedly had better opportunity to recognize Abadilla's attackers. As correctly pointed out by the trial judge, Herbas could not have really seen at close range the perpetrators from his position at a nearby building, which is several meters away from the ambush site, as confirmed by photographs submitted by the prosecution, which Herbas failed to refute. The same thing can be said of Espiritu who admitted in his *Sinumpaang Salaysay* that his car was ahead of the Honda Accord driven by Abadilla, and that he had already alighted from his car some houses away from the exact spot where Abadilla was ambushed while his car was in the stop position.[169]

Positive Identification of Appellants

Appellants assail the out-of-court identification made by Alejo who pointed to appellant Joel de Jesus and Lorenzo delos Santos

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[166] *People v. Gallo*, G.R. No. 133002, October 19, 2001, 367 SCRA 662, 668.

[167] *People v. Mendoza*, G.R. No. 142654, November 16, 2001, 369 SCRA 268, 286.

[168] *People v. Tagana*, G.R. No. 133027, March 4, 2004, 424 SCRA 620, 639.

[169] Records, Vol. I, pp. 27-29.

in a line-up at the police station together with police officers. However, appellants' claim that the police officers who joined the line-up were actually in their police uniforms at the time, as to make the identification process suggestive and hence not valid, was unsubstantiated.

In *People v. Teehankee, Jr.*,[170] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification, thus:

> Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. . . In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the **totality of circumstances test** where they consider the following factors, *viz*: (1) the witness' **opportunity to view the criminal** at the time of the crime; (2) the witness' **degree of attention** at that time; (3) the **accuracy of any prior description** given by the witness; (4) the **level of certainty** demonstrated by the witness at the identification; (5) the **length of time between the crime and the identification**; and, (6) **the suggestiveness of the identification procedure**.[171] [EMPHASIS SUPPLIED.]

Examining the records, we find nothing irregular in the identification made by Alejo at the police station for which he executed the *Karagdagang Sinumpaang Salaysay* dated June 21, 1996, during which he positively identified Joel de Jesus and Lorenzo delos Santos as those lookouts who had pointed their guns at him demanding that he buck down at his guardhouse. In any case, the trial court did not rely solely on said out-of-court identification considering that Alejo also positively identified appellants during the trial. Thus, even assuming *arguendo* that Alejo's out-of-court identification was tainted with irregularity, his subsequent identification in court cured any flaw that may

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[170] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

[171] *Id.*, at p. 95.

have attended it.[172] We have held that the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification.[173]

We also found none of the danger signals enumerated by Patrick M. Wall, a well-known authority in eyewitness identification, which give warning that the identification may be erroneous even though the method used is proper. The danger signals contained in the list, which is not exhaustive, are:

(1) the witness originally stated that he could not identify anyone;

(2) the identifying witness knew the accused before the crime, but made no accusation against him when questioned by the police;

(3) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused;

(4) before identifying the accused at the trial, the witness erroneously identified some other person;

(5) other witnesses to the crime fail to identify the accused;

(6) before trial, the witness sees the accused but fails to identify him;

(7) before the commission of the crime, the witness had limited opportunity to see the accused;

(8) the witness and the person identified are of different racial groups;

(9) during his original observation of the perpetrator of the crime, the witness was unaware that a crime was involved;

(10) a considerable time elapsed between the witness' view of the criminal and his identification of the accused;

(11) several persons committed the crime; and

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[172] *People v. Rivera, supra*, at p. 239, citing *People v. Timon,* G.R. Nos. 97841-42, November 12, 1997, 281 SCRA 577, 592.

[173] *Id.*, citing *People v. Timon, id.,* and *People v. Lapura,* G.R. No. 94494, March 15, 1996, 255 SCRA 85, 96.

(12) the witness fails to make a positive trial identification.[174]

Appellants nonetheless point out the allegedly doubtful prior descriptions given by Alejo, who was able to describe the physical appearance of only two (2) suspects in his statement:

Iyong tumutok sa akin ay naka-asul na t-shirt, edad 30-35, 5'5"-5'6" ang taas, katamtaman ang katawan, maikli ang buhok, kayumanggi. Ang baril niya ay tipong 45 o 9 mm na pistola. Iyong sumakal sa biktima at nang-agaw ng clutch bag nito ay 25-30 ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na 5'5"-5'6", maiksi din ang baril niya at naka-puting polo. Iyong iba ay maaring makilala ko kung makikita ko uli.[175]

Appellants claimed that if Alejo was referring to appellant Joel de Jesus who pointed a gun at him, his description did not jibe at all since Joel de Jesus was just 22 years old and not 30-35 years of age, and who stands 5'9" and not 5'5"-5'6". And if indeed it was appellant Lenido Lumanog whom Alejo saw as the gunman who had grabbed the victim by the neck after opening the car's left front door, his description again failed because far from being "*maitim*," Lumanog was in fact fair-complexioned.

We are not persuaded. Alejo positively identified Joel de Jesus in a line-up at the police station and again inside the courtroom as the first lookout who pointed a gun at him. Though his estimate of Joel's age was not precise, it was not that far from his true age, especially if we consider that being a tricycle driver who was exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age. Moreover Alejo's description of Lumanog as dark-skinned was made two (2) months prior to the dates of the trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having a fair complexion and was 40 years old, the private prosecutor

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[174] *People v. Pineda*, G.R. No. 141644, May 27, 2004, 429 SCRA 478, 503-504, citing Patrick M. Wall, Eye-Witness Identification in Criminal Cases 74 (1965), pp. 90-130.

[175] Exhibit "L-1", folder of exhibits, p. 27.

manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of trial.

Applying the totality-of-circumstances test, we thus reiterate that Alejo's out-of-court-identification is reliable, for reasons that, *first*, he was very near the place where Abadilla was shot and thus had a good view of the gunmen, not to mention that the two (2) lookouts directly approached him and pointed their guns at them; *second*, no competing event took place to draw his attention from the event; *third*, Alejo immediately gave his descriptions of at least two (2) of the perpetrators, while affirming he could possibly identify the others if he would see them again, and the entire happening that he witnessed; and *finally*, there was no evidence that the police had supplied or even suggested to Alejo that appellants were the suspects, except for Joel de Jesus whom he refused to just pinpoint on the basis of a photograph shown to him by the police officers, insisting that he would like to see said suspect in person. More importantly, Alejo during the trial had positively identified appellant Joel de Jesus independently of the previous identification made at the police station. Such in-court identification was positive, straightforward and categorical.

Appellants contend that the subsequent acquittal of Lorenzo delos Santos, whom Alejo had categorically pointed to as one (1) of the two (2) men whom he saw walking to and fro in front of his guard post prior to the shooting incident, and as one (1) of the two (2) men who pointed a gun at him and ordered him to get down, totally destroyed said witness' credibility and eroded the trustworthiness of each and every uncorroborated testimony he gave in court. This assertion is untenable. A verdict of acquittal is immediately final; hence, we may no longer review the acquittal of accused Lorenzo delos Santos.[176] However, the acquittal of their co-accused does not necessarily benefit the appellants. We have ruled that accused-appellant may not

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[176] *People v. Dulay*, G.R. No. 174775, October 11, 2007, 535 SCRA 656, 662, citing *People v. Court of Appeals*, G.R. No. 159261, February 21, 2007, 516 SCRA 383.

invoke the acquittal of the other conspirators to merit the reversal of his conviction for murder.[177]

Ballistic and fingerprint examination results are inconclusive and not indispensable

Appellants deplore the trial court's disregard of the results of the ballistic and fingerprint tests, which they claim should exonerate them from liability for the killing of Abadilla. These pieces of evidence were presented by the defense to prove that the empty shells recovered from the crime scene and deformed slug taken from the body of Abadilla were not fired from any of the firearms seized from appellants. Instead, they matched the same firearm used in the killings of Suseso de Dios and other supposed victims of ambush-slay perpetrated by suspected members of the ABB. Further, none of the fingerprints lifted from the KIA Pride, used by the gunmen as getaway vehicle, matched any of the specimens taken from the appellants.

We are not persuaded. As correctly held by the CA, the negative result of ballistic examination was inconclusive, for there is no showing that the firearms supposedly found in appellants' possession were the same ones used in the ambush-slay of Abadilla. The fact that ballistic examination revealed that the empty shells and slug were fired from another firearm does not disprove appellants' guilt, as it was possible that different firearms were used by them in shooting Abadilla.[178] Neither will the finding that the empty shells and slug matched those in another criminal case allegedly involving ABB members, such that they could have been fired from the same firearms belonging to said rebel group, exonerate the appellants who are on trial in this case and

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[177] *Id.*, citing *People v. Uganap*, G.R. No. 130605, June 19, 2001, 358 SCRA 674, 684.

[178] See *Maandal v. People*, G.R. No. 144113, June 28, 2001, 360 SCRA 209, 228.

not the suspects in another case. To begin with, the prosecution never claimed that the firearms confiscated from appellants, which were the subject of separate charges for illegal possession of firearms, were the same firearms used in the ambush-slay of Abadilla. A ballistic examination is not indispensable in this case. Even if another weapon was in fact actually used in killing the victim, still, appellants Fortuna and Lumanog cannot escape criminal liability therefor, as they were positively identified by eyewitness Freddie Alejo as the ones who shot Abadilla to death.[179]

As this Court held in *Velasco v. People*[180] —

> As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. **The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction.** The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, **since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt.** [EMPHASIS SUPPLIED.]

The negative result of the fingerprint tests conducted by fingerprint examiner Remedios is likewise inconclusive and unreliable. Said witness admitted that no prints had been lifted from *inside* the KIA Pride and only two (2) fingerprints were taken from the car of Abadilla.

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[179] See *People v. Belaro,* G.R. No. 99869, May 26, 1999, 307 SCRA 591, 605.

[180] G.R. No. 166479, February 28, 2006, 483 SCRA 649, 666-667.

Defense of Alibi Cannot Prevail Over Positive Identification

Alibi is the weakest of all defenses, for it is easy to fabricate and difficult to disprove, and it is for this reason that it cannot prevail over the positive identification of the accused by the witnesses.[181] To be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[182]

Deeply embedded in our jurisprudence is the rule that positive identification of the accused, where categorical and consistent, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of appellants, whose testimonies are not substantiated by clear and convincing evidence.[183] However, none of the appellants presented clear and convincing excuses showing the physical impossibility of their being at the crime scene between 8:00 o'clock and 9:00 o'clock in the morning of June 13, 1996. Hence, the trial court and CA did not err in rejecting their common defense of *alibi.*

As to the failure of appellant Lumanog to take the witness stand, indeed the grave charges of murder and illegal possession of firearms would have normally impelled an accused to testify in his defense, particularly when his life is at stake. As this Court observed in *People v. Delmendo*:[184]

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[181] *People v. Medina,* G.R. No. 155256, July 30, 2004, 435 SCRA 610, 619.

[182] *People v. Bracamonte,* G.R. No. 95939, June 17, 1996, 257 SCRA 380.

[183] *People v. Abes,* 465 Phil. 165 (2004).

[184] G.R. No. 123300, September 25, 1998, 296 SCRA 371, 379-380.

An adverse inference may also be deduced from appellant's failure to take the witness stand. While his failure to testify cannot be considered against him, it may however help in determining his guilt. "**The unexplained failure of the accused to testify, under a circumstance where the crime imputed to him is so serious that places in the balance his very life and that his testimony might at least help in advancing his defense, gives rise to an inference that he did not want to testify because he did not want to betray himself.**"

An innocent person will at once naturally and emphatically repel an accusation of crime, as a matter of self-preservation, and as a precaution against prejudicing himself. A person's silence, therefore, particularly when it is persistent, may justify an inference that he is not innocent. Thus, we have the general principle that when an accused is silent when he should speak, in circumstances where an innocent person so situated would have spoken, on being accused of a crime, his silence and omission are admissible in evidence against him. Accordingly, it has been aptly said that silence may be assent as well as consent, and may, where a direct and specific accusation of crime is made, be regarded under some circumstances as a quasi-confession.[185]

Treachery and Evident Premeditation

Attended the Commission of the Crime

As regards the presence of treachery as a qualifying circumstance, the evidence clearly showed that the attack on the unsuspecting victim — who was inside his car on a stop position in the middle of early morning traffic when he was suddenly fired upon by the appellants — was deliberate, sudden and unexpected. There was simply no chance for Abadilla to survive the ambush-slay, with successive shots quickly fired at close range by two (2) armed men on both sides of his car; and much less to retaliate by using his own gun, as no less than 23 gunshot wounds on his head and chest caused his instantaneous death. As we have consistently ruled, the essence of treachery is the sudden and unexpected attack on an unsuspecting victim by the perpetrator of the crime, depriving the victim of any chance to defend himself or to repel the aggression, thus insuring

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[185] *Id*.

its commission without risk to the aggressor and without any provocation on the part of the victim.[186]

Evident premeditation was likewise properly appreciated by the trial court, notwithstanding the inadmissibility of Joel de Jesus's extrajudicial confession disclosing in detail the pre-planned ambush of Abadilla, apparently a contract killing in which the perpetrators were paid or expected to receive payment for the job. As correctly pointed out by the CA, Alejo had stressed that as early as 7:30 in the morning of June 13, 1996, he already noticed something unusual going on upon seeing the two (2) lookouts (appellants Joel de Jesus and Lorenzo delos Santos) walking to and fro along Katipunan Avenue in front of the building he was guarding. True enough, they were expecting somebody to pass that way, who was no other than Abadilla driving his Honda Accord. After the lapse of more or less one (1) hour, he already heard successive gunshots, while in his guard post, from the direction of the middle lane where Abadilla's car was surrounded by four (4) men carrying short firearms. All the foregoing disclosed the execution of a pre-conceived plan to kill Abadilla. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out criminal intent within a span of time sufficient to arrive at a calm judgment.[187]

The trial court and CA were therefore correct in declaring the appellants guilty as conspirators in the ambush-slay of Abadilla, the presence of treachery and evident premeditation qualifying the killing to murder under Art. 248 of the Revised Penal Code, as amended.

Proper Penalty

The CA correctly modified the death penalty imposed by the trial court. At the time the crime was committed, the penalty for murder was *reclusion perpetua* to death. Since the penalty is composed of two (2) indivisible penalties, then for the purpose

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[186] *People v. Castillo,* 426 Phil. 752, 767 (2002).

[187] *People v. Rabanillo,* G.R. No. 130010, May 26, 1999, 307 SCRA 613, 621.

of determining the imposable penalty, Article 63 of the Revised Penal Code, as amended, must be considered. It provides in part:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

With the presence of the aggravating circumstance of treachery and there being no mitigating circumstance, the higher penalty of death should be imposed.[188]

In view, however, of the passage of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which was signed into law on June 24, 2006, the imposition of the death penalty has been prohibited. Pursuant to Section 2 thereof, the penalty to be meted to appellants shall be *reclusion perpetua*. Said section reads:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Notwithstanding the reduction of the penalty imposed on appellants, they are not eligible for parole following Section 3 of said law which provides:[189]

SECTION 3. 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.

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[188] *People v. Nabong*, G.R. No. 172324, April 3, 2007, 520 SCRA 437, 457, citing *People v. Navida*, G.R. Nos. 132239-40, December 4, 2000, 346 SCRA 821, 834.

[189] *Mendoza v. People*, G.R. No. 173551, October 4, 2007, 534 SCRA 669, 701.

Appellants' attack on the constitutionality of the above provision on grounds of curtailment of the President's absolute power to grant executive clemency, imposition of an inhuman punishment and violation of equal protection clause, is utterly misplaced.

As succinctly explained by this Court in *People v. Gardon*[190]

> We should point out that the benefit of parole cannot be extended to Gardon even if he committed the crimes for which he is now convicted prior to the effectivity of R.A. No. 9346. Sec. 2 of the Indeterminate Sentence Law provides that the law "shall not apply to persons convicted of offenses punished with death penalty or life- imprisonment." Although the law makes no reference to persons convicted to suffer the penalty of *reclusion perpetua* such as Gardon, the Court has consistently held that the Indeterminate Sentence Law likewise does not apply to persons sentenced to *reclusion perpetua.* In *People v. Enriquez,* we declared:
>
> > *[R]eclusion perpetua* is the only penalty that can be imposed against the appellants. As correctly argued by the Solicitor General, Act No. 4103, otherwise known as the *Indeterminate Sentence Law*, cannot be applied in the case of appellants considering the proscription in Sec. 2 thereof, *viz*:
> >
> > x x x x x x x x x
> >
> > Indeed, in *People v. Asturias, Serrano v. Court of Appeals, People v. Lampaza* and *People v. Tan*, to name a few cases, we in effect equated the penalty of *reclusion perpetua* as synonymous to life-imprisonment for purposes of the Indeterminate Sentence Law, and ruled that the latter law does not apply to persons convicted of offenses punishable with the said penalty. Consequently, we affirm the Court of Appeals in not applying the Indeterminate Sentence Law, and in imposing upon appellants the penalty of *reclusion perpetua* instead.
> >
> > *Reclusion perpetua* is an indivisible penalty without a minimum or maximum period. Parole, on the other hand, is extended only to those sentenced to divisible penalties as is evident from Sec. 5 of the Indeterminate Sentence Law, which provides that it is only after "any prisoner shall have served

[190] G.R. No. 169872, September 27, 2006, 503 SCRA 757, 770-771.

> the minimum penalty imposed on him" that the Board of Indeterminate Sentence may consider whether such prisoner may be granted parole.[191]

Further, we cite the concurring opinion of Mr. Justice Dante Tinga in *People v. Tubongbanua*,[192] addressing the issue herein raised by appellants, to wit:

> No constitutional sanctities will be offended if persons previously sentenced to death, or persons sentenced to *reclusion perpetua,* are denied the benefit of parole conformably to Section 3 of Rep. Act No. 9346. **As to persons previously sentenced to death, it should be remembered that at the time of the commission of the crime, the penalty attached to the crime was death. To their benefit, Rep. Act No. 9346 reduced the penalty attached to the crime to *reclusion perpetua.*** Yet such persons cannot claim the benefit of parole on the basis of the *ex post facto* clause of the Constitution, since an *ex post facto* law is one which, among others, "changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed." Rep. Act No. 9346 had the effect of "inflicting" a lighter punishment, not a greater punishment, than what the law annexed to the crime when committed.[193] [EMPHASIS SUPPLIED.]

Civil Liability

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[194]

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the

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[191] *Id.*, citing *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; and *People v. Tubongbanua,* G.R. No. 171271, August 31, 2006, 500 SCRA 727 (see Concurring Opinion).

[192] *Id*.

[193] *Id.*, at pp. 746-747.

[194] *Id.*, citing *People v. Enriquez, Jr.*, G.R. No. 158797, July 29, 2005, 465 SCRA 407, 418; and *People v. Tubongbanua,* G.R. No. 171271, August 31, 2006, 500 SCRA 727 (see Concurring Opinion).

crime.[195] We have ruled that even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[196] As explained in *People v. Salome*,[197] while R.A. No. 9346 prohibits the imposition of the death penalty, the fact remains that the penalty provided for by the law for a heinous offense is still death, and the offense is still heinous. Accordingly, the heirs of Col. Rolando N. Abadilla is entitled to civil indemnity in the amount of ₱75,000.00. The grant of actual damages representing burial expenses, funeral services and cost of repair of the Honda car, is likewise in order, being duly supported by receipts.[198]

With regard to moral and exemplary damages, we find the amounts awarded by the trial court excessive and the same are hereby reduced to ₱75,000.00 and ₱30,000.00, respectively. It must again be stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial judge or appellate court justices.[199] As to exemplary damages, the

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[195] *Id*.

[196] *Madsali v. People*, G.R. No. 179570, February 4, 2010, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[197] 500 Phil. 659, 676 (2006).

[198] Exhibits "T" to "T-6", folder of exhibits, pp. 40-46; TSN, January 27, 1997, p. 3.

[199] *Francisco v. Ferrer, Jr.*, G.R. No. 142029, February 28, 2001, 353 SCRA 261, 266-267, citing *American Home Assurance Company v. Chua*, G.R. No. 130421, June 28, 1999, 309 SCRA 250, 263, *Benguet Electric Cooperative, Inc. v. Court of Appeals*, G.R. No. 127326, December 23, 1999, 321 SCRA 524, 537, *Singson v. Court of Appeals*, 346 Phil. 831, 845 and *De la Serna v. Court of Appeals*, G.R. No. 109161, June 21, 1994, 233 SCRA 325, 329-330.

same is justified under Article 2230 of the New Civil Code when a crime is committed with an aggravating circumstance, either qualifying or generic.[200]

WHEREFORE, the consolidated petitions and appeal are hereby *DISMISSED*. The Decision dated April 1, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00667 is hereby *AFFIRMED* with *MODIFICATIONS* in that the civil indemnity for the death of Col. Rolando N. Abadilla is hereby increased to ₱75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are reduced to ₱75,000.00 and ₱30,000.00, respectively.

With costs against the accused-appellants.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Peralta, Del Castillo, Perez, and *Mendoza, JJ.,* concur.

Bersamin, J., with concurring opinion.

Brion, J., on official leave but left his vote concurring with *J*. Villarama, Jr. and the majority.

Carpio and *Abad, JJ.,* see dissenting opinion.

Carpio Morales and *Sereno, JJ.*, join the dissents of *JJ*. Carpio & Abad.

Nachura, J., no part. Signed pleading as Solicitor General.

CONCURRING OPINION

BERSAMIN, *J.*:

I concur with the thorough *ponencia* of Mr. Justice Villarama. Indeed, the People established beyond reasonable doubt the guilt of the appellants for the murder charged herein.

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[200] *People v. Padilla*, G.R. No. 167955 (Formerly G.R. No. 151275), September 30, 2009, citing *People v. Marcos*, G.R. No. 185380, June 18, 2009.

Through this humble concurrence, I only desire to spotlight some aspects of the case to banish the unfounded misgivings my two illustrious colleagues, Mr. Justice Carpio and Mr. Justice Abad, so eloquently expressed about the affirmance of the two lower courts' judgments. I would have unhesitatingly joined them in disagreeing with the *ponencia* had their misgivings been well founded. Alas, I cannot do so, for the records firmly established that the accused were guilty beyond reasonable doubt of the treacherous killing of the victim.

A

In his separate opinion, Mr. Justice Carpio urges the acquittal of all the accused due to the inadmissibility of the positive out-of-court identification of appellant Joel De Jesus (De Jesus) by the eyewitness security guard Freddie Alejo (Alejo) for being tainted with impermissible suggestiveness that cast grave doubt on the reliability of the identification. Mr. Justice Carpio observes that the police had first shown a photograph of De Jesus to Alejo prior to their face-to-face confrontation, and contends that the police thereby implanted in the mind of Alejo the identity of De Jesus as one of the perpetrators of the crime. He concludes that De Jesus was not reliably identified, and insists that the illegally-taken extrajudicial confession (by which he had implicated the other perpetrators) rendered De Jesus' identification of the other accused also baseless and inadmissible.

B

Citing *People v. Rodrigo*,[1] Mr. Justice Carpio advocates the acquittal of all the accused.

I do not disagree that the Court properly dismissed as unreliable the positive out-of-court and in-court identifications made in *People v. Rodrigo*. The established facts and circumstances in that case fully warranted the ultimate acquittal of Rodrigo, for the presumption of innocence in his favor was not overcome without his reliable identification as one of the robbers.

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[1] G.R. No. 176159, September 11, 2008, 564 SCRA 584.

Yet, I cannot join Mr. Justice Carpio's reliance on *People v. Rodrigo*, because the established facts and circumstances there were not similar to those herein.

People v. Rodrigo was a prosecution for robbery with homicide. There, the Court acquitted Lee Rodrigo, one of the three alleged robbers, because his out-of-court identification by the victim's wife, the lone eyewitness for the State, was held to be defective based on the "totality of the circumstances" and did not come up to the standard for reliable photographic identification set in *People v. Pineda*.[2] The Court particularly took into account that Rodrigo had been a stranger to the eyewitness, who had not known him prior to the identification; that the eyewitness had only a very brief encounter with the robbers (there being no direct evidence on the time the actual robbery and the accompanying homicide had taken); that she (eyewitness) had already known the name of Rodrigo long before she positively identified him, due to a neighbor of hers having told her that one of the malefactors had been Lee Rodrigo; that she could not have focused solely on the robber, because she had actually been closer in proximity to another malefactor; that she had made the out-of-court identification based on Rodrigo's photograph more than a month after the commission of the crime; and that she had been inconsistent on the precise role that Rodrigo had played in the commission of the crime.[3]

The Court noted in *People v. Rodrigo* that the eyewitness, being the wife of the victim and thus an aggrieved party, had hardly been a disinterested witness whose testimony should be equated to or treated as that from a detached party; and concluded that "based on the above considerations, that Rosita's (eyewitness)

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[2] G.R. No. 141644, May 17, 2004, 429 SCRA 478, 497; citing *People v. Teehankee, Jr.,* G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95.

[3] The actual confrontation between the eyewitness and the accused occurred five and a half months after the commission of the crime; and the *in-court identification* was conducted 15 months after the commission of the crime.

photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo (accused) as one of the three robbers xxx [and] based on the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime."

In contrast, the records of the present case show that impermissible suggestion did not precede Alejo's out-of-court positive identification of De Jesus as one of the perpetrators of the crime. Alejo's testimony on September 3, 1996 reveals, on the contrary, that Alejo even *categorically declined* to identify any suspect by mere looking at a photograph, to wit:

ATTY. BAGATSING:

Q Prior to 3:00 o'clock PM of **June 19, 1996 on or about 2:00 o'clock PM** where were you?

A Perhaps I was on my way I was fetched by the policeman from out agency in Monumento, sir.

x x x x x x x x x

Q After you were fetched from your post or agency in Monumento, where did you go?

A The police officers told me we were going to Fairview, sir.

Q While you were with these police officers on the way to Fairview, did you have any conversation with them?

A This is what happened. On the 18th of June in the afternoon of June 18, 1996, **they showed me a picture of a man wearing eyeglasses but I told them I will not point a man in photographs I would like to see him in person**.

Verily, the procedure outlined in *People v. Pineda*[4] and *People v. Teehankee*[5] for a proper out-of-court identification was neither disregarded nor violated.

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[4] Note 2, *supra*, *viz*:

The procedure on proper identification requires that, *firstly*, a series of photographs, not merely that of the suspects, must be shown and; *secondly*,

C

The reliability of Alejo's in-court identification of all the accused is being assailed on the ground that the identification of the other accused had supposedly resulted from the illegally taken extrajudicial confession of De Jesus, and that such identification had suffered from flaws, specifically: (*a*) the discrepancies about the descriptions of two of the accused and their features in Alejo's sworn statement given a few hours after the commission of the crime; (*b*) Alejo's having seen the killers only very briefly; (*c*) the lapse of a considerable length of time between the commission of the crime and Alejo's in-court identification of all the accused sufficed to cast doubt on Alejo's ability to still recall with clarity the details of the crime; and (*d*) the crime was committed by six perpetrators.

I now address the aforecited misgivings.

The challenge to the reliability of the in-court identification of De Jesus and Lenido Lumanog (Lumanog) was predicated on a report contained in a newspaper article (which was extracted from the internet)[6] to the effect that the "police sketch of [the] killer bore no resemblance to any of the Abadilla 5 (referring to the five accused)."[7] Allegedly, the physical descriptions of De Jesus and Lumanog given in Alejo's sworn statement – that the lookout (De Jesus) was "*edad* 30-35, 5'5"-5'6" *ang taas, maikli ang buhok, kayumanggi*" while the other suspect

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when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.

[5] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95, to wit:

In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances* test where they consider the following factors, to wit: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.

[6] See note 5, Separate Opinion, p. 6.

[7] *Id.*

(Lumanog) looked like "25-30 *ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na 5'5"-5'6"* – did not match reality, considering that De Jesus actually stood at 5'9" and was only 22 years of age at the time of the commission of the crime, and Lumanog was 40 years old and fair complexioned (*kayumanggi*), not dark skinned (*maitim*) at the time of the in-court identification.

With all due respect, the inconsistencies are more apparent than real, and did not discredit the positive in-court identification of all the accused.

To state that a police sketch of the killer bore no resemblance to any of the accused is to make a very *subjective* assessment. It is worth nothing in forensic determination. At any rate, a discrepancy between a police artist's sketch of a perpetrator of a crime based on descriptions of witnesses at the scene of the crime, on one hand, and an actual identification of the perpetrator by an eyewitness given in court, on the other hand, is a very minimal factor of doubt on the reliability of the identification. In any criminal prosecution there are more and better circumstances to consider other than the initial sketch of a police artist for determining the reliability of an identification. We have to remember that a police artist's sketch of a perpetrator of a crime is initially for purposes of pursuing an investigation, and has seldom any impact on the case after that.

That there might be a discrepancy between the alleged actual height of De Jesus and eyewitness Alejo's estimate of it did not negate the reliability of the latter's in-court identification of the former as the lookout who had pointed a gun at the latter. The records show that Alejo was standing inside his *elevated* guardhouse at the time of the commission of the crime, from where he had a clear view of the incident and of the persons involved. His good vantage point was confirmed during the ocular inspection conducted by the trial judge,[8] who observed for the record the high visibility of the events from such vantage point. Moreover, Alejo definitely had a good look at De Jesus,

[8] The trial judge was then RTC Judge Jose C. Mendoza, now a member of the Court.

considering that the latter himself *twice* shouted at and even poked his gun at Alejo. Lastly, any discrepancy between Alejo's estimate and the alleged actual height of De Jesus was easily accounted for by the higher location of Alejo in relation to De Jesus. This explanation is made plausible by the fact that Alejo's estimation was off by only three to four inches.

Alejo's description of Lumanog's pony-tailed long hair at the time of the commission of the crime did not also detract from Alejo's reliability by reason of Lumanog's hair at the time of his arrest being shorter. There is no question that Lumanog could have meanwhile cut his hair to look different (which he had a good motive to do). I might doubt the identification had Alejo described Lumanog's hair as very short at the time of the commission of the crime, due to the physical impossibility for hair to grow beyond a couple of inches within the span of the two months between the commission of the crime and his arrest.

The discrepancy between Alejo's recollection of Lumanog's dark skin tone at the time of the commission of the crime (*maitim*) and the latter's lighter one at the in-court identification (*kayumanggi*) did not diminish the reliability of Alejo as an eyewitness. For one, Alejo declared when asked that he had described Lumanog as *maitim* instead of *kayumanggi* because, to him, *maitim* and *kayumanggi* meant the same thing.[9] Also, as Mr. Justice Villarama rightly indicates in his *ponencia*, the variance in Lumanog's skin tone depended on the degree of his exposure to sunlight. Consequently, Lumanog's lighter skin tone at the time of his in-court identification as compared to his skin tone when arrested was really attributable to the lessened exposure to the sun during the period of over two months of his incarceration.

I have no doubt in my mind that whatever were the perceived discrepancies in Alejo's recollection of the event and the persons involved in it related only to minor and collateral matters, and did not diminish the veracity and weight of his positive

[9] TSN, August 22, 1996, p. 100.

identification of the accused as the heartless assailants of the victim.[10] That the laws of physics and our daily human experience easily explained the *perceived* discrepancies affirms that such discrepancies were not factors of doubt that depreciated, but rather increased, Alejo's value as an eyewitness. For, as all courts ought to know, no person who may be a witness in court possesses perfect faculties of observation or unerring senses of perception. Thus, the courts are often reminded to disregard discrepancies in testimony when the essential integrity of the State's evidence in its material whole is not damaged by such discrepancies. The courts are instructed instead to regard the discrepancies as erasing the suspicion that the testimony was rehearsed or contrived. Verily, honest inconsistencies usually serve to strengthen rather than destroy the witness' credibility.[11]

D

Alejo testified in court for the first time on August 20, 1996, or only over two months *following* the commission of the crime. Yet, Mr. Justice Carpio regards the interval as "a considerable length of time" that rendered unreliable Alejo's recollection of the significant circumstances of the crime, particularly the identities of the malefactors.

I concede that what is "considerable length of time" that can affect the integrity of testimony solely based on recollection cannot be defined with any consistency. In my long experience as a trial judge for over 16 years,[12] however, I *never* regarded the short period of only slightly over two months *between* the commission of the crime *and* the court testimony of an eyewitness as "a considerable length of time" sufficient to warp and distort testimonial recollection. In this particular instance, that the eyewitness was a trained security guard is even a better reason to hold that the lapse of over two months from the commission

[10] *People v. Mercado*, G.R. No. 116239, November 29, 2000, 346 SCRA 256, 280-281.

[11] *Decasa v. Court of Appeals*, G.R. No. 172184, July 10, 2007, 527 SCRA 267, 282; citing *People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 615.

[12] From November 6, 1986 until March 10, 2003.

of the crime to the time of his giving testimony did not weaken his recollection.

In fact, I find that Alejo remained consistent and unshaken in his recollection of the circumstances of people, acts and place, despite his standing as a witness in court for nine days (*that is*, August 20, 21, 22, 28 and 29, and September 3, 4, 5 and 17, all in 1996). My finding is based on his not wavering or not varying from his earlier eyewitness account of the crime despite his *exhaustive* cross examination on eight of those nine days.

E

The integrity and reliability of Alejo's identification of the accused were even fortified in the course of the trial.

To insulate Alejo's in-court identification of the accused from the prejudicial effects of prior improper suggestion made by the police, *if any*, the Defense deliberately subjected to a severe test the trustworthiness of his recollection when the time came for Alejo to make the identification in court by resorting to moves that would confuse him and would make the identification difficult. Specifically, the several accused donned regular clothing, instead of the regulation orange prison shirts; and commingled with the public inside the courtroom, with some putting on eyeglasses.

As the following excerpts from the records of the proceedings reveal, Alejo creditably hurdled the test, *viz*:

PROS. CHUA CHENG:

Q: Mr. Witness, you said that if you will be able to see those six (6) persons again you will be able to identify them?

A: Yes, mam.

x x x x x x x x x

Q: The person who first pointed the gun at you and told you to '*bumabaka*' (sic), if he is inside the courtroom will you please step down from your place and tap the shoulder of that person or point at him if that person is inside the courtroom...

ATTY. AZARCON:

I object to the pointing, your Honor, no basis to the identity of the suspects mentioned from 1 to 6, your Honor.

PROS. CHUA CHENG:

That is the reason why we requested the witness to point to the suspect, your Honor. **Before the witness comply with the request, may we request that whoever pointed by the witness be (sic) refrained from any comment, your Honor.**

Q: Inside the courtroom ... **will you please look around the court room and tell us if these suspects #1, 2, 3, 4, 5, & 6 are inside the court room.** (sic)

INTERPRETER:

Witness looking around the courtroom.

ATTY. CORPUZ:

May we request, your Honor, that all those persons wearing glasses including lawyers removed (sic) their eyeglasses.

ATTY. AZARCON:

Your Honor, that is uncalled for. That is not necessary.

PROS. CHUA CHENG:

May we move, your Honor, that all persons inside the courtroom to sit down.

COURT:

All persons inside the courtroom please sit down.

PROS. CHUA CHENG:

Q: **Are all these six (6) persons inside the court room?**

A: **Yes, mam. (sic)**

Q: **This number 5 the person who first pointed a gun at you and told you '*babaka*'** (sic)**, will you please pointed** (sic) **to us?**

INTERPRETER:

Witness went down from the witness stand and approaching to the group of persons and witness pointing to a man seated

in the courtroom **wearing stripe polo and when asked to identify himself he gave his name as JOEL DE JESUS.**

x x x x x x x x x

PROS. CHUA CHENG:

Q: **This person referred by you as #1 the person who got the clutch bag, grabbed the neck and pulled the victim outside the car, is he inside the courtroom?**

A: **Yes, maam. (sic)**

Q: Please step down and pointed (sic) to us that person?

INTERPRETER:

Witness went down from the witness stand and approaching to the group of persons and witness pointing to a man **wearing maroon T-shirt and when asked to identify himself he gave his name as LENIDO LUMANOG.**

x x x x x x x x x

PROS. CHUA CHENG:

Q: **This #2 which you referred to in the picture if he is inside the courtroom, will you please point him to us?**

INTERPRETER:

Witness stepping down from the witness stand and approaching the group of people and pointed at a man **wearing printed polo shirt and when asked to identify himself he gave his name as RAMESES DE JESUS.**

ATTY. CORPUZ:

May we make it of record that the person pointed to by the witness who answered the name as RAMESES DE JESUS even transferred his position from the group of the suspects to the right side of the audience and that is also true with accused LENIDO LUMANOG that before the identification was made he transferred his sitting position and even used eye glasses, your Honor.

x x x x x x x x x

INTERPRETER:

> Witness stepping down from the witness stand **approaching the group of people and pointed at a man and when asked to identify himself he gave his name as LORENZO DELOS SANTOS.**

x x x x x x x x x

INTERPRETER:

> Witness stepping down from the witness stand approaching the group of people and **pointed at a man and when asked to identify himself he gave his name as AUGUSTO SANTOS.**

x x x x x x x x x

INTERPRETER:

> Witness stepping down from the witness stand approaching the group of people and **pointed at a man and when asked to identify himself he gave his name as CESAR FORTUNA.**[13]

F

Neither did the fact that Alejo's initial sworn statement had described only two suspects dent his credibility, considering that he did not at all state or declare therein that he could not describe the other suspects. On the other hand, he asserted that he could do so when required.

G

That Alejo had the full opportunity to *take in* the circumstances of the killing of the victim and should be accorded the highest reliance is beyond question. He had a close proximity to the vehicle of the victim and to the accused. His vantage point from his elevated position inside the guardhouse gave him a frontal view of the commission of the crime. The circumstances played out like a scene from an action-packed movie right before his very eyes, as confirmed by the trial court's ocular inspection of the scene of the crime. His boldness in looking at what was happening in his presence until finally forced at gunpoint to

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[13] TSN, August 20, 1995, pp. 49-63.

look away was made plausible by his being a security guard then on duty in that area.

The insinuation that Alejo could not have observed enough and thus could not reliably recall the persons and events in view of the fleeting character of the encounter was at best speculative. We should not ignore that Alejo was a security guard who had undergone some professional training that included how to respond to a crime committed within his area of responsibility. With his training investing him an appreciation of the crucial importance of identification and discernment, he was not likely affected by the excitement of the startling situation, unlike an untrained observer.

H

For his part, Mr. Justice Abad similarly assails the credibility of Alejo as an eyewitness able to reliably identify the perpetrators of the crime. He rejects an outright reliance on the factual findings of the trial court mainly because the trial judge who penned the decision had not been the same judge who had heard the testimony of Alejo and had thus observed his demeanor. He urges, instead, that the place to start is Alejo's lack of ill motive in testifying against the accused, which, if true, would render him trustworthy enough. He states that Alejo did not lack ill motive, in light of the revelation that the family of the victim had sheltered him and had extended financial benefits to him, thereby tainting his testimony.

I take a contrary view.

That the judge who wrote the decision had not heard all the testimonies of the prosecution witnesses did not taint or disturb the decision,[14] or did not necessarily render it assailable,[15] for, after all, he had before him the records of the trial, including the transcripts of the stenographic notes (TSNs). This, among

[14] *People v. Ulzoron*, G.R. No. 121979, March 2, 1998, 286 SCRA 740, 748.

[15] *People v. Sorrel*, G.R. No. 119332, August 29, 1997, 278 SCRA 368, 377; citing *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.

others, explains why all trial courts are required to be courts of record.[16]

The validity of a decision is not impaired when its writer only took over from another judge who had earlier presided at the trial, unless there is a clear showing of grave abuse of discretion in the appreciation of the facts.[17] No such grave abuse of discretion was shown herein. The trial records demonstrate, on the contrary, that the factual findings of the trial court and the assessment of the credibility of Alejo as an eyewitness rested on a most careful and thorough study of the evidence adduced by both parties. Indeed, although he did not observe the demeanor of Alejo as a witness, the writing judge (Judge Jaime N. Salazar) was not entirely deprived of a proper sense of Alejo's demeanor considering that the TSNs were replete with the *detailed* manifestations on Alejo's appearance, behavior, deportment, disposition, and mien during the many days of his testimony that the various counsel of both parties zealously put on record for memorialization.[18]

Indeed, a decision rendered by a judge who has not himself received the evidence during the trial and has relied on the TSNs of the trial is as good and binding as one rendered by a judge who has seen and heard the witnesses as they testified in court. It is up to the party disagreeing with the dispositions contained in the former's decision to establish that the rendering judge ignored some facts or misappreciated material evidence. A mere generalized attack against such decision should not diminish its value as a judicial adjudication. Otherwise, we would frequently have the undesirable situation of the accused forcing the trial judge receiving the evidence and observing the demeanor of the witnesses to self-inhibit from the case once the State

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[16] *People v. Tamayo, et al.*, G.R. No. 138608, September 24, 2002, 389 SCRA 540, 551-552.

[17] See note 15; citing *People v. Sadiangabay,* G.R. No. 87214, March 30, 1993, 220 SCRA 551.

[18] At one point, more than ten lawyers were collectively involved in the prosecution/defense of this case.

completed the presentation of its evidence in order to prevent another judge from rendering the proper judgment against the accused.

I

Mr. Justice Abad imputes to Alejo the ill-motive to fabricate his testimony in order to favor the Prosecution and the family of the victim due to the latter's sheltering him and extending to him some financial or economic benefits. He implies that Alejo not only disregarded his earlier physical descriptions of the two armed men involved in the commission of the crime, but actually enhanced his impression of the actual shooting in consideration of his intervening affinity with the victim's family.

The mere imputation of ill-motive *without proof* was *speculative* at best. To start with, that the family of the victim *might have* extended economic or financial support to Alejo did not necessarily warrant the presumption of bias on the part of Alejo as a witness. There was no evidence showing that *any* such support was for the purpose of unduly influencing his testimony. Likelier than not, the support was only an expression of the family's appreciation for his cooperation in the public prosecution of the culprits, or for his resolve to ensure the successful prosecution of the perpetrators.

J

Mr. Justice Abad contends that Alejo's eyewitness account was further suspect in light of the following observations: (*a*) Alejo did not take any steps to anticipate and prevent trouble despite having observed two strangers walking to and fro in front of the establishment he was then guarding; (*b*) Alejo did not see what was happening on the street because he was seated inside the guardhouse with his back slightly turned towards the street; (*c*) Alejo did not see which of the four strangers stood at which side of the car of the victim, because his attention was already focused on De Jesus and the latter's gun poked at his face; (*d*) Lumanog could not possibly hold a gun in one hand and grab the victim's neck with the other, and still manage to reach for the clutch bag of the victim inside the

car; (*e*) Alejo could not focus his attention on De Jesus and still simultaneously examine the faces of the other four perpetrators who were standing by the car of the victim in a short span of time; (*f*) Alejo identified all the accused as the perpetrators of the crime through photographs and while the accused were already in custody; and (*g*) the accused could not have turned to face Alejo in unison as if posing for a class picture.

I disagree.

On the failure to make any preemptive move upon noticing the two strangers walking to and fro in front of the establishment he was then guarding, Alejo clarified during his cross examination that he became more alert after noticing the two strangers,[19] but he explained why he did not confront the two strangers, to wit:

ATTY. BUTED (to the witness)

Q **Did you confront these 2 men?**

A **No sir.**

Q **And since you consider it unusual and you are a security guard, why did you not confront these 2 men?**

x x x x x x x x x

A **I can't do that sir because according to the law of security guards you cannot ask passersby or any person for that matter who haven't done anything unlawful.**

x x x x x x x x x

Q Were you not apprehensive that these 2 men would do something to you or to the establishment?

ATTY. CORPUZ

Already answered your Honor please, because the security guard answered he became alert when he noticed these 2 men walking to and fro.[20]

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[19] TSN, August 21, 1996, p. 22.

[20] *Id.* at pp. 23-24.

On the implausibility of Alejo actually seeing what was happening on the street due to his back being then slightly turned towards the street while he was seated inside the guardhouse, I submit that this attempt to discredit emanates from a *wrong interpretation* of *tagilid ang upo*, Alejo's description of his position inside the guardhouse.

How good a vantage point did Alejo have when he witnessed the crime was ascertained during the ocular inspection of the scene of the crime conducted by the trial judge on September 26, 1996. The ocular inspection *confirmed* that the car of the victim was not directly in front of the guard house, but a few meters further down the road to the right; and that Alejo's stool, relative to the front portion of the store facing Katipunan Avenue, positioned him at an angle towards the car of the victim and the southbound direction, *i.e.*, White Plains/Blue Ridge area. With himself taking the position of Alejo inside the guardhouse, the trial judge then observed for the record that he "can see the car very clearly even if the car would be moved back by another segment also xxx and the Court observes that from the guard post the faces of the persons beside the car are very clear."[21] The trial judge also recorded that *even if* Alejo had been *tagilid ang upo*,[22] the means to observe the goings-on for anyone in *that* position of Alejo were still unhampered, thus:

COURT:

> **The Court observed that from where witness Alejo was he can still see the whole car as it has been moved back per the directive of Major Villena.**[23]

x x x x x x x x x

INTERPRETER:

> **Witness demonstrating how suspect No. 1 took the clutch bag from the front passenger seat by leaning his body**

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[21] TSN, September 26, 1996, pp. 21-22.

[22] *Id.* at p. 23.

[23] *Id.* at p. 38.

> **forward into the car over the body of the victim slumped on the steering wheel, and after the taking of the clutch bag, the witness puts his right arm around the victim's neck while standing on the left side of the victim as both face the front of the car.**

COURT:

> **After the demonstration while witness Alejo was demonstrating how he got the clutch bag and how he grabbed the neck of the driver of the black car, the Judge was at the guard post [house] and saw for himself that he clearly saw the taking of the clutch bag even if the untinted windows were closed and the pulling of the driver of the black car**.[24]

Next, to insist that Alejo could not have noticed where the four assailants had stood in relation to the car of the victim due to his (Alejo) attention being already focused on De Jesus and the gun that De Jesus had poked at Alejo's face was, again, to speculate. The records do not contain any factual foundation for such insistence. Instead, the sequence of events indicated that Alejo had the *ample opportunity* to commit to memory the facial descriptions of the perpetrators. Moreover, it is noted that Alejo had first noticed the presence of the two strangers walking to and fro nearly an hour *prior to the shooting* of the victim, which means that his observation of them was ample enough. This belied the unsupported claim that he had only a mere fleeting glance of De Jesus and his cohorts.

It is also clear that Alejo continued to watch the unfolding scene and the various persons involved. He had ignored the first shouted command for him to get down (*dapa*) and had continued to observe until the second command for him to get down, with the gun poked directly in his face, was harshly shouted at him.

On the impossibility of Alejo's claim that Lumanog held a gun with one hand and grabbed the victim by the neck with the other, while also reaching for the victim's clutch bag, inside

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[24] *Id*. at p. 69.

the car, it seems that Lumanog was being simplistically projected to have simultaneously done all such actions.

I cannot accept such simplistic projection. It is evident that Lumanog executed his acts *in sequence*. His sequential execution was easy for him to do, for the victim's upper torso, including the neck and face, had by then been riddled with bullets, leaving the already lifeless victim slumped over the steering wheel of his own car. Obviously, Lumanog *became* confident enough to open the car door in order to reach for the clutch bag of the victim with his right hand, having transferred his gun to his left hand. His reaching right hand had to curve around the slumped body of the victim.

Describing the situation during his cross examination, Alejo recalled not anymore seeing the gun in Lumanog's right hand at the point when Lumanog reached in for the clutch bag of the victim.[25] Understandably, Lumanog was holding the gun with his left hand because there was no more need for him at that point to hold the gun with his right hand.

In the course of the ocular inspection conducted on September 26, 1996, Alejo demonstrated how Lumanog had stood at the left side of the victim (with both Lumanog and the victim facing the front of the car) and how in that position Lumanog had curved his right arm around the victim's neck in order to pull the victim's body partly out of the car and onto the pavement, when he had then delivered a final shot to the head.[26] Without any resistance from the lifeless victim, Lumanog had then easily reached for the clutch bag with his right hand.

The thing about all the accused improbably turning in unison towards Alejo as if posing for a class photograph did not reflect what is in the trial records.

The records proved that Alejo's *ample* personal observation of what each of the attackers backstopped the reliability of his identification of the attackers. It was definitely not as if his

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[25] *Id.* at p. 69.

[26] See note 19.

observation occurred in an "infinitesimal second," as Mr. Justice Abad has put it. We note that the others turned towards Alejo's direction by reflex upon hearing the *loudly shouted command* of De Jesus for Alejo to lie low in his guardhouse. The following excerpt from Alejo's testimony bears it out:

> ATTY. BUTED (to the witness)
>
> Q **Because you were not nervous and you were not scared?**
> A **Yes sir.**
>
> Q **When for the second time when he said "*dapa*," what did you do?**
> A **When he shouted at me "*dapa*" his companions faced me because of his loud voice.**
>
> Q **Whom do you mean companions?**
> A **The one that was at the right rear side, another one at the left rear side and another one was at the right front side.**
>
> Q **So that's all?**
> A **No sir there was another one, one of the 2 men who were earlier walking to and fro who was at the corner also faced me and pointed the gun at me**.[27]

Indeed, the loudly shouted command of De Jesus made his cohorts instantaneously turn towards Alejo's direction, because it was there where the shout had come from. Their facing towards that direction was reflexive, because De Jesus had been the lookout designated to ensure their safety. Their common reaction of looking in his direction *further* enabled Alejo to have a good look at their faces, which were not concealed by masks or other disguises, as the trial judge noted in the order dated January 25, 2000, thus:

> 13. Indeed, the court is impressed with the brazenness that the shooters/gunmen and the look-out had displayed during the actual ambush incident as they did not even cover their faces with masks or bonnets so as to conceal their identities considering the time and place. It is not surprising, therefore, that they were not also smart enough but had the audacity

[27] *Id.* at p. 76.

to go on their daily routine as if nothing petrifying had happened.[28]

I

Mr. Justice Abad contends that the presence of any of the accused at the scene of the crime was not established because "none of the fingerprint marks on [the hijacked] vehicle (KIA Pride) matched any of those of the accused."[29]

The contention has no basis.

Worth clarifying is that the Defense did not present in this case *any* credible evidence, exculpatory or otherwise, on the fingerprints. Although the Defense presented Mrs. Remedios Dedicatoria, a fingerprints expert, to testify on the fingerprints lifted from the vehicles involved in this case, her testimony on the matter turned out to be untrustworthy in view of her admission on cross examination that she had not been present or involved in the lifting of the fingerprints from either the hijacked KIA Pride or the victim's Honda Accord. In fact, she had no contact with the vehicles, as the following excerpt of her testimony indicated:[30]

ATTY. CORPUZ:

Are you sure, Madam witness you were present when all those fingerprints were lifted Madam witness?

x x x x x x x x x

ATTY. CORPUZ:

Are you sure you were present when the fingerprints were lifted, allegedly taken from the two (2) cars, Honda Accord car and KIA pride (sic) Madam witness?

WITNESS:

I was not the one who lifted the latent prints. I was not present sir.

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[28] Order dated January 25, 2000 (Criminal Case Nos. 96-66679-84, p. 7).

[29] Additional Reflection, p. 6.

[30] TSN, January 9, 1998, pp. 140-141.

ATTY. CORPUZ:

In short, you were not present when all those fingerprints were taken from these cars, Honda Accord and Kia Pride Madam witness?

WITNESS:

Yes sir.

Moreover, Mrs. Dedicatoria was exposed as a lying witness. In a clear attempt to conceal from the trial court her failure to *personally* lift the fingerprint marks off the hijacked KIA Pride, she professed to know the whereabouts of the vehicle. On cross examination, however, her prevarication was exposed, *viz*:

ATTY. CORPUZ:

Is it not a fact that Madam witness, that car KIA Pride car was found at the Police station near 10th Avenue or another street, not in Katipunan Avenue, is it not Madam witness?

WITNESS:

It was at Katipunan Road, sir.

ATTY. CORPUZ:

Where in Katipunan Madam witness?

WITNESS:

At Project 4 sir.

ATTY. CORPUZ:

Which place in Project 4, in relation to this Honda Accord car Madam witness?

WITNESS:

Bayanihan Street sir.

x x x x x x x x x

ATTY. CORPUZ:

How far was that KIA Pride to the Honda Accord when you lifted latent prints, how many meters away when you lifted that latent prints Madam witness?

WITNESS:

About fifteen (15) to twenty (20) meters away sir.[31]

As the records reveal, the perpetrators had *abandoned* the hijacked KIA Pride on Aguinaldo Street in Project 4, Quezon City, near its intersection with J.P. Rizal Street. The vehicle was, therefore, nowhere on Katipunan Avenue; neither was it anywhere near the Honda Accord of the victim, least of all a mere 15-20 meters away from the latter vehicle.[32]

Nonetheless, even assuming that Mrs. Dedicatoria was a competent witness, certain factors might still render her testimony on the absence of fingerprints inconclusive, namely:

(a) Fingerprints made on smooth surfaces (like the exterior of the vehicles) could easily be wiped off, or erased;

(b) If the fingerprints of the victim and of Lumanog were not found on the door handle of the victim's car,[33] the simple explanation was that the victim and Lumanog possibly lifted the handle from its underside. It is notable that, as Mrs. Dedicatoria admitted, no examination was made on the underside of said handle; and

(*c*) No thorough examination for fingerprints was done on the cars, considering that even the victim was said not to have left any fingerprints on the Honda Accord despite his having owned and driven it on the fatal day.[34]

In fine, the Dactyloscopy Report and the expert testimony of Mrs. Dedicatoria were inconclusive, and should not be relied upon to disprove the actual presence of the accused in the place and scene of the crime at the time of its commission.

K

Mr. Justice Abad states that the slug recovered from the body of the victim matched the slug taken from a "known victim

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[31] *Id.* at pp. 135-139.

[32] See note 11 of the Decision, p. 5.

[33] *Id.* at pp. 124-125.

[34] *Id.* at p. 128.

of the Alex Boncayao Brigade (ABB) of the New People's Army." He then concludes that those responsible for the murder of the victim were also from the ABB. Hence, he deduces that because "none of the accused had been identified with the ABB, they could not have been involved in that killing."

The concern about the slug extracted from the victim being ballistically similar to the slug extracted from a known victim of the ABB is devoid of factual justification and deserves *no* consideration.

In his order dated January 25, 2000 denying the motion for reconsideration and/or new trial filed by the accused grounded on the same concern, the trial judge explained very well why the concern was unfounded, thus:

> 9. **The transference of responsibility to the ABB for the ambush-slay of the victim is based on alleged news reports. Said news reports are hearsay and not admissible in evidence. The requisites on the applicability of the rule on declaration against interest, as an exception to the hearsay rule, were not convincingly shown before this court as being present in such alleged press statements by the ABB**;
>
> 10. **While the records do not indicate that accused were ABB operatives, the same records do not bear that they are not. Anyone can simply claim that he is not the one who he is or who he is not xxx**.[35]

It is relevant to remind that the Court itself has already affirmed the propriety of the aforecited order dated January 25, 2000 in *Lumanog, et al. v. Hon. Salazar, Jr.*[36]

L

The urging to take judicial notice of the fact that the victim was a natural target of the ABB for being the former head of the Metropolitan Command Intelligence and Security Group

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[35] Order dated January 25, 2000, p. 6.

[36] G.R. No. 142065, September 7, 2001, 364 SCRA 719.

(MISG) of the Philippine Constabulary during the Marcos regime is unwarranted.

The victim's heading the MISG was not material to the question of whether or not the State established beyond reasonable doubt the guilt of all the accused herein for the crime charged. Taking judicial notice that the victim was a natural target of the ABB is even improper, considering that such fact could not be reasonably inferred from his having headed the MISG during the Marcos regime. For sure, that the victim was a natural target of the ABB was neither a matter of public knowledge, nor capable of unquestionable demonstration, nor ought to be known to judges by reason of their judicial functions.[37] Lastly, the Court no less, albeit on another occasion,[38] already declared that "appellations or opprobriums" would not sway it against the victim, Col. Rolando N. Abadilla, observing:

> The Court is not unaware that accused-respondent Abadilla, rightly or wrongly, is identified with the violent arm of the past regime. To many, he is regarded with unusual ease and facility as the "hit man" of that regime. The Court, however, is not swayed by appellations or opprobriums. Its duty, as a temple of justice, is to accord to every man who comes before it in appropriate proceedings the right to due process and the equal protection of the laws.

CONCLUSION

In our resolution of this appeal, we should be guided only by the weighty and competent evidence on record. We should resolve with objectivity and detachment. We should eschew speculation and passion.We should not allow angles or theories not supported by the evidence on record to distract us.

Convinced that the presumption of innocence in favor of the accused was sufficiently overcome by the State, I vote to dismiss the consolidated petitions of the accused, and to affirm their conviction for the felony of murder.

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[37] Section 2, Rule 129, *Rules of Court*.

[38] *People v. Asuncion*, G.R. No. 80066, May 24, 1988, 161 SCRA 490, 499.

DISSENTING OPINION

CARPIO, *J.*:

An accused has the right to be presumed innocent unless proven guilty beyond reasonable doubt. No less than the fundamental law guarantees such human right. Section 14(2), Article III of the Constitution mandates that "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved." Reinforcing this right, Section 2, Rule 134 of the Rules of Court specifically provides that "In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt."

The "presumption of innocence" serves to emphasize that the prosecution has the obligation to prove not only each element of the offense beyond reasonable doubt[1] but also **the identity of the accused as the perpetrator**. The accused, on the other hand, bears no burden of proof.[2] The prosecution evidence must stand or fall on its own weight and cannot draw strength from the weakness of the defense.[3]

The present consolidated cases involve the ambush-killing of former Metropolitan Command Intelligence and Security Group of the Philippine Constabulary Colonel Rolando N. Abadilla (Abadilla) on 13 June 1996 by several men while he was stuck in traffic along Katipunan Avenue, Quezon City.

Accused of being the killers of Abadilla, Lenido Lumanog (Lumanog), Augusto Santos (Santos), Cesar Fortuna (Fortuna), Rameses De Jesus (Rameses), Lorenzo Delos Santos (Delos Santos), Joel De Jesus (Joel), and Arturo Napolitano (Napolitano) were charged with murder, aggravated by treachery, evident premeditation, and taking advantage of superior strength. The

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[1] http://en.wikipedia.org/wiki/Presumption_of_innocence

[2] *Id.*

[3] *People v. Ulpindo*, G.R. No. 115983, 12 April 1996; *People v. Subido*, G.R. No. 115004, 5 February 1996; *People v. Payawal*, G.R. No. 113995, 16 August 1995.

trial court convicted Lumanog, Santos, Fortuna, Rameses, and Joel, while it acquitted Delos Santos and Napolitano. The Court of Appeals affirmed the conviction.

The majority sees no reason to disturb the verdict. The majority discards the extrajudicial confession extracted from the accused for being violative of the accused's constitutional rights. Nevertheless, the majority affirms the trial and appellate courts' finding of guilt, which was basically anchored on the alleged positive identification of the accused as gunmen and lookouts by a lone eyewitness, Freddie Alejo (Alejo). The majority gives credence to the prosecution's eyewitness, and disbelieves the defense's eyewitness. For these reasons, the majority finds that the prosecution has sufficiently overthrown the presumption of innocence which the accused enjoy and has proved beyond reasonable doubt the accused's guilt for the crime of murder.

I dissent.

I. The photographic identification of Joel De Jesus is tainted with impermissible suggestion, violating the accused's due process rights.

As the majority found, "**when appellants (accused) were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, x x x.**" In other words, insofar as the police was concerned, Joel was already a suspect even before Alejo went with them to "identify" Joel. **In fact, before Alejo pinpointed Joel as one of the suspects, the police showed Alejo a photograph of Joel, supporting the fact that the police focused on Joel as a suspect in the Abadilla killing.** Alejo testified:

ATTY. BAGATSING:

Q Prior to 3:00 o'clock PM of June 19, 1996 on or about 2:00 o'clock PM where were you?

A Perhaps I was on my way I was fetched by the policeman from our agency in Monumento, sir.

Q Who was that police officer who fetched you?

A I can't recall his name which was placed on his name plate, sir.

Q How many were they?
A They were four (4) of them, sir.

Q After you were fetched from your post or agency in Monumento, where did you go?
A The police officers told me we were going to Fairview, sir.

Q While you were with these police officers on the way to Fairview, did you have any conversation with them?
A This was what happened. **On the 18th of June in the afternoon of June 18, 1996, <u>they showed me a picture of a man wearing eyeglasses</u>** but I told them I will not point a man in photographs I would like to see him in person.[4] (Emphasis supplied)

In *People v. Teehankee*,[5] the Court laid down the guidelines to determine the admissibility and reliability of an out-of-court identification, thus:

> In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted **the totality of circumstances test** where they consider the following factors, ***viz***: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at the time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and **(6) the suggestiveness of the identification procedure.** (Emphasis supplied)

Hence, in an out-of-court identification, among the factors to be considered is the suggestiveness of the procedure. In this case, the police resorted to a photographic identification of Joel, who was the first suspect to be apprehended and who provided the identities of the other accused.

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[4] TSN, 3 September 1996, pp. 21-22.

[5] G.R. Nos. 111206-08, 6 October 1995, 249 SCRA 54.

In *People v. Pineda*,[6] the Court explained the rules in proper photographic identification procedure, to wit:

> Although showing mug shots of suspects is one of the established methods of identifying criminals, the procedure used in this case is unacceptable. **The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect. The second rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect.** Thus:
>
> > [W] here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness's recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."
> >
> > x x x x x x x x x
> >
> > A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph. (Emphasis supplied)

In *Pineda*, the Court rejected the out-of-court identification of the accused, since only the photographs of the two accused, Pineda and Sison, were shown to the witnesses, contrary to the recognized rules in photographic identification. Finding the identification of appellant therein tainted with impermissible suggestion, the Court held the identification failed the totality of circumstances test, thus:

> In the present case, there was impermissible suggestion because the photographs were only of appellant and Sison, focusing attention on the two accused. The police obviously suggested the identity of

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[6] G.R. No. 141644, 27 May 2004, 429 SCRA 478, 497-498.

the accused by showing only appellant and Sison's photographs to Ferrer and Ramos.

The testimonies of Ferrer and Ramos show that their identification of appellant fails the totality of circumstances test. The out-of-court identification of appellant casts doubt on the testimonies of Ferrer and Ramos in court.[7]

Similarly, in this case, Alejo was first shown a photograph of Joel before Alejo pinpointed Joel as one of the suspects. The police showed only one photograph, that of Joel's, highlighting the fact that the police primed and conditioned Alejo to identify Joel as one of the murderers of Abadilla. The police focused on Joel as one of the suspects, prior to Alejo's identification. The police did not show Alejo any other photograph, only that of Joel's. Assuming Alejo refused to glance at Joel's photograph, which is quite unbelievable, the fact that he was shown only one photograph violates standard operating procedures in criminal investigations. Clearly, the police, in showing Alejo only a photograph of Joel, instead of a series of photographs arranged in an unsuspicious manner, breached the recognized rules in photographic identification. Undoubtedly, this procedure seriously corrupted the identification process with impermissible suggestion.

In *People v. Rodrigo*,[8] the Court, speaking thru Justice Arturo Brion, acquitted the accused for failure of the prosecution to identify the accused as the perpetrator of the crime, which identification is extremely crucial to the prosecution's burden of proof. Stressing the importance of a proper identification of the accused, most especially **"when the identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification," just like in this case,** the Court held:

The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole

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[7] *Id.* at 498.

[8] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 597, 600, 609-610.

witness and the judgment in the case totally depends on the reliability of the identification. This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

x x x x x x x x x

That a single photograph, not a series, was shown to Rosita is admitted by Rosita herself in her testimony.

x x x x x x x x x

We hold it highly likely, based on the above considerations, that Rosita's photographic identification was attended by an impermissible suggestion that tainted her in-court identification of Rodrigo as one of the three robbers. We rule too that based on the other indicators of unreliability we discussed above, Rosita's identification cannot be considered as proof beyond reasonable doubt of the identity of Rodrigo as one of the perpetrators of the crime.

A first significant point to us is that Rosita did not identify a person whom she had known or seen in the past. The robbers were total strangers whom she saw very briefly. It is unfortunate that there is no direct evidence of how long the actual robbery and the accompanying homicide lasted. But the crime, as described, could not have taken long, certainly not more than a quarter of an hour at its longest. This time element alone raises the question of whether Rosita had sufficiently focused on Rodrigo to remember him, and whether there could have been a reliable independent recall of Rodrigo's identity.

We also find it significant that three robbers were involved, all three brandishing guns, who immediately announced a holdup. This is an unusual event that ordinarily would have left a person in the scene nervous, confused, or in common parlance, "rattled." To this already uncommon event was added the shooting of Rosita's husband who charged the robbers with a *"bangko"* and was promptly shot, not once but three times. These factors add up to our conclusion of the unlikelihood of an independent and reliable identification. (Emphasis supplied)

The clear import of *Rodrigo* is that an out-of-court identification, made by the lone witness, who was subjected to impermissible photographic suggestion, fatally tainted

the subsequent in-court identification made by the same witness. Accordingly, the testimony of such witness on the identification of the accused, by itself, cannot be considered as proof beyond reasonable doubt of the identity of the perpetrator of the crime. Without proof beyond reasonable doubt of the identity of the perpetrator, the accused deserves an acquittal.

Inasmuch as the present case involves the alleged positive identification by a lone eyewitness and the entire case depends on such identification, the *Rodrigo* case squarely applies here. Moreover, similar to this case, the witness in *Rodrigo* was initially shown a single photograph of the accused.

Applying *Rodrigo* to this case, the sole eyewitness Alejo's out-of-court identification which proceeded from impermissible suggestion tainted his in-court identification of Joel as one of the perpetrators of the crime. As a result, Alejo's corrupted testimony on the identification of Joel cannot be considered as proof beyond reasonable doubt of the identity of Joel as one of the perpetrators. Without such proof, Joel must be acquitted.

In his Separate Concurring Opinion, Justice Lucas P. Bersamin distinguishes *Rodrigo* from the instant case. Indeed, *Rodrigo* involved a robbery with homicide while this case is for murder. Notwithstanding the dissimilarity in the factual milieus, ***Rodrigo*** **similarly dealt with the admissibility and reliability of the identification made by a sole witness and the judgment in the case totally depends on such identification. In this case, Alejo is the sole eyewitness whose identification of the perpetrators is determinative of the final outcome of this case.**

Justice Bersamin errs in concluding that Alejo's alleged act of "categorically declining to identify any suspect from mere looking at a photograph" removes any taint of impermissible suggestion from the out-of-court identification. This does not detract from the fact that the police showed Alejo no other photograph, except that of Joel's. Moreover, to repeat the majority's finding: "**when appellants (accused) were arrested they were already considered suspects: Joel was pinpointed**

by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, x x x." Moreover, the fact remains that Joel testified that the police "showed me a picture of a man wearing eyeglasses."

Further, it must be emphasized that a highly suggestive identification results in a denial of the accused's right to due process since it effectively and necessarily deprives the accused of a fair trial. In *Rodrigo*, the Court stated:

> The initial photographic identification in this case carries serious constitutional law implications in terms of the possible violation of the due process rights of the accused as it may deny him his rights to a fair trial to the extent that his in-court identification proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. In the context of this case, the investigators might not have been fair to Rodrigo if they themselves, purposely or unwittingly, fixed in the mind of Rosita, or at least actively prepared her mind to, the thought that Rodrigo was one of the robbers. Effectively, this act is no different from coercing a witness in identifying an accused, varying only with respect to the means used. Either way, the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists.[9]

In *Pineda*, the Court pointed out the dangers a photographic identification spawns: an impermissible suggestion and **the risk that the eyewitness would identify the person he saw in the photograph and not the person he saw actually committing the crime.** Citing Patrick M. Wall, the Court stated:

> [W]here a photograph has been identified as that of the guilty party, any subsequent corporeal identification of that person may be based not upon the witness' recollection of the features of the guilty party, but upon his recollection of the photograph. Thus, although a witness who is asked to attempt a corporeal identification of a person whose photograph he previously identified may say, "That's the man that did it," what he may actually mean is, "That's the man whose photograph I identified."

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[9] *Id.* at 598-599.

x x x x x x x x x

A recognition of this psychological phenomenon leads logically to the conclusion that where a witness has made a photographic identification of a person, his subsequent corporeal identification of that same person is somewhat impaired in value, and its accuracy must be evaluated in light of the fact that he first saw a photograph.[10]

Due process dictates that the photographic identification must be devoid of any impermissible suggestions in order to prevent a miscarriage of justice. In *People v. Alcantara,* the Court declared:

Due process demands that identification procedure of criminal suspects must be free from impermissible suggestions. As appropriately held in *US vs. Wade,* "**the influence of improper suggestion upon identifying witness probably accounts for more miscarriages of justice than any other single factor**."[11] (Emphasis supplied)

Therefore, the police's act of showing a single photograph to Alejo, prior to "identifying" Joel as a suspect, corrupted the identification procedure with impermissible suggestion. Through this illegal procedure, the police, purposely or otherwise, suggested and implanted on Alejo's mind that Joel was one of the perpetrators, thereby violating Joel's right as an accused to due process. Not only did the police disregard recognized and accepted rules in photographic identification, they likewise transgressed the clear mandate of the Constitution that "No person shall be deprived of life, liberty, or property without due process of law." More particularly, the police violated Section 14(1) of the Constitution which provides: "No person shall be held to answer for a criminal offense without due process of law."

II. The accused was not assisted by counsel during the police line-up, violating the accused's right to counsel in a custodial investigation.

The second out-of-court identification of Joel was made by Alejo when Joel and Delos Santos were presented in a police

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[10] *People vs. Pineda, supra* at 498.

[11] G.R. No. 91283, 17 January 1995, 240 SCRA 122, 135.

line-up conducted at the Criminal Investigation Division in Camp Karingal on 21 June 1996, two days after the first out-of-court identification of Joel. As stated above, Alejo was shown a picture of Joel prior to the latter's arrest on 19 June 1996. Similar to the first out-of-court identification, the identification of Joel in a police line-up likewise proceeded from impermissible suggestion. Alejo already saw Joel's photograph and had seen Joel in person when Alejo pinpointed Joel as a suspect. The necessity for the police line-up was doubtful and the conduct thereof suspicious considering that Joel was already identified by Alejo when the latter went with the police to Fairview to "pinpoint the suspect."

More importantly, the police denied Joel his right to counsel during the line-up, contrary to Section 12(1) of the Constitution which provides:

> Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

In *People v. Escordial*,[12] the Court pertinently ruled:

> As a rule, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of the custodial inquest. However, the cases at bar are different inasmuch as accused-appellant, having been the focus of attention by the police after he had been pointed to by a certain Ramie as the possible perpetrator of the crime, was already under custodial investigation when these out-of-court identifications were conducted by the police.
>
> An out-of-court identification of an accused can be made in various ways. In a show-up, the accused alone is brought face to face with the witness for identification, while in a police line-up, the suspect is identified by a witness from a group of persons gathered for that purpose. **During custodial investigation, these types of identification have been recognized as "critical confrontations of the accused by**

[12] G.R. Nos. 139834-35, 16 January 2002, 373 SCRA 585, 607.

the prosecution" which necessitate the presence of counsel for the accused. This is because the results of these pre-trial proceedings "might well settle the accused's fate and reduce the trial itself to a mere formality." We have thus ruled that any identification of an uncounseled accused made in a police line-up, or in a show-up for that matter, after the start of the custodial investigation is inadmissible as evidence against him. (Emphasis supplied)

As stated in *Escordial*, generally, an accused is not entitled to the assistance of counsel in a police line-up considering that such is usually not a part of custodial investigation. **An exception to this rule is when the accused had been the focus of police attention at the start of the investigation**. The line-up in this case squarely falls under this exception. It was established that Joel was already a suspect prior to the police line-up. In fact, even before Joel's apprehension, the police had already zeroed in on Joel as one of Abadilla's killers. As such, Joel was entitled to counsel during the police line-up.

However, there is no question that Joel was not assisted by counsel, whether of his own choice or provided by the police, during the line up. As Joel's identification was uncounseled, it cannot be admitted in evidence for grossly violating Joel's right to counsel under Section 12(1) of the Constitution.

Further, the Court held in *Escordial* that the testimony of the witness regarding the inadmissible identification cannot be admitted as well, thus:

> Here, accused-appellant was identified by Michelle Darunda in a show-up on January 3, 1997 and by Erma Blanca, Ma. Teresa Gellaver, Jason Joniega, and Mark Esmeralda in a police line-up on various dates after his arrest. Having been made when accused-appellant did not have the assistance of counsel, these out-of-court identifications are inadmissible in evidence against him. **Consequently, the testimonies of these witnesses regarding these identifications should have been held inadmissible for being "the direct result of the illegal lineup 'come at by exploitation of [the primary] illegality.'"**[13]

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[13] *Id.* at 607-608.

III. The in-court identification of the accused did not cure the flawed out-of-court identification.

Citing Patrick M. Wall,[14] the majority enumerated the danger signals which give warning that the identification may be erroneous even though the method used is proper. Contrary to the majority, some of these danger signals are present in this case: (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) the limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

A. Discrepancy between original description and actual description

In his sworn statement, which was executed barely five hours after the commission of the crime, Alejo was able to recall the features of only two suspects, those of one of the gunmen and one of the lookouts. Significantly, Alejo failed to remember the physical attributes of the rest of the suspects. Alejo described the two suspects as follows:

20. *T – Kung makita mo bang muli ang mga* suspect, *makikilala mo ba sila?*
S – Maaari, sir.

21. *T – Ano ba ang itsura ng mga* suspect?
***S – Iyong tumutok sa akin ay naka-asul na t-shirt, edad* 30-35, 5'5" - 5'6" *ang taas, maikli ang buhok, kayumanggi.* xxx *Iyong sumakal sa biktima at nang-agaw ng clutch bag nito ay 25-30 ang edad, payat, mahaba ang buhok na nakatali, maitim, may taas na* 5'5"-5'6", *maiksi din ang baril niya at nakaputing polo.* xxx**

22. *T – Ang sabi mo, pagbangon mo sa pagkadapa sa* guardhouse *ay wala na ang mga* suspect, *may napansin ka bang sasakyan man sila sa pagtakas?*

[14] A well-known authority in eyewitness identification (see *People v. Pineda*, *supra*).

> *S – Mabilis nga sir ang pangyayari. Wala din akong napansin kung may sasakyan man sila sa pagtakas.* (Emphasis supplied)

In his in-court identification of the suspects, two months after the crime, Alejo identified Lumanog as Suspect No. 1, who allegedly took the clutch bag of the victim, "*sinakal ang biktima, inilabas ng kotse at nang bagsak sa kalsada ay binaril pa uli.*"

However, Lumanog's actual age and physical features are nowhere close to Alejo's description of the gunman in his sworn statement. In a newspaper article, it was reported that the "police sketch of killer bore no resemblance to any of the Abadilla 5 (referring to the five accused)."[15] Lumanog is fair complexioned, definitely not "*maitim*"; 40 years old, not 25 to 30 years of age; and sported a short, not long, hair. The grave disparity between the description of the gunman in Alejo's sworn statement and in his testimony greatly undermines Alejo's credibility in identifying the perpetrators of the gruesome crime.

Yet, the majority brushed aside Alejo's inconsistencies, justifying the same, thus:

> Alejo's description of Lumanog as dark-skinned was made two (2) months prior to the dates of trial when he was again asked to identify him in court. When defense counsel posed the question of the discrepancy in Alejo's description of Lumanog who was then presented as having fair complexion and 40 years old, the private prosecutor manifested the possible effect of Lumanog's incarceration for such length of time as to make his appearance different at the time of the trial.[16]

Notably, the majority failed to consider the disparity in the suspect's estimated age and Lumanog's actual age. Alejo described the gunman as between 25-30 years old, while Lumanog was actually 40 years old. Certainly, a 40 year old man could not be mistaken for a 25 or 30 year old male, unless the prosecution

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[15] http://news.google.com/newspapers?nid=2479&dat=20021210&id=Alk1AAAAIBAJ&sjid=iyUMAAAAIBAJ&pg=3075,32965267

[16] Decision, p. 68.

had shown that Lumanog, despite his age, looked quite young, or that Lumanog underwent facial surgery before he supposedly shot the victim to appear as a 25-30 year old male.

With respect to one of the lookouts, who pointed a gun at him, Alejo described him in his sworn statement as "*edad* 30-35, 5'5"-5'6" *ang taas, maikli ang buhok, kayumanggi*." It must be pointed out that Alejo was only able to give a prior description of one of the lookouts who pointed a gun at him, despite his later testimony that there were two lookouts who threatened his life and were walking to and fro in front of his guardpost prior to the killing, suggesting Alejo had ample time to see and familiarize himself with the faces of these two lookouts.

Considering that in open court, Alejo testified that there were two suspects who each pointed a gun at him, whom he identified as Joel and Delos Santos, the prosecution must sufficiently and clearly establish as to who between these two accused would the description in Alejo's sworn statement be used as basis for identification. This the prosecution gravely failed to do.

With respect to Joel, Alejo's prior description given before the police did not match Joel's physical features. Joel was only 22 years old then, leaving at least an 8-year difference as to the age of the lookout who was described by Alejo as 30-35 years old. The majority explained the difference in the age by stating, thus:

> Though his estimate of Joel's age was not precise, it is not far from his true age, especially if we consider that being a tricycle driver who is exposed daily to sunlight, Joel's looks may give a first impression that he is older than his actual age.[17]

The majority's explanation is purely speculative. There was no evidence presented to prove (1) that Joel plied his tricycle everyday during daytime; (2) the amount of Joel's exposure to sunlight; and (3) such exposure was excessive as to result to premature aging of the facial skin.

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[17] Decision, p. 68.

Moreover, Joel's height is 5'9" whereas the man whom Alejo described as lookout was about 5'5"-5'6" tall. There was no explanation offered as to the disparity in the height.

To repeat, Alejo described only one lookout in his sworn statement, contrary to his testimony that there were two lookouts. For such conflicting statements, the trial court acquitted Delos Santos, thus:

> The typewriter recording at 1:55 in the afternoon of SG Alejo's *salaysay* is but the culmination of a long process of oral interviews and conversation so that the results thereof can be put in systematic order. Additionally, at that period in time, SG Alejo's recollection is still very recent and fresh and he appears to be solely in touch with police investigators who came to know of the ambush that same morning. His court testimony, therefore, given at a much later date (August 1996) after the arrest of Lorenzo delos Santos wherein SG Alejo narrated that there were two (2) men loitering about near his post and that one after the other those two men barked at or ordered him is weakened by what he had earlier told police investigators disclosing that only one (1) person shouted orders at him. In view of this, the court finds the alibi of Lorenzo to have been correspondingly strengthened as to put in doubt the prosecution's case against this particular accused.

The trial court disbelieved Alejo's testimony wherein he pinned Joel and Delos Santos as the suspects who were walking to and fro and threatened him at his guard post. Despite the fact that in terms of proximity to Alejo, these two suspects were nearest him, and would most likely be recognized, if seen again, the trial court doubted Alejo's identification of Delos Santos. Alejo's testimony is fatally inconsistent with his earlier claim that there was only one lookout who twice ordered him to lie down ("*baba*").

Considering there was sufficient reason to doubt Delos Santos' culpability based on Alejo's conflicting statements, there is more reason to doubt Joel's participation in the crime. The discrepancy between Alejo's description given before the police and the actual physical appearance of Joel, and the inconsistency in the number of lookouts, severely weakened the credibility of Alejo in identifying the real culprits.

B. Limited opportunity for Alejo to see the criminals

There is no dispute that Alejo does not know the murderers. Neither does he know the accused. Alejo saw the gunmen and lookouts for the first time during the killing. In *Rodrigo,* the Court observed:

> This fact can make a lot of difference as human experience tells us: in the recognition of faces, the mind is more certain when the faces relate to those already in the mind's memory bank; conversely, it is not easy to recall or identify someone we have met only once or whose appearance we have not fixed in our mind.[18]

Aside from the fact that Alejo did not know the killers, Alejo saw them very briefly. In fact, in his own words, he admitted this to the police investigators when he answered "*mabilis ang mga pangyayari,* sir." Likewise, in his testimony, Alejo stated:

> ATTY. AZARCON
>
> Q And how long a time when the first suspect poked the gun at you and the time you faced the other suspect?
> A I faced the man who poked a gun at me for about 5 seconds and then I looked back towards the four suspects.
>
> Q How long a time were you facing the four suspects?
> A Less than a minute, sir.[19]

We agree with the accused that the swiftness by which the crime was committed and the physical impossibility of memorizing the faces of all the perpetrators of the crime whom the witness saw for the first time and only for a brief moment under life-threatening and stressful circumstances incite disturbing doubts as to whether the witness could accurately remember the identity of the perpetrators of the crime.

C. A considerable time elapsed between the witness' view of the criminal and his identification of the accused.

Except for Joel and Delos Santos, the rest of the accused were identified for the first time in open court when Alejo testified

[18] *Supra* at 604.

[19] TSN, 4 September 1996, p. 28.

during the trial. It must be stressed that there was neither any prior identification nor prior description of Lumanog, Santos, Rameses, and Fortuna as murder suspects in this case.

The crime took place on 13 June 1996, while Alejo testified in August 1996. Alejo was never made to identify Lumanog, Santos, Rameses, and Fortuna prior to their arrest until their in-court identification was made. Two months had elapsed between Alejo's view of the criminals and his identification of the accused in open court. Alejo's memory, just like any other human's, is frail. In fact, as noted by the trial court, Alejo's recollection at the time he gave his statement before the police investigators was more recent and fresher than when Alejo testified in court. Accordingly, the trial court gave more credence to Alejo's sworn statement than his testimony in acquitting Delos Santos.

Considering Alejo's weak recollection of the incident, it is quite incredible that Alejo, at the time he identified the accused in open court, had perfect memory as to the identity of the five accused, who were complete strangers allegedly seen by Alejo for the first time on 13 June 1996 in a very fleeting and extremely stressful moment.

D. Several persons committed the crime.

According to Alejo, six men perpetrated the crime. He saw these six male adults, all complete strangers, for the very first time in a matter of seconds. It is quite unbelievable that Alejo, whose life was threatened by at least one of the suspects, focused his attention on all six suspects, looked at them at the same time, and memorized their faces and features in less than a minute. In fact, he did not witness the entire incident as it unfolded. Alejo did not even see the suspects flee the crime scene in a white Kia Pride car as he was ordered to lie down by one of the lookouts. The physical impossibility of looking at the faces of six different men at the same time points to the incredibility of Alejo's testimony, certain details of which clearly run counter to human nature and experience.

IV. Alejo's in-court identification of the accused proceeded from illegal police activities.

As discussed earlier, Alejo's in-court identification of Joel proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. As a consequence, Alejo's testimony based on such fatally defective identification cannot be considered as proof beyond reasonable doubt of the identity of the perpetrators, warranting Joel's acquittal.

As regards Lumanog, Fortuna, Santos and Rameses, it was Joel, through a coerced confession, who supplied the police investigators with the identities of his supposed cohorts and their whereabouts. The majority notes that "Police officers claimed that appellants were apprehended as a result of "hot pursuit" activities on the days following the ambush-slay of Abadilla. There is no question, however, that when appellants were arrested they were already considered suspects: Joel was pinpointed by security guard Alejo who went along with the PARAC squad to Fairview on June 19, 1996, **while the rest of appellants were taken by the same operatives in follow-up operations after Joel provided them with identities of his conspirators and where they could be found.**"

The police did not posses any description or prior identification of these accused. There was no leading information, or any piece of reliable information for that matter, on the identity of the killers, except Joel's illegally extracted extrajudicial confession. Neither did the police have any evidence linking the other accused to the crime. **To repeat, Joel provided the police, through a coerced confession, with the identities of his supposed co-conspirators and where they could be found. Clearly, "the police investigators are the real actors in the identification of the accused; evidence of identification is effectively created when none really exists."**[20]

The majority strikes down "the extrajudicial confession [which were] extracted in violation of constitutional enshrined rights

[20] *People v. Rodrigo, supra* at 599.

and declares it inadmissible in evidence." Since Joel's coerced extrajudicial confession is inadmissible, the contents of which, specifically the identities of the supposed killers, are unreliable and inadmissible as well.

In *Escordial*, the Court stated that the testimonies of the witnesses on the identification of the accused should be held inadmissible for being "the direct result of the illegal lineup 'come at by exploitation of [the primary] illegality.'"[21] Here, being a direct result of an illegal police activity, that is the coerced extraction of a confession from Joel, the subsequent in-court identification by Alejo of Lumanog, Rameses, Fortuna and Santos must be rejected. The testimony of Alejo on the identification of the accused as perpetrators of the crime cannot be given any weight. Alejo's in-court identification of Lumanog, Rameses, Fortuna, and Santos was fatally tainted because the identity of the suspects came from a coerced confession of Joel, who himself was identified as a suspect through a fatally defective impermissible suggestion to Alejo. **In short, Alejo's identification of Joel was fatally defective; Alejo's identification of Lumanog, Rameses, Fortuna and Santos was also fatally defective. Both identification directly emanated from illegal police activities – impermissible suggestion and coerced confession.**

Without any credible evidence of their identification as the perpetrators of the crime, Lumanog, Rameses, Fortuna, Santos, and Joel must therefore be acquitted.

V. Alejo's familiarity with the faces of the accused, due to media exposure of the identities of the accused extracted from a coerced confession, impaired his in-court identification.

After the police investigators had illegally extracted from Joel the identities and locations of the other suspects, and after they had arrested Lumanog, Rameses, Fortuna and Santos, the police proudly declared: "crime solved" and "case closed." With

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[21] *People v. Escordial*, *supra* at 608 citing *Gilbert v. California*, 388 U.S. 263, 272-273, 18 L.Ed.2d 1178 (1967).

this remarkable development, the accused were presented before the media in a press conference in Camp Crame on 24 June 1996 or 11 days after the killing. The accused were photographed by mediamen and interviewed by members of the press. During the press conference, the accused were made to squat on the floor, their names written on boards dangling from their necks.[22]

Indisputably, the police extracted the identities of the accused from a coerced confession of Joel. Then the police arrested the accused, and allowed the media to take their pictures with their names written on boards around their necks. The media promptly published these pictures in several newspapers. Thus, at that time, the faces of the accused were regularly splashed all over the newspapers and on television screens in news reports. **Alejo could not have missed seeing the faces of the accused before he identified them in court. To rule otherwise strains credulity.**

Alejo, as the star witness in this case, must naturally be interested to look, or even stare, at the faces of the alleged killers to make sure he identifies them in court. Assuming Alejo failed to personally see the faces of the accused in the newspapers or television, which is highly improbable, if not totally impossible, his family and friends, if not the police, would have provided him with photographs of the accused from the newspapers for easier identification later in court. Surely, Alejo had ample time to memorize and familiarize himself with the faces of the accused before he testified in court and identified Lumanog, Santos, Rameses, Joel, and Fortuna as the killers of Abadilla.

To give credence to Alejo's in-court identification of the accused is to admit and give probative value to the coerced confession of Joel. Clearly, the publication of the pictures of the accused in the newspapers and television came directly from the coerced confession of Joel. Alejo would not have been able to identify the accused without

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[22] http://news.google.com/newspapers?nid=2479&dat=20021210&id=Alk1AAAAIBAJ&sjid=iyUMAAAAIBAJ&pg=3075,32965267

the pictures of the accused that were taken by media as a result of the coerced confession of Joel.

Inexplicably, the majority fails to consider this extensive media exposure of the accused in ascertaining the reliability and admissibility of Alejo's testimony on the identities of the accused. The majority ignores the fact that Alejo had seen the accused in print and on television, guaranteeing Alejo's in-court identification of the accused as the perpetrators of the crime. The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the murderers. Such doubts are sufficient to rule that Alejo's in-court identification of the accused as the perpetrators of the crime is neither positive nor credible. "It is not merely any identification which would suffice for conviction of the accused. It must be positive identification made by a credible witness, in order to attain the level of acceptability and credibility to sustain moral certainty concerning the person of the offender."[23]

VI. The police investigation and apprehension of the accused violated the accused's rights against warrantless arrest and against any form of torture.

The police arrested Joel, without any warrant, on 19 June 1996 or six days after the killing. **Six days is definitely more than enough to secure an arrest warrant, and yet the police opted to arrest Joel and the other accused, without any warrant, claiming that it was conducted in "hot pursuit."** In law enforcement, "hot pursuit" can refer to an immediate pursuit by the police such as a car chase.[24] Certainly, the warrantless arrrest of Joel, made six days after the murder, does not fall within the ambit of "hot pursuit." The question now is whether the successive warrantless arrests of the accused are legal. The pertinent provisions of Rule 113 of the Rules on Criminal Procedure on warrantless arrest provide:

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[23] *People v. Gamer*, 383 Phil. 557, 570 (2000).

[24] http://en.wikipedia.org/wiki/Hot_pursuit. See *People v. Bati*, G.R. No. 87429, 27 August 1990, where the two accused were pursued and arrested a few minutes after consummating the sale of marijuana.

> Sec. 5. *Arrest without warrant; when lawful*. - A peace officer or a private person may, without a warrant, arrest a person:
>
> a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
>
> b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and
>
> c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

None of the above instances is present in this case: (1) the accused were not arrested in *flagrante delicto*; (2) the arrest was not based on personal knowledge of the arresting officers that there is probable cause that the accused were the authors of the crime which had just been committed; (3) the accused were not prisoners who have escaped from custody serving final judgment or temporarily confined while their case is pending. There is no question that all the accused were apprehended several days after the crime while doing ordinary and unsuspicious activities. There is also no question that the police had no personal knowledge of probable cause that the accused were responsible for the crime which had been committed. The third situation is inapplicable since the accused are not prison escapees. Considering these facts, there is indeed no justification for the warrantless arrests effected by the police in their so-called "hot pursuit." Such warrantless arrest, therefore, amounts to a violation of Section 2, Article III of the Constitution, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may

produce, and particularly describing the place to be searched and the persons or things to be seized.

The police investigation work in this case, which led to the unlawful warrantless arrest of the accused, is nothing but sloppy: **(1) they chose to rely solely on the sworn statement of one eyewitness (Alejo); (2) they failed to obtain any description of the suspects from other eyewitnesses, including the owner of the Kia Pride which was forcefully obtained by the suspects as a get-away car; (3) they showed Alejo a picture of Joel to assist him in identifying the "suspect"; and (4) they arrested the other accused based entirely on the illegally extracted extrajudicial confession of Joel.**

Worse than their illegal warrantless arrest, the accused reportedly underwent unspeakable torture in the hands of the police. While the Commission on Human Rights, "in its Resolution dated July 16, 1996, did not make any categorical finding of physical violence inflicted on the appellants by the police authorities, the CHR found *prima facie* evidence that the police officers could have violated Republic Act No. 7438, particularly on visitorial rights and the right to counsel, including the law on arbitrary detention, x x x."

The majority also finds that "P/Insp. Castillo admitted that the initial questioning of Joel began in the morning of June 20, 1996, the first time said suspect was presented to him at the CPDC station, even before he was brought to the IBP Office for the taking of his formal statement. **Thus, the possibility of appellant Joel having been subjected to intimidation or violence in the hands of police investigators as he claims cannot be discounted.**" During the trial, the police miserably failed to explain Joel's whereabouts from the time he was arrested on 19 June 1996 until he was interrogated the next day. Further, there were sufficient evidence that Joel and the other accused suffered physical injuries consistent with torture bruises.

The speedy resolution of a crime is never a license for the police to apprehend any person and beat him to admit his

participation in a gruesome crime. In this case, without any credible evidence linking the accused to the murder, the police blindly resorted to careless investigation and unlawful apprehension of innocent men. Worse, the police apparently tortured the accused to answer for the brutal slaying of Abadilla.

Indisputably, torturing the accused to extract incriminating confessions is repugnant to the Constitution. Section 12(2), Article III of the Constitution expressly provides "[n]o torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against [an accused]." The blatant and unacceptable transgression of the accused's constitutional rights, for the sake of delivering speedy, but false, justice to the aggrieved, can never be countenanced. This Court can never tolerate official abuses and perpetuate the gross violation of these rights. The presumption that a public officer had regularly performed his official duty can at no instance prevail over the presumption of innocence.

VII. Conclusion

In reviewing criminal cases, the Court must carefully determine and establish "*first*, the identification of the accused as perpetrator of the crime, taking into account the credibility of the prosecution witness who made the identification as well as the prosecution's compliance with legal and constitutional standards; and *second*, all the elements constituting the crime were duly proven by the prosecution to be present."[25] The inexistence of any of these two factors compels us to acquit the accused.[26]

In this case, the identification of the accused as the perpetrators of the crime was not clearly and convincingly established raising reasonable doubt on the accused's guilt for the crime charged.

Apart from breaching established rules on photographic identification, the out-of-court identification of the accused Joel De Jesus infringes upon his fundamental Constitutional rights

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[25] *People v. Rodrigo, supra* at 597.

[26] *Id.*

(1) to due process; and (2) to counsel. Specifically, the highly suggestive photographic identification of Joel made by Alejo violated Joel's due process rights under Section 1, Article III and Section 14(1) of the Constitution. Meanwhile, the failure of the police to provide Joel with the assistance of counsel during the police line-up, regarded as a part of custodial investigation, violated Section 12(1) of the Constitution.

On the other hand, the in-court identification of Joel and the rest of the accused did not cure the flawed out-of-court identification. Contrary to the majority's view, various circumstances signal an erroneous identification: (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) the limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

Moreover, it was clearly established that Joel was tortured in admitting his participation in the crime and in providing the identities of his supposed co-conspirators. Such despicable act violated the accused's right under Section 12 (2) of the Constitution. The torture, aside from the failure of the police to provide Joel with counsel, renders his extrajudicial confession indamissible. Significantly, without such coerced confession, the police had nothing to implicate the other accused to the murder.

Further, the police arrested the accused without warrant contrary to Section 2, Article III of the Constitution. Also, none of the instances under Rule 113 of the Rules on Criminal Procedure exists to justify the accused's warrantless arrest.

It devolves upon the police authorities, as law enforcers, to ensure the proper and strict implementation of the laws, most specially, the fundamental law of the land. Lamentably, the present case showcases the dark reality in our country, where the police at times assumes the role of law offenders. The policemen, boasting of solving a highly sensationalized crime,

flagrantly disregarded the accused's constitutional rights. These men in uniform openly defiled the Constitution, which they are bound to observe and respect, by infringing upon the accused's rights guaranteed under (1) Section 1, Article III; (2) Section 14(1); (3) Section 12(1); (4) Section 12 (2); and (5) Section 2, Article III of the Constitution. Such violations simply cannot be countenanced. Instead, they deserve utmost condemnation. As the Court declared emphatically in *Alcantara*:

> The records show that [the police] illegally arrested appellant, arbitrarily detained, physically abused and coerced him to confess to a crime penalized by nothing less than *reclusion perpetua*. Too often, our law enforcers, in their haste to solve crimes, strip people accused of serious offenses of the sanctity of their constitutional rights. **It is again time to pound on these law enforcers with the crania of cavern men that the guarantees of the rights of an accused in the Constitution are not mere saccharine statements but the bedrock of our liberty. If we allow a meltdown of these guarantees, our democracy will be a delusion.** (Emphasis supplied)

In view of the gross violations of the accused's constitutional rights as well as the seriously flawed identification of the accused as the perpetrators of the crime, there is sufficient reason to doubt the accused's guilt for the crime charged. To repeat, the prosecution failed to discharge its burden of proof, **specifically to prove the identity of the perpetrators of the crime beyond reasonable doubt.** Accordingly, the presumption of innocence in favor of the accused prevails. The accused need not even raise the defenses of denial and alibi as the burden of proof never shifted to the defense. "Any consideration of the merits of these defenses is rendered moot and will serve no useful purpose."[27] Therefore, the accused are entitled to an acquittal.

Accordingly, I vote to *GRANT* the appeals and *ACQUIT* all the accused.

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[27] *People v. Rodrigo, supra* at 611-612.

DISSENTING OPINION

ABAD, *J.*:

I concur with Mr. Justice Antonio T. Carpio's powerful dissent. I would, however, add a few thoughts that deeply bothered me while pondering the question of whether or not to join the *ponencia* of Mr. Justice Martin Villarama, Jr. that affirms the lower courts' judgments of conviction against the accused.

The *ponencia* has to rely solely on the testimony of just one witness, Freddie Alejo, the private security guard who happened to be on the sidewalk of Katipunan Avenue in Quezon City when gunmen ambushed Col. Rolando Abadilla, former head of an intelligence and security unit of the defunct Philippine Constabulary, while driving his car. The trial court found Alejo's testimony straightforward, categorical, and convincing, unaffected by any possible ill-motive. His testimony, said the trial court, obliterated the denials and alibis of all the accused. Further, like the CA and the RTC, the *ponencia* downplayed as inconclusive the physical evidence that the defense offered in the case.

The Issue Presented

Inevitably, the ultimate issue in this case is whether or not Alejo's testimony is sufficiently credible to support the finding of guilt of all of the accused beyond reasonable doubt.

Arguments

The *ponencia* would defer to the factual findings of the trial court given that it had the advantage of hearing the evidence in the case first hand from Alejo's lips. But this would be a false start since the Judge who sat at the trial when Alejo took the witness stand was then Judge Jose C. Mendoza,[1] not Judge Jaime N. Salazar, Jr., who eventually weighed the evidence and passed judgment on the accused. Judge Salazar was just

[1] Now a member of this Court.

as deprived as the members of this Court of the advantage of observing Alejo's demeanor as he claimed having witnessed how the accused gunned down Col. Abadilla in cold blood.

Justice Mendoza, who personally heard Alejo's testimony, is of course now a member of the Court. But he cannot join his colleagues in their deliberation and contribute whatever insight he might have acquired when he listened to Alejo testify. For, first, that would mean bringing into the deliberation matters that are not of record. It would mean depriving the parties of their right to confront by cross examination evidence not adduced at the trial but considered by this Court on appeal.

And, second, it would not be fair to query Justice Mendoza regarding his assessment of Alejo's credibility at the trial minus the responsibility of conscience that every judge who renders the decision in a criminal case must bear when passing upon such question. Justice Mendoza would merely be required to speculate on what his views would be if he had the chance to decide the case. Therefore, like Judge Salazar, the Court must rely solely on the cold record of the case in assessing witness Alejo's testimony.

As already stated, the following discussions are on top of what Justice Carpio already covered in his separate dissenting opinion:

The place to start is Alejo's supposed lack of ill motive in testifying against the accused. Doubtless he had nothing but good motive when he described to the police, shortly after the shooting of Colonel Abadilla, all that he saw. The Court can at that point trust his unembellished story.

But something weighs heavily against the version he delivered at the trial. The police apprehended several suspects, including the accused in this case, and built up evidence against them. Unfortunately, perhaps convinced by the police that these men were Colonel Abadilla's assailants and desiring to ensure a successful prosecution, his family took and sheltered Alejo and another security guard, Merlito Herbas, paying them allowances to make up for their lost earnings.

Called by the defense, Herbas testified that the Abadillas housed Alejo and him (together with Melissa Villasin, the latter's live-in partner) somewhere in Quezon City.[2] Parenthetically, the defense presented Herbas who testified that none of the accused was involved in the ambush. But the RTC rejected Herbas' testimony because he admitted having previously received, together with Alejo, money and economic benefits from the Abadillas. And, when the latter were unable to fulfill their promise to him, Herbas instead testified for the defense.

The trial court's rejection of Herbas' testimony may be correct but the grant by the Abadillas of financial benefit to Alejo equally tainted the latter's testimony. Indeed, economic benefit and the sense of obligation that it created appear to have induced him to disregard his initial physical descriptions of the two armed men who prevented him from intervening in the shooting of Colonel Abadilla. At the trial, Alejo pointed to two of the accused who did not fit his prior description of the two armed men. He also enhanced his impression of the actual shooting of the victim by claiming that he had the opportunity, no matter if as brief as a camera's flash, to see and remember the faces of each of all four men who shot the colonel down the middle of Katipunan Avenue.

The Government has a witness protection program designed to secure vital witnesses from threats or harm. Apparently, the public prosecutor chose instead to allow the Abadillas, who had an interest in Alejo's testimony, to make him dependent on them for his livelihood at least for the duration of the trial of the case. Knowing this, I cannot but hesitate to swallow everything that Alejo said at the trial.

Consider Alejo's testimony, culled from the *ponencia*'s summary. He testified that on June 13, 1996 he was assigned as security guard at 211 Katipunan Avenue. He went on duty at 7:00 a.m. At about 7:30 a.m., he noted two men, whom he later identified as Joel de Jesus and Lorenzo delos Santos

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[2] TSN, February 20, 1998, p. 67.

suspiciously walking to and fro by his outpost, which stood between the building he was guarding and the street.

Alejo recalled witnessing at about 8:40 a.m. four men fire their guns at the driver of a black car that had stopped on the street before his outpost. One of the two men on the sidewalk, Joel de Jesus (marked as No. 5 in Exhibit H) pointed his hand gun at Alejo and ordered him to go down his post ("*Baba*!") but he did not budge. Alejo then saw Lenido Lumanog (marked as No. 1 in Exhibit H), standing on the car's left door, grab the victim by the neck, reach for the latter's clutch bag in the car, and pull the bloodied body out of the car, dropping him on the pavement.

Alejo claimed that at this point he heard Lumanog fire another shot, evidently at the victim. Just then, Joel de Jesus, one of the two men with Alejo on the sidewalk, shouted, "*Dapa… walang makikialam!*" At this point, the rest of the shooters on the street, namely, Rameses de Jesus (No. 2); Cesar Fortuna (No. 3); and Augusto Santos (No. 4) turned their faces towards Alejo, enabling him to make a mental note of their identities. Next, delos Santos, the second man on the sidewalk, pointed a gun at Alejo, prompting the latter to lower his body and hide behind the covered half of the guard post. Less than a minute after the shooting had stopped, Alejo stood up. The assailants were gone, leaving the window of the victim's car shattered.

The police later interviewed Alejo and brought him and another security guard to Camp Karingal.

In addition to what Justice Carpio pointed out in his separate dissenting opinion, Alejo's testimony does not inspire belief for the following reasons –

1. Alejo said that he noticed earlier that morning de Jesus and delos Santos walking to and fro by his guard post. Since the behavior of the two men seemed to Alejo unusual, his trained mind did not put them down in the category of ordinary pedestrians waiting for a ride or companions. Innocent pedestrians did not walk to and fro on the same place on the sidewalk for an extended

period (more than an hour) without inviting suspicion. Yet, Alejo did not, as his training would have made him, take any step to anticipate some trouble like informing the establishment he was guarding about it or writing a note on his logbook of the description of the two men.

2. Alejo claimed that he actually saw four men shoot at the driver of a black car on the street facing his building. But this is doubtful since, admittedly, he was seated at his guard post with his back slightly turned towards the street.[3] He said, "*tagilid ang upo ko*,"[4] and demonstrated this during the ocular inspection.[5] As a matter of fact, he confessed that "at the start of the shooting, I did not see because I was still seated and the next gun reports I stood up and then I saw."[6] Alejo claimed then seeing the four accused already in the position described in Exhibit H.[7]

Clearly, then, Alejo did not see the men fire their guns at Colonel Abadilla. If Alejo were to be believed, the shots alerted him to the trouble and it was their noise that made him turn towards the street at the direction of the shooting. Indeed, he said that as he looked what he saw were the four assassins standing two at each side of the car's front seats. The shooting had stopped.

3. Besides, Alejo said that he looked in the direction of the ambush after he heard the volley of shots. But this could not be accurate because it was right after those shots were fired that Joel de Jesus pointed a gun at him and told him to get out of the outpost and go down from it. How could Alejo see which of four other accused stood at what side of Colonel Abadilla's car when his attention was at Joel de Jesus who was threatening to shoot him if he did not come out of his outpost?

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[3] TSN, September 4, 1996, p. 9.

[4] TSN, September 26, 1996, p. 23.

[5] *Id*.

[6] TSN, September 4, 1996, p. 20.

[7] *Id*.

Alejo of course claimed that he was not intimidated. He did not budge and continued to watch what was going on. His courage is surprising, however, since guns had been fired so close to him at someone in a car on the street and now he sees a gun pointed directly at him. Since Alejo chose not to fight back, it seems odd that he would dare one of the men to shoot him for not obeying the order for him to step out of the out post.

4. Alejo claimed that Lumanog grabbed Colonel Abadilla by the neck, reached out for the latter's clutch bag in the car, and pulled the colonel out of the car before dropping him on the pavement. But if Lumanog held a gun with one hand and held the colonel's neck by the other, what hand did he use to reach out for the clutch bag in the car?

5. Alejo testified that when Joel de Jesus, one of the two men on the sidewalk, pointed a gun at him and cried out: "*Dapa, walang makikialam!*," all four men who fired their guns at Colonel Abadilla turned their faces towards Alejo on the sidewalk, enabling the latter to see their faces clearly. But this is a strained scenario. How could Alejo in such infinitesimal second pay attention to de Jesus pointing a gun at him and commanding him to go out of his guard post and lie face down on the ground and at the same time examine the faces of each of the four men surrounding Colonel Abadilla's car, one after the other, to remember their identities?

6. At best, Alejo had but a glimpse of those who took part in shooting down Colonel Abadilla. But the police remedied this. After arresting the several accused in the case, the police first took their pictures at the police headquarters. Now, rather than call Alejo to make a direct identification of the accused from a police lineup and rule out any possibility of suggestion and mistake, the police investigators first showed him the pictures of the men they nabbed. This is admission that the police needed to prepare Alejo with those pictures before showing to him the accused who had been in their custody all along.

It is very well known that the police, bent on their theory of a case, would sometimes falsely tell the supposed eyewitness that those in the pictures had already confessed to the crime.

It takes little subtle convincing to make a witness believe that the person or persons on the pictures were the ones he saw commit the crime and that, unless he identified them, they would walk out free. Naturally, later at the police lineup, the witness when asked would unhesitatingly identify the men he saw on the pictures. His point of reference would be the men on the pictures rather than his recollection of the persons he saw or did not see at the crime scene.

7. It was rush hour when the incident happened and Katipunan Avenue was filled with traffic. It was most unlikely for the assassins who surrounded Colonel Abadilla's car to pose exclusively for Alejo, turning their faces towards him in unison as if he was going to take a class picture of them from the sidewalk. The street was teeming with other cars and people in them. The assassins had enough to watch out for, the least of which was the sidewalk where they knew they had lookouts protecting them from any kind of interference.

Being housed and paid allowances by the victim's family enabled Alejo to substantially alter the previous descriptions he gave to the police of some of the accused. Further, he got to look with plenty of time at the faces of those who fired their guns at Colonel Abadilla and, despite the threats to his life by two men on the sidewalk who had their guns on him, he could remember with remarkable details the shooting of the victim on the street.

8. The assassins fled on a hijacked vehicle. When this was recovered, none of the fingerprint marks on that vehicle matched any of those of the accused. Men would lie but object evidence like fingerprints would not.

9. One cannot ignore the fact that, based on the ballistics report, a slug recovered from the body of Colonel Abadilla matched a slug recovered from the body of a known victim of the Alex Boncayao Brigade (ABB) of the New People's Army. This is clear evidence of the truth of the ABB's claim, told the media, that they were the ones responsible for Colonel Abadilla's

death. Again, physical evidence cannot lie; it is a silent witness that could not be housed and bought. Since none of the accused had been identified with the ABB, they could not have been involved in that killing.

The Court should also have taken judicial notice of the fact that, as former head of the dreaded Metropolitan Command Intelligence and Security Group of President Marcos' Philippine Constabulary, Colonel Abadilla had always been a natural target of the communist's death squad, the ABB. Indeed, there had been reports of its previous attempts to kill him.

I have more than reasonable doubt for not being taken in by Alejo's testimony. Those who saw the daylight shooting of Colonel Abadilla did not know the assassins by face. How the police got to identify and pick up the particular accused in this case from their homes or places of work to be shown to the witnesses as their prime suspects is a mystery that the prosecution did not bother to tell the trial court. I can only assume that this is the handy work of police informers, those who made a living of snitching on criminals and saving the police from the shame of having another crime, a crime called to such tremendous public attention because of the identity of the slain victim, left unsolved.

I vote to *GRANT* the appeals and *ACQUIT* all the accused.

EN BANC

[G.R. No. 187689. September 7, 2010]

CLARITA J. CARBONEL, *petitioner, vs.* **CIVIL SERVICE COMMISSION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE PERFECTION OF AN APPEAL IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW IS MANDATORY.— It is undisputed that petitioner appealed the CSCRO IV's decision almost three years from receipt thereof. Undoubtedly, the appeal was filed way beyond the reglementary period when the decision had long become final and executory. As held in *Bacsasar v. Civil Service Commission,* citing *Talento v. Escalada, Jr.*— "The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or re-opened no matter how erroneous it may have been."

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO COUNSEL; NOT ALWAYS IMPERATIVE IN ADMINISTRATIVE INVESTIGATIONS; RATIONALE.— [T]he right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation. Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation. While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and no duty rests

on such body to furnish the person being investigated with counsel. The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; DISHONESTY, GRAVE MISCONDUCT OR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; A PERSON'S FALSE REPRESENTATION THAT SHE TOOK THE CIVIL SERVICE EXAMINATION WHEN IN FACT SOMEONE ELSE TOOK THE EXAMINATION FOR HER, A CASE OF.— It has been established that petitioner accepted Navarro's proposal for the latter to obtain for petitioner a Career Service Professional Eligibility by merely accomplishing an application form and in consideration of the amount of ₱10,000.00. Petitioner thus accomplished an application form to take the CATS Career Service Professional Examination and gave Navarro ₱5,000.00 as down payment. Upon receipt of the original copy of the certificate of rating from Navarro, petitioner gave the latter the remaining ₱5,000.00. Petitioner, however, misplaced the certificate of rating that prompted her to secure another copy from the CSCRO IV. The CSCRO IV noticed that petitioner's personal and physical appearance was entirely different from the picture of the examinee attached to the application form and the picture seat plan. It was also discovered that the signature affixed on the same application form was different from that appearing on the verification slip. Clearly, petitioner falsely represented that she took the civil service examination when in fact someone else took the examination for her. CSC Memorandum Circular No. 15, series of 1991, provides: "An act which includes the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, cheating, collusion, impersonation, or any other anomalous act which amounts to any violation of the Civil Service examination, has been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service."

4. ID.; ID.; ID.; DISHONESTY; NATURE.— [D]ishonesty is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. Its immense debilitating effect on the government service cannot be overemphasized. If a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression, and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.

5. ID.; ID.; CIVIL SERVICE RULES; DISHONESTY; A GRAVE OFFENSE PUNISHABLE BY DISMISSAL.— Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service. In *Civil Service Commission v. Dasco, Bartolata v. Julaton,* and *Civil Service Commission v. Sta. Ana,* we found the respondents-employees therein guilty of dishonesty when they misrepresented that they took the Civil Service Examination when in fact someone else took the examination for them. Because of such dishonesty, the employees were dismissed from government service.

APPEARANCES OF COUNSEL

Victor R. De Guzman for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated November 24, 2008 and Resolution[2] dated April 29, 2009 in CA-G.R. SP No. 101599.

Petitioner Clarita J. Carbonel was an employee of the Bureau of Jail Management and Penology, Makati City. She was formally charged with Dishonesty, Grave Misconduct, and Falsification of Official Documents by the Civil Service Commission Regional Office No. IV (CSCRO IV).

The Civil Service Commission (CSC), as affirmed by the CA, established the following facts:

On May 21, 1999, petitioner went to the CSCRO IV to secure a copy of the result of the Computer Assisted Test (CATS) Career Service Professional Examination given on March 14, 1999, because she lost the original copy of her Career Service Professional Certificate of Rating (hereafter referred to as certificate of rating).[3] Petitioner was directed to accomplish a verification slip. The Examination Placement and Service Division noticed that petitioner's personal and physical appearance was entirely different from the picture of the examinee attached to the application form and the picture seat plan. It was also discovered that the signature affixed on the application form was different from that appearing on the verification slip.[4] Because of these discrepancies, the Legal Affairs Division of the CSCRO IV conducted an investigation.

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[1] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 22-41.

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

[3] CA *rollo*, pp. 17-18.

[4] *Id.* at 18.

In the course of the investigation, petitioner voluntarily made a statement[5] before Atty. Rosalinda S.M. Gepigon, admitting that, sometime in March 1999, she accepted the proposal of a certain Bettina J. Navarro (Navarro) for the latter to obtain for petitioner a Career Service Professional Eligibility by merely accomplishing an application form and paying the amount of ₱10,000.00. Petitioner thus accomplished an application form to take the CATS Career Service Professional Examination and gave Navarro ₱5,000.00 as down payment. Upon receipt of the original copy of the certificate of rating from Navarro, petitioner gave the latter the remaining ₱5,000.00. Petitioner, however, misplaced the certificate of rating. This prompted her to secure another copy from the CSCRO IV.

Hence, the formal charge against petitioner.

Denying her admissions in her voluntary statement before the CSCRO IV, petitioner, in her Answer,[6] traversed the charges against her. She explained that after filling up the application form for the civil service examination, she asked Navarro to submit the same to the CSC. She, however, admitted that she failed to take the examination as she had to attend to her ailing mother. Thus, when she received a certificate of eligibility despite her failure to take the test, she was anxious to know the mystery behind it. She claimed that she went to the CSCRO IV not to get a copy of the certificate of rating but to check the veracity of the certificate. More importantly, she questioned the use of her voluntary statement as the basis of the formal charge against her inasmuch as the same was made without the assistance of counsel.

After the formal investigation, the CSCRO IV rendered its March 25, 2002 Decision No. 020079[7] finding petitioner guilty of dishonesty, grave misconduct, and falsification of official documents. The penalty of dismissal from the service, with all its accessory penalties, was imposed on her. Petitioner's motion

[5] *Id.* at 47-50.

[6] *Id.* at 51-53.

[7] Penned by Director Rebecca A. Fernandez; *id.* at 17-35.

for reconsideration was denied by CSCRO IV on November 14, 2003.[8]

Petitioner appealed, but the CSC dismissed[9] the same for having been filed almost three years from receipt of the CSCRO IV decision. The CSC did not give credence to petitioner's explanation that she failed to timely appeal the case because of the death of her counsel. The CSC opined that notwithstanding the death of one lawyer, the other members of the law firm, petitioner's counsel of record, could have timely appealed the decision.[10] Petitioner's motion for reconsideration was denied in Resolution No. 072049[11] dated November 5, 2007.

Unsatisfied, petitioner elevated the matter to the CA. On November 24, 2008, the CA rendered the assailed decision affirming the decisions and resolutions of the CSCRO IV and the CSC. Petitioner's motion for reconsideration was denied by the CA on April 29, 2009.

Hence, the instant petition based on the following grounds:

I

SERIOUS ERROR OF FACT AND LAW AMOUNTING TO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY THE COURT OF APPEALS IN ITS ASSAILED DECISION DATED NOVEMBER 24, 2008 BECAUSE PETITIONER'S FINDING OF GUILT WAS GROUNDED ENTIRELY ON HER UNSWORN STATEMENT THAT SHE ADMITTED THE OFFENSES CHARGED AND WITHOUT THE ASSISTANCE OF A COUNSEL.

II

THE CONCLUSION AND FINDING OF THE COURT OF APPEALS IN ITS ASSAILED DECISION THAT PETITIONER'S APPEAL WAS LOST THRU HER OWN FAULT OR NEGLIGENCE WAS PREMISED ON MISAPPREHENSION OF FACTS.

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[8] *Id.* at 44-46.

[9] Embodied in Resolution No. 071354, dated July 18, 2007; *id.* at 36-40.

[10] *Id.* at 36-40.

[11] *Id.* at 41-43.

III

THE COURT OF APPEALS IN ITS ASSAILED DECISION HAS DECIDED THE CASE NOT IN ACCORD WITH THE DECISIONS OF THIS HONORABLE COURT.[12]

The petition is without merit.

It is undisputed that petitioner appealed the CSCRO IV's decision almost three years from receipt thereof. Undoubtedly, the appeal was filed way beyond the reglementary period when the decision had long become final and executory. As held in *Bacsasar v. Civil Service Commission*,[13] citing *Talento v. Escalada, Jr.*[14]—

> The perfection of an appeal in the manner and within the period prescribed by law is mandatory. Failure to conform to the rules regarding appeal will render the judgment final and executory and beyond the power of the Court's review. Jurisprudence mandates that when a decision becomes final and executory, it becomes valid and binding upon the parties and their successors-in-interest. Such decision or order can no longer be disturbed or re-opened no matter how erroneous it may have been.

This notwithstanding, on petition before the CA, the appellate court reviewed the case and disposed of it on the merits, not on pure technicality.

To accentuate the abject poverty of petitioner's arguments, we discuss hereunder the issues she raised.

Petitioner faults the CSC's finding because it was based solely on her uncounselled admission taken during the investigation by the CSCRO IV. She claims that her right to due process was violated because she was not afforded the right to counsel when her statement was taken.

It is true that the CSCRO IV, the CSC, and the CA gave credence to petitioner's uncounselled statements and, partly on

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[12] *Rollo*, pp. 12-13.

[13] G.R. No. 180853, January 20, 2009, 576 SCRA 787, 792.

[14] G.R. No. 180884, June 27, 2008, 556 SCRA 491, 498.

the basis thereof, uniformly found petitioner liable for the charge of dishonesty, grave misconduct, and falsification of official document.[15]

However, it must be remembered that the right to counsel under Section 12 of the Bill of Rights is meant to protect a suspect during custodial investigation.[16] Thus, the exclusionary rule under paragraph (2), Section 12 of the Bill of Rights applies only to admissions made in a criminal investigation but not to those made in an administrative investigation.[17]

While investigations conducted by an administrative body may at times be akin to a criminal proceeding, the fact remains that, under existing laws, a party in an administrative inquiry may or may not be assisted by counsel, irrespective of the nature of the charges and of petitioner's capacity to represent herself, and no duty rests on such body to furnish the person being investigated with counsel.[18] The right to counsel is not always imperative in administrative investigations because such inquiries are conducted merely to determine whether there are facts that merit the imposition of disciplinary measures against erring public officers and employees, with the purpose of maintaining the dignity of government service.[19]

As such, the admissions made by petitioner during the investigation may be used as evidence to justify her dismissal.[20] We have carefully scrutinized the records of the case below and we find no compelling reason to deviate from the findings of the CSC and the CA. The written admission of petitioner is

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[15] *Donato, Jr. v. Civil Service Commission Regional Office No. 1*, G.R. No. 165788, February 7, 2007, 515 SCRA 48, 62.

[16] *Remolona v. Civil Service Commission*, 414 Phil. 590, 598 (2001).

[17] *Id.* at 599.

[18] *Id.*; *Sebastian, Sr. v. Hon. Garchitorena*, 397 Phil. 519, 527 (2000); *Lumiqued v. Hon. Exevea*, 346 Phil. 807, 822 (1997).

[19] *Remolona v. Civil Service Commission, supra*; *Sebastian, Sr. v. Hon. Garchitorena, supra*; *Lumiqued v. Hon. Exevea, supra*, at 823.

[20] *Remolona v. Civil Service Commission, supra*.

replete with details that could have been known only to her.[21] Besides, petitioner's written statement was not the only basis of her dismissal from the service. Records show that the CSCRO IV's conclusion was reached after consideration of all the documentary and testimonial evidence submitted by the parties during the formal investigation.

Now, on petitioner's liability and penalty.

It has been established that petitioner accepted Navarro's proposal for the latter to obtain for petitioner a Career Service Professional Eligibility by merely accomplishing an application form and in consideration of the amount of ₱10,000.00. Petitioner thus accomplished an application form to take the CATS Career Service Professional Examination and gave Navarro ₱5,000.00 as down payment. Upon receipt of the original copy of the certificate of rating from Navarro, petitioner gave the latter the remaining ₱5,000.00. Petitioner, however, misplaced the certificate of rating that prompted her to secure another copy from the CSCRO IV. The CSCRO IV noticed that petitioner's personal and physical appearance was entirely different from the picture of the examinee attached to the application form and the picture seat plan. It was also discovered that the signature affixed on the same application form was different from that appearing on the verification slip. Clearly, petitioner falsely represented that she took the civil service examination when in fact someone else took the examination for her.

CSC Memorandum Circular No. 15, series of 1991, provides:

> An act which includes the procurement and/or use of fake/spurious civil service eligibility, the giving of assistance to ensure the commission or procurement of the same, cheating, collusion, impersonation, or any other anomalous act which amounts to any violation of the Civil Service examination, has been categorized as a grave offense of Dishonesty, Grave Misconduct or Conduct Prejudicial to the Best Interest of the Service.[22]

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[21] *Id.* at 601.

[22] As cited in *Bartolata v. Julaton*, A.M. No. P-02-1638, July 6, 2006, 494 SCRA 433, 439-440.

It must be stressed that dishonesty is a serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. Its immense debilitating effect on the government service cannot be overemphasized.[23] If a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression, and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.[24]

Under the Civil Service Rules, dishonesty is a grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service.[25]

In *Civil Service Commission v. Dasco*,[26] *Bartolata v. Julaton*,[27] and *Civil Service Commission v. Sta. Ana*,[28] we found the respondents-employees therein guilty of dishonesty when they misrepresented that they took the Civil Service Examination when in fact someone else took the examination for them. Because of such dishonesty, the employees were dismissed from government service.

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[23] *Bacsasar v. Civil Service Commission*, *supra* note 13, at 796.

[24] *Remolona v. Civil Service Commission*, *supra* note 16, at 600.

[25] *Civil Service Commission v. Dasco*, A.M. No. P-07-2335, September 22, 2008, 566 SCRA 114, 122.

[26] *Id.*

[27] *Supra* note 22.

[28] 450 Phil. 59 (2003).

We find no reason to deviate from these previous rulings.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated November 24, 2008 and Resolution dated April 29, 2009 in CA-G.R. SP No. 101599 are *AFFIRMED*.

SO ORDERED.

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

Brion, J., on official leave.

EN BANC

[G.R. No. 189155. September 7, 2010]

IN THE MATTER OF THE PETITION FOR THE WRIT OF *AMPARO* AND THE WRIT OF *HABEAS DATA* IN FAVOR OF MELISSA C. ROXAS,

MELISSA C. ROXAS, *petitioner, vs.* **GLORIA MACAPAGAL-ARROYO, GILBERT TEODORO, GEN. VICTOR S. IBRADO, P/DIR. GEN. JESUS AME VERZOSA, LT. GEN. DELFIN N. BANGIT, PC/SUPT. LEON NILO A. DELA CRUZ, MAJ. GEN. RALPH VILLANUEVA, PS/SUPT. RUDY GAMIDO LACADIN, and CERTAIN PERSONS WHO GO BY THE NAME[S] DEX, RC and ROSE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULE ON WRIT OF *AMPARO*; COMMAND RESPONSIBILITY IN *AMPARO* PROCEEDINGS; THE DOCTRINE OF COMMAND RESPONSIBILITY CANNOT

BE A PROPER LEGAL BASIS TO IMPLEAD A PARTY-RESPONDENT IN AN *AMPARO* PETITION; ELUCIDATED.— The doctrine of command responsibility is a rule of substantive law that establishes liability and, by this account, cannot be a proper legal basis to implead a party-respondent in an *amparo* petition. The case of ***Rubrico v. Arroyo***, which was the first to examine command responsibility in the context of an *amparo* proceeding, observed that the doctrine is used to pinpoint liability. ***Rubrico*** notes that: "The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, 'command responsibility,' in its simplest terms, means the 'responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict.' In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine of command responsibility, foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is '**an omission mode of individual criminal liability**,' whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators (as opposed to crimes he ordered."

2. ID.; ID.; ID.; WRIT OF *AMPARO*; NATURE.— Since the application of command responsibility presupposes an imputation of individual liability, it is more aptly invoked in a full-blown criminal or administrative case rather than in a summary *amparo* proceeding. The obvious reason lies in the nature of the writ itself: The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security. **While the principal objective of its proceedings is the initial determination of whether an enforced disappearance, extralegal killing or threats thereof had transpired—the writ does not, by so doing, fix liability for such disappearance, killing or threats, whether that may be criminal, civil or administrative under the**

applicable substantive law. The rationale underpinning this peculiar nature of an *amparo* writ has been, in turn, clearly set forth in the landmark case of ***The Secretary of National Defense v. Manalo***: "x x x The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; **it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings.**"

3. ID.; ID.; ID.; COMMAND RESPONSIBILITY IN *AMPARO* PROCEEDINGS; THE INAPPLICABILITY OF THE DOCTRINE OF COMMAND RESPONSIBILITY IN AN *AMPARO* PROCEEDING DOES NOT PRECLUDE IMPLEADING MILITARY OR POLICE COMMANDERS ON THE GROUND OF THEIR RESPONSIBILITY, OR AT LEAST ACCOUNTABILITY.— [T]he inapplicability of the doctrine of command responsibility in an *amparo* proceeding does not, by any measure, preclude impleading military or police commanders on the ground that the complained acts in the petition were committed with their direct or indirect acquiescence. In which case, commanders may be impleaded—not actually on the basis of command responsibility—but rather on the ground of their **responsibility**, or at least **accountability**.

4. ID.; ID.; ID.; *AMPARO* PROCEEDINGS; CONCEPTS OF RESPONSIBILITY AND ACCOUNTABILITY, DISTINGUISHED.— In ***Razon v. Tagitis***, the distinct, but interrelated concepts of responsibility and accountability were given special and unique significations in relation to an *amparo* proceeding, to wit: "x x x **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing

the level of their complicity to the level of responsibility defined above; or who imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of extraordinary diligence in the investigation of the enforced disappearance."

5. ID.; ID.; ID.; ID.; DIRECT EVIDENCE OF THE IDENTITY OF PERPETRATORS, WHEN OBTAINABLE, MUST BE PREFERRED OVER MERE CIRCUMSTANTIAL EVIDENCE BASED ON PATTERNS AND SIMILARITY.— The similarity between the circumstances attending a particular case of abduction with those surrounding previous instances of enforced disappearances does not, necessarily, carry sufficient weight to prove that the government orchestrated such abduction. We opine that insofar as the present case is concerned, the perceived similarity cannot stand as substantial evidence of the involvement of the government. In *amparo* proceedings, the weight that may be accorded to parallel circumstances as evidence of military involvement depends largely on the availability or non-availability of other pieces of evidence that has the potential of directly proving the identity and affiliation of the perpetrators. Direct evidence of identity, when obtainable, must be preferred over mere circumstantial evidence based on patterns and similarity, because the former indubitably offers greater certainty as to the true identity and affiliation of the perpetrators. An *amparo* court cannot simply leave to remote and hazy inference what it could otherwise clearly and directly ascertain.

6. ID.; ID.; ID.; ID.; PRONOUNCEMENT ON RESPONSIBILITY CANNOT BE MADE IN CASE AT BAR FOR INSUFFICIENCY OF EVIDENCE.— [T]he petitioner was not able to establish to a concrete point that her abductors were actually affiliated, whether formally or informally, with the military or police organizations. Neither does the evidence at hand prove that petitioner was indeed taken to the military camp Fort Magsaysay to the exclusion of other places. **These evidentiary gaps, in turn, make it virtually impossible to determine whether the abduction and torture of the petitioner was in fact committed with the acquiescence of the public respondents.** On account of this insufficiency in evidence, a pronouncement of

responsibility on the part of the public respondents, therefore, cannot be made.

7. ID.; ID.; ID.; ID.; MATTERS OF LIABILITY ARE NOT DETERMINABLE IN A MERE SUMMARY *AMPARO* PROCEEDING.— [A]n order directing the public respondents to return the personal belongings of the petitioner is already equivalent to a conclusive pronouncement of liability. The order itself is a substantial relief that can only be granted once the liability of the public respondents has been fixed in a full and exhaustive proceeding. x x x [M]atters of liability are not determinable in a mere summary *amparo* proceeding.

8. ID.; ID.; ID.; EXCLUDES THE PROTECTION OF PROPERTY RIGHTS.— [T]he more fundamental reason in denying the prayer of the petitioner, lies with the fact that a person's right to be restituted of his property is already subsumed under the general rubric of property rights—which are no longer protected by the *writ of amparo*. Section 1 of the *Amparo* Rule, which defines the scope and extent of the writ, clearly excludes the protection of property rights.

9. ID.; ID.; ID.; DOES NOT ALLOW A FISHING EXPEDITION FOR EVIDENCE.— Considering the dearth of evidence concretely pointing to any military involvement in petitioner's ordeal, this Court finds no error on the part of the Court of Appeals in denying an inspection of the military camp at Fort Magsaysay. We agree with the appellate court that a contrary stance would be equivalent to sanctioning a "fishing expedition," which was never intended by the *Amparo* Rule in providing for the interim relief of inspection order. Contrary to the explicit position espoused by the petitioner, the *Amparo* Rule does not allow a "fishing expedition" for evidence.

10. ID.; ID.; ID.; INSPECTION ORDER; THE ISSUANCE THEREOF REQUIRES THAT THE PLACE TO BE INSPECTED IS REASONABLY DETERMINABLE FROM THE ALLEGATIONS OF THE PARTY SEEKING THE ORDER; INSPECTION ORDER, DEFINED.— An inspection order is an interim relief designed to give support or strengthen the claim of a petitioner in an *amparo* petition, in order to aid the court before making a decision. A basic requirement before an *amparo* court may grant inspection order is that the place to be inspected is

reasonably determinable from the allegations of the party seeking the order. While the *Amparo* Rule does not require that the place to be inspected be identified with clarity and precision, it is, nevertheless, a minimum for the issuance of an inspection order that the supporting allegations of a party be sufficient in itself, so as to make a *prima facie* case. This, as was shown x x x, petitioner failed to do. Since the very estimates and observations of the petitioner are not strong enough to make out a *prima facie* case that she was detained in Fort Magsaysay, an inspection of the military camp cannot be ordered. An inspection order cannot issue on the basis of allegations that are, in themselves, unreliable and doubtful.

11. ID.; ID.; RULE ON THE WRIT OF *HABEAS DATA*; WRIT OF *HABEAS DATA*; A JUDICIAL REMEDY ENFORCING THE RIGHT TO PRIVACY, MOST ESPECIALLY THE RIGHT TO INFORMATIONAL PRIVACY OF INDIVIDUALS.— The writ of *habeas data* was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. The writ operates to protect a person's right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends. Needless to state, an indispensable requirement before the privilege of the writ may be extended is the showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim.

12. ID.; ID.; RULE ON THE WRIT OF *AMPARO*; REQUIRES THE RESPONDENTS WHO ARE PUBLIC OFFICIALS OR EMPLOYEES TO PROVE THAT NO LESS THAN EXTRAORDINARY DILIGENCE AS REQUIRED BY APPLICABLE LAWS, RULES AND REGULATIONS WAS OBSERVED IN THE PERFORMANCE OF DUTY.— Ironic as it seems, but part and parcel of the reason why the petitioner was not able to adduce substantial evidence proving her allegations of government complicity in her abduction and torture, may be attributed to the incomplete and one-sided investigations conducted by the government itself. This "*awkward*" situation, wherein the very persons alleged to be involved in an enforced disappearance or extralegal killing are, at the same time, the very ones tasked by law to investigate

the matter, is a unique characteristic of these proceedings and is the main source of the "*evidentiary difficulties*" faced by any petitioner in any *amparo* case. Cognizant of this situation, however, the *Amparo* Rule placed a potent safeguard—requiring the "respondent who is a public official or employee" to prove that no less than "extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty." Thus, unless and until any of the public respondents is able to show to the satisfaction of the *amparo* court that extraordinary diligence has been observed in their investigations, they cannot shed the allegations of responsibility despite the prevailing scarcity of evidence to that effect. With this in mind, We note that extraordinary diligence, as required by the *Amparo* Rule, was not fully observed in the conduct of the police and military investigations in the case at bar.

APPEARANCES OF COUNSEL

Rex J.M.A. Fernandez for petitioner.
The Solicitor General for respondents.

D E C I S I O N

PEREZ, *J.*:

At bench is a Petition For Review on *Certiorari*[1] assailing the Decision[2] dated 26 August 2009 of the Court of Appeals in CA-G.R. SP No. 00036-WRA — a petition that was commenced jointly under the Rules on the Writ of *Amparo* (*Amparo* Rule) and *Habeas Data* (*Habeas Data* Rule). In its decision, the Court of Appeals extended to the petitioner, Melissa C. Roxas, the privilege of the writs of *amparo* and *habeas data* but denied the latter's prayers for an inspection order, production order and return of specified personal belongings. The *fallo* of the decision reads:

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[1] Under Rule 45 of the Rules of Court, in relation with Section 19 of The Rule on the Writ of *Amparo* (A.M. No. 07-9-12-SC) and Section 19 of the Rule on the Writ of *Habeas Data* (A.M. No. 08-1-16-SC).

[2] Penned by Associate Justice Noel G. Tijam with Associate Justices Arturo G. Tayag and Normandie B. Pizarro, concurring. *Rollo*, pp. 50-82.

WHEREFORE, the Petition is PARTIALLY MERITORIOUS. This Court hereby grants Petitioner the privilege of the Writ of *Amparo* and *Habeas Data*.

Accordingly, Respondents are enjoined to refrain from distributing or causing the distribution to the public of any records in whatever form, reports, documents or similar papers relative to Petitioner's Melissa C. Roxas, and/or Melissa Roxas; alleged ties to the CPP-NPA or pertinently related to the complained incident. Petitioner's prayers for an inspection order, production order and for the return of the specified personal belongings are denied for lack of merit. Although there is no evidence that Respondents are responsible for the abduction, detention or torture of the Petitioner, said Respondents pursuant to their legally mandated duties are, nonetheless, ordered to continue/complete the investigation of this incident with the end in view of prosecuting those who are responsible. Respondents are also ordered to provide protection to the Petitioner and her family while in the Philippines against any and all forms of harassment, intimidation and coercion as may be relevant to the grant of these reliefs.[3]

We begin with the petitioner's allegations.

Petitioner is an American citizen of Filipino descent.[4] While in the United States, petitioner enrolled in an exposure program to the Philippines with the group *Bagong Alyansang Makabayan*-United States of America (*BAYAN*-USA) of which she is a member.[5] During the course of her immersion, petitioner toured various provinces and towns of Central Luzon and, in April of 2009, she volunteered to join members of *BAYAN*-Tarlac[6] in conducting an initial health survey in La Paz, Tarlac for a future medical mission.[7]

In pursuit of her volunteer work, petitioner brought her passport, wallet with Fifteen Thousand Pesos (₱15,000.00) in

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[3] *Id.* at 81-82.

[4] *Id.* at 53.

[5] *Id.*

[6] A sister organization of *BAYAN*-USA.

[7] Affidavit of Petitioner. CA *rollo*, p. 11.

cash, journal, digital camera with memory card, laptop computer, external hard disk, *IPOD*,[8] wristwatch, sphygmomanometer, stethoscope and medicines.[9]

After doing survey work on 19 May 2009, petitioner and her companions, Juanito Carabeo (Carabeo) and John Edward Jandoc (Jandoc), decided to rest in the house of one Mr. Jesus Paolo (Mr. Paolo) in *Sitio* Bagong Sikat, *Barangay* Kapanikian, La Paz, Tarlac.[10] At around 1:30 in the afternoon, however, petitioner, her companions and Mr. Paolo were startled by the loud sounds of someone banging at the front door and a voice demanding that they open up.[11]

Suddenly, fifteen (15) heavily armed men forcibly opened the door, barged inside and ordered petitioner and her companions to lie on the ground face down.[12] The armed men were all in civilian clothes and, with the exception of their leader, were also wearing bonnets to conceal their faces.[13]

Petitioner tried to protest the intrusion, but five (5) of the armed men ganged up on her and tied her hands.[14] At this juncture, petitioner saw the other armed men herding Carabeo and Jandoc, already blindfolded and taped at their mouths, to a nearby blue van. Petitioner started to shout her name.[15] Against her vigorous resistance, the armed men dragged petitioner towards the van—bruising her arms, legs and knees.[16] Once inside the van, but before she can be blindfolded, petitioner was able to see the face of one of the armed men sitting beside her.[17] The van then sped away.

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[8] A digital multi-media player combined with a hard drive.

[9] Supplemental Affidavit of Petitioner. CA *rollo*, p. 194.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.* at 12.

After about an hour of traveling, the van stopped.[18] Petitioner, Carabeo and Jandoc were ordered to alight.[19] After she was informed that she is being detained for being a member of the Communist Party of the Philippines-New People's Army (CPP-NPA), petitioner was separated from her companions and was escorted to a room that she believed was a jail cell from the sound of its metal doors.[20] From there, she could hear the sounds of gunfire, the noise of planes taking off and landing and some construction bustle.[21] She inferred that she was taken to the military camp of Fort Magsaysay in Laur, Nueva Ecija.[22]

What followed was five (5) straight days of interrogation coupled with torture.[23] The thrust of the interrogations was to convince petitioner to abandon her communist beliefs in favor of returning to "the fold."[24] The torture, on the other hand, consisted of taunting, choking, boxing and suffocating the petitioner.[25]

Throughout the entirety of her ordeal, petitioner was made to suffer in blindfolds even in her sleep.[26] Petitioner was only relieved of her blindfolds when she was allowed to take a bath, during which she became acquainted with a woman named "Rose" who bathed her.[27] There were also a few times when she cheated her blindfold and was able to peek at her surroundings.[28]

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.* at 54.

[23] *Id.* at 12-15.

[24] *Id.*

[25] *Id.*

[26] *Id.* at 12.

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

[28] Supplemental Affidavit. *Id.* at 194-196.

Despite being deprived of sight, however, petitioner was still able to learn the names of three of her interrogators who introduced themselves to her as "Dex," "James" and "RC."[29] "RC" even told petitioner that those who tortured her came from the "*Special Operations Group*," and that she was abducted because her name is included in the "*Order of Battle*."[30]

On 25 May 2009, petitioner was finally released and returned to her uncle's house in Quezon City.[31] Before being released, however, the abductors gave petitioner a cellular phone with a SIM[32] card, a slip of paper containing an e-mail address with password,[33] a plastic bag containing biscuits and books,[34] the handcuffs used on her, a blouse and a pair of shoes.[35] Petitioner was also sternly warned not to report the incident to the group *Karapatan* or something untoward will happen to her and her family.[36]

Sometime after her release, petitioner continued to receive calls from RC *via* the cellular phone given to her.[37] Out of apprehension that she was being monitored and also fearing for the safety of her family, petitioner threw away the cellular phone with a SIM card.

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[29] *Id.* at 14-15 and 195.

[30] *Id.* at 15.

[31] *Id.* at 15-16. Per investigation of the police, Juanito Carabeo was released by the abductors on 24 May 2009 along the highway of *Barangay* Santa Cruz, Lubao, Pampanga. His exact whereabouts are, however, presently unknown. According to the police, Carabeo has 7 outstanding warrants of arrest. As of the time of this decision, no news relative to the release and/or whereabouts of John Edward Jandoc is obtainable.

[32] Meaning, subscriber Identity Module.

[33] The email address is "*riveradong@yahoo.com*," with the password "*dantes2009*." CA *rollo*, at 196.

[34] The book was "*Love in the Times of Cholera*" by Gabriel Garcia Marquez, and a copy of a Bible of the King James Version. *Id.* at 195.

[35] *Id.* at 15.

[36] *Id.*

[37] *Id.*

Seeking sanctuary against the threat of future harm as well as the suppression of any existing government files or records linking her to the communist movement, petitioner filed a *Petition for the Writs of Amparo and Habeas Data* before this Court on 1 June 2009.[38] Petitioner impleaded public officials occupying the uppermost echelons of the military and police hierarchy as respondents, on the belief that it was government agents who were behind her abduction and torture. Petitioner likewise included in her suit "Rose," "Dex" and "RC."[39]

The *Amparo* and *Habeas Data* petition prays that: (1) respondents be enjoined from harming or even approaching petitioner and her family; (2) an order be issued allowing the inspection of detention areas in the 7th Infantry Division, Fort Magsaysay, Laur, Nueva Ecija; (3) respondents be ordered to produce documents relating to any report on the case of petitioner including, but not limited to, intelligence report and operation reports of the 7th Infantry Division, the Special Operations Group of the Armed Forces of the Philippines (AFP) and its subsidiaries or branch/es prior to, during and subsequent to 19 May 2009; (4) respondents be ordered to expunge from the records of the respondents any document pertinent or connected to Melissa C. Roxas, Melissa Roxas or any name which sounds the same; and (5) respondents be ordered to return to petitioner her journal, digital camera with memory card, laptop computer, external hard disk, IPOD, wristwatch, sphygmomanometer, stethoscope, medicines and her ₱15,000.00 cash.[40]

In a Resolution dated 9 June 2009, this Court issued the desired writs and referred the case to the Court of Appeals for hearing, reception of evidence and appropriate action.[41]

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[38] *Id.* at 2-18. Shortly after filing the petition, petitioner went to the United States to recuperate from her experience. She came back to the Philippines on 30 July 2009 to testify on the affidavits attached to her petition before the Court of Appeals, but returned immediately to the United States.

[39] The interrogator identified only by the name of "James" was not similarly impleaded as a co-respondent.

[40] CA *rollo*, pp. 7-8.

[41] Supreme Court *En Banc* Resolution, *id.* at 19-21.

The Resolution also directed the respondents to file their verified written return.[42]

On 18 June 2009, the Office of the Solicitor General (OSG), filed a *Return of the Writs*[43] on behalf of the public officials impleaded as respondents.

We now turn to the defenses interposed by the public respondents.

The public respondents label petitioner's alleged abduction and torture as "stage managed."[44] In support of their accusation, the public respondents principally rely on the statement of Mr. Paolo, as contained in the *Special Report*[45] of the La Paz Police Station. In the *Special Report*, Mr. Paolo disclosed that, prior to the purported abduction, petitioner and her companions instructed him and his two sons to avoid leaving the house.[46] From this statement, the public respondents drew the distinct possibility that, except for those already inside Mr. Paolo's house, nobody else has any way of knowing where petitioner and her companions were at the time they were supposedly abducted.[47] This can only mean, the public respondents concluded, that if ever there was any "abduction" it must necessarily have been planned by, or done with the consent of, the petitioner and her companions themselves.[48]

Public respondents also cited the *Medical Certificate*[49] of the petitioner, as actually belying her claims that she was subjected to serious torture for five (5) days. The public respondents

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[42] *Id.*

[43] No return was filed by or for the unknown respondents "Dex," "Rose" and "RC." *Id.* at 35-98.

[44] *Id.* at 56.

[45] *Id.* at 18 and 90.

[46] *Id.*

[47] *Id.* at 58.

[48] *Id.* at 59.

[49] *Id.* at 17.

noted that while the petitioner alleges that she was choked and boxed by her abductors—inflictions that could have easily produced remarkable bruises—her *Medical Certificate* only shows abrasions in her wrists and knee caps.[50]

For the public respondents, the above anomalies put in question the very authenticity of petitioner's alleged abduction and torture, more so any military or police involvement therein. Hence, public respondents conclude that the claims of abduction and torture was no more than a charade fabricated by the petitioner to put the government in bad light, and at the same time, bring great media mileage to her and the group that she represents.[51]

Nevertheless, even assuming the abduction and torture to be genuine, the public respondents insist on the dismissal of the *Amparo* and *Habeas Data* petition based on the following grounds: (a) as against respondent President Gloria Macapagal-Arroyo, in particular, because of her immunity from suit,[52] and (b) as against all of the public respondents, in general, in view of the absence of any specific allegation in the petition that they had participated in, or at least authorized, the commission of such atrocities.[53]

Finally, the public respondents posit that they had not been remiss in their duty to ascertain the truth behind the allegations of the petitioner.[54] In both the police and military arms of the government machinery, inquiries were set-up in the following manner:

Police Action

Police authorities first learned of the purported abduction around 4:30 o'clock in the afternoon of 19 May 2009, when *Barangay* Captain Michael M. Manuel came to the La Paz

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[50] *Id.* at 60-61.

[51] *Id.* at 60.

[52] *Id.* at 42-43

[53] *Id.* at 43-55.

[54] *Id.*

Municipal Police Station to report the presence of heavily armed men somewhere in *Barangay* Kapanikian.[55] Acting on the report, the police station launched an initial investigation.[56]

The initial investigation revolved around the statement of Mr. Paolo, who informed the investigators of an abduction incident involving three (3) persons—later identified as petitioner Melissa Roxas, Juanito Carabeo and John Edward Jandoc—who were all staying in his house.[57] Mr. Paolo disclosed that the abduction occurred around 1:30 o'clock in the afternoon, and was perpetrated by about eight (8) heavily armed men who forced their way inside his house.[58] Other witnesses to the abduction also confirmed that the armed men used a dark blue van with an unknown plate number and two (2) Honda XRM motorcycles with no plate numbers.[59]

At 5:00 o'clock in the afternoon of 19 May 2009, the investigators sent a Flash Message to the different police stations surrounding La Paz, Tarlac, in an effort to track and locate the van and motorcycles of the suspects. Unfortunately, the effort yielded negative results.[60]

On 20 May 2009, the results of the initial investigation were included in a *Special Report*[61] that was transmitted to the Tarlac Police Provincial Office, headed by public respondent P/S Supt. Rudy Lacadin (Supt. Lacadin). Public respondent Supt. Lacadin, in turn, informed the Regional Police Office of Region 3 about the abduction.[62] Follow-up investigations were, at the same time, pursued.[63]

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[55] *Id.* at 18 and 90.

[56] *Id.*

[57] *Id.*

[58] *Id.*

[59] *Id.*

[60] *Id.* at 113.

[61] *Id.* at 18.

[62] Affidavit of PC/Supt. Leon Nilo A. Dela Cruz. *Id.* at 83.

[63] *Id.* at 18-90.

On 26 May 2009, public respondent PC/Supt. Leon Nilo Dela Cruz, as Director of the Regional Police Office for Region 3, caused the creation of Special Investigation Task Group—CAROJAN (Task Group CAROJAN) to conduct an in-depth investigation on the abduction of the petitioner, Carabeo and Jandoc.[64]

Task Group CAROJAN started its inquiry by making a series of background examinations on the victims of the purported abduction, in order to reveal the motive behind the abduction and, ultimately, the identity of the perpetrators.[65] Task Group CAROJAN also maintained liaisons with *Karapatan* and the Alliance for Advancement of People's Rights—organizations trusted by petitioner—in the hopes of obtaining the latter's participation in the ongoing investigations.[66] Unfortunately, the letters sent by the investigators requesting for the availability of the petitioner for inquiries were left unheeded.[67]

The progress of the investigations conducted by Task Group CAROJAN had been detailed in the reports[68] that it submitted to public respondent General Jesus Ame Verzosa, the Chief of the Philippine National Police. However, as of their latest report dated 29 June 2009, Task Group CAROJAN is still unable to make a definitive finding as to the true identity and affiliation of the abductors—a fact that task group CAROJAN attributes

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[64] Initial Report of Special Investigative Task Group CAROJAN, *id.* at 112-114.

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

[66] *See* Letters sent by PC/Supt. Gil C. Meneses, head of Special Investigative Task Group CAROJAN, to Sister Cecile Ruiz of *Karapatan* and the Alliance for Advancement of People's Rights. *Id.* at 93-94.

[67] *Id.* at 54.

[68] *See* Initial Report dated 26 May 2009; First Progress Report dated 27 May 2009; Second Progress Report dated 1 June 2009; Third Progress Report dated 8 June 2009, on the alleged abduction and torture of Melissa Roxas, Juanito Carabeo and John Edward Jandoc, prepared by Task Group CAROJAN, *id.* at 112-120. *See also* Investigation Report dated 29 June 2009, *id.* at 179-185.

to the refusal of the petitioner, or any of her fellow victims, to cooperate in their investigative efforts.[69]

Military Action

Public respondent Gilbert Teodoro, the Secretary of National Defense, first came to know about the alleged abduction and torture of the petitioner upon receipt of the Resolution of this Court directing him and the other respondents to file their return.[70] Immediately thereafter, he issued a *Memorandum Directive*[71] addressed to the Chief of Staff of the AFP, ordering the latter, among others, to conduct an inquiry to determine the validity of the accusation of military involvement in the abduction.[72]

Acting pursuant to the *Memorandum Directive*, public respondent General Victor S. Ibrado, the AFP Chief of Staff, sent an AFP Radio Message[73] addressed to public respondent Lieutenant General Delfin N. Bangit (Lt. Gen. Bangit), the Commanding General of the Army, relaying the order to cause an investigation on the abduction of the petitioner.[74]

For his part, and taking cue from the allegations in the *amparo* petition, public respondent Lt. Gen. Bangit instructed public respondent Major General Ralph A. Villanueva (Maj. Gen. Villanueva), the Commander of the 7th Infantry Division of the Army based in Fort Magsaysay, to set in motion an investigation regarding the possible involvement of any personnel assigned at the camp in the purported abduction of the petitioner.[75] In turn, public respondent Maj. Gen. Villanueva tapped the Office of the Provost Marshal (OPV) of the 7th Infantry Division, to conduct the investigation.[76]

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[69] *Id.* at 185.

[70] Counter-Affidavit of Secretary Gilbert Teodoro, *id.* at 121-123.

[71] *Id.* at 124.

[72] *Id.* at 122.

[73] *Id.* at 77.

[74] Affidavit of General Victor S. Ibrado, *id.* at 73-74.

[75] Affidavit of Lt. Gen. Delfin N. Bangit, *id.* at 79-80.

[76] Affidavit of Maj. Gen. Ralph A. Villanueva, *id.* at 81-82.

On 23 June 2009, the OPV of the 7th Infantry Division released an *Investigation Report*[77] detailing the results of its inquiry. In substance, the report described petitioner's allegations as "opinionated" and thereby cleared the military from any involvement in her alleged abduction and torture.[78]

The Decision of the Court of Appeals

In its Decision,[79] the Court of Appeals gave due weight and consideration to the petitioner's version that she was indeed abducted and then subjected to torture for five (5) straight days. The appellate court noted the sincerity and resolve by which the petitioner affirmed the contents of her affidavits in open court, and was thereby convinced that the latter was telling the truth.[80]

On the other hand, the Court of Appeals disregarded the argument of the public respondents that the abduction of the petitioner was "stage managed," as it is merely based on an unfounded speculation that only the latter and her companions knew where they were staying at the time they were forcibly taken.[81] The Court of Appeals further stressed that the *Medical Certificate* of the petitioner can only affirm the existence of a true abduction, as its findings are reflective of the very injuries the latter claims to have sustained during her harrowing ordeal, particularly when she was handcuffed and then dragged by her abductors onto their van.[82]

The Court of Appeals also recognized the existence of an ongoing threat against the security of the petitioner, as manifested in the attempts of "RC" to contact and monitor her, even after she was released.[83] This threat, according to the Court of Appeals,

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77 *Id.* at 107-110.

78 *Id.* at 110.

79 *Rollo,* pp. 50-82.

80 *Id.* at 63-64.

81 *Id.* at 64.

82 *Id.* at 64-65.

83 *Id.* at 67.

is all the more compounded by the failure of the police authorities to identify the material perpetrators who are still at large.[84] Thus, the appellate court extended to the petitioner the privilege of the writ of *amparo* by directing the public respondents to afford protection to the former, as well as continuing, under the norm of extraordinary diligence, their existing investigations involving the abduction.[85]

The Court of Appeals likewise observed a transgression of the right to informational privacy of the petitioner, noting the existence of "records of investigations" that concerns the petitioner as a suspected member of the CPP-NPA.[86] The appellate court derived the existence of such records from a photograph and video file presented in a press conference by party-list representatives Jovito Palparan (Palparan) and Pastor Alcover (Alcover), which allegedly show the petitioner participating in rebel exercises. Representative Alcover also revealed that the photograph and video came from a female CPP-NPA member who wanted out of the organization. According to the Court of Appeals, the proliferation of the photograph and video, as well as any form of media, insinuating that petitioner is part of the CPP-NPA does not only constitute a violation of the right to privacy of the petitioner but also puts further strain on her already volatile security.[87] To this end, the appellate court granted the privilege of the writ of *habeas data* mandating the public respondents to refrain from distributing to the public any records, in whatever form, relative to petitioner's alleged ties with the CPP-NPA or pertinently related to her abduction and torture.[88]

The foregoing notwithstanding, however, the Court of Appeals was not convinced that the military or any other person acting under the acquiescence of the government, were responsible

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[84] *Id.* at 69-71.

[85] *Id.* at 81-82.

[86] *Id.* at 80-81.

[87] *Id.*

[88] *Id.* at 81-82.

for the abduction and torture of the petitioner.[89] The appellate court stressed that, judging by her own statements, the petitioner merely "believed" that the military was behind her abduction.[90] Thus, the Court of Appeals absolved the public respondents from any complicity in the abduction and torture of petitioner.[91] The petition was likewise dismissed as against public respondent President Gloria Macapagal-Arroyo, in view of her immunity from suit.[92]

Accordingly, the petitioner's prayers for the return of her personal belongings were denied.[93] Petitioner's prayers for an inspection order and production order also met the same fate.[94]

Hence, this appeal by the petitioner.

AMPARO

A.

Petitioner first contends that the Court of Appeals erred in absolving the public respondents from any responsibility in her abduction and torture.[95] Corollary to this, petitioner also finds fault on the part of Court of Appeals in denying her prayer for the return of her personal belongings.[96]

Petitioner insists that the manner by which her abduction and torture was carried out, as well as the sounds of construction, gun-fire and airplanes that she heard while in detention, as these were detailed in her two affidavits and affirmed by her in open court, are already sufficient evidence to prove government involvement.[97]

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[89] *Id.* at 71-72.

[90] *Id.* at 73.

[91] *Id.* at 71-72.

[92] *Id.* at 73.

[93] *Id.* at 81.

[94] *Id.* at 75-77.

[95] *Id.* at 2-40 and 7.

[96] *Id.*

[97] *Id.* at 15. *See* also CA *rollo*, p. 5.

Proceeding from such assumption, petitioner invokes the doctrine of command responsibility to implicate the high-ranking civilian and military authorities she impleaded as respondents in her *amparo* petition.[98] Thus, petitioner seeks from this Court a pronouncement holding the respondents as complicit in her abduction and torture, as well as liable for the return of her belongings.[99]

Command Responsibility in Amparo Proceedings

It must be stated at the outset that the use by the petitioner of the *doctrine of command responsibility* as the justification in impleading the public respondents in her *amparo* petition, is legally inaccurate, if not incorrect. The doctrine of command responsibility is a rule of substantive law that establishes liability and, by this account, cannot be a proper legal basis to implead a party-respondent in an *amparo* petition.[100]

The case of ***Rubrico v. Arroyo***,[101] which was the first to examine command responsibility in the context of an *amparo* proceeding, observed that the doctrine is used to pinpoint liability. ***Rubrico*** notes that:[102]

The evolution of the command responsibility doctrine finds its context in the development of laws of war and armed combats. According to Fr. Bernas, "command responsibility," in its simplest terms, means the "responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict."[103] In this sense, command responsibility is properly a form of criminal complicity. The Hague Conventions of 1907 adopted the doctrine

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[98] *Id.* at 17.

[99] *Id.* at 38.

[100] *See* Separate Opinion of Associate Justice Arturo D. Brion in *Rubrico v. Arroyo*, G.R. No. 183871, 18 February 2010.

[101] *Rubrico v. Arroyo*, G.R. No. 183871, 18 February 2010.

[102] *Id*.

[103] Joaquin G. Bernas, S.J., *Command Responsibility*, 5 February 2007, http://sc.judiciary.gov.ph/publications/summit/Summit%20Papers/Bernas%20-%20Command%20Responsibility.pdf (visited 2 September 2010).

of command responsibility,[104] foreshadowing the present-day precept of holding a superior accountable for the atrocities committed by his subordinates should he be remiss in his duty of control over them. As then formulated, command responsibility is "**an omission mode of individual criminal liability**," whereby the superior is made responsible for **crimes committed** by his subordinates for failing to prevent or punish the perpetrators[105] (as opposed to crimes he ordered). (Emphasis in the original, underscoring supplied)

Since the application of command responsibility presupposes an imputation of individual liability, it is more aptly invoked in a full-blown criminal or administrative case rather than in a summary *amparo* proceeding. The obvious reason lies in the nature of the writ itself:

The writ of *amparo* is a protective remedy aimed at providing judicial relief consisting of the appropriate remedial measures and directives that may be crafted by the court, in order to address specific violations or threats of violation of the constitutional rights to life, liberty or security.[106] **While the principal objective of its proceedings is the initial determination of whether an enforced disappearance, extralegal killing or threats thereof had transpired—the writ does not, by so doing, fix liability for such disappearance, killing or threats, whether that may be criminal, civil or administrative under the applicable substantive law**.[107] The rationale underpinning this peculiar

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[104] Eugenia Levine, Command Responsibility, The Mens Rea Requirement, *Global Policy Forum*, February 2005 (www.globalpolicy.org.). As stated in *Kuroda v. Jalandoni*, 83 Phil. 171 (1949), the Philippines is not a signatory to the Hague Conventions.

[105] Iavor Rangelov and Jovan Nicic, "Command Responsibility: The Contemporary Law," http://www.hlc-rdc.org/uploads/editor/Command%20Responsibility.pdf (visited 2 August 2009)

[106] *Razon, Jr. v. Tagitis*, G.R. No. 182498, 3 December 2009, 606 SCRA 598, 602.

[107] Separate Opinion of Associate Justice Arturo D. Brion in *Rubrico v. Arroyo*, *supra* note 101.

nature of an *amparo* writ has been, in turn, clearly set forth in the landmark case of ***The Secretary of National Defense v. Manalo***:[108]

x x x The remedy provides rapid judicial relief as it partakes of a summary proceeding that requires only substantial evidence to make the appropriate reliefs available to the petitioner; **it is not an action to determine criminal guilt requiring proof beyond reasonable doubt, or liability for damages requiring preponderance of evidence, or administrative responsibility requiring substantial evidence that will require full and exhaustive proceedings**.[109] (Emphasis supplied)

It must be clarified, however, that the inapplicability of the doctrine of command responsibility in an *amparo* proceeding does not, by any measure, preclude impleading military or police commanders on the ground that the complained acts in the petition were committed with their direct or indirect acquiescence. In which case, commanders may be impleaded—not actually on the basis of command responsibility but rather on the ground of their **responsibility**, or at least **accountability**. In ***Razon v. Tagitis***,[110] the distinct, but interrelated concepts of responsibility and accountability were given special and unique significations in relation to an *amparo* proceeding, to wit:

x x x **Responsibility** refers to the extent the actors have been established by substantial evidence to have participated in whatever way, by action or omission, in an enforced disappearance, as a measure of the remedies this Court shall craft, among them, the directive to file the appropriate criminal and civil cases against the responsible parties in the proper courts. **Accountability**, on the other hand, refers to the measure of remedies that should be addressed to those who exhibited involvement in the enforced disappearance without bringing the level of their complicity to the level of responsibility defined above; or who are imputed with knowledge relating to the enforced disappearance and who carry the burden of disclosure; or those who carry, but have failed to discharge, the burden of

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[108] G.R. No. 180906, 7 October 2008, 568 SCRA 1, 42.

[109] Deliberations of the Committee on the Revision of the Rules of Court, 10 August 2007, 24 August 2007, 31 August 2007 and 20 September 2008.

[110] *Supra* note 106 at 620-621.

extraordinary diligence in the investigation of the enforced disappearance.

Responsibility of Public Respondents

At any rate, it is clear from the records of the case that the intent of the petitioner in impleading the public respondents is to ascribe some form of **responsibility** on their part, based on her assumption that they, in one way or the other, had condoned her abduction and torture.[111]

To establish such assumption, petitioner attempted to show that it was government agents who were behind her ordeal. Thus, the petitioner calls attention to the circumstances surrounding her abduction and torture—*i.e.*, the forcible taking in broad daylight; use of vehicles with no license plates; utilization of blindfolds; conducting interrogations to elicit communist inclinations; and the infliction of physical abuse—which, according to her, is consistent with the way enforced disappearances are being practiced by the military or other state forces.[112]

Moreover, petitioner also claims that she was held inside the military camp Fort Magsaysay—a conclusion that she was able to infer from the travel time required to reach the place where she was actually detained, and also from the sounds of construction, gun-fire and airplanes she heard while thereat.[113]

We are not impressed. The totality of the evidence presented by the petitioner does not inspire reasonable conclusion that her abductors were military or police personnel and that she was detained at Fort Magsaysay.

First. The similarity between the circumstances attending a particular case of abduction with those surrounding previous instances of enforced disappearances does not, necessarily, carry sufficient weight to prove that the government orchestrated such abduction. We opine that insofar as the present case is

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

[112] *Id.* at 15.

[113] CA *rollo*, p. 5.

concerned, the perceived similarity cannot stand as substantial evidence of the involvement of the government.

In *amparo* proceedings, the weight that may be accorded to parallel circumstances as evidence of military involvement depends largely on the availability or non-availability of other pieces of evidence that has the potential of directly proving the identity and affiliation of the perpetrators. Direct evidence of identity, when obtainable, must be preferred over mere circumstantial evidence based on patterns and similarity, because the former indubitably offers greater certainty as to the true identity and affiliation of the perpetrators. An *amparo* court cannot simply leave to remote and hazy inference what it could otherwise clearly and directly ascertain.

In the case at bench, petitioner was, in fact, able to include in her *Offer of Exhibits*,[114] the cartographic sketches[115] of several of her abductors whose faces she managed to see. To the mind of this Court, these cartographic sketches have the undeniable potential of giving the greatest certainty as to the true identity and affiliation of petitioner's abductors. Unfortunately for the petitioner, this potential has not been realized in view of the fact that the faces described in such sketches remain unidentified, much less have been shown to be that of any military or police personnel. Bluntly stated, the abductors were not proven to be part of either the military or the police chain of command.

Second. The claim of the petitioner that she was taken to Fort Magsaysay was not adequately established by her mere estimate of the time it took to reach the place where she was detained and by the sounds that she heard while thereat. Like the Court of Appeals, We are not inclined to take the estimate and observations of the petitioner as accurate on its face—not only because they were made mostly while she was in blindfolds, but also in view of the fact that she was a mere sojourner in the Philippines, whose familiarity with Fort Magsaysay and the travel

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[114] *Id.* at 187-193.

[115] *Id. See* Exhibit "G', and its sub-markings.

time required to reach it is in itself doubtful.[116] With nothing else but obscure observations to support it, petitioner's claim that she was taken to Fort Magsaysay remains a mere speculation.

In sum, the petitioner was not able to establish to a concrete point that her abductors were actually affiliated, whether formally or informally, with the military or the police organizations. Neither does the evidence at hand prove that petitioner was indeed taken to the military camp Fort Magsaysay to the exclusion of other places. **These evidentiary gaps, in turn, make it virtually impossible to determine whether the abduction and torture of the petitioner was in fact committed with the acquiescence of the public respondents.** On account of this insufficiency in evidence, a pronouncement of responsibility on the part of the public respondents, therefore, cannot be made.

Prayer for the Return of Personal Belongings

This brings Us to the prayer of the petitioner for the return of her personal belongings.

In its decision, the Court of Appeals denied the above prayer of the petitioner by reason of the failure of the latter to prove that the public respondents were involved in her abduction and torture.[117] We agree with the conclusion of the Court of Appeals, but not entirely with the reason used to support it. To the mind of this Court, the prayer of the petitioner for the return of her belongings is doomed to fail regardless of whether there is sufficient evidence to hold public respondents responsible for the abduction of the petitioner.

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[116] *Rollo*, pp. 75-76. As observed by the Court of Appeals:

As respondents correctly argued, considering that Petitioner is an American citizen who claimed to be unfamiliar with Fort Magsaysay or its immediate vicinity, she cannot possibly have any familiarity or actual knowledge of the buildings in or around Fort Magsaysay or the relative distances to and from the same. Petitioner failed to offer a single evidence to definitely prove that she was brought to Fort Magsaysay to the exclusion of other places. It is also unfortunate that her two other companions Messrs. Carabeo and Jandoc, chose not to appear in Court to corroborate the testimony of the Petitioner.

[117] *Id.* at 81.

In the first place, an order directing the public respondents to return the personal belongings of the petitioner is already equivalent to a conclusive pronouncement of liability. The order itself is a substantial relief that can only be granted once the liability of the public respondents has been fixed in a full and exhaustive proceeding. As already discussed above, matters of liability are not determinable in a mere summary *amparo* proceeding.[118]

But perhaps the more fundamental reason in denying the prayer of the petitioner, lies with the fact that a person's right to be restituted of his property is already subsumed under the general rubric of property rights—which are no longer protected by the *writ of amparo*.[119] Section 1 of the *Amparo* Rule,[120] which defines the scope and extent of the writ, clearly excludes the protection of property rights.

B.

The next error raised by the petitioner is the denial by the Court of Appeals of her prayer for an inspection of the detention areas of Fort Magsaysay.[121]

Considering the dearth of evidence concretely pointing to any military involvement in petitioner's ordeal, this Court finds no error on the part of the Court of Appeals in denying an inspection of the military camp at Fort Magsaysay. We agree with the appellate court that a contrary stance would be equivalent to sanctioning a "fishing expedition," which was never intended

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[118] *Razon, Jr. v. Tagitis, supra* note 106 at 688-689.

[119] *Tapuz v. Del Rosario*, G.R. No. 182484, 17 June 2008, 554 SCRA 768, 784-785.

[120] Section 1 of the *Amparo* Rule states:

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

The writ shall cover **extra-legal killings and enforced disappearances or threats thereof**. (Emphasis supplied).

[121] *Rollo*, pp. 27-31.

by the *Amparo* Rule in providing for the interim relief of inspection order.[122] Contrary to the explicit position[123] espoused by the petitioner, the *Amparo* Rule does not allow a "fishing expedition" for evidence.

An inspection order is an interim relief designed to give support or strengthen the claim of a petitioner in an *amparo* petition, in order to aid the court before making a decision.[124] A basic requirement before an *amparo* court may grant an inspection order is that the place to be inspected is reasonably determinable from the allegations of the party seeking the order. While the *Amparo* Rule does not require that the place to be inspected be identified with clarity and precision, it is, nevertheless, a minimum for the issuance of an inspection order that the supporting allegations of a party be sufficient in itself, so as to make a *prima facie* case. This, as was shown above, petitioner failed to do.

Since the very estimates and observations of the petitioner are not strong enough to make out a *prima facie* case that she was detained in Fort Magsaysay, an inspection of the military camp cannot be ordered. An inspection order cannot issue on the basis of allegations that are, in themselves, unreliable and doubtful.

HABEAS DATA

As earlier intimated, the Court of Appeals granted to the petitioner the privilege of the writ of *habeas data*, by enjoining the public respondents from "distributing or causing the distribution to the public any records in whatever form, reports, documents or similar papers" relative to the petitioner's "alleged ties with the CPP-NPA or pertinently related to her abduction and torture." Though not raised as an issue in this appeal, this Court is constrained to pass upon and review this particular ruling of the Court of Appeals in order to rectify, what appears to Us, an error infecting the grant.

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[122] *Id.* at 76.

[123] *Id.* at 28.

[124] *Yano v. Sanchez*, G.R. No. 186640, 11 February 2010.

For the proper appreciation of the rationale used by the Court of Appeals in granting the privilege of the writ of *habeas data*, We quote hereunder the relevant portion[125] of its decision:

> Under these premises, Petitioner prayed that all the records, intelligence reports and reports on the investigations conducted on Melissa C. Roxas or Melissa Roxas be produced and eventually expunged from the records. Petitioner claimed to be included in the Government's Order of Battle under Oplan Bantay Laya which listed political opponents against whom false criminal charges were filed based on made up and perjured information.
>
> **Pending resolution of this petition and before Petitioner could testify before Us, Ex-army general Jovito Palaparan, Bantay party-list, and Pastor Alcover of the Alliance for Nationalism and Democracy party-list held a press conference where they revealed that they received an information from a female NPA rebel who wanted out of the organization, that Petitioner was a communist rebel. Alcover claimed that said information reached them thru a letter with photo of Petitioner holding firearms at an NPA training camp and a video CD of the training exercises**.
>
> **Clearly, and notwithstanding Petitioner's denial that she was the person in said video, there were records of other investigations on Melissa C. Roxas or Melissa Roxas which violate her right to privacy**. Without a doubt, reports of such nature have reasonable connections, one way or another, to petitioner's abduction where she claimed she had been subjected to cruelties and dehumanizing acts which nearly caused her life precisely due to allegation of her alleged membership in the CPP-NPA. And if said report or similar reports are to be continuously made available to the public, Petitioner's security and privacy will certainly be in danger of being violated or transgressed by persons who have strong sentiments or aversion against members of this group. The unregulated dissemination of said unverified video CD or reports of Petitioner's alleged ties with the CPP-NPA indiscriminately made available for public consumption without evidence of its authenticity or veracity certainly violates Petitioner's right to privacy which must be protected by this Court. We, thus, deem it necessary to grant Petitioner the privilege of the Writ of *Habeas Data*. (Emphasis supplied).

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[125] *Rollo*, pp. 80-81.

The writ of *habeas data* was conceptualized as a judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals.[126] The writ operates to protect a person's right to control information regarding himself, particularly in the instances where such information is being collected through unlawful means in order to achieve unlawful ends.

Needless to state, an indispensable requirement before the privilege of the writ may be extended is the showing, at least by substantial evidence, of an actual or threatened violation of the right to privacy in life, liberty or security of the victim.[127] This, in the case at bench, the petitioner failed to do.

The main problem behind the ruling of the Court of Appeals is that there is actually no evidence on record that shows that any of the public respondents had violated or threatened the right to privacy of the petitioner. The act ascribed by the Court of Appeals to the public respondents that would have violated or threatened the right to privacy of the petitioner, *i.e.*, keeping records of investigations and other reports about the petitioner's ties with the CPP-NPA, was not adequately proven—considering that the origin of such records were virtually unexplained and its existence, clearly, only inferred by the appellate court from the video and photograph released by Representatives Palparan and Alcover in their press conference. No evidence on record even shows that any of the public respondents had access to such video or photograph.

In view of the above considerations, the directive by the Court of Appeals enjoining the public respondents from

[126] Annotation to the Rule on the Writ of *Habeas Data*, A.M. No. 08-1-16-SC, effective 2 February 2008 (pamphlet released by the Supreme Court), p. 23.

[127] Section 1 of the *Habeas Data* Rule states:

SECTION 1. *Habeas Data*. - The writ of *habeas data* is a remedy available to any person whose **right to privacy in life, liberty or security is violated or threatened** by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party. (Emphasis supplied).

"distributing or causing the distribution to the public any records in whatever form, reports, documents or similar papers" relative to the petitioner's "alleged ties with the CPP-NPA," appears to be devoid of any legal basis. The public respondents cannot be ordered to refrain from distributing something that, in the first place, it was not proven to have.

Verily, until such time that any of the public respondents were found to be actually responsible for the abduction and torture of the petitioner, any inference regarding the existence of reports being kept in violation of the petitioner's right to privacy becomes farfetched, and premature.

For these reasons, this Court must, at least in the meantime, strike down the grant of the privilege of the writ of *habeas data*.

DISPOSITION OF THE CASE

Our review of the evidence of the petitioner, while telling of its innate insufficiency to impute any form of responsibility on the part of the public respondents, revealed two important things that can guide Us to a proper disposition of this case. *One*, that further investigation with the use of extraordinary diligence must be made in order to identify the perpetrators behind the abduction and torture of the petitioner; and *two,* that the Commission on Human Rights (CHR), pursuant to its Constitutional mandate to "investigate all forms of human rights violations involving civil and political rights and to provide appropriate legal measures for the protection of human rights,"[128] must be tapped in order to fill certain investigative and remedial voids.

Further Investigation Must Be Undertaken

Ironic as it seems, but part and parcel of the reason why the petitioner was not able to adduce substantial evidence proving her allegations of government complicity in her abduction and torture, may be attributed to the incomplete and one-sided investigations conducted by the government itself. This "*awkward*" situation, wherein the very persons alleged to be involved in an

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[128] CONSTITUTION, Article VIII, Section 18.

enforced disappearance or extralegal killing are, at the same time, the very ones tasked by law to investigate the matter, is a unique characteristic of these proceedings and is the main source of the "*evidentiary difficulties*" faced by any petitioner in any *amparo* case.[129]

Cognizant of this situation, however, the *Amparo* Rule placed a potent safeguard—requiring the "respondent who is a public official or employee" to prove that no less than "extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty."[130] Thus, unless and until any of the public respondents is able to show to the satisfaction of the *amparo* court that extraordinary diligence has been observed in their investigations, they cannot shed the allegations of responsibility despite the prevailing scarcity of evidence to that effect.

With this in mind, We note that extraordinary diligence, as required by the *Amparo* Rule, was not fully observed in the conduct of the police and military investigations in the case at bar.

A perusal of the investigation reports submitted by Task Group CAROJAN shows modest effort on the part of the police investigators to identify the perpetrators of the abduction. To be sure, said reports are replete with background checks on the victims of the abduction, but are, at the same time, comparatively

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[129] In *Razon, Jr. v. Tagitis*, *supra* note 106 at 684, this Court, thru Associate Justice Arturo D. Brion, recognized the three (3) types of evidentiary difficulties faced by a petitioner in an *amparo* petition. In explaining the origins of such difficulties, Justice Brion explained:

"These difficulties largely arise because the State itself – the party whose involvement is alleged – investigates enforced disappearances. x x x."

[130] Section 17 of the *Amparo* Rule states:

SEC. 17. *Burden of Proof and Standard of Diligence Required*. – x x x.

x x x x x x x x x

The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty. (Emphasis supplied.)

silent as to other concrete steps the investigators have been taking to ascertain the authors of the crime. Although conducting a background investigation on the victims is a logical first step in exposing the motive behind the abduction—its necessity is clearly outweighed by the need to identify the perpetrators, especially in light of the fact that the petitioner, who was no longer in captivity, already came up with allegations about the motive of her captors.

Instead, Task Group CAROJAN placed the fate of their investigations solely on the cooperation or non-cooperation of the petitioner—who, they claim, was less than enthusiastic in participating in their investigative efforts.[131] While it may be conceded that the participation of the petitioner would have facilitated the progress of Task Group CAROJAN's investigation, this Court believes that the former's reticence to cooperate is hardly an excuse for Task Group CAROJAN not to explore other means or avenues from which they could obtain relevant leads.[132] Indeed, while the allegations of government complicity by the petitioner cannot, by themselves, hold up as adequate evidence before a court of law—they are, nonetheless, a vital source of valuable investigative leads that must be pursued and verified, if only to comply with the high standard of diligence required by the *Amparo* Rule in the conduct of investigations.

Assuming the non-cooperation of the petitioner, Task Group CAROJAN's reports still failed to explain why it never considered seeking the assistance of Mr. Jesus Paolo—who, along with the victims, is a central witness to the abduction. The reports of Task Group CAROJAN is silent in any attempt to obtain

[131] CA *rollo*, p. 185.

[132] Placed in a similar situation, the case of *Rubrico v. Arroyo*, *supra* note 101, instructs:

> **The seeming reluctance on the part of the Rubricos or their witnesses to cooperate ought not to pose a hindrance to the police in pursuing, on its own initiative, the investigation in question to its natural end**. To repeat what the Court said in *Manalo*, the right to security of persons is a guarantee of the protection of one's right by the government. And this protection includes conducting effective investigations of extra-legal killings, enforced disappearances, or threats of the same kind. (Emphasis supplied).

from Mr. Paolo, a cartographic sketch of the abductors or, at the very least, of the one who, by petitioner's account, was not wearing any mask.

The recollection of Mr. Paolo could have served as a comparative material to the sketches included in petitioner's offer of exhibits that, it may be pointed out, were prepared under the direction of, and first submitted to, the CHR pursuant to the latter's independent investigation on the abduction and torture of the petitioner.[133] But as mentioned earlier, the CHR sketches remain to be unidentified as of this date.

In light of these considerations, We agree with the Court of Appeals that further investigation under the norm of extraordinary diligence should be undertaken. This Court simply cannot write *finis* to this case, on the basis of an incomplete investigation conducted by the police and the military. In a very real sense, the right to security of the petitioner is continuously put in jeopardy because of the deficient investigation that directly contributes to the delay in bringing the real perpetrators before the bar of justice.

To add teeth to the appellate court's directive, however, We find it fitting, nay, necessary to shift the primary task of conducting further investigations on the abduction and torture of the petitioner upon the CHR.[134] We note that the CHR, unlike the police or the military, seems to enjoy the trust and confidence of the petitioner—as evidenced by her attendance and participation in the hearings already conducted by the commission.[135] Certainly, it would be reasonable to assume from such cooperation that the investigations of the CHR have advanced, or at the very least, bears the most promise of advancing farther, in terms of

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[133] TSN, 30 July 2009, pp. 171-173.

[134] We follow suit with the recent case of *Burgos v. Arroyo*, G.R. No. 183711, 22 June 2010, where this Court, after having found significant lapses in the conduct of the police investigations, resolved to assign the CHR, as its directly commissioned agency, with the task of continuing the investigations on the disappearance of Jonas Burgos.

[135] *Rollo*, p. 33.

locating the perpetrators of the abduction, and is thus, vital for a final resolution of this petition. From this perspective, We also deem it just and appropriate to relegate the task of affording *interim* protection to the petitioner, also to the CHR.

Hence, We modify the directive of the Court of the Appeals for further investigation, as follows—

1.) Appointing the CHR as the lead agency tasked with conducting further investigation regarding the abduction and torture of the petitioner. Accordingly, the CHR shall, under the norm of extraordinary diligence, take or continue to take the necessary steps: (a) to identify the persons described in the cartographic sketches submitted by the petitioner, as well as their whereabouts; and (b) to pursue any other leads relevant to petitioner's abduction and torture.

2.) Directing the incumbent Chief of the Philippine National Police (PNP), or his successor, and the incumbent Chief of Staff of the AFP, or his successor, to extend assistance to the ongoing investigation of the CHR, including but not limited to furnishing the latter a copy of its personnel records *circa* the time of the petitioner's abduction and torture, subject to reasonable regulations consistent with the Constitution and existing laws.

3.) Further directing the incumbent Chief of the PNP, or his successor, to furnish to this Court, the Court of Appeals, and the petitioner or her representative, a copy of the reports of its investigations and their recommendations, other than those that are already part of the records of this case, within ninety (90) days from receipt of this decision.

4.) Further directing the CHR to (a) furnish to the Court of Appeals within ninety (90) days from receipt of this decision, a copy of the reports on its investigation and its corresponding recommendations; and to (b) provide or continue to provide protection to the petitioner during her stay or visit to the Philippines, until such time as may hereinafter be determined by this Court.

Accordingly, this case must be referred back to the Court of Appeals, for the purposes of monitoring compliance with the above directives and determining whether, in light of any recent reports or recommendations, there would already be sufficient evidence to hold any of the public respondents responsible or, at least, accountable. After making such determination, the Court of Appeals shall submit its own report with recommendation to this Court for final action. The Court of Appeals will continue to have jurisdiction over this case in order to accomplish its tasks under this decision.

WHEREFORE, the instant petition is *PARTIALLY MERITORIOUS*. We hereby render a decision:

1.) *AFFIRMING* the denial of the petitioner's prayer for the return of her personal belongings;

2.) *AFFIRMING* the denial of the petitioner's prayer for an inspection of the detention areas of Fort Magsaysay.

3.) *REVERSING* the grant of the privilege of *habeas data*, without prejudice, however, to any modification that this Court may make on the basis of the investigation reports and recommendations submitted to it under this decision.

4.) *MODIFYING* the directive that further investigation must be undertaken, as follows—

   a. *APPOINTING* the Commission on Human Rights as the lead agency tasked with conducting further investigation regarding the abduction and torture of the petitioner. Accordingly, the Commission on Human Rights shall, under the norm of extraordinary diligence, take or continue to take the necessary steps: (a) to identify the persons described in the cartographic sketches submitted by the petitioner, as well as their whereabouts; and (b) to pursue any other leads relevant to petitioner's abduction and torture.

b. *DIRECTING* the incumbent Chief of the Philippine National Police, or his successor, and the incumbent Chief of Staff of the Armed Forces of the Philippines, or his successor, to extend assistance to the ongoing investigation of the Commission on Human Rights, including but not limited to furnishing the latter a copy of its personnel records *circa* the time of the petitioner's abduction and torture, subject to reasonable regulations consistent with the Constitution and existing laws.

c. Further *DIRECTING* the incumbent Chief of the Philippine National Police, or his successor, to furnish to this Court, the Court of Appeals, and the petitioner or her representative, a copy of the reports of its investigations and their recommendations, other than those that are already part of the records of this case, within ninety (90) days from receipt of this decision.

d. Further *DIRECTING* the Commission on Human Rights (a) to furnish to the Court of Appeals within ninety (90) days from receipt of this decision, a copy of the reports on its investigation and its corresponding recommendations; and (b) to provide or continue to provide protection to the petitioner during her stay or visit to the Philippines, until such time as may hereinafter be determined by this Court.

5.) *REFERRING BACK* the instant case to the Court of Appeals for the following purposes:

a. To *MONITOR* the investigations and actions taken by the PNP, AFP, and the CHR;

b. To *DETERMINE* whether, in light of the reports and recommendations of the CHR, the abduction and torture of the petitioner was committed by persons acting under any of the public respondents; and on the basis of this determination—

c. To *SUBMIT* to this Court within ten (10) days from receipt of the report and recommendation of the Commission on Human Rights—its own report, which shall include a recommendation either for the *DISMISSAL* of the petition as against the public respondents who were found not responsible and/or accountable, *or* for the *APPROPRIATE REMEDIAL MEASURES, AS MAY BE ALLOWED BY THE AMPARO AND HABEAS DATA RULES, TO BE UNDERTAKEN* as against those found responsible and/or accountable.

Accordingly, the public respondents shall remain personally impleaded in this petition to answer for any responsibilities and/or accountabilities they may have incurred during their incumbencies.

Other findings of the Court of Appeals in its Decision dated 26 August 2009 in CA-G.R. SP No. 00036-WRA that are not contrary to this decision are *AFFIRMED*.

SO ORDERED.

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

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 161162. September 8, 2010]

FRUEHAUF ELECTRONICS, PHILS., INC., *petitioner, vs.* **COURT OF APPEALS (SIXTH DIVISION) and PHILIPS SEMICONDUCTORS, PHILIPPINES, INC.,** *respondents.*

[G.R. No. 166436. September 8, 2010]

FRUEHAUF ELECTRONICS, PHILS., INC., *petitioner, vs.* **PHILIPS SEMICONDUCTORS, PHILIPPINES, INC.,** *respondent.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE DETERMINATION OF THE ISSUES RAISED IN CASE AT BAR HAD ALREADY BEEN RENDERED MOOT AND ACADEMIC.— The proceedings that took place after the filing of the petition are significant. On February 21, 2005, this Court issued a Resolution resolving to deny the petition buttressed on the fact that the verification and certification against forum shopping was signed by the president of petitioner without proof of authority to sign for its behalf. On March 30, 2005, petitioner filed a Manifestation and Motion explaining that the authority of its president to sign the verification and certification against forum shopping for and in its behalf was filed with G.R. No. 161162, to which G.R. No. 166436 is currently consolidated, and which is pending determination before this Court. Petitioner posited that such prior authority allowed its president to sign the verification for all other subsequent related cases. Petitioner prayed that the Court reconsider its resolution denying the petition and instead order its reinstatement. On April 27, 2005, this Court issued a Resolution denying petitioner's motion with finality as no compelling reason exists to warrant a reconsideration of the earlier resolution. On June 9, 2005, the denial became final and executory and recorded in the Book of Entries of Judgment. Consequently, only the pending issues in G.R. No. 161162 remain to be determined. x x x In the present

petition, petitioner argues, among other things, that even if it is true, as respondent claims, that the subject matter of the cases wherein ACCRA acted as counsel for petitioner are not related to the subject matter of the case before the CA, still the lawyer-client relationship that previously existed between petitioner and ACCRA made it possible for the latter to obtain confidential information regarding the business operations of the corporation. Petitioner posits that ACCRA violated the prohibition against representing conflicting interests. Ultimately, petitioner prays that the CA strike out the appearance of ACCRA as counsel for respondent and that all papers and pleadings filed by ACCRA for respondent in the proceedings before the CA be expunged from the records. At the outset, the events that transpired after the filing of the petition are worthy of note: On May 25, 2004, the law offices of Poblador Bautista & Reyes entered its appearance as counsel for respondent substituting ACCRA. On August 2, 2004, the CA issued a Resolution directing ACCRA to make a manifestation, within ten (10) days from notice, whether or not in withdrawing as counsel for respondent, it can also be deemed that it has withdrawn all pleadings and papers it filed on behalf of the respondent. On August 12, 2004, in its Comment and Manifestation, ACCRA manifested that by withdrawing as counsel for the respondent, it is also withdrawing all pleadings and papers it had filed on behalf of the respondent. On September 6, 2004, in line with ACCRA's manifestation, the CA issued a Resolution concluding that there was no more reason for the suspension of the proceedings before it and the resolution of respondent's motion for reconsideration of the CA decision and petitioner's opposition thereto. More importantly, the CA categorically stated that, on the basis of ACCRA's withdrawal as counsel for the respondent and ACCRA's manifestation, all pleadings and papers filed by ACCRA on behalf of the respondent were considered withdrawn and expunged from the records. Consequently, based on the foregoing series of events, the determination of the issues raised by petitioner in G.R. No. 161162 had already been rendered moot and academic.

APPEARANCES OF COUNSEL

Benedict A. Litonjua and Antonio R. Bautista & Partners for petitioner.

Angara Abello Concepcion Regala & Cruz for private respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court are two consolidated[1] cases. In G.R. No. 161162, petitioner Fruehauf Electronics, Phils., Inc. is seeking to annul and set aside the Resolution[2] dated December 19, 2003 issued by the Court of Appeals (CA) in CA-G.R. SP No. 71612. While in G.R. No. 166436, petitioner is assailing the Amended Decision,[3] dated October 7, 2004, rendered by the CA in the same case in favor of respondent Philips Semiconductors, Philippines, Inc. (PSPI) and against the petitioner.

The procedural and factual antecedents are as follows:

G.R. No. 166436

Signetics Corporation, U.S.A. (SIGCOR), was organized under the laws of the United States of America with Signetics Filipinas Corporation (SIGFIL) as its wholly-owned local subsidiary here in the Philippines. Sometime in 1978, SIGCOR entered into a contract of lease over a piece of land consisting of 12,727 square meters, situated along the corner of Dimasalang and Laong-Laan Streets, Pasig, Metro Manila, with petitioner, through its president, Antonio Litonjua.[4]

On March 15, 1990, petitioner filed a Complaint[5] against SIGCOR for damages, accounting or return of certain

[1] *Rollo* (G.R. No. 166436), p. 772.

[2] *Rollo* (G.R. No. 161162), pp. 14-16.

[3] Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Delilah Vidallon-Magtolis and Hakim S. Abdulwahid, concurring; *rollo* (G.R. No. 166436), pp. 20-47.

[4] *Rollo* (G.R. No. 166436), pp. 22-23.

[5] *Id.* at 142-158.

machineries, equipment and accessories, including the transfer of title and surrender of possession of the buildings, installations and improvements on the leased land, before the Regional Trial Court (RTC) of Pasig, Metro Manila, which was raffled to Branch 156 and docketed as Civil Case No. 59264.

In its Complaint, petitioner alleged, among other things, that SIGCOR transferred all its shares of stocks from SIGFIL to TEAM Holdings Limited (TEAM Holdings), a foreign corporation organized under the laws of the British Virgin Island. The new owner then dropped the name SIGFIL and changed its corporate name to Technology Electronics Assembly and Management Pacific Corporation (TEAM Pacific). Consequently, service of summons was made on SIGCOR through TEAM Pacific.

On October 31, 1996, the court rendered default judgment against SIGCOR, the decretal portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the defendant and/or its local subsidiary:
>
> 1. To account for and return the machineries, equipment and accessories removed by defendant and/or its local subsidiary from the leased premises;
>
> 2. To formally transfer title to and surrender the possession of the lot subject of the lease contract to the plaintiff together with the buildings, machineries, installations and improvements on it;
>
> 3. To pay plaintiff the amount of Five Hundred Thousand Pesos (₱500,000.00) as moral damages for the injury to plaintiff's business standing and commercial credit; One Million Pesos (₱1,000,000.00) as exemplary damages; Two Hundred Thousand Pesos (₱200,000.00) as and for attorney's fees and to pay the costs of the suit.
>
> Let a copy of this Decision be furnished the defendant at c/o Sycip, Salazar, Hernandez & Gatmaitan, 4th Floor Sycip Law - All Asia Center, 105 Paseo de Roxas, Makati City; at Philips Electrical Lamps, Inc., Las Piñas, Metro Manila and at Technology Electronics Assembly

and Management (TEAM) Pacific Corporation, Electronics Avenue, FTI Complex, Taguig, Metro Manila.

SO ORDERED.[6]

On motion for partial reconsideration, the trial court amended its decision to include an order for the return of the corresponding value of the machineries, equipments and accessories removed by SIGCOR, and likewise canceling the annotation of the Contract of Lease on petitioner's property covered by TCT Nos. 11548, 11549, 11550, 11551, 11552, 11553, 11554, 11555 and 11937.[7]

Again, on motion of petitioner, the trial court issued an Order dated April 27, 1997 clarifying its previous decision by ordering the Register of Deeds to cancel the annotation of the lease contracts over the titles above-mentioned.[8]

Copies of the decision, including the amendments dated January 27 and April 27, 1997, respectively, were both served on TEAM Pacific at its office in Pamplona, Las Piñas City, and on its retained counsel, the Sycip Salazar Hernandez & Gatmaitan Law Office (Sycip Law Office).[9]

On May 21, 2001, petitioner filed a Motion for Execution[10] of the RTC decision. In said motion, petitioner sought to enforce the judgment of the RTC against SIGCOR through the respondent. Petitioner alleged that SIGFIL was the alter ego of SIGCOR; that SIGFIL became TEAM Pacific; and that, SIGCOR was, subsequently, renamed as Philips Semiconductors.

On August 9, 2001, petitioner filed an Urgent *Ex-parte* Motion[11] to serve notice of hearing of its motion for execution to SIGCOR

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[6] *Id.* at 253-254.

[7] *Id.* at 26.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 109-113.

[11] *Id.* at 116-117.

or its predecessor and its counsel through special service. The motion was grounded on the fact that SIGCOR had transferred its principal place of business from Philips Electric Lamps, Inc. in Las Piñas, Metro Manila to Philips Semiconductors Philippines, Inc. at Philips Avenue, SEPZ, LISP, Cabuyao, Laguna.[12]

On October 17, 2001, respondent PSPI filed a Manifestation[13] denying that SIGCOR holds office in the said address. It contended further that at no time was respondent ever known as Signetics Corporation, and its original corporate name was Philips Components (Philippines), Inc. before it changed its name to PSPI. Hence, it returned the copy of the court's September 27, 2001 order as well as petitioner's motion for execution.[14] Respondent also specified that it was engaging the services of its counsel only for the limited purpose of making the said manifestation.

On December 14, 2001, respondent filed another Manifestation reiterating that respondent and SIGCOR or its predecessors are not one and the same entity, and that SIGCOR or its predecessors have assets that are in the possession of respondent.[15]

On January 21, 2002, the RTC issued an Order[16] denying the motion for execution quoted as follows:

> WHEREFORE, under the circumstances herein obtaining, absent showing that the judgment rendered in this case has become final and executory, the Motion for Execution filed by plaintiff, thru counsel, would have to be, as it is hereby DENIED for having been prematurely filed.
>
> SO ORDERED.[17]

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[12] *Id.* at 26-27.

[13] *Id.* at 124-126.

[14] *Id.* at 27-28.

[15] *Id.* at 127-128.

[16] *Id.* at 129.

[17] *Id.*

The court anchored its Order on the lack of proof that SIGCOR or its alleged subsidiary was notified and/or served with a copy of the Decision sought to be executed. Hence, the definite reckoning period for purposes of computing when the judgment became final is yet to be determined. As such, the motion was prematurely filed.[18]

On February 13, 2002, petitioner filed a Motion for Reconsideration and Clarification.[19] Petitioner argued that granting that SIGCOR was not properly served with a copy of the Decision, nonetheless, prior to the hearing of the motion for execution, certified copies of the Decision, as well as of the Orders amending it, were duly served on the respondent, the latter being SIGCOR's local subsidiary. It went on to say that while respondent was not named in the caption of the case, yet, in the body of the Decision, there was a factual finding to the effect that it is the present local subsidiary of SIGCOR. As such, the Decision can be properly enforced against it, considering the clear wording of the dispositive portion of the decision that it may be enforced through SIGCOR's "local subsidiary."[20]

On May 21, 2002, the RTC issued an Order[21] denying the motion.

On July 12, 2002, petitioner filed before the CA a Petition for *Certiorari* and *Mandamus*[22] assailing the Order of the RTC, denying its motion for reconsideration and clarification. The case was docketed as CA-G.R. SP No. 71612.

On September 10, 2003, the CA rendered a Decision[23] setting aside the assailed Order of the trial court and directing the

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[18] *Id.* at 28.

[19] *Id.* at 130-134.

[20] *Id.* at 29.

[21] *Id.* at 86-88.

[22] CA *rollo*, Vol. I, pp. 2-21.

[23] *Rollo* (G.R. No. 166436), pp. 445-458.

execution of the October 31, 1996 Decision of the trial court against respondent as SIGCOR's local subsidiary. The writ was issued on October 17, 2003.[24]

Corollarilly, also on October 9, 2003, respondent filed a Motion for Reconsideration[25] of the CA decision. On October 17, 2003, respondent filed a Supplement to Motion for Reconsideration.[26] Respondent argued that:

I

PSPI IS NOT BOUND BY THE DECISION IN CIVIL CASE NO. 59264 AGAINST SIGNETICS USA AS IT HAS NOTHING TO DO WITH SIGNETICS USA OR THE TRANSACTION UPON WHICH IT WAS SUED BY FRUEHAUF

(a)

PSPI WAS NEVER A PARTY TO CIVIL CASE NO. 59264 IN THE LOWER COURT

(b)

PSPI IS NOT SIGNETICS, USA, PHILIPS USA OR SIGFIL. NEITHER IS IT A SUBSIDIARY OR CONDUIT OF ANY OF THEM

II

THE SEPARATE CORPORATE PERSONALITY OF PSPI WAS NEVER PIERCED DURING THE TRIAL OF THE CASE BEFORE THE LOWER COURT, OR BEFORE THIS COURT

III

PSPI'S PROPERTIES ARE ITS OWN AND CANNOT BE LEVIED TO ANSWER FOR THE LIABILITY OF SIGNETICS USA, WHICH DOES NOT OWN OR HAVE ANY RIGHT OR INTEREST IN PSPI'S PROPERTIES[27]

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[24] *Id.* at 30.

[25] *Id.* at 459-479.

[26] *Id.* at 538-542.

[27] CA *rollo*, Vol. II, pp. 928-930.

On October 20, 2003, respondent filed an Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Injunction[28] to restrain the execution of the adverse Decision against it pending the resolution of respondent's motion for reconsideration and to set the case for oral arguments.[29] On October 21, 2003, the CA issued a Resolution[30] granting respondent's prayer for the issuance of a temporary restraining order.

On December 19, 2003, the CA issued a Resolution[31] granting, among other things, the motion for the issuance of a writ of preliminary injunction conditioned upon the filing of an injunction bond in the amount of ₱1,000,000.00 and, at the same time, set the case for oral argument on January 28, 2004.

On October 7, 2004, the CA rendered an Amended Decision[32] reversing and setting aside its earlier decision, the dispositive portion of which reads:

> WHEREFORE, the motion for reconsideration, dated October 9, 2003, of respondent Philips Semiconductors, Philippines, Inc. (PSPI) is hereby **GRANTED**. Our September 10, 2003 decision in CA-G.R. SP No. 71612 is hereby **REVERSED** AND **SET ASIDE**, and the earlier Orders dated May 21, 2002 and June 7, 2002, respectively of the Regional Trial Court of Pasig City, Branch 156 in Civil Case No. 59264, REINSTATED.
>
> SO ORDERED.[33]

In ruling in favor of the respondent, the CA opined, among other things, that SIGCOR and TEAM Pacific are not one and the same corporation, reasoning that corporations have a personality separate and distinct from its stockholders and even

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[28] *Id.* at 535-541.

[29] *Rollo* (G.R. No. 166436), p. 30.

[30] CA *rollo*, Vol. II, p. 616.

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

[32] *Rollo* (G.R. No. 166436), pp. 20-47.

[33] *Id.* at 45-46.

its subsidiary. Moreover, the mention in its articles of incorporation that TEAM Pacific was formerly SIGFIL is not by itself sufficient reason for disregarding the fiction of separate corporate personality. Consequently, the service of the decision of the RTC upon TEAM pacific could not be treated as binding upon SIGCOR.

More importantly, the CA ratiocinated that respondent PSPI cannot be made liable on the basis of the trial court's decision against SIGCOR in Civil Case No. 52964. The CA pronounced that respondent was not a party to the original case before the trial court, nor was it impleaded at any stage of the proceedings in Civil Case No. 52964. Thus, the decision of the trial court cannot bind the respondent.

Hence, the present petition docketed as **G.R. No. 166436**.

G.R. No. 161162

During the course of the proceedings in CA-G.R. SP No. 71612, respondent's counsel of record, the Sycip Law Office, filed a Notice of Withdrawal of Appearance.[34] As a result thereof, on October 30, 2003, the law office of Angara Abello Concepcion Regala & Cruz (ACCRA) entered its appearance as the new counsel for the respondent.[35]

However, petitioner opposed ACCRA's entry of appearance, contending that the said law firm has in the past represented the petitioner in two civil cases before the trial courts in Quezon City.[36] On November 17, 2003, petitioner filed a Motion to Strike Out Appearance[37] praying that the CA strike out the appearance of ACCRA as respondent's counsel. In addition, on December 9, 2003, petitioner filed a Motion to Expunge[38] praying that all pleadings and papers filed by ACCRA should also be striken out.

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[34] *Id.* at 31.

[35] *Rollo* (G.R. No. 161162), p. 17.

[36] *Rollo* (G.R. No. 166436), p. 31.

[37] *Rollo* (G.R. No. 161162), pp. 21-23.

[38] *Id.* at 24.

On December 19, 2003, the CA issued a Resolution[39] noting the appearance of ACCRA as counsel for the respondent.

On December 30, 2003, petitioner filed before this Court a Petition for *Certiorari* and *Mandamus* with Application for a Writ of Preliminary Injunction[40] questioning the Resolution of the CA and praying that all papers and pleadings filed by the said Law Office for the respondent before the CA be expunged from the records. The case was docketed as **G.R. No. 161162**.

On May 21, 2004, however, ACCRA filed its Withdrawal of Appearance as counsel for respondent[41] and, on May 24, 2004, the Poblador Bautista and Reyes Law Offices entered its appearance as new counsel for respondent.

On May 31, 2004, respondent, through its new counsel, filed a Motion for Early Resolution with Leave to File Memorandum[42] alleging, among other things, that in view of ACCRA's withdrawal as counsel for the respondent, the reason for the suspension of the resolution of the case has become moot and academic. Petitioner filed its comment[43] thereon on June 8, 2004 stating that the petition for *certiorari* pending before this Court not only asked for the removal of ACCRA as respondent's counsel, but also prayed for the Court to expunge all papers and pleadings filed by it in connection with the present case.[44]

On August 2, 2004, the CA issued a Resolution[45] directing ACCRA to inform the court whether or not in withdrawing as counsel for the respondent, it is also deemed to have withdrawn all the papers and pleadings it filed on behalf its former client.

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

[40] *Id.* at 3-11.

[41] CA *rollo*, Vol. II, pp. 872-876.

[42] *Id.* at 877-883.

[43] *Id.* at 890-893.

[44] *Rollo* (G.R. No. 166436), pp. 32-33.

[45] CA *rollo*, Vol. II, pp. 908-909.

On August 12, 2004, in compliance with the resolution, ACCRA filed its Comment and Manifestation[46] signifying that by withdrawing as counsel for respondent, ACCRA is also withdrawing all the pleadings and papers it has filed on behalf of the latter.

On September 6, 2004, the CA issued a Resolution[47] resolving that in view of ACCRA's manifestation, all the pleadings and papers filed by the latter on behalf of respondent are considered withdrawn and expunged from the records. The CA also concluded that, based on the foregoing developments, there was no longer any reason for it to suspend the proceedings.

The Court's Ruling

G.R. No. 166436

The proceedings that took place after the filing of the petition are significant.

On February 21, 2005, this Court issued a Resolution[48] resolving to deny the petition buttressed on the fact that the verification and certification against forum shopping was signed by the president of petitioner without proof of authority to sign for its behalf.

On March 30, 2005, petitioner filed a Manifestation and Motion[49] explaining that the authority of its president to sign the verification and certification against forum shopping for and in its behalf was filed with G.R. No. 161162, to which G.R. No. 166436 is currently consolidated, and which is pending determination before this Court. Petitioner posited that such prior authority allowed its president to sign the verification for all other subsequent related cases. Petitioner prayed that the Court reconsider its resolution denying the petition and instead order its reinstatement.

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[46] *Id.* at 1015-1016.

[47] *Id.* at 1026-1027.

[48] *Id.* at 773.

[49] *Id.* at 775-790.

On April 27, 2005, this Court issued a Resolution[50] dated April 27, 2005, denying petitioner's motion with finality as no compelling reason exists to warrant a reconsideration of the earlier resolution.

On June 9, 2005, the denial became final and executory and recorded in the Book of Entries of Judgment.[51]

Consequently, only the pending issues in G.R. No. 161162 remain to be determined.

G.R. No. 161162

In the present petition, petitioner argues, among other things, that even if it is true, as respondent claims, that the subject matter of the cases wherein ACCRA acted as counsel for petitioner are not related to the subject matter of the case before the CA, still the lawyer-client relationship that previously existed between petitioner and ACCRA made it possible for the latter to obtain confidential information regarding the business operations of the corporation. Petitioner posits that ACCRA violated the prohibition against representing conflicting interests.

Ultimately, petitioner prays that the CA strike out the appearance of ACCRA as counsel for respondent and that all papers and pleadings filed by ACCRA for respondent in the proceedings before the CA be expunged from the records.

At the outset, the events that transpired after the filing of the petition are worthy of note:

On May 25, 2004, the law offices of Poblador Bautista & Reyes entered its appearance as counsel for respondent substituting ACCRA.[52]

On August 2, 2004, the CA issued a Resolution[53] directing ACCRA to make a manifestation, within ten (10) days from

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[50] *Rollo* (G.R. No. 161162), p. 336.

[51] *Rollo* (G.R. No. 166436), p. 792.

[52] *Id.* at 884-887.

[53] *Supra* note 45.

notice, whether or not in withdrawing as counsel for respondent, it can also be deemed that it has withdrawn all the pleadings and papers it filed on behalf of the respondent.

On August 12, 2004, in its Comment and Manifestation,[54] ACCRA manifested that by withdrawing as counsel for the respondent, it is also withdrawing all pleadings and papers it had filed on behalf of the respondent.

On September 6, 2004, in line with ACCRA's manifestation, the CA issued a Resolution[55] concluding that there was no more reason for the suspension of the proceedings before it and the resolution of respondent's motion for reconsideration of the CA decision and petitioner's opposition thereto. More importantly, the CA categorically stated that, on the basis of ACCRA's withdrawal as counsel for the respondent and ACCRA's manifestation, all pleadings and papers filed by ACCRA on behalf of the respondent were considered withdrawn and expunged from the records.

Consequently, based on the foregoing series of events, the determination of the issues raised by petitioner in G.R. No. 161162 had already been rendered moot and academic.

WHEREFORE, premises considered, the petition in *G.R. No. 161162* is *DENIED* for being MOOT and ACADEMIC.

SO ORDERED.

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

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[54] CA *rollo,* Vol. II, pp. 1015-1019.

[55] *Supra* note 47.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated August 25, 2010.

FIRST DIVISION

[G.R. No. 164913. September 8, 2010]

ST. MARY'S ACADEMY OF DIPOLOG CITY, *petitioner, vs.* **TERESITA PALACIO, MARIGEN CALIBOD, LEVIE LAQUIO, ELAINE MARIE SANTANDER, ELIZA SAILE, and MA. DOLORES MONTEDERAMOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 7836 (THE PHILIPPINE TEACHERS PROFESSIONALIZATION ACT OF 1994); PRACTICE OF THE TEACHING PROFESSION; MANDATORY REQUIREMENT OF REGISTRATION; MUST BE COMPLIED WITH UNTIL SEPTEMBER 19, 2000; CASE AT BAR.— Pursuant to RA 7836, the PRC formulated certain rules and regulations relative to the registration of teachers and their continued practice of the teaching profession. Specific periods and deadlines were fixed within which incumbent teachers must register as professional teachers in consonance with the essential purpose of the law in promoting good quality education by ensuring that those who practice the teaching profession are duly licensed and are registered as professional teachers. Under DECS Memorandum No. 10, S. 1998, the Board for Professional Teachers (BPT), created under the general supervision and administrative control of the PRC, was organized on September 20, 1995 so that, in the implementation of Sections 26, 27 and 31 of RA 7836, incumbent teachers as of December 16, 1994 have until September 19, 1997 to register as professional teachers. The Memorandum further stated that a Memorandum of Agreement (MOA) was subsequently entered into by the PRC, Civil Service Commission (CSC) and DECS to further allow those teachers who failed to register by September 19, 1997 to continue their service and register. BPT Resolution No. 600, s. 1997 was thereafter passed to provide the guidelines to govern teacher registration beyond September 19, 1997. Consequently, the deadline was moved to September 19, 2000. Pursuant to the aforestated law, resolution and memorandum, effective

September 20, 2000, only holders of valid certificates of registration, valid professional licenses and valid special/ temporary permits can engage in teaching in both public and private schools. Clearly, respondents, in the case at bar, had until September 19, 2000 to comply with the mandatory requirement to register as professional teachers. As respondents are categorized as those not qualified to register without examination, the law requires them to register by taking and passing the licensure examination.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; PRESENT WHEN THERE IS PREMATURE DISMISSAL FROM THE SERVICE OF EMPLOYEES; CASE AT BAR.— It is undisputed that respondents were all non-board passers when they were dismissed by petitioner on March 31, 2000. Based on the certification issued by the PRC on October 23, 2000, only respondent Santander passed the LET but only for the elementary level. Thus, she is still unqualified to teach in the high school level. All the others, except respondent Saile who is not qualified to take the LET, failed the examination. Petitioner harps on the fact that even if respondents were to take the LET in August of 2000, the results could not be known in time to meet the September 19, 2000 deadline. However, it is to be noted that the law still allows those who failed the licensure examination between 1996 and 2000 to continue teaching if they obtain temporary or special permits as para-teachers. In other words, as the law has provided a specific timeframe within which respondents could comply, petitioner has no right to deny them of this privilege accorded to them by law. As correctly pointed out by the Labor Arbiter and affirmed by the NLRC and the CA, the dismissal from service of respondents Palacio, Calibod, Lacquio, Santander and Montederamos on March 31, 2000 was quite premature.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; STIPULATIONS MADE UPON THE CONVENIENCE OF THE PARTIES ARE VALID ONLY IF THEY ARE NOT CONTRARY TO LAW.— [E]ven if respondents' contracts stipulate for a period of one year in compliance with DECS's directive, such stipulation could not be given effect for being violative of the law. Provisions in a contract must be read in conjunction with statutory and administrative regulations. This finds basis on

the principle "that an existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it." Settled is the rule that stipulations made upon the convenience of the parties are valid only if they are not contrary to law. Hence, mere reliance on the policy of DECS requiring yearly contracts for teachers should not prevent petitioner from retaining the services of respondents until and unless the law provides for cause for respondents' dismissal.

4. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION PRIOR TO THE DEADLINE SET BY LAW, NOT PROPER IN CASE AT BAR.— Petitioner's intention and desire not to put the students' education and school operation in jeopardy is neither a decisive consideration for respondents' termination prior to the deadline set by law. Again, by setting a deadline for registration as professional teachers, the law has allowed incumbent teachers to practice their teaching profession until September 19, 2000, despite being unregistered and unlicensed. The prejudice that respondents' retention would cause to the school's operation is only trivial if not speculative as compared to the consequences of respondents' unemployment. Because of petitioner's predicament, it should have adopted measures to protect the interest of its teachers as regular employees. As correctly observed by the CA, petitioner should have earlier drawn a contingency plan in the event there is need to terminate respondents' services in the middle of the school year. Incidentally, petitioner did not dispute that it hired and retained other teachers who do not likewise possess the qualification and eligibility and even allowed them to teach during the school year 2000-2001. This indicates petitioner's ulterior motive in hastily dismissing respondents.

5. ID.; ID.; SECURITY OF TENURE; SHOULD NOT BE INFRINGED BY THE EXERCISE OF THE EMPLOYER'S RIGHT TO PROTECT ITS INTEREST; CASE AT BAR.— It is incumbent upon this Court to afford full protection to labor. Thus, while we take cognizance of the employer's right to protect its interest, the same should be exercised in a manner which does not infringe on the workers' right to security of tenure. "Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have

more in law." To reiterate, this Court will not hesitate to defend respondents' right to security of tenure. The premature dismissal from the service of respondents Palacio, Calibod, Laquio, Santander and Montederamos is unwarranted. However, we take exception to the case of respondent Saile who, as alleged by petitioner, was not qualified to take the LET as she only had three out of the minimum 10 required educational units to be admitted to take the LET pursuant to Section 15 of RA 7836, which fact respondent Saile did not refute. Not being qualified to take the examination to become a duly licensed professional teacher, petitioner cannot be compelled to retain her services as she cannot possibly obtain the needed prerequisite to allow her to continue practicing the teaching profession. Thus, we find her termination just and legal.

6. ID.; ID.; TERMINATION OF EMPLOYMENT; BACKWAGES; AWARDED IN CASE AT BAR.— Petitioner questions the amount of separation pay awarded to respondents contending that assuming respondents were illegally dismissed, they are only entitled to an amount computed from the time of dismissal up to September 19, 2000 only. After September 19, 2000, respondents, according to petitioner, are already dismissible for cause for lack of the necessary license to teach. This contention deserves no merit. Petitioner cannot possibly presume that respondents could not timely comply with requirements of the law. At any rate, we note that petitioner only assailed the amount of backwages for the first time in its motion for reconsideration of the Decision of the CA. Thus, the Court cannot entertain the issue for being belatedly raised. Hence, the award of limited backwages covering the period from March 31, 2000 to September 30, 2000 as ruled by the Labor Arbiter and affirmed by both the NLRC and CA is in order.

APPEARANCES OF COUNSEL

Padilla Law Office for petitioner.
Eliezer C. Bacho for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

The Court will not hesitate to defend the workers' constitutional right to security of tenure. After all, the interest of the workers is paramount as they are regarded with compassion under the policy of social justice.

By this Petition for Review on *Certiorari*,[1] petitioner St. Mary's Academy of Dipolog City (petitioner) assails the Decision[2] dated September 24, 2003 and Resolution[3] dated August 16, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 67691, which affirmed with modification the Resolution[4] of the National Labor Relations Commission (NLRC), dated April 30, 2001 holding the dismissal of respondents Teresita Palacio (Palacio), Marigen Calibod (Calibod), Levie Laquio (Laquio), Elaine Marie Santander (Santander), Eliza Saile (Saile), and Ma. Dolores Montederamos (Montederamos) as illegal, as well as the Resolution[5] dated August 31, 2001 denying the motion for reconsideration.

Factual Antecedents

On different dates in the late 1990's, petitioner hired respondents Calibod, Laquio, Santander, Saile and Montederamos, as classroom teachers, and respondent Palacio, as guidance counselor. In separate letters dated March 31, 2000,[6] however, petitioner informed them that their re-application for school

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[1] *Rollo*, pp. 10-35.

[2] *Id.* at 36-47; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Delilah Vidallon-Magtolis and Jose L. Sabio, Jr.

[3] *Id.* at 55.

[4] *Id.* at 93-98; penned by Presiding Commissioner Salic B. Dumarpa and concurred in by Commissioners Oscar N. Abella and Leon G. Gonzaga, Jr.

[5] *Id.* at 122-124.

[6] Petitioner's letter dated March 31, 2000 to Santander and Montederamos, *id.* at 181 and 183, respectively.

year 2000-2001 could not be accepted because they failed to pass the Licensure Examination for Teachers (LET). According to petitioner, as non-board passers, respondents could not continue practicing their teaching profession pursuant to the Department of Education, Culture and Sports (DECS) Memorandum No. 10, S. 1998[7] which requires incumbent teachers to register as professional teachers pursuant to Section 27[8] of Republic Act (RA) No. 7836, otherwise known as the Philippine Teachers Professionalization Act of 1994.[9]

Together with four other classroom teachers namely Gail Josephine Padilla (Padilla), Virgilio Andalahao (Andalahao), Alma Decipulo (Decipulo),[10] and Marlynn Palacio,[11] who were similarly dismissed by petitioner on the same ground, respondents filed a complaint contesting their termination as highly irregular and premature. They admitted that they are indeed non-board passers, however, they also argued that their security of tenure could not simply be trampled upon for their failure to register with the Professional Regulation Commission (PRC) or to pass the LET prior to the deadline set by RA 7836. Further, as the aforesaid law provides for exceptions to the taking of examination, they opined that their outright dismissal was illegal because some of them possessed civil service eligibilities and special permits to teach. Furthermore, petitioner's retention and

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[7] Dated January 12, 1998.

[8] SEC. 27. *Inhibition Against the Practice of the Teaching Profession.*— Except as otherwise allowed under this Act, no person shall practice or offer to practice the teaching profession in the Philippines or be appointed as teacher to any position without having previously obtained a valid certificate of registration and a valid professional license from the [Professional Regulation] Commission.

[9] AN ACT TO STRENGTHEN THE REGULATION AND SUPERVISION OF THE PRACTICE OF TEACHING IN THE PHILIPPINES AND PRESCRIBING A LICENSURE EXAMINATION FOR TEACHERS AND FOR OTHER PURPOSES. (Approved on December 16, 1994).

[10] Referred also as Alma Decipolo in some parts of the records.

[11] Referred also as Merlyn Palacio in some parts of the records.

acceptance of other teachers who do not also possess the required eligibility showed evident bad faith in terminating respondents.

Petitioner, on the other hand, maintained that it had repeatedly informed respondents of their obligation to comply with the mandate of the Memorandum issued by DECS by passing the LET to be eligible as a registered professional teacher. While the DECS Memorandum, pursuant to PRC Resolution No. 600, S. 1997,[12] fixed the deadline for teachers to register on September 19, 2000,[13] petitioner claimed that it decided to terminate their services as early as March 31, 2000 because it would be prejudicial to the school if their services will be terminated in the middle of the school year.

Ruling of the Labor Arbiter

On September 22, 2000, the Labor Arbiter adjudged petitioner guilty of illegal dismissal because it terminated the services of the respondents on March 31, 2000 which was clearly prior to the September 19, 2000 deadline fixed by PRC for the registration of teachers as professional teachers, in violation of the doctrine regarding the prospective application of laws. Thus, petitioner was ordered to reinstate the respondents or to pay them separation pay at the rate of ½ month wage for every year of service, plus limited backwages covering the period from March 31, 2000 to September 30, 2000. The dispositive portion of the Labor Arbiter's Decision reads as follows:

WHEREFORE, anchored on the foregoing premises, judgment is hereby rendered:

1.) that respondent's act of having terminated the complainants' employment is in fact and in law illegal, as it is not founded on any of the restricted just and authorized causes provided for by law[,] hence, entitling complainants to the right of reinstatement and backwages

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[12] Issued on November 13, 1997.

[13] DECS Memorandum No. 10, S. 1998 erroneously indicated the deadline as September 20, 2000.

in accordance with the mandate of Article 279 of the Labor Code of the Philippines. In this case, however, separation pay is hereby directed against respondent together with the payment of limited backwages, as particularly reflected in paragraph "2" hereof;

2.) ordering respondent St. Mary's Academy to pay complainants their separation pay and limited backwages, particularly indicated as follows:

A.) Teresita Palacio:
- a.) Separation pay . . . . . ₱ 11,250.90;
- b.) Limited backwages 27,002.16;
- Total . . . . . ₱ 38,253.06;

B.) Gail Josephine Padilla:
- a.) Separation pay . . . . . ₱ 15,456.45;
- b.) Limited backwages 26,512.20;
- Total . . . . . ₱ 41,977.65;

C.) Marigen Calibod:
- a.) Separation pay . . . . . ₱ 8,837.40;
- b.) Limited backwages 26,512.20;
- Total . . . . . ₱ 35,349.60;

D.) Levei Laquio:
- a.) Separation pay . . . . . ₱ 11,378.15;
- b.) Limited backwages 27,307.56;
- Total . . . . . ₱ 38,685.71;

E.) Elaine Marie Santander:
- a.) Separation pay . . . . . ₱ 8,837.40;
- b.) Limited backwages 26,512.20;
- Total . . . . . ₱ 35,349.60;

F.) Virgilio Andalahao:
- a.) Separation pay . . . . . ₱ 6,435.00;
- b.) Limited backwages 25,740.00;
- Total . . . . . ₱ 32,175.00;

G.) Alma Decipulo:
a.) Separation pay . . . . . ₱ 6,435.00;
b.) Limited backwages 25,740.00;
Total . . . . . ₱ 32,175.00;

H.) Eliza Saile:
a.) Separation pay . . . . . ₱ 19,313.72;
b.) Limited backwages 28,970.58;
Total . . . . . ₱ 48,284.30;

I.) Marlynn Palacio:
a.) Separation pay . . . . . ₱ 4,290.00;
b.) Limited backwages 25,740.00;
Total . . . . . ₱ 30,030.00; and

J.) Ma. Dolores Montederamos:
a.) Separation pay . . . . . ₱ 18,205.04;
b.) Limited backwages 27,307.56;
Total . . . . . ₱ 45,512.60; and

3.) dismissing all other money claims of complainants for lack of merit.

SO ORDERED.[14]

Ruling of the National Labor Relations Commission

Both parties appealed to the NLRC. In its Memorandum of Appeal,[15] petitioner insisted on the validity of respondents' termination from service, such act being in compliance with RA 7836 and in accordance with DECS Memorandum No. 10, S. 1998. Respondents, for their part, did not question the merits of the Labor Arbiter's Decision but prayed for the refund of their retirement contribution and payment of attorney's fees.

The NLRC, in its Resolution[16] dated April 30, 2001, denied both appeals. In affirming the Labor Arbiter's Decision, it held

[14] *Rollo,* pp. 163-166.

[15] *Id.* at 126-134.

[16] *Id.* at 93-98.

that the grounds relied upon by petitioner to dismiss respondents are not among those enumerated by the Labor Code and that respondents are regular employees, thus cannot be removed unless for cause. The NLRC did not grant respondents' demand for the refund of their retirement contribution because this was not alleged in the original complaint as well as their prayer for attorney's fees since this case is not one for collection of unlawfully withheld wages.

In a subsequent Resolution dated August 31, 2001,[17] the NLRC likewise denied petitioner's Motion for Reconsideration,[18] reiterating that it cannot sustain petitioner's premature implementation of relevant laws and regulations.

Ruling of the Court of Appeals

Petitioner, then, elevated the case to the CA *via* a petition for *certiorari*.[19] The CA agreed with the findings of both the Labor Arbiter and the NLRC that the dismissal was effected prematurely in violation of existing laws, noting that respondents still had until September 19, 2000 within which to pass the LET. A contingency plan, according to the CA, should have instead been adopted by petitioner in the event respondents' termination from the service in the middle of the school year becomes inevitable. The CA also observed that petitioner's ulterior motive for the termination may have been the result of a confrontation between petitioner's principal and respondents. The CA also found petitioner's acts of retaining and hiring other equally unqualified teachers who do not possess the required eligibility and allowing them to teach for the school year 2000-2001 as badges of bad faith.

As regards Padilla, Marlynn Palacio, Andalahao and Decipulo, the CA found them to be mere probationary, and not regular, employees. Their employment contracts merely expired and since the petitioner did not wish to renew their contracts, then there is no illegal dismissal to speak of.

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[17] *Id.* at 122-124.

[18] *Id.* at 99-112.

[19] *Id.* at 57-91.

Accordingly, the dispositive portion of the CA Decision reads:

> WHEREFORE, the assailed Resolutions of the NLRC, Fifth Division dated April 30, 2001, [is] hereby AFFIRMED with MODIFICATION. The monetary awards adjudged in favor of private respondents Gail Josephine Padilla, Virgilio Andalahao, Alma Decipolo and Merlyn Palacio whose services were legally terminated, are hereby DELETED for lack of basis.
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> SO ORDERED.[20]

Petitioner moved to partially reconsider the Decision insofar as it found the dismissal of herein respondents to be premature and prayed that respondents be declared legally dismissed from the service. The CA, however, denied the motion.

Hence, this petition.

Issues

I. THE COURT OF APPEALS COMMITTED GRIEVOUS ERROR IN HOLDING THAT THE DISMISSAL OF TERESITA PALACIO, MARIGEN CALIBOD, LEVIE LAQUIO, ELAINE MARIE SANTANDER, ELIZA SAILE, AND DOLORES MONTEDERAMOS, WAS PREMATURE BECAUSE IT WAS EFFECTED ON MARCH 31, 2000 PRIOR TO SEPTEMBER 20, 2000,[21] THE DEADLINE SET BY THE PROFESSIONAL [REGULATION] COMMISSION FOR TEACHERS TO ACQUIRE THEIR LICENSE.

II. THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO CONSIDER THAT ASSUMING THAT RESPONDENTS WERE "PREMATURELY" TERMINATED IN MARCH 2000, AT THE MOST, RESPONDENTS ARE ENTITLED TO BACKWAGES UP TO SEPTEMBER 19, 2000 ONLY BECAUSE ON SUCH DATE, THEY WERE ALREADY DISMISSIBLE *FOR CAUSE* FOR NOT HAVING OBTAINED THEIR TEACHERS' LICENSE.[22]

Petitioner insists that it has the right to terminate respondents' services as early as March 2000 without waiting for the

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[20] *Id.* at 46-47.

[21] Should be September 19, 2000.

[22] *Rollo*, p. 22.

September 19, 2000 deadline set by law for respondents to register as professional teachers due to the need to fix the school organization prior to the applicable school year. Petitioner justifies respondents' termination by advancing that it would be difficult to hire licensed teachers in the middle of the school year as respondents' replacements. Also, the termination of respondents in the middle of the school year might result in compromising the education of the students as well as the school operation. Petitioner further argues that it cannot hire respondents for the period covering only June to September as it would contravene the DECS's policy requiring written contracts of at least one year's duration for teachers.

Our Ruling

The petition is devoid of merit.

The dismissal of Teresita Palacio, Calibod, Laquio, Santander, and Montederamos was premature and defeated their right to security of tenure. Saile's dismissal has legal basis for lack of the required qualification needed for continued practice of teaching.

Pertinent provisions of RA 7836 provide:

SEC. 13. *Examination, Registration and License Required.* – Except as otherwise specifically allowed under the provisions of this Act, all applicants for registration as professional teachers shall be required to undergo a written examination which shall be given at least once a year in such places and dates as the Board may determine upon approval by the Commission. A valid certificate of registration and a valid professional license from the Commission are required before any person is allowed to practice as a professional teacher in the Philippines, except as otherwise allowed under this Act.

x x x x x x x x x

SEC. 26. *Registration and Exception.* – Two (2) years after the effectivity of this Act, no person shall engage in teaching and/or act as a professional teacher as defined in this Act, whether in the preschool, elementary or secondary level, unless he is a duly

registered professional teacher, and a holder of a valid certificate of registration and a valid professional license or a holder of a valid special/temporary permit.

Upon approval of the application and payment of the prescribed fees, the certificate of registration and professional license as a professional teacher shall be issued without examination as required in this Act to a qualified applicant, who at the time of the approval of this Act, is:

(a) A holder of a certificate of eligibility as a teacher issued by the Civil Service Commission and the Department of Education, Culture and Sports; or

(b) A registered professional teacher with the National Board for Teachers under the Department of Education, Culture and Sports (DECS) pursuant to Presidential Decree No. 1006; or

(c) Not qualified under paragraphs one and two but with any of the following qualifications, to wit:

(1) An elementary or secondary teacher for five (5) years in good standing and a holder of a Bachelor of Science in Education or its equivalent; or

(2) An elementary or secondary teacher for three (3) years in good standing and a holder of a master's degree in education or its equivalent.

Provided, That they shall be given two (2) years from the organization of the Board for professional teachers within which to register and be included in the roster of professional teachers: *Provided, further*, That those incumbent teachers who are not qualified to register without examination under this Act or who, albeit qualified, were unable to register within the two-year period shall be issued a five-year temporary or special permit from the time the Board is organized within which to register after passing the examination and complying with the requirements provided in this Act and be included in the roster of professional teachers: *Provided, furthermore*, That those who have failed the licensure examination for professional teachers shall be eligible as para-teachers and as such, shall be issued by the Board a special or temporary permit, and shall be assigned by the Department of Education, Culture and Sports (DECS) to schools as it may determine under the circumstances.

x x x x x x x x x

SEC. 27. *Inhibition Against the Practice of the Teaching Profession.* – Except as otherwise allowed under this Act, no person shall practice or offer to practice the teaching profession in the Philippines or be appointed as teacher to any position without having previously obtained a valid certificate of registration and a valid professional license from the Commission.

x x x x x x x x x

SEC. 31. *Transitory Provision.* – All incumbent teachers in both the public and private sector not otherwise certified as professional teachers by virtue of this Act, shall be given five (5) years temporary certificates from the time the Board for Professional Teachers is organized within which to qualify as required by this Act and be included in the roster of professionals.

Pursuant to RA 7836, the PRC formulated certain rules and regulations relative to the registration of teachers and their continued practice of the teaching profession. Specific periods and deadlines were fixed within which incumbent teachers must register as professional teachers in consonance with the essential purpose of the law in promoting good quality education by ensuring that those who practice the teaching profession are duly licensed and are registered as professional teachers.

Under DECS Memorandum No. 10, S. 1998, the Board for Professional Teachers (BPT), created under the general supervision and administrative control of the PRC, was organized on September 20, 1995 so that, in the implementation of Sections 26, 27 and 31 of RA 7836, incumbent teachers as of December 16, 1994 have until September 19, 1997 to register as professional teachers. The Memorandum further stated that a Memorandum of Agreement (MOA) was subsequently entered into by the PRC, Civil Service Commission (CSC) and DECS to further allow those teachers who failed to register by September 19, 1997 to continue their service and register. BPT Resolution No. 600, s. 1997 was thereafter passed to provide the guidelines[23]

[23] I. Coverage

A. Incumbent teachers [full-time] or part-time, as of December 16, 1994 in public and private schools at the pre-school,

to govern teacher registration beyond September 19, 1997. Consequently, the deadline was moved to September 19, 2000.

Pursuant to the aforestated law, resolution and memorandum, effective September 20, 2000, only holders of valid certificates

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elementary and secondary levels who were unable to register with PRC as of September 19, 1997.

1. Those not qualified to register without exam

2. Those qualified to register without exam

2.1 CSC eligibles (Category A)

2.2 PBET eligibles (Category B)

2.3 With BSE/BSEE or equivalent with at least 10 units of professional education for secondary school teachers and at least 5 years of experience (Category C)

2.4 With [master's] degree in education or equivalent and at least 3 years of experience (Category D)

B. **Non-passers in the LET between 1996 and 2000**

C. Those performing supervisory and/or administrative functions at the pre-school, elementary and secondary levels, including Principals, Supervisors, Superintendents, Regional Directors, Bureau/Center Directors, Guidance Counselors, and Researchers.

II. General Rules

A. For Incumbent teachers Unable to Register before September 19, 1997.

1. Those not qualified to register without examination must qualify by passing the LET between 1997 and 2000.

x x x x x x x x x

B. LET non-passers between 1996 and 2000 shall submit with their applications for permit as para teachers their respective reports of rating.

x x x x x x x x x

II[I.] Specific Rules

x x x x x x x x x

5. Those who fail to register by September 19, 2000 shall forfeit their privilege to practice the teaching profession for abandonment of responsibility.

of registration, valid professional licenses and valid special/ temporary permits can engage in teaching in both public and private schools.[24] Clearly, respondents, in the case at bar, had until September 19, 2000 to comply with the mandatory requirement to register as professional teachers. As respondents are categorized as those not qualified to register without examination, the law requires them to register by taking and passing the licensure examination.

It is undisputed that respondents were all non-board passers when they were dismissed by petitioner on March 31, 2000. Based on the certification issued by the PRC on October 23, 2000,[25] only respondent Santander passed the LET but only for the elementary level. Thus, she is still unqualified to teach in the high school level. All the others, except respondent Saile who is not qualified to take the LET, failed the examination. Petitioner harps on the fact that even if respondents were to take the LET in August of 2000, the results could not be known in time to meet the September 19, 2000 deadline. However, it is to be noted that the law still allows those who failed the licensure examination between 1996 and 2000 to continue teaching if they obtain temporary or special permits as para-teachers.[26] In other words, as the law has provided a specific timeframe within which respondents could comply, petitioner has no right to deny them of this privilege accorded to them by law. As correctly pointed out by the Labor Arbiter and affirmed by the NLRC and the CA, the dismissal from service of

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[24] See PRC Press Release "*PRC Clarifies Professional Teachers' Deadline,*" CA *rollo,* pp. 182-183.

[25] Annex "2" of petitioner's Memorandum of Appeal with the NLRC, *rollo,* p. 136.

[26] BPT Resolution No. 98-183, Series of 1998 was issued to implement Section 26 of RA 7836 regarding the issuance of special or temporary permits to those who have failed the licensure examination for professional teachers to become eligible as para teachers who may be assigned by the DECS to schools located in places where no professional teachers are available; see also BPT Resolution No. 600, series of 1997 which provides that LET non-passers between 1996 and 2000 may apply as para teachers.

respondents Palacio, Calibod, Laquio, Santander and Montederamos on March 31, 2000 was quite premature.

Petitioner claims that it terminated respondents' employment as early as March 2000 because it would be highly difficult to hire professional teachers in the middle of the school year as replacements for respondents without compromising the operation of the school and education of the students. Also, petitioner reasons out that it could not enter into written contracts with respondents for the period June 2000 to September 19, 2000 without violating the DECS's policy requiring contracts of yearly duration for elementary and high school teachers.

Petitioner's contentions are not tenable. First, even if respondents' contracts stipulate for a period of one year in compliance with DECS's directive, such stipulation could not be given effect for being violative of the law. Provisions in a contract must be read in conjunction with statutory and administrative regulations. This finds basis on the principle "that an existing law enters into and forms part of a valid contract without the need for the parties expressly making reference to it."[27] Settled is the rule that stipulations made upon the convenience of the parties are valid only if they are not contrary to law.[28] Hence, mere reliance on the policy of DECS requiring yearly contracts for teachers should not prevent petitioner from retaining the services of respondents until and unless the law provides for cause for respondents' dismissal.

Petitioner's intention and desire not to put the students' education and school operation in jeopardy is neither a decisive consideration for respondents' termination prior to the deadline set by law. Again, by setting a deadline for registration as professional teachers, the law has allowed incumbent teachers to practice their teaching profession until September 19, 2000, despite being unregistered and unlicensed. The prejudice that respondents' retention would cause to the school's operation is only trivial if not speculative as compared to the consequences

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[27] *Escorpizo v. University of Baguio*, 366 Phil. 166, 178 (1999).

[28] NEW CIVIL CODE, Article 1306.

of respondents' unemployment. Because of petitioner's predicament, it should have adopted measures to protect the interest of its teachers as regular employees. As correctly observed by the CA, petitioner should have earlier drawn a contingency plan in the event there is need to terminate respondents' services in the middle of the school year. Incidentally, petitioner did not dispute that it hired and retained other teachers who do not likewise possess the qualification and eligibility and even allowed them to teach during the school year 2000-2001. This indicates petitioner's ulterior motive in hastily dismissing respondents.

It is incumbent upon this Court to afford full protection to labor. Thus, while we take cognizance of the employer's right to protect its interest, the same should be exercised in a manner which does not infringe on the workers' right to security of tenure. "Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law."[29]

To reiterate, this Court will not hesitate to defend respondents' right to security of tenure. The premature dismissal from the service of respondents Palacio, Calibod, Laquio, Santander and Montederamos is unwarranted. However, we take exception to the case of respondent Saile who, as alleged by petitioner, was not qualified to take the LET as she only had three out of the minimum 10 required educational units to be admitted to take the LET pursuant to Section 15 of RA 7836,[30] which fact

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[29] *Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas*, 487 Phil. 531, 599 (2004).

[30] SEC. 15. *Qualification Requirements of Applicants.* – No applicant shall be admitted to take the examination unless, on the date of filing of the application, he shall have complied with the following requirements:

x x x x x x x x x

(e) A graduate of a school, college or university recognized by the government and possesses the minimum educational qualifications, as follows:

x x x x x x x x x

respondent Saile did not refute. Not being qualified to take the examination to become a duly licensed professional teacher, petitioner cannot be compelled to retain her services as she cannot possibly obtain the needed prerequisite to allow her to continue practicing the teaching profession. Thus, we find her termination just and legal.

Limited backwages computed from March 31, 2000 to September 30, 2000 awarded in favor of Palacio, Calibod, Laquio, Santander and Montederamos are sustained.

Petitioner questions the amount of separation pay awarded to respondents contending that assuming respondents were illegally dismissed, they are only entitled to an amount computed from the time of dismissal up to September 19, 2000 only. After September 19, 2000, respondents, according to petitioner, are already dismissible for cause for lack of the necessary license to teach.

This contention deserves no merit. Petitioner cannot possibly presume that respondents could not timely comply with the requirements of the law. At any rate, we note that petitioner only assailed the amount of backwages for the first time in its motion for reconsideration of the Decision of the CA. Thus, the Court cannot entertain the issue for being belatedly raised. Hence, the award of limited backwages covering the period from March 31, 2000 to September 30, 2000 as ruled by the Labor Arbiter and affirmed by both the NLRC and CA is in order.

WHEREFORE, the petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals dated September 24, 2003 in CA-G.R. SP No. 67691 finding respondents Teresita Palacio,

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(3) For teachers in the secondary grades, a bachelor's degree in education or its equivalent with a major and minor, or a **bachelor's degree in arts and sciences with at least ten (10) units in professional education**; and

x x x x x x x x x

Marigen Calibod, Levie Laquio, Elaine Marie Santander and Ma. Dolores Montederamos to have been illegally dismissed and awarding them separation pay and limited backwages is *AFFIRMED*. As regards respondent Eliza Saile, we find her termination valid and legal. Consequently, the awards of separation pay and limited backwages in her favor are *DELETED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 166358. September 8, 2010]

CHANG IK JIN and KOREAN CHRISTIAN BUSINESSMEN ASSOCIATION, INC., *petitioners, vs.* **CHOI SUNG BONG,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL OF A MOTION TO DISMISS; REMEDIES.— Petitioners would like the CA to review the RTC Order dated September 11, 2003 denying their Motion to Dismiss by way of a Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA decision which found the impropriety of the issuance of the preliminary injunction. This cannot be done. The ordinary procedure, as a general rule, is that after the denial of a Motion to Dismiss, the defendant should file an Answer, go to trial and, if the decision is adverse, reiterate the issues on appeal. The exception is when the court denying the Motion to Dismiss acted without or in excess of jurisdiction or with grave abuse of discretion in which case *certiorari* under

Rule 65 of the Rules of Court may be availed of. Thus, if petitioners believe that the issuance of the Order denying their Motion to Dismiss was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, they could have filed a separate petition for *certiorari* and assailed such Order but not in the Motion for Partial Reconsideration.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SHOULD BE FILED WITHIN SIXTY DAYS FROM RECEIPT OF THE ORDER DENYING THE MOTION TO DISMISS; CASE AT BAR.— Under Section 4, Rule 65 of the Rules of Court, petitioners have 60 days from receipt of the Order denying their Motion to Dismiss to file the petition. Here, petitioners received the Order dated September 11, 2003 on September 25, 2003; thus, the 60 days receipt of the order would be on November 25, 2003. Petitioners did not file a petition for *certiorari* assailing the Order denying their Motion to Dismiss within the reglementary period, but instead waited until the CA, where petitioners filed a petition for *certiorari* assailing the RTC's issuance of the preliminary injunction, issued its assailed decision on November 27, 2003, a copy of which petitioners received on December 4, 2003. Petitioners then filed their Motion for Partial Reconsideration and/or Supplemental Petition of the CA Decision on December 19, 2003 where they mentioned about the RTC Order denying their Motion to Dismiss and claimed that the CA's *certiorari* jurisdiction could be extended to review whether the RTC gravely abused its discretion or exceeded its jurisdiction in denying their Motion to Dismiss. Petitioners' procedural shortcut cannot be countenanced. The period within which to file a petition for *certiorari* to assail the RTC's denial of petitioners' Motion to Dismiss had already lapsed on November 25, 2003, thus, petitioners' filing of their Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA Decision on December 19, 2003 and sought the resolution of whether the RTC gravely abused its discretion when it denied their Motion to Dismiss would indeed extend the period to assail such Order.

3. ID.; ID.; MOTION TO DISMISS; THE ISSUANCE OF THE WRIT OF PRELIMINARY INJUNCTION IN CASE AT BAR DOES NOT AMOUNT TO THE DENIAL OF THE MOTION TO DISMISS.— Petitioners argue that the RTC's issuance of

the writ of preliminary injunction had already amounted to the denial of the petitioners' Motion to Dismiss; that even during the August 21, 2003 hearing in the RTC, both parties through their respective counsels had confirmed that the issuance of the writ of preliminary injunction had effectively denied petitioners' Motion to Dismiss, thus the CA erred in its decision when it refused to tackle the issues of the complaint's failure to state a cause of action, prescription and forum shopping saying that it would result in the pre-judgment of the main case. x x x Petitioners' assumption that the RTC's issuance of the writ of preliminary injunction had already amounted to the denial of petitioners' Motion to Dismiss has no basis, since at the time the writ was issued on August 18, 2003, there was still no Order resolving petitioners' Motion to Dismiss. In fact, after the issuance of the writ, petitioners had even filed an Urgent Motion to Resolve (petitioners' Motion to Dismiss dated August 1, 2003, Supplement to Motion to Dismiss dated August 6, 2003 and Omnibus Motion to Dismiss dated August 15, 2003). Moreover, in the hearing dated August 21, 2003, the RTC required petitioners to submit their Rejoinder to the Motion to Dismiss and for respondent to file a Reply thereto after which the Motion to Dismiss shall be deemed submitted for resolution. Thus, it was clearly shown that the Motion to Dismiss was not yet decided upon by the RTC. The CA was correct when it did not rule on those issues even when petitioners raised them in their petition with the CA, since to do so would be overstepping its boundaries since the Motion to Dismiss was not yet decided at the time the petition was filed.

4. ID.; ID.; APPEALS; THE COURT OF APPEALS COMMITTED NO ERROR FOR NOT RULING ON THE ISSUES OF PRESCRIPTION, FAILURE TO STATE A CAUSE OF ACTION AND IMPROPER VENUE IN CASE AT BAR.— Petitioners contend that the CA's finding that the RTC should have first resolved the Motion to Dismiss before issuing the Order granting the writ of preliminary injunction had been mooted by the RTC's subsequent denial of the Motion to Dismiss, thus, the CA could determine the merits of petitioners' claim regarding prescription, failure to state a cause of action and improper venue. x x x While the RTC subsequently issued an Order denying petitioners' Motion to Dismiss, such Order cannot be raised in petitioners' Motion for Partial

Reconsideration and/or Supplemental Petition of the assailed CA Decision dated November 27, 2003 without violating procedural rules. Also, the CA's ruling on the impropriety of the RTC's issuance of the preliminary injunction was not solely based on the RTC's failure to first resolve the Motion to Dismiss but the CA also found the absence of the requisites for the issuance of the writ. More importantly, the Order dated September 11, 2003 denying petitioners' Motion to Dismiss was distinct from the RTC Order dated August 18, 2003 which directed the issuance of the writ of preliminary injunction and which latter Order was the only Order which petitioners sought to annul in their petition filed with the CA. Thus, we find no error committed by the CA for not ruling on the issues of prescription, failure to state a cause of action and improper venue.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado & Cruz for petitioners.
Hector A. Yulo and *Moises S. Tolentino Jr.* for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this *petition for review on certiorari* are the November 27, 2003 Decision[1] and the November 30, 2004 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 78809.

The antecedent facts are as follows:

Petitioner Korean Christian Businessmen Association, Inc. is the publisher of *Korea Post*, a Korean language newspaper printing current events and business news about Korea and the Philippines which are of general interest to the Korean community

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Salvador J. Valdez, Jr. and Arturo D. Brion (now a member of this Court), concurring; *rollo*, pp. 54-66.

[2] *Id.* at 68.

in Metro Manila. *Korea Post* is published weekly and distributed free of charge at selected restaurants, offices and areas frequented by Korean nationals in Metro Manila. Petitioner Chang Ik Jin is one of the incorporators of the said association, while respondent Choi Sung Bong is a Pastor of Caraan Church based in Parañaque City whose members are mostly Korean residents of Metro Manila.

On July 12, 2003, the Korean Union Church of Manila, Inc., represented by Chung Geun Park, filed before the Regional Trial Court (RTC) of Parañaque City, a complaint for damages and injunction with prayer for a temporary restraining order (TRO) against petitioners, docketed as CV-03-0346, raffled off to Branch 196. The complaint alleged among others that petitioners have been publishing the *Korea Post* in violation of the constitutional provisions barring foreigners from engaging in mass media; that it was prohibited by its Articles of Incorporation from engaging in mass media; that on May 3, 2003, the *Korea Post* published a defamatory article against the Korean Union Church of Manila causing besmirched reputation on its entire membership, thus, it sought the issuance of a TRO and a writ of preliminary injunction to stop the publication of the *Korea Post*. A TRO was issued effective for seventy-two hours. Later, the RTC issued an Order[3] dated July 22, 2003 denying the application for the writ of preliminary injunction. Subsequently, the Korean Union Church of Manila filed on August 1, 2003 a notice of dismissal, which the RTC granted in its Order dated August 5, 2003.

On July 23, 2003, herein respondent Choi Sung Bong filed with the RTC of Pasay City, a complaint for injunction and damages against petitioners, docketed as Civil Case No. 03-0347-CFM and was raffled off to Branch 118. The complaint sought the issuance of a TRO and a Writ of Preliminary Injunction and alleged that: (1) petitioners have been publishing the *Korea Post* in violation of the constitutional provisions barring foreigners from engaging in mass media; and (2) the *Korea Post* published

[3] Per Judge Brigido Artemon M. Luna II, the Presiding Judge of Branch 196, RTC, Parañaque City; *rollo*, pp. 109-110.

defamatory articles against respondent Choi in its April 25 and May 9, 1998 issues, thus respondent Choi sought to stop the publication of the *Korea Post.*

On July 28, 2003, the RTC issued[4] a TRO directing petitioners to refrain, cease and desist from further publishing, distributing locally the *Korea Post*; and set the hearing on respondent's application for a writ of preliminary injunction on August 12, 2003.

On August 1, 2003, petitioners filed a Motion to Dismiss on the following grounds: (1) respondent Choi had validly waived his right to file action; (2) respondent Choi was guilty of laches; (3) the action had prescribed; and (4) respondent Choi had no cause of action. On August 6, 2003, petitioners filed a Supplement to the Motion to Dismiss on the ground of improper venue as respondent was not a resident of Pasay City.

During the August 12, 2003 hearing for the application of the Writ of Preliminary Injunction, respondent presented his evidence and after which the RTC ordered the parties to submit their Position Papers.

On August 15, 2003, respondent filed his Position Paper in support of his prayer for the issuance of a writ of preliminary injunction and petitioners filed a Position Paper (with Omnibus Motion to Dismiss and To Cite for Direct Contempt For Forum Shopping).

On August 18, 2003, the RTC issued an Order[5] granting the issuance of a Writ of Preliminary Injunction as follows:

> WHEREFORE, let a Writ of Preliminary Injunction be forthwith issued enjoining the defendants, their employees, or agents, and/or any individual, partnership or corporation acting for and in their behalf, to refrain, cease and desist from publishing, printing, [distributing] and circulating locally the Korea Post.

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[4] CA *rollo*, pp. 48-49; Per Judge Pedro de Leon Gutierrez.

[5] *Rollo*, pp. 278-281.

Let the Branch Sheriff of RTC, Branch 119, and the Sheriff[,] Virgilio Villar[,] of the Office of the Clerk of Court, RTC, Pasay City, as they are hereby designated as Custodians of the equipments and machines located at 2750 South Avenue, Barangay Sta. Cruz, Makati City, used in the publication of the Korea Post, including but not limited to the computers, scanners, cameras, photocopying machines, typewriters, and or similar paraphernalia, such Custodians' authority being to see to it that the equipment so placed under their custody be not used for the purpose of publishing the Korea Post while the Preliminary Injunction is in force and effect. In this connection, plaintiff is hereby ordered to post injunction bond in the sum of TWO HUNDRED THOUSAND PESOS (₱200,000.00) in favor of the defendants to answer for damages that may be sustained by the latter should it be found that plaintiff is not entitled to the relief prayed for.[6]

A writ of preliminary injunction was subsequently issued on the same day.[7]

On August 20, 2003, petitioners filed an Urgent *Ex-Parte* Motion to Resolve their Motion to Dismiss, Supplement to the Motion to Dismiss and the Omnibus Motion to Dismiss dated August 15, 2003. At the hearing held on August 21, 2003, the RTC ordered the parties to submit the appropriate pleadings, after which the Motion to Dismiss, shall be deemed submitted for resolution.

On August 27, 2003, petitioners filed with the CA a petition for *certiorari* and prohibition with urgent application for issuance of a TRO and or writ of preliminary injunction seeking to nullify and set aside for having been issued with grave abuse of discretion the following: (1) Order dated July 28, 2003, issuing the TRO directing petitioners to refrain from further publishing and circulating locally the *Korea Post*; (2) Order dated August 18, 2003, granting the issuance of the writ of preliminary injunction enjoining petitioners from publishing and circulating locally the *Korea Post*; and (3) the writ of preliminary injunction issued.

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[6] *Id.* at 281.

[7] *Id.* at 282-283.

In a Resolution[8] dated September 4, 2003, the CA issued a TRO enjoining the RTC from implementing its Order dated August 18, 2003 as well as the issuance of the Writ of Preliminary Injunction.

On September 3, 2003, respondent filed before the CA a Manifestation that per sheriff's return dated August 29, 2003, the subject writ of preliminary injunction had already been served and implemented on August 19, 2003. On the same date, private respondent filed an Urgent Motion to Lift the TRO. The CA set the hearing of these incidents together with petitioners' prayer for the issuance of a writ of preliminary injunction. A hearing was conducted on September 23, 2003.

On November 27, 2003, the CA issued its assailed Decision, the dispositive portion of which reads:

> WHEREFORE, the foregoing considered, the assailed Orders dated July 28, 2003 and August 18, 2003 are hereby REVERSED and SET ASIDE. The Writ of Preliminary Injunction in Civil Case No.03-0347-CM is hereby dissolved. Let this case be remanded to the Regional Trial Court of Pasay City, Branch 118, for further proceedings.[9]

The CA said that the issue to be resolved was whether the RTC properly issued the writ of preliminary injunction and found that it did not. The CA found that the RTC's action in deferring the resolution of petitioners' Motion to Dismiss and the subsequent pleadings relative thereto after the filing of the parties' Reply and Rejoinder but in the meantime granted respondent's application for a writ of preliminary injunction was not sanctioned by Section 3, Rule 16 of the Rules of Court; that under the Rules, the court, upon hearing a Motion to Dismiss, may dismiss the action or claim, deny the motion or order the amendment of the pleading but it is prohibited from deferring the resolution of the Motion to Dismiss for the reason that the ground relied upon is not indubitable; that the RTC was mandated to have first resolved

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[8] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr., concurring; *id.* at 367.

[9] *Rollo*, p. 66.

the Motion to Dismiss before it issued the assailed writ of preliminary injunction, since the Motion to Dismiss raised the grounds of forum shopping and prescription among others, which, if found to be meritorious, would have resulted in the dismissal of the complaint and the preliminary injunction could not have been issued.

The CA found that the requisites for the issuance of injunction, to wit: (1) the complainant has a clear legal right; (2) that his right has been violated and the invasion is material and substantial; and (3) that there is an urgent and permanent necessity for the writ to prevent serious damage, were wanting in respondent's case. The CA said that the alleged articles being complained of by respondent were published on the April 25 and May 9, 1998 issues of *Korea Post*, thus, respondent failed to show that he was in imminent danger of sustaining an injury by reason of the continued publication of the *Korea Post*, as the articles being complained of were published in 1998; and there was no urgency or any irreparable injury which necessitated the issuance of a TRO/preliminary injunction, since there was no damage to prevent anymore as the alleged defamatory story was published in 1998. Thus, the RTC concluded that the issuance of the preliminary injunction was without basis and was tainted with grave abuse of discretion.

The CA did not rule on the other issues raised by petitioners in their petition, *i.e*, whether the RTC committed grave abuse of discretion by not dismissing the complaint based on its failure to state a cause of action, prescription of action for oral defamation and improper venue, as the CA believed that it would result in the pre-judgment of the main case when the question raised before the CA was the question of the propriety of the issuance of the writ of preliminary injunction.

The CA found no forum shopping as there was no identity of parties in the Parañaque case and the instant case; that the rights asserted in the two cases were different although the reliefs prayed for against petitioners were the same, since both cases prayed to permanently stop the publication and circulation of the *Korea Post* newspaper and to pay damages; that the

judgment in one case would not amount to *res judicata* in the other case since the plaintiffs in both cases are different.

Petitioners filed a Motion for Partial Reconsideration and/or Supplemental Petition insofar as the CA did not order the dismissal of the case before the RTC but instead ordered the remand of the case for further proceedings. Petitioners alleged that while the Motion to Dismiss remained unresolved at the time of the filing of the petition for *certiorari* and prohibition with the CA, however, the RTC subsequently issued its Order on September 11, 2003 already denying petitioners' Motion to Dismiss; hence the filing of the Supplemental Petition with the CA.

On November 30, 2004, the CA issued a Resolution denying the Motion for Partial Reconsideration and/or Supplemental Petition.

Hence, petitioners filed this petition for review on *certiorari* raising the issue of:

WHETHER OR NOT THE COURT OF APPEALS DECIDED THE CASE IN A WAY NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT BY DENYING PETITIONERS' MOTION FOR PARTIAL RECONSIDERATION AND/OR SUPPLEMENTAL PETITION AND HOLDING THAT TO TACKLE OTHER ISSUES RAISED BY PETITIONERS WOULD RESULT IN THE COURT OF APPEALS' ACTING *ULTRA JURISDICTIO*.[10]

The issue for resolution is whether the CA erred when it did not rule on the issues of prescription, failure to state a cause of action and improper venue which petitioners raised in their petition filed with the CA.

We find no merit in the petition.

In its assailed decision, the CA found that the RTC committed grave abuse of discretion when it issued the writ of preliminary injunction without first resolving petitioners' Motion to Dismiss and that there was also no basis for the issuance of the writ.

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[10] *Id.* at 541-542.

While petitioners raised the issues on whether the RTC committed a grave abuse of discretion by not dismissing the complaint based on (a) the complaint's failure to state a cause of action, (b) prescription of action for oral defamation, and (c) improper venue, the CA did not tackle these issues for to do so would dispose of the main case without trial and would result in the pre-judgment of the main case when the Order sought by petitioners to be annulled in the CA pertained only to the propriety of the issuance of the writ of preliminary injunction. Petitioners then filed their Motion for Partial Reconsideration and/or Supplemental Petition, since the CA did not order the dismissal of the case but directed the remand of the same to the RTC for further proceedings. Petitioners then argued that the CA set aside the writ of preliminary injunction on the ground, among others, that the RTC's issuance of the writ was done without first resolving the Motion to Dismiss. However, the RTC had subsequently issued an Order dated September 11, 2003 denying petitioners' Motion to Dismiss; thus, the CA should have extended their *certiorari* proceedings to review whether the RTC gravely abused its discretion in denying petitioners' Motion to Dismiss. The CA denied petitioners' Motion for Partial Reconsideration and/or Supplemental Petition.

We found no reversible error committed by the CA.

Petitioners would like the CA to review the RTC Order dated September 11, 2003 denying their Motion to Dismiss by way of a Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA decision which found the impropriety of the issuance of the preliminary injunction. This cannot be done. The ordinary procedure, as a general rule, is that after the denial of a Motion to Dismiss, the defendant should file an Answer, go to trial and, if the decision is adverse, reiterate the issues on appeal. The exception is when the court denying the Motion to Dismiss acted without or in excess of jurisdiction or with grave abuse of discretion in which case *certiorari* under Rule 65 of the Rules of Court may be availed of.[11] Thus, if petitioners believe that the issuance of the Order denying their

[11] *Drilon v. Court of Appeals*, 336 Phil. 949, 962 (1997).

Motion to Dismiss was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, they could have filed a separate petition for *certiorari* and assailed such Order but not in the Motion for Partial Reconsideration.

Under Section 4, Rule 65[12] of the Rules of Court, petitioners have 60 days from receipt of the Order denying their Motion to Dismiss to file the petition. Here, petitioners received the Order dated September 11, 2003 on September 25, 2003; thus, the 60 days from receipt of the order would be on November 25, 2003. Petitioners did not file a petition for *certiorari* assailing the Order denying their Motion to Dismiss within the reglementary period, but instead waited until the CA, where petitioners filed a petition for *certiorari* assailing the RTC's issuance of the preliminary injunction, issued its assailed decision on November 27, 2003, a copy of which petitioners received on December 4, 2003. Petitioners then filed their Motion for Partial Reconsideration and/or Supplemental Petition of the CA Decision on December 19, 2003 where they mentioned about the RTC Order denying their Motion to Dismiss and claimed that the CA's *certiorari* jurisdiction could be extended to review whether the RTC gravely abused its discretion or exceeded its jurisdiction in denying their Motion to Dismiss.

Petitioners' procedural shortcut cannot be countenanced. The period within which to file a petition for *certiorari* to assail the RTC's denial of petitioners' Motion to Dismiss had already lapsed on November 25, 2003, thus, petitioners' filing of their Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA Decision on December 19, 2003 and sought the resolution of whether the RTC gravely abused its discretion when it denied their Motion to Dismiss would indeed extend the period to assail such Order.

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[12] Section 4, Rule 65 as amended by A.M. No. 00-2-03-SC, provides:

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

Petitioners argue that the RTC's issuance of the writ of preliminary injunction had already amounted to the denial of petitioners' Motion to Dismiss; that even during the August 21, 2003 hearing in the RTC, both parties through their respective counsels had confirmed that the issuance of the writ of preliminary injunction had effectively denied petitioners' Motion to Dismiss, thus the CA erred in its decision when it refused to tackle the issues of the complaint's failure to state a cause of action, prescription and forum shopping saying that it would result in the pre-judgment of the main case.

We do not agree.

Petitioners' assumption that the RTC's issuance of the writ of preliminary injunction had already amounted to the denial of petitioners' Motion to Dismiss has no basis, since at the time the writ was issued on August 18, 2003, there was still no Order resolving petitioners' Motion to Dismiss. In fact, after the issuance of the writ, petitioners had even filed an Urgent Motion to Resolve (petitioners' Motion to Dismiss dated August 1, 2003, Supplement to Motion to Dismiss dated August 6, 2003 and Omnibus Motion to Dismiss dated August 15, 2003). Moreover, in the hearing dated August 21, 2003, the RTC required petitioners to submit their Rejoinder to the Motion to Dismiss and for respondent to file a Reply thereto after which the Motion to Dismiss shall be deemed submitted for resolution.[13] Thus, it was clearly shown that the Motion to Dismiss was not yet decided upon by the RTC. The CA was correct when it did not rule on those issues even when petitioners raised them in their petition with the CA, since to do so would be overstepping its boundaries since the Motion to Dismiss was not yet decided at the time the petition was filed.

Petitioners contend that the CA's finding that the RTC should have first resolved the Motion to Dismiss before issuing the Order granting the writ of preliminary injunction had been mooted by the RTC's subsequent denial of the Motion to Dismiss, thus, the CA could determine the merits of petitioners' claim regarding

[13] TSN, August 21, 2003, pp. 21-22.

prescription, failure to state a cause of action and improper venue.

We are not persuaded.

While the RTC subsequently issued an Order denying petitioners' Motion to Dismiss, such Order cannot be raised in petitioners' Motion for Partial Reconsideration and/or Supplemental Petition of the assailed CA Decision dated November 27, 2003 without violating procedural rules. Also, the CA's ruling on the impropriety of the RTC's issuance of the preliminary injunction was not solely based on the RTC's failure to first resolve the Motion to Dismiss but the CA also found the absence of the requisites for the issuance of the writ. More importantly, the Order dated September 11, 2003 denying petitioners' Motion to Dismiss was distinct from the RTC Order dated August 18, 2003 which directed the issuance of the writ of preliminary injunction and which latter Order was the only Order which petitioners sought to annul in their petition filed with the CA. Thus, we find no error committed by the CA for not ruling on the issues of prescription, failure to state a cause of action and improper venue.

WHEREFORE, the Petition is *DENIED*. The Decision and Resolution of the Court of Appeals, dated November 27, 2003 and November 30, 2004, respectively, in CA-G.R. SP. No. 78809 are *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 172138. September 8, 2010]

NELSON JENOSA and his son NIÑO CARLO JENOSA, SOCORRO CANTO and her son PATRICK CANTO, CYNTHIA APALISOK and her daughter CYNDY APALISOK, EDUARDO VARGAS and his son CLINT EDUARD VARGAS, and NELIA DURO and her son NONELL GREGORY DURO, *petitioners, vs.* **REV. FR. JOSE RENE C. DELARIARTE, O.S.A., in his capacity as the incumbent Principal of the High School Department of the University of San Agustin, and the UNIVERSITY OF SAN AGUSTIN, herein represented by its incumbent President REV. FR. MANUEL G. VERGARA, O.S.A.,** *respondents.*

SYLLABUS

1. POLITICAL LAW; EDUCATION; DISCIPLINE IN EDUCATION; SPECIFICALLY MANDATED BY THE 1987 CONSTITUTION.— Discipline in education is specifically mandated by the 1987 Constitution which provides that all educational institutions shall "teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline." Schools and school administrators have the authority to maintain school discipline and the right to impose appropriate and reasonable disciplinary measures. On the other hand, students have the duty and the responsibility to promote and maintain the peace and tranquility of the school by observing the rules of discipline.

2. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INJUNCTION; SINCE INJUNCTION IS THE STRONG ARM OF EQUITY, HE WHO MUST APPLY FOR IT MUST COME TO COURT WITH CLEAN HANDS; CASE AT BAR.— In this case, we rule that the Principal had the authority to order the immediate transfer of petitioner students because of the 28 November 2002 agreement. Petitioner parents affixed their signatures to the minutes of the 28 November 2002 meeting and signified their conformity to transfer their

children to another school. Petitioners Socorro Canto and Nelia Duro even wrote a letter to inform the University that they would transfer their children to another school and requested for the pertinent papers needed for the transfer. In turn, the University did not anymore convene the COSD. The University agreed that it would no longer conduct disciplinary proceedings and instead issue the transfer credentials of petitioner students. Then petitioners reneged on their agreement without any justifiable reason. Since the petitioners' present complaint is one for injunction, and injunction is the strong arm of equity, petitioners must come to court with clean hands. In *University of the Philippines v. Hon. Catungal, Jr.,* a case involving student misconduct, this Court ruled: "Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue." Here, petitioners, having reneged on their agreement without any justifiable reason, come to court with unclean hands. This Court may deny a litigant relief if his conduct has been inequitable, unfair and dishonest as to the controversy in issue. Since petitioners have come to court with inequitable and unfair conduct, we deny them relief. We uphold the validity of the 28 November 2002 agreement and rule that the Principal had the authority to order the immediate transfer of petitioner students based on the 28 November 2002 agreement.

APPEARANCES OF COUNSEL

Reyes and Reyes Law Offices for petitioners.
Padilla Law Office for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 16 June 2005 Decision[2] and 22 March 2006[3] Resolution of the Court of Appeals in CA-G.R. SP No. 78894. In its 16 June 2005 Decision, the Court of Appeals granted the petition of respondents University of San Augustin (University), represented by its incumbent President Rev. Fr. Manuel G. Vergara, O.S.A. (University President), and Rev. Fr. Jose Rene C. Delariarte, O.S.A. (Principal), in his capacity as the incumbent Principal of the High School Department of the University (respondents) and ordered the dismissal of Civil Case Nos. 03-27460 and 03-27646 for lack of jurisdiction over the subject matter. In its 22 March 2006 Resolution, the Court of Appeals denied the motion for reconsideration of petitioners Nelson Jenosa and his son Niño Carlo Jenosa, Socorro Canto and her son Patrick Canto, Cynthia Apalisok and her daughter Cyndy Apalisok, Eduardo Vargas and his son Clint Eduard Vargas, and Nelia Duro and her son Nonell Gregory Duro (petitioners).

The Facts

On 22 November 2002, some students of the University, among them petitioners Niño Carlo Jenosa, Patrick Canto, Cyndy Apalisok, Clint Eduard Vargas, and Nonell Gregory Duro (petitioner students), were caught engaging in hazing outside the school premises. The hazing incident was entered into the blotter of the Iloilo City Police.[4]

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[1] Under Rule 45 of the Rules of Civil Procedure.

[2] *Rollo*, pp. 24-34. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring.

[3] *Id.* at 36-37. Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring.

[4] *Id.* at 62.

Thereafter, dialogues and consultations were conducted among the school authorities, the apprehended students and their parents. During the 28 November 2002 meeting, the parties agreed that, instead of the possibility of being charged and found guilty of hazing, the students who participated in the hazing incident as initiators, including petitioner students, would just transfer to another school, while those who participated as neophytes would be suspended for one month. The parents of the apprehended students, including petitioners, affixed their signatures to the minutes of the meeting to signify their conformity.[5] In view of the agreement, the University did not anymore convene the Committee on Student Discipline (COSD) to investigate the hazing incident.

On 5 December 2002, the parents of petitioner students (petitioner parents) sent a letter to the University President urging him not to implement the 28 November 2002 agreement.[6] According to petitioner parents, the Principal, without convening the COSD, decided to order the immediate transfer of petitioner students.

On 10 December 2002, petitioner parents also wrote a letter to Mrs. Ida B. Endonila, School Division Superintendent, Department of Education (DepEd), Iloilo City, seeking her intervention and prayed that petitioner students be allowed to take the home study program instead of transferring to another school.[7] The DepEd asked the University to comment on the letter.[8] The University replied and attached the minutes of the 28 November 2002 meeting.[9]

On 3 January 2003, petitioners filed a complaint for **injunction** and damages with the Regional Trial Court, Branch 29, Iloilo City (trial court) docketed as Civil Case No. 03-27460.[10]

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[5] *Id.* at 93-94.

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

[7] *Id.* at 65-68.

[8] *Id.* at 69.

[9] *Id.* at 92-94.

[10] *Id.* at 55-61.

Petitioners assailed the Principal's decision to order the immediate transfer of petitioner students as a violation of their right to due process because the COSD was not convened.

On 5 February 2003, the trial court issued a writ of preliminary injunction and directed respondents to admit petitioner students during the pendency of the case.[11] The 5 February 2003 Order reads:

> WHEREFORE, let [a] Writ of Preliminary Mandatory Injunction issue. The defendants are hereby directed to allow the plaintiff's minor children to attend their classes during the pendency of this case, without prejudice to any disciplinary proceeding to which any or all of them may be liable.
>
> SO ORDERED.[12]

Respondents filed a motion for reconsideration and asked for the dissolution of the writ. The trial court denied respondents' motion. Respondents complied but with reservations.

On 25 March 2003, respondents filed a motion to dismiss. Respondents alleged that the trial court had no jurisdiction over the subject matter of the case and that petitioners were guilty of forum shopping. On 19 May 2003, the trial court denied respondents' motion. Respondents filed a motion for reconsideration.

On 21 April 2003, petitioners wrote the DepEd and asked that it direct the University to release the report cards and other credentials of petitioner students.[13] On 8 May 2003, the DepEd sent a letter to the University advising it to release petitioner students' report cards and other credentials if there was no valid reason to withhold the same.[14] On 14 May 2003, the DepEd sent another letter to the University to follow-up petitioners' request.[15] On 20 May 2003, the University

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

[12] *Id.* at 96.

[13] *Id.* at 76.

[14] *Id.* at 75.

[15] *Id.* at 77.

replied that it could not release petitioner students' report cards due to their pending disciplinary case with the COSD.[16]

On 28 May 2003, petitioners filed another complaint for mandatory injunction praying for the release of petitioner students' report cards and other credentials docketed as Civil Case No. 03-27646.[17]

The trial court consolidated the two cases.[18]

On 17 June 2003, the trial court issued a writ of preliminary injunction and directed the University to release petitioner students' report cards and other credentials.[19] Respondents filed a motion for reconsideration. Respondents alleged that they could not comply with the writ because of the on-going disciplinary case against petitioner students.

On 26 June 2003, the COSD met with petitioners for a preliminary conference on the hazing incident. On 7 July 2003, the University, through the COSD, issued its report finding petitioner students guilty of hazing. The COSD also recommended the exclusion of petitioner students from its rolls effective 28 November 2002.

On 14 July 2003, the trial court issued an Order denying both motions for reconsideration.[20]

On 1 September 2003, respondents filed a special civil action for *certiorari* with the Court of Appeals. Respondents insisted that the trial court had no jurisdiction over the subject matter of Civil Case Nos. 03-27460 and 03-27646. Respondents also alleged that petitioners were guilty of forum shopping.

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[16] *Id.* at 78-79.

[17] *Id.* at 98-105.

[18] *Id.* at 388-389.

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

[20] *Id.* at 151-152.

The Ruling of the Court of Appeals

In its 16 June 2005 Decision, the Court of Appeals granted respondents' petition and ordered the trial court to dismiss Civil Case Nos. 03-27460 and 03-27646 for lack of jurisdiction over the subject matter because of petitioners' failure to exhaust administrative remedies or for being premature. According to the Court of Appeals, petitioners should have waited for the action of the DepEd or of the University President before resorting to judicial action. The Court of Appeals held:

> From the foregoing, it is clear that the court *a quo* committed grave [abuse] of discretion amounting to LACK OF JURISDICTION in INTERFERING, pre-maturely, with the exclusive and inherent authority of educational institutions to discipline.
>
> In directing herein petitioners [respondents in this case] to re-admit herein private respondents [petitioners in this case] and eventually, to release the report cards and other school credentials, prior to the action of the President of USA and of the recommendation of the COSD, the court *a quo* is guilty of improper judicial intrusion by encroaching into the exclusive prerogative of educational institutions.[21]

Petitioners filed a motion for reconsideration.[22] In its 22 March 2006 Resolution, the Court of Appeals denied petitioners' motion for lack of merit.

The Issues

Petitioners raise the following issues:

1. Was the Court of Appeals correct in holding that Branch 29 of the Regional Trial Court of Iloilo City in Civil Case Nos. 03-27460 and 03-27646 did not acquire jurisdiction over the subject matter of this case for failure of petitioners to exhaust administrative remedies?

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

[22] *Id.* at 39-46.

2. Was the recommendation/report/order of the Committee on Student Discipline dated 7 July 2003 valid, and did it justify the order of exclusion of petitioner students retroactive to 28 November 2002?[23]

The Ruling of the Court

The petition has no merit.

Discipline in education is specifically mandated by the 1987 Constitution which provides that all educational institutions shall "teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline."[24] Schools and school administrators have the authority to maintain school discipline[25] and the right to impose appropriate and reasonable disciplinary measures.[26] On the other hand, students have the duty and the responsibility to promote and maintain the peace and tranquility of the school by observing the rules of discipline.[27]

In this case, we rule that the Principal had the authority to order the immediate transfer of petitioner students because of the 28 November 2002 agreement.[28] Petitioner parents affixed their signatures to the minutes of the 28 November 2002 meeting and signified their conformity to transfer their children to another school. Petitioners Socorro Canto and Nelia Duro even wrote a letter to inform the University that they would transfer their children to another school and requested for the pertinent papers needed for the transfer.[29] In turn, the University did not anymore convene the COSD. The University agreed that it would no longer conduct disciplinary proceedings and instead issue the

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[23] *Id.* at 852.

[24] CONSTITUTION, Art. XIV, Sec. 3(2).

[25] Manual of Regulations for Private Schools (1992), Section 74.

[26] Manual of Regulations for Private Schools (1992), Section 75.

[27] *Batas Pambansa Blg.* 232 (1982), Section 15.3.

[28] *Rollo*, pp. 92-94.

[29] *Id.* at 246 and 248.

transfer credentials of petitioner students. Then petitioners reneged on their agreement without any justifiable reason. Since petitioners' present complaint is one for injunction, and injunction is the strong arm of equity, petitioners must come to court with clean hands. In *University of the Philippines v. Hon. Catungal, Jr.*,[30] a case involving student misconduct, this Court ruled:

> Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent, or deceitful as to the controversy in issue.[31]

Here, petitioners, having reneged on their agreement without any justifiable reason, come to court with unclean hands. This Court may deny a litigant relief if his conduct has been inequitable, unfair and dishonest as to the controversy in issue.

Since petitioners have come to court with inequitable and unfair conduct, we deny them relief. We uphold the validity of the 28 November 2002 agreement and rule that the Principal had the authority to order the immediate transfer of petitioner students based on the 28 November 2002 agreement.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 16 June 2005 Decision and the 22 March 2006 Resolution of the Court of Appeals.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[30] 338 Phil. 728 (1997).

[31] *Id.* at 743-744.

SECOND DIVISION

[G.R. No. 172727. September 8, 2010]

QUEENSLAND-TOKYO COMMODITIES, INC., ROMEO Y. LAU, and CHARLIE COLLADO, *petitioners, vs.* **THOMAS GEORGE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES LIKE THE SECURITIES AND EXCHANGE COMMISSION (SEC), RESPECTED.— It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the records of the case. It is not the function of this Court to analyze or weigh all over again the evidence and the credibility of witnesses presented before the lower court, tribunal, or office, as we are not a trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court. x x x The findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. The Hearing Officer had the optimum opportunity to review the pieces of evidence presented before him and to observe the demeanor of the witnesses. Administrative decisions on matters within his jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law, which has not been shown by petitioner in this case.

2. COMMERCIAL LAW; REVISED SECURITIES ACT (BP 178); VALIDITY OF CONTRACTS.— *Batas Pambansa Bilang* (B.P. Blg.) 178 or the *Revised Securities Act* explicitly provided: SEC. 53. Validity of Contracts. x x x. (b) Every contract executed in violation of any provision of this Act, or any rule or regulation

thereunder, and every contract, including any contract for listing a security on an exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule and regulation thereunder, shall be void.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; VOID CONTRACTS; GENERALLY OF NO EFFECT; EXCEPTION, AS WHEN RETURN OF WHAT MAY HAVE BEEN GIVEN UNDER A VOID CONTRACT IS PERMITTED.— It is settled that 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*. This rule, however, is not absolute. Article 1412 of the Civil Code provides an exception, and permits the return of that which may have been given under a void contract. Thus: 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.

4. COMMERCIAL LAW; CORPORATIONS; SEPARATE PERSONALITY; THAT CORPORATE OFFICERS WHO ENTERED INTO CONTRACTS IN BEHALF OF THE CORPORATION CANNOT BE HELD PERSONALLY LIABLE; EXCEPTIONS.— A corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach, as a rule, only when – (1) he assents to a patently

unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders, or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action.

5. CIVIL LAW; DAMAGES; MORAL DAMAGES; ELUCIDATED.— Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.

6. ID.; ID.; EXEMPLARY DAMAGES; ELUCIDATED.— Article 2229 of the Civil Code provides that exemplary damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although plaintiff must show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

7. ID.; ID.; MORAL AND EXEMPLARY DAMAGES; DETERMINATION THEREOF.— Certainly, there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral and exemplary damages, since each case must be governed by its own peculiar facts. Courts are given discretion in determining the amount, with the limitation that it should not be palpably and scandalously excessive. Indeed, it must be commensurate to the loss or injury suffered.

APPEARANCES OF COUNSEL

Alberto L. Sales for petitioners.
Acorda Baylon Jaromay & Associates for respondent.

R E S O L U T I O N

NACHURA, *J.*:

At bar is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by Queensland-Tokyo Commodities, Inc. (QTCI), Romeo Y. Lau (Lau), and Charlie Collado (Collado), challenging the September 30, 2005 Decision[1] and the January 20, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 58741.

QTCI is a duly licensed broker engaged in the trading of commodity futures. In 1995, Guillermo Mendoza, Jr. (Mendoza) and Oniler Lontoc (Lontoc) of QTCI met with respondent Thomas George (respondent), encouraging the latter to invest with QTCI. On July 7, 1995, upon Mendoza's prodding, respondent finally invested with QTCI. On the same day, Collado, in behalf of QTCI, and respondent signed the *Customer's Agreement*.[3] Forming part of the agreement was the Special Power of Attorney[4] executed by respondent, appointing Mendoza as his attorney-in-fact with full authority to trade and manage his account.

On June 20, 1996, the Securities and Exchange Commission (SEC) issued a Cease-and-Desist Order (CDO) against QTCI. Alarmed by the issuance of the CDO, respondent demanded from QTCI the return of his investment, but it was not heeded. He then sought legal assistance, and discovered that Mendoza and Lontoc were not licensed commodity futures salesmen.

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[1] Penned by Estela M. Perlas-Bernabe, with Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid, concurring; *rollo*, pp. 27-35.

[2] *Id.* at 37.

[3] *Id.* at 62-65.

[4] *Id.* at 66.

On February 4, 1998, respondent filed a complaint for *Recovery of Investment with Damages*[5] with the SEC against QTCI, Lau, and Collado (petitioners), and against the unlicensed salesmen, Mendoza and Lontoc. The case was docketed as SEC Case No. 02-98-5886, and was raffled to SEC Hearing Officer Julieto F. Fabrero.

Only petitioners answered the complaint, as Mendoza and Lontoc had since vanished into thin air. Traversing the complaint, petitioners denied the material allegations in the complaint and alleged lack of cause of action, as a defense. Petitioners averred that QTCI only assigned duly qualified persons to handle the accounts of its clients; and denied allowing unlicensed brokers or agents to handle respondent's account. They claimed that they were not aware of, nor were they privy to, any arrangement which resulted in the account of respondent being handled by unlicensed brokers. They added that even assuming that the subject account was handled by an unlicensed broker, respondent is now estopped from raising it as a ground for the return of his investment. They pointed out that respondent transacted business with QTCI for almost a year, without questioning the license or the authority of the traders handling his account. It was only after it became apparent that QTCI could no longer resume its business transactions by reason of the CDO that respondent raised the alleged lack of authority of the brokers or traders handling his account. The losses suffered by respondent were due to circumstances beyond petitioners' control and could not be attributed to them. Respondent's remedy, they added, should be against the unlicensed brokers who handled the account. Thus, petitioners prayed for the dismissal of the complaint.[6]

After due proceedings, the SEC Hearing Officer rendered a decision[7] in favor of respondent, decreeing that:

WHEREFORE, premises considered, [petitioners] Queensland Tokyo [C]ommodities, Inc., Romeo Y. Lau (*aka* "Lau Ching Yee") and Charlie

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[5] *Id.* at 38-46.

[6] *Id.* at 51-58.

[7] *Id.* at 192-198.

F. Collado are hereby ordered to jointly and severally pay the [respondent] the following:

1. The amount of ₱138,164.00, Philippine currency, representing the x x x return of his [respondent's] peso investment, plus legal rate of interest from February 1998 until fully paid;

2. The amount of $19,820.00, American dollars, or its peso equivalent at the time of payment representing the [respondent's] return of his dollar investments, plus legal rate of interest from February 1998 until fully paid;

3. The amount of ₱100,000.00 as (sic) by way of moral damages;

4. The amount of ₱50,000.00 as and (sic) by way of exemplary damages;

5. The amount of ₱10,000.00 as and for attorney's fees; and

6. The amount of ₱2,877.00 as cost of suit.

SO ORDERED.[8]

Petitioners appealed to the Commission *en banc*, but the appeal was dismissed because the Notice of Appeal and the Memorandum on Appeal were not verified.[9]

Petitioners then went to the CA via a petition for review[10] under Rule 43, faulting the Commission *en banc* for dismissing their appeal on purely technical ground. They insisted that they did not violate the rules on commodity futures trading. Thus, they faulted the SEC Hearing Officer for nullifying the *Customer's Agreement* and for holding them liable for respondent's claims.

On September 30, 2005, the CA rendered the now challenged Decision.[11] It declared the dismissal of petitioners' appeal by the Commission *en banc* improper. Nevertheless, it did not order a remand of the case to the Commission *en banc* because

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[8] *Id.* at 198.

[9] *Id.* at 201-202.

[10] *Id.* at 216-239.

[11] *Supra* note 1.

jurisdiction over petitioners' appeal had already been transferred to the Regional Trial Court (RTC) by virtue of Republic Act No. 8799 or the *Securities Regulation Code*. The CA thus proceeded to decide the merits of the case, affirming *in toto* the decision of the SEC Hearing Officer. The appellate court failed to see any reason to disturb the SEC Hearing Officer's finding of liability on the part of petitioners. It sustained the finding that petitioners violated the *Revised Rules and Regulations on Commodity Futures Trading* when they allowed an unlicensed salesman, like Mendoza, to handle respondent's account. The CA also upheld the nullification of the *Customer's Agreement*, and the award of moral and exemplary damages, as well as attorney's fees, in favor of respondent. The CA disposed, thus:

> WHEREFORE, premises considered, the petition is **DISMISSED** for lack of merit. The assailed decision dated February 7, 2000 is hereby **AFFIRMED** *in toto*.
>
> SO ORDERED.[12]

Petitioners filed a motion for reconsideration,[13] but the CA denied it on January 20, 2006.[14]

Hence, this recourse by petitioners arguing that:

> A.
>
> THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONERS KNOWINGLY PERMITTED AN UNLICENSED TRADER TO SOLICIT AND HANDLE REPONDENT'S (sic) ACCOUNT, AND THAT PETITIONERS ARE GUILTY OF FRAUD AND MISREPRESENTATION.
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> B.
>
> THE HONORABLE COURT OF APPEALS ERRED IN FINDING INDIVIDUAL PETITIONERS SOLIDARILY LIABLE FOR THE DAMAGES AND AWARDS DUE [THE] RESPONDENT.[15]

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[12] *Id.* at 35.

[13] *Rollo,* pp. 240-249.

[14] *Id.* at 37.

[15] *Id.* at 301.

Petitioners insist that they did not violate the *Revised Rules and Regulations on Commodity Futures Trading*. They claim that it has been QTCI's policy and practice to appoint only licensed traders to trade the client's account. They denied any participation in the designation of Mendoza as respondent's attorney-in-fact; taking exception to the findings that they permitted Mendoza to trade respondent's account. Petitioners also assailed the weight given by the SEC Hearing Officer and by the CA to respondent's evidence.

It is evident that the issue raised in this petition is the correctness of the factual findings of the SEC Hearing Officer, as affirmed by the CA. It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the records of the case. It is not the function of this Court to analyze or weigh all over again the evidence and the credibility of witnesses presented before the lower court, tribunal, or office, as we are not a trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[16]

We sustain the finding of the SEC Hearing Officer and the CA that petitioners allowed unlicensed individuals to engage in, solicit or accept orders in futures contracts, and thus, transgressed the *Revised Rules and Regulations on Commodity Futures Trading*.[17]

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[16] *Cuenca v. Atas,* G.R. No. 146214, October 5, 2007, 535 SCRA 48, 84-85.

[17] SECTION 20. - Licensing of persons associated with futures commission merchants. It shall be unlawful for any person to be associated with any futures commission merchant as a partner, officer or employee (or any person occupying similar status or performing similar functions) in any capacity which involves (a) solicitation or acceptance of customers orders (other than in clerical capacity) or (b) the supervision of any person so engaged unless such person shall have been licensed/registered by the commission and such license shall not have expired nor have been suspended nor revoked, and it shall be unlawful for any commission merchant to knowingly permit such person to become and remain associated with him in such capacity.

We are not persuaded by petitioners' assertion that they had no hand in Mendoza's designation as respondent's attorney-in-fact. As pointed out by the CA, the *Special Power of Attorney* formed part of respondent's agreement with QTCI, and under the *Customer's Agreement*,[18] only a licensed or registered dealer or investment consultant may be appointed as attorney-in-fact. Thus:

> 2. If I so desire, I shall appoint you as my agent pursuant to a Special Power of Attorney which I shall execute for this purpose and which form part of this Agreement.
>
> x x x x x x x x x
>
> 18. I hereby confer, pursuant to the Special Power of Attorney herewith attached, full authority to your licensed/registered dealer/ investment in charge of my account/s and your Senior Officer, who must also be a licensed/registered dealer/investment consultant, to sign all order slips on futures trading.[19]

Inexplicably, petitioners did not object to, and in fact recognized, Mendoza's appointment as respondent's attorney-in-fact. Collado, in behalf of QTCI, concluded the *Customer's Agreement* despite the fact that the appointed attorney-in-fact was not a licensed dealer. Worse, petitioners permitted Mendoza to handle respondent's account.

Indubitably, petitioners violated the *Revised Rules and Regulations on Commodity Futures Trading* prohibiting any unlicensed person to engage in, solicit or accept orders in futures contract. Consequently, the SEC Hearing Officer and the CA cannot be faulted for declaring the contract between QTCI and respondent void.

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x x x x x x x x x

SECTION 28. Prohibited Acts. – It shall be unlawful for any person to engage in any futures transaction, or solicit, accept orders or act as conduit without being duly authorized by either SEC or the commodity futures exchange under the existing rules.

[18] *Rollo*, pp. 62-65.

[19] *Id.* at 63.

Batas Pambansa Bilang (B.P. Blg.) 178 or the *Revised Securities Act* explicitly provided:

> SEC. 53. Validity of Contracts. x x x.
>
> (b) Every contract executed in violation of any provision of this Act, or any rule or regulation thereunder, and every contract, including any contract for listing a security on an exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule and regulation thereunder, shall be void.

Likewise, Paragraph 29[20] of the Customer's Agreement provides:

> 29. Contracts entered into by unlicensed Account Executives (A/E) or Investment consultants are deemed void and of no legal effect.

Clearly, the CA merely adhered to the clear provision of B.P. Blg. 178 and to the stipulation in the parties' agreement when it declared as void the *Customer's Agreement* between QTCI and respondent.

It is settled that 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*.[21] This rule, however, is not absolute. Article 1412 of the Civil Code provides an exception, and permits the return of that which may have been given under a void contract. Thus:

> 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;

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[20] *Id.* at 64.

[21] *Menchavez v. Teves, Jr.*, 490 Phil. 268, 280 (2005).

> (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.

The evidence on record established that petitioners indeed permitted an unlicensed trader and salesman, like Mendoza, to handle respondent's account. On the other hand, the record is bereft of proof that respondent had knowledge that the person handling his account was not a licensed trader. Respondent can, therefore, recover the amount he had given under the contract. The SEC Hearing Officer and the CA, therefore, committed no reversible error in holding that respondent is entitled to a full recovery of his investments.

Petitioners Collado and Lau next fault the CA in making them solidarily liable for the payment of respondent's claim.

Doctrine dictates that a corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach, as a rule, only when – (1) he assents to a patently unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders, or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action.[22]

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[22] *Powton Conglomerate, Inc. v. Agcolicol,* 448 Phil. 643, 656 (2003).

In holding Lau and Collado jointly and severally liable with QTCI for respondent's claim, the SEC Hearing Officer explained in this wise:

> Anent the issue of who among the individual [petitioners] are jointly liable with QTCI in the payment of the awards, the Commission took into consideration, among others, that audit report on the trading activities submitted by the Brokers and Exchange Department (BED) of this Commission (Exhibit "J"). The findings contained in the report include the presence of seven (7) unlicensed investment consultants in QTCI, and the company practice of changing deeds of Special Power of Attorney bearing those who are licensed (exhibits "J-1" and "J-2").
>
> The Commission also took into consideration the fact that [petitioner] Collado, who is not a licensed commodity salesman, himself violated the aforequoted provisions of the Revised Rules and Regulations on Commodity Futures Trading when he admitted having participated in the execution of the customers orders (p. 7, TSN dated January 21, 1999) without giving any exception thereto, which presumably includes his participation in the execution of customers orders of the [respondent].
>
> Such being the case, [Mendoza's] participation in the trading of [respondent's] account is within the knowledge of [petitioner] Collado.
>
> The presence of seven (7) unlicensed investment consultants within QTCI apart from x x x Mendoza, and [petitioner] Collado's participation in the unlawful execution of orders under the [respondent's] account clearly established the fact that the management of QTCI failed to implement the rules and regulations against the hiring of, and associating with, unlicensed consultants or traders. How these unlicensed personnel been able to pursue their unlawful activities is a reflection of how negligent [the] management was.
>
> [Petitioner] Romeo Lau, as president of [petitioner] QTCI, cannot feign innocence on the existence of these unlawful activities within the company, especially so that Collado, himself a ranking officer of QTCI, is involved in the unlawful execution of customers orders. [Petitioner] Lau, being the chief operating officer, cannot escape the fact that had he exercised a modicum of care and discretion in supervising the operations of QTCI, he could have detected and prevented the unlawful acts of [petitioner] Collado and Mendoza.

It is therefore safe to conclude that although Lau may not have participated nor been aware of the unlawful acts, he is however deemed to have been grossly negligence in directing the affairs of QTCI.

In all, it having been established by substantial evidence that [petitioner] Collado assented to the unlawful act of QTCI, and that [petitioner] Lau is grossly negligent in directing the affairs of QTCI, and pursuant to Section 31 of the Corporation Code, they are therefore, jointly and severally liable with QTCI for all the damages and awards due to the [respondent].[23]

We find no compelling reason to depart from the conclusion of the SEC Hearing Officer, which was affirmed by the CA. We are in full accord with his reasons for holding Lau and Collado jointly and severally liable with QTCI for the payment of respondent's claim.

Finally we sustain the awards for moral and exemplary damages in favor of respondent. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.[24]

Likewise, exemplary damages are properly exigible of QTCI. Article 2229[25] of the Civil Code provides that such damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although plaintiff must show that he is entitled to moral, temperate, or compensatory

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[23] *Rollo*, pp. 196-197.

[24] *Samson, Jr. v. Bank of the Philippine Islands*, 453 Phil. 577, 583 (2003).

[25] Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

damages before the court may consider the question of whether or not exemplary damages should be awarded. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[26]

However, the same statutory and jurisprudential standards dictate reduction of the amounts of moral and exemplary damages fixed by the SEC. Certainly, there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral and exemplary damages, since each case must be governed by its own peculiar facts.[27] Courts are given discretion in determining the amount, with the limitation that it should not be palpably and scandalously excessive. Indeed, it must be commensurate to the loss or injury suffered.[28]

In this case, we find a need to modify, by reducing the awards for moral damages from ₱100,000.00 to ₱50,000.00; and for exemplary damages from ₱50,000.00 to ₱30,000.00.

In fine, except for the modification of the awards for moral and exemplary damages, there is no justification to overturn the findings of the SEC Hearing Officer, as affirmed by the CA.

We reiterate that the findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. The Hearing Officer had the optimum opportunity to review the pieces of evidence presented before him and to observe the demeanor of the witnesses. Administrative decisions on matters within his jurisdiction are entitled to respect

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[26] See *Del Rosario v. CA*, 334 Phil. 812, 827-828 (1997).

[27] *Id.* at 828.

[28] *Samson v. Bank of the Philippine Islands*, *supra* note 24, at 583-584.

and can only be set aside on proof of grave abuse of discretion, fraud, or error of law,[29] which has not been shown by petitioner in this case.

WHEREFORE, the challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 58741 are *AFFIRMED* with *MODIFICATION* that the awards for moral and exemplary damages are reduced to ₱50,000.00 and ₱30,000.00, respectively.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 173631. September 8, 2010]

PASIG CYLINDER MFG., CORP., A.G. & E ALLIED SERVICES, MANUEL ESTEVANEZ, SR., and VIRGILIO GERONIMO, SR., *petitioners, vs.* **DANILO ROLLO, REYNALDO ORANDE, RONIE JOHN ESPINAS, ROGELIO JUAREZ, FELICIANO BERMUDEZ, DAVID OCLARINO, RODRIGO ANDICO, DANTE CALA-OD, JOSE RONNIE SERENIO, CHARLIE AGNO, EDWIN BEDES, JOSEPH RIVERA, FERNANDO SAN PEDRO, JESUS CABRERA, ANASTACIO ALINGAS, EDUARDO GUBAN, ROLANDO DEMANO, ROBERTO PINUELA, and EMELITO LOBO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; NLRC'S NEW RULES OF

[29] *Cuenca v. Atas, supra* note 16, at 84.

PROCEDURE; SERVICE OF NOTICES AND RESOLUTION AND PROOF OF COMPLETENESS OF SERVICE.— Sections 5 and 6, Rule III of the NLRC's new rules of procedure (NLRC rules), as amended in 1999, on the service of notices and resolutions and proof of completeness of service, provide: SECTION 5. SERVICE OF NOTICES AND RESOLUTIONS. – (a) x x x in cases of decision[s] and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail; x x x *For purposes of computing the period of appeal, the same shall be counted from receipt of such decisions, awards, or orders by the counsel of record*. SECTION 6. PROOF AND COMPLETENESS OF SERVICE. - The return is prima facie proof of the facts indicated therein. *Service by registered mail is complete upon receipt by the addressee or his agent*; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time.

2. ID.; ID.; ID.; ID.; AGENT FOR PURPOSES OF SERVING COURT PROCESSES ON JURIDICAL PERSONS.— Under the Rules of Court and Section 6 (formerly Section 5), Rule III of the NLRC rules, the word "agent" for purposes of serving court processes on juridical persons refers to – [a] representative so integrated with the corporation sued as to make it *a priori* supposable that he will realize his responsibilities and know what he should do with any legal papers served on him. x x x [I]t does not necessarily connote an officer of the corporation. However, though this may include employees other than officers of a corporation, *this does not include employees whose duties are not so integrated to the business that their absence or presence will not toll the entire operation of the business*.

3. ID.; ID.; APPEAL BOND; REDUCED APPEAL BOND NOT FATAL TO APPEAL.— Article 223 of the Labor Code requires the filing of appeal bond "in the amount equivalent to the monetary award in the judgment appealed from." However, both the Labor Code and this Court's jurisprudence abhor rigid application of procedural rules at the expense of delivering just settlement of labor cases. Petitioners' reasons for their filing of the reduced appeal bond – the downscaling of their operations coupled with the amount of the monetary award appealed – are not unreasonable. Thus, the recourse petitioners

adopted constitutes substantial compliance with Article 223 consistent with our ruling in *Rosewood Processing, Inc. v. NLRC*, where we allowed the appellant to file a reduced bond of ₱50,000 (accompanied by the corresponding motion) in its appeal of an arbiter's ruling in an illegal termination case awarding ₱789,154.39 to the private respondents.

4. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABANDONMENT OF WORK; REQUISITES; NONE PRESENT IN CASE AT BAR. — For abandonment of work to prosper, petitioners should have proved (1) that the failure to report for work was without justifiable reason, and (2) respondents' intention to sever the employer-employee relationship as shown by some overt acts. Petitioners failed to discharge their burden of proof. On respondents' non-reporting for work, petitioners failed to rebut respondents' claim that they were denied entry to their work area and the records substantially support the arbiter's finding that respondents were placed on shifts "not by weeks but almost by month." Further, petitioners fail to bring to our attention any overt acts of respondents showing clear intention to sever their employment relationship with petitioners. On the contrary, respondents' act of filing complaints before the NLRC for illegal dismissal shows intent to continue their employment and hold petitioners liable for their constructive dismissal and for non-compliance with labor laws on payment of benefits. We have consistently treated this fact as belying intent to abandon work.

5. ID.; NATIONAL LABOR RELATIONS COMMISSION; NOT PRECLUDED FROM CONSIDERING EVIDENCE TO PROVE PAYMENT OF LABOR BENEFITS.— Petitioners further claim that the documents they submitted to the NLRC prove payment to respondents of the labor benefits the arbiter awarded to them. The task of resolving this issue, purely factual, properly pertains to the NLRC as the quasi-judicial appellate body to which these documents were presented to review the arbiter's ruling. True, the labor arbiter was the ideal forum to receive and evaluate these pieces of evidence but the NLRC is not precluded from considering them in light of their apparent merit, consistent with equity and the basic notions of fairness.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for petitioners.

D E C I S I O N

CARPIO, *J.*:

The Case

For review[1] are the rulings[2] of the Court of Appeals affirming the dismissal of a labor case for late filing and payment of the appeal bond.

The Facts

Petitioners Pasig Cylinder Manufacturing Corporation and A.G. & E Allied Services are cylinder gas tank manufacturers and repairers commonly operated by their officers, petitioners Manuel Estevanez, Sr. and Virgilio Geronimo, Sr. (Geronimo). Respondents, numbering 19, sued[3] petitioners before the National Labor Relations Commission (NLRC) for constructive dismissal and payment of employment benefits and damages. Respondents alleged that they were employees of petitioners whom petitioners arbitrarily denied regular work since December 1999 and, in May 2000, were altogether refused entry to their workplace. Respondents also claimed underpayment of wages and non-payment of 13th month pay, service incentive leave pay, and holiday pay.

Petitioners denied respondents' claims, contending that the loss of a major client constrained them to reduce the volume of work and shorten respondents' workweek to three

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 20 March 2006 and Resolution dated 19 July 2006, penned by Associate Justice Lucas P. Bersamin (now a member of this Court) with Associate Justices Renato C. Dacudao and Celia C. Librea-Leagogo, concurring.

[3] In two separate suits.

days. Respondents reacted adversely to the downscaling and refused to follow shift assignments, disrupting what remains of petitioners' business. As a compromise, petitioners offered respondents separation benefits equivalent to a portion of their total years of service but respondents rejected the offer.[4]

The Ruling of the Labor Arbiter

The labor arbiter[5] ruled for respondents,[6] found petitioners liable for constructive dismissal with the ancillary obligation to pay backwages and separation pay in lieu of reinstatement. Further, the arbiter held petitioners liable for wage differential, holiday pay, 13th month pay, and service incentive leave pay, save for respondents Danilo Rollo, Emelito Lobo, Ronnie John Espinas, Jose Ronnie Serenio, Roberto Pinuela, Reynaldo Orande, and David Oclarino whom the arbiter found to have received payment for these benefits. In sum, the arbiter found petitioners liable for ₱3,132,335.57. The arbiter refused to award damages for lack of basis.[7]

On 24 September 2001, a copy of the arbiter's ruling, sent through mail, was received by one Arnel Naronio (Naronio), the security guard manning the compound where several businesses, including petitioners', operated. The document was given to petitioners the following day, 25 September 2001. Ten days later, on 5 October 2001, petitioners filed their appeal with the NLRC with a motion to reduce the amount of the appeal bond to ₱100,000, enclosing a bond in that amount. Petitioners attached to their appeal copies of payrolls, payment ledgers, leave applications, and other documents allegedly indicating payment to respondents of 13th month pay, service incentive leave pay, and holiday pay.

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[4] *Rollo,* p. 95.

[5] Natividad M. Roma.

[6] In a Decision dated 14 September 2001.

[7] *Rollo,* pp. 97-112.

The Ruling of the NLRC

The NLRC found the appeal barred by prescription and dismissed it. The NLRC reckoned the 10-day appeal period under Article 223 of the Labor Code, as amended, from Naronio's receipt of the arbiter's ruling on 24 September 2001. Consequently, the NLRC deemed petitioners' appeal bond similarly barred by prescription, not to mention that its amount was less than the monetary award adjudged in the appealed ruling.[8]

After unsuccessfully seeking reconsideration,[9] petitioners appealed to the Court of Appeals in a petition for *certiorari*. On the issue of prescription, petitioners contended that instead of counting the appeal period from 24 September 2001, the NLRC should have done so from their receipt of the arbiter's ruling on 25 September 2001, consistent with relevant jurisprudence. Thus reckoned, their appeal and appeal bond, filed on 5 October 2001, were filed within the 10-day appeal period.

On the validity of their reduced appeal bond, petitioners cited precedents allowing such practice for valid reasons. Petitioners submitted that the large amount of the monetary award and their downscaled operations constrained them to seek a reduction of the appeal bond's amount.

On the merits, petitioners reiterated their non-liability, maintaining that respondents reacted adversely to the downscaled operations by going on unauthorized leaves and making known their intention to cease reporting for work. Petitioners also claimed that there is no basis to hold them liable for non-payment of employment benefits because they were not remiss in their obligations under the Labor Code as borne out by the company records they submitted to the NLRC.

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[8] *Id.* at 297.

[9] Their motion was denied in the Resolution dated 30 April 2002.

The Ruling of the Court of Appeals

The Court of Appeals sustained the NLRC and dismissed the petition. The appellate court saw no reason to disturb the NLRC's ruling, invoking the mandatory nature of appellate prescriptive periods, and, in labor cases, of the timely filing of the proper amount of appeal bond. Petitioners' motion for reconsideration was similarly denied.[10]

Hence, this petition.

Aside from reiterating the contentions raised before the Court of Appeals, petitioners call the Court's attention to an alleged clerical error in the dispositive portion of the arbiter's ruling awarding 13th month pay to the seven respondents whom the arbiter had excluded from such benefit.

The Issues

The petition raises the following issues:

(1) Whether petitioners' appeal and appeal bond filed with the NLRC were barred by prescription; and

(2) If in the negative, whether petitioners are liable (a) for constructive dismissal; and (b) non-payment of 13th month pay, service incentive leave pay, and holiday pay.[11]

The Ruling of the Court

We hold that (1) petitioners' appeal with the NLRC was seasonably filed and their submission of a reduced appeal bond was justified; (2) petitioners are liable for illegal dismissal; and (3) the questions on respondents' receipt of 13th month pay, service incentive leave pay, and holiday pay and the arbiter's erroneous award of 13th month pay to seven of the

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[10] See note 2.

[11] Although petitioners also question their so-called solidary liability for the monetary award (*rollo*, p. 22), this issue was never raised below. At any rate, it is premature to pass upon the question as petitioners do not allege that execution has been attempted against the personal properties of individual petitioners.

respondents are factual issues properly resolved by the NLRC on remand.

On the Threshold Issues of Timeliness of Appeal and Filing of Appeal Bond

Petitioners' Appeal Seasonably Filed

The resolution of the question on the timeliness of petitioners' appeal with the NLRC hinges on the reckoning of the 10-day appeal period under Article 223 of the Labor Code, as amended. Petitioners submit that the reckoning point is their receipt on 25 September 2001 of the mailed copy of the arbiter's ruling; respondents counter that it is Naronio's receipt of the ruling on 24 September 2001. The one day difference is pivotal because petitioners filed their appeal on the 10th day from their receipt of the arbiter's ruling, and, accordingly, on the 11th from the receipt by Naronio. The NLRC and the Court of Appeals found merit in respondents' submission. We find merit in petitioners' and thus, reverse.

Sections 5 and 6, Rule III of the NLRC's new rules of procedure (NLRC rules), as amended in 1999,[12] on the service of notices and resolutions and proof of completeness of service, provide:

SECTION 5. SERVICE OF NOTICES AND RESOLUTIONS. – (a) x x x in cases of decision[s] and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail; x x x

For purposes of computing the period of appeal, the same shall be counted from receipt of such decisions, awards, or orders by the counsel of record.

SECTION 6. PROOF AND COMPLETENESS OF SERVICE. - The return is *prima facie* proof of the facts indicated therein. *Service by registered mail is complete upon receipt by the addressee or his*

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[12] Under NLRC Resolution No. 3-99, Series of 1999, effective 1 January 2000. Although the NLRC rules were subsequently amended by Resolution No. 01-02, Series of 2002, the amendments substantially reiterated Sections 5 and 6, Rule III as Sections 6 and 7, Rule III.

agent; but if the addressee fails to claim his mail from the post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Emphasis supplied)

It appears that petitioners were not represented by counsel before the arbiter.[13] Thus, the arbiter's ruling was mailed to Geronimo and two other individuals[14] with a common address at "#98 San Guillermo St., Buting, 1601 Pasig City."[15] Following the NLRC rules, service of the ruling is completed upon its receipt by Geronimo or his agent from which the 10-day period for appeal will be counted. It is not disputed that Geronimo received a copy of the arbiter's ruling on 25 September 2001. The question then is whether the receipt the day before, 24 September 2001, of the same document by Naronio constitutes receipt by petitioners' "agent" within the contemplation of Section 6, Rule III of the NLRC rules. We hold that it does not.

Under the Rules of Court and Section 6 (formerly Section 5[16]), Rule III of the NLRC rules, the word "agent" for purposes of serving court processes on juridical persons refers to –

> [a] representative so integrated with the corporation sued as to make it *a priori* supposable that he will realize his responsibilities and know what he should do with any legal papers served on him. x x x
>
> x x x x x x x x x
>
> [I]t does not necessarily connote an officer of the corporation. However, though this may include employees other than officers of a corporation, *this does not include employees whose duties are not so integrated to the business that their absence or presence will not toll the entire operation of the business*.[17] (Emphasis supplied)

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[13] Their position paper was signed by one Manuel Z. Ambrosio (Ambrosio) in his capacity as "finance manager."

[14] Manuel Ambrosio and Johnny Amanglan, alleged president and finance manager, respectively, of petitioner Pasig Cylinder Manufacturing Corporation (whom respondents impleaded as respondent below).

[15] *Rollo*, p. 96.

[16] As amended by NLRC Resolution No. 1-96, Series of 1996.

[17] *Pabon v. NLRC*, 357 Phil. 7, 15-16 (1998) (internal citations omitted) (holding that a bookkeeper is an "agent" of a corporation).

It cannot be determined from the records who hired Naronio; but it is also undisputed that petitioners are not his employers. Indeed, Naronio serviced all the businesses operating within the compound where the arbiter's ruling was mailed. Thus, it is not even necessary to determine whether Naronio's "duties are not so integrated to the business that [his] absence or presence will not toll the entire operation" of petitioners' business. This test presupposes that the recipient of the legal document is employed by the addressee. For remedial law purposes, Naronio's receipt of any processes intended for petitioners was receipt by a stranger, without legal significance to petitioners.[18]

Hence, there is merit in petitioners' submission that they seasonably filed their appeal on 5 October 2001, the 10th day from their receipt of the arbiter's ruling on 25 September 2001, or within the appeal period in Article 223 of the Labor Code. For ruling to the contrary, thus denying due course to petitioners' appeal, the appellate court committed reversible error of law.[19]

Reduced Appeal Bond not Fatal to Petitioner's Appeal

Nor was petitioners' filing of a reduced appeal bond fatal to their appeal. True, Article 223 of the Labor Code requires the

[18] This mirrors our consistent treatment on the binding effect *on counsel* of a security personnel's receipt of legal processes for purposes of counting prescriptive periods. See *e.g. Adamson Ozanam Educational Institution, Inc. v. Adamson University Faculty and Employees Association*, G.R. No. 86819, 9 November 1989, 179 SCRA 279 and *Lawin Security Services, Inc. v. NLRC*, 339 Phil. 330 (1997) uniformly holding that receipt by the security guard of the building where a party's counsel holds office does not trigger the running of the 10-day prescriptive period under the Labor Code to seek reconsideration, applying suppletorily Section 4, Rule 13 of the Rules of Court (now Section 6, Rule 13 of the 1997 Rules of Civil Procedure) on personal service of pleadings, judgments and other papers.

[19] Even if petitioners' appeal was indeed belatedly filed by one day, due consideration of the merits of their claims on the improper payment of benefits to respondents justifies relaxation of Article 223, a procedure this Court had sanctioned. See *e.g. City Fair Corporation v. NLRC*, 313 Phil. 464 (1995) where we found no error in the NLRC's decision to give due course to an appeal filed one day late to delete the damages awarded to the employer.

filing of appeal bond "in the amount equivalent to the monetary award in the judgment appealed from." However, both the Labor Code[20] and this Court's jurisprudence[21] abhor rigid application of procedural rules at the expense of delivering just settlement of labor cases. Petitioners' reasons for their filing of the reduced appeal bond – the downscaling of their operations coupled with the amount of the monetary award appealed – are not unreasonable. Thus, the recourse petitioners adopted constitutes substantial compliance with Article 223 consistent with our ruling in *Rosewood Processing, Inc. v. NLRC*,[22] where we allowed the appellant to file a reduced bond of ₱50,000 (accompanied by the corresponding motion) in its appeal of an arbiter's ruling in an illegal termination case awarding ₱789,154.39 to the private respondents.

Petitioners' Liability for Illegal Dismissal and Non-payment of Benefits

No Reversible Error in the Arbiter's Finding of Illegal Dismissal

We find no error in the labor arbiter's ruling on the question of petitioners' liability for constructive dismissal. It seems petitioners rested their case on the defense of respondents'

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[20] Article 221 mandates liberal application of rules of evidence in resolving labor disputes, thus: "*Technical rules not binding and prior resort to amicable settlement*. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling and *it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process*. x x x" (Emphasis supplied)

[21] See *e.g. Rapid Manpower Consultants, Inc. v. NLRC*, G.R. No. 88683, 18 October 1990, 190 SCRA 747 (remanding the case to the Philippine Overseas Employment Agency for reception of supplemental evidence on the legality of the respondents' dismissal and the propriety of the monetary award in their favor for unpaid employment benefits).

[22] 352 Phil. 1013 (1998) (limiting the solidary liability of petitioner as indirect employer of security personnel).

abandonment of work.[23] For this cause to prosper, petitioners should have proved (1) that the failure to report for work was without justifiable reason, and (2) respondents' intention to sever the employer-employee relationship as shown by some overt acts.[24] Petitioners failed to discharge their burden of proof. On respondents' non-reporting for work, petitioners failed to rebut respondents' claim that they were denied entry to their work area and the records substantially support the arbiter's finding that respondents were placed on shifts "not by weeks but almost by month."[25] Further, petitioners fail to bring to our attention any overt acts of respondents showing clear intention to sever their employment relationship with petitioners. On the contrary, respondents' act of filing complaints before the NLRC for illegal dismissal shows intent to continue their employment and hold petitioners liable for their constructive dismissal and for non-compliance with labor laws on payment of benefits. We have consistently treated this fact as belying intent to abandon work.[26]

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[23] Petitioners alleged in their position paper filed with the arbiter (*rollo*, p. 95):

> *Complainants were not dismissed* but were scheduled to work for three (3) days a week starting November 1999 because of lack of work x x x. Caltex (Phils.), Inc., which is respondents' only major source of LPG cylinder tank repair business, stopped delivering tanks for repair because of budgetary constraints. The only operation that remained was the repair of cylinder tanks of very few independent LPG dealers.
>
> x x x x x x x x x
>
> Work schedules were posted regularly for the workers' information. However, complainants do not report for work as scheduled in obvious defiance of official orders thereby disrupting the flow of whatever is left of the company's operations. *The complainants were absent without official leave when respondents learned later that they have filed this complaint. Complainants thereafter even categorically stated during a talk with x x x respondents' officer that they do not intend to return to work if asked to report when operations normalize.* (Emphasis supplied)

[24] *RBC Cable Master System v. Baluyot*, G.R. No. 172670, 20 January 2009, 576 SCRA 668.

[25] *Rollo*, pp. 103-104.

[26] *Globe Telecom, Inc. v. Florendo-Flores*, 438 Phil. 756, 768 (2002); *Kams Int'l., Inc. v. NLRC*, 373 Phil. 950, 959 (1999).

Accordingly, petitioners are liable for constructive dismissal for placing respondents on shifts of a few days per month and in eventually denying them workplace access, rendering respondents' employment impossible, unreasonable or unlikely, leaving them no choice but to quit.

Resolution of the Issues of Payment of Benefits and Double Payment of 13th Month Pay to Seven Respondents Properly Pertains to the NLRC

Petitioners further claim that the documents they submitted to the NLRC prove payment to respondents of the labor benefits the arbiter awarded to them. The task of resolving this issue, purely factual, properly pertains to the NLRC as the quasi-judicial appellate body to which these documents were presented to review the arbiter's ruling. True, the labor arbiter was the ideal forum to receive and evaluate these pieces of evidence but the NLRC is not precluded from considering them in light of their apparent merit, consistent with equity and the basic notions of fairness.[27] In discharging this task, the NLRC is to take into account all the documents petitioners attached to their memorandum of appeal, particularly Annexes "GGGGGG" to "IIIIII", "KKKKKK" and "LLLLLL"[28] which are payment ledgers indicating acknowledgment by some respondents of their receipt of 13th month pay for 1998 and 1999. The NLRC should also pass upon petitioners' claim of erroneous award of 13th month pay to respondents Danilo Rollo, Emelito Lobo, Ronnie

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[27] *Philippine Telegraph and Telephone Corporation v. NLRC,* G.R. No. 80600, 21 March 1990, 183 SCRA 451, 458. Here, we found the NLRC to have erred in not considering relevant evidence presented to it for the first time on appeal:

> [E]ven if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to respondent commission is enough basis for the latter to have been more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first course of action would be more consistent with equity and the basic notions of fairness. (*Id.* at 457-458)

[28] *Rollo,* pp. 278-280, 282-283.

John Espinas, Jose Ronnie Serenio, Roberto Pinuela, Reynaldo Orande, and David Oclarino whom the arbiter found to have been paid such benefit.[29]

WHEREFORE, we *GRANT* the petition in part. We *REVERSE* the Decision dated 20 March 2006 and Resolution dated 19 July 2006 of the Court of Appeals and *REMAND* the case to the National Labor Relations Commission for resolution of the question on the liability of petitioners Pasig Cylinder Manufacturing Corporation, A.G. & E Allied Services, Manuel Estevanez, Sr., and Virgilio Geronimo, Sr. to respondents for payment of 13th month pay, service incentive leave pay, and holiday pay.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174149. September 8, 2010]

J. TIOSEJO INVESTMENT CORP., *petitioner, vs.* **SPOUSES BENJAMIN AND ELEANOR ANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PERFECTION THEREOF IN THE MANNER AND WITHIN THE PERIOD PRESCRIBED BY LAW MUST BE COMPLIED WITH.— While the dismissal of an appeal on purely technical grounds is concededly frowned upon, it bears emphasizing that the

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[29] *Id.* at 105.

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

procedural requirements of the rules on appeal are not harmless and trivial technicalities that litigants can just discard and disregard at will. Neither being a natural right nor a part of due process, the rule is settled that the right to appeal is merely a statutory privilege which may be exercised only in the manner and in accordance with the provisions of the law. The perfection of an appeal in the manner and within the period prescribed by law is, in fact, not only mandatory but jurisdictional. Considering that they are requirements which cannot be trifled with as mere technicality to suit the interest of a party, failure to perfect an appeal in the prescribed manner has the effect of rendering the judgment final and executory.

2. ID.; ID.; APPEAL UNDER RULE 43; PERIOD OF APPEAL.— Sec. 4, Rule 43 of the *1997 Rules of Civil Procedure* provides as follows: 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 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.

3. ID.; ID.; ID.; ID.; VIOLATION THEREOF CANNOT BE JUSTIFIED BY HEAVY WORKLOAD; GRANT FOR MOTION OF EXTENSION OR POSTPONEMENT CANNOT BE EXPECTED AS A MATTER OF COURSE.— Heavy workload cannot be considered as a valid justification to sidestep the reglementary period since to do so would only serve to encourage needless delays and interminable litigations. Indeed, rules prescribing the time for doing specific acts or for taking certain proceedings are considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business. Corollary to the principle that the allowance or denial of a motion for extension of time is addressed to the sound discretion of the court, moreover, lawyers cannot

expect that their motions for extension or postponement will be granted as a matter of course.

4. ID.; ID.; TECHNICAL RULES AND TIME RULES SHALL NOT BE DISCARDED WITH THE MERE EXPEDIENCY OF CLAIMING SUBSTANTIAL MERIT.— Although technical rules of procedure are not ends in themselves, they are necessary for an effective and expeditious administration of justice and cannot, for said reason, be discarded with the mere expediency of claiming substantial merit. x x x Like all rules, [time rules] are required to be followed and utter disregard of the same cannot be expediently rationalized by harping on the policy of liberal construction which was never intended as an unfettered license to disregard the letter of the law or, for that matter, a convenient excuse to substitute substantial compliance for regular adherence thereto. When it comes to compliance with time rules, the Court cannot afford inexcusable delay.

5. CIVIL LAW; SPECIAL CONTRACTS; PARTNERSHIP; JOINT VENTURE CONSIDERED AS PARTNERSHIP, ALL PARTNERS ARE SOLIDARITY LIABLE WITH THE PARTNERSHIP FOR EVERYTHING CHARGEABLE TO THE PARTNERSHIP.— A joint venture is considered in this jurisdiction as a form of partnership and is, accordingly, governed by the law of partnerships. Under Article 1824 of the *Civil Code of the Philippines*, all partners are solidarily liable with the partnership for everything chargeable to the partnership, including loss or injury caused to a third person or penalties incurred due to any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners. Whether innocent or guilty, all the partners are solidarily liable with the partnership itself.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.

Law Firm of Perlas De Guzman and Partners for respondents.

D E C I S I O N

PEREZ, *J.*:

Filed pursuant to Rule 45 of the *1997 Rules of Civil Procedure*, the petition for review at bench seeks the reversal of the Resolutions dated 23 May 2006 and 9 August 2006 issued by the Third Division of the Court of Appeals (CA) in CA-G.R. SP No. 93841 which, respectively, dismissed the petition for review of petitioner J. Tiosejo Investment Corp. (JTIC) for having been filed out of time[1] and denied the motion for reconsideration of said dismissal.[2]

The Facts

On 28 December 1995 petitioner entered into a *Joint Venture Agreement* (JVA) with Primetown Property Group, Inc. (PPGI) for the development of a residential condominium project to be known as *The Meditel* on the former's 9,502 square meter property along Samat St., Highway Hills, Mandaluyong City.[3] With petitioner contributing the same property to the joint venture and PPGI undertaking to develop the condominium, the JVA provided, among other terms and conditions, that the developed units shall be shared by the former and the latter at a ratio of 17%-83%, respectively.[4] While both parties were allowed, at their own individual responsibility, to pre-sell the units pertaining to them,[5] PPGI further undertook to use all proceeds from the pre-selling of its saleable units for the completion of the Condominium Project."[6]

On 17 June 1996, the Housing and Land Use Regulatory Board (HLURB) issued License to Sell No. 96-06-2854 in favor

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[1] Record, CA-G.R. SP No. 93841, pp. 818-819.

[2] *Id.* at 859-860.

[3] Record, HLURB Case No. REM-A-031007-0240/REM-072199-10567, pp. 246-255.

[4] *Id.* at 251-252.

[5] *Id.* at 249-250.

[6] *Id.* at 253.

of petitioner and PPGI as project owners.[7] By virtue of said license, PPGI executed *Contract to Sell No. 0212* with Spouses Benjamin and Eleanor Ang on 5 February 1997, over the 35.45-square meter condominium unit denominated as Unit A-1006, for the agreed contract price of ₱52,597.88 per square meter or a total ₱2,077,334.25.[8] On the same date PPGI and respondents also executed *Contract to Sell No. 0214* over the 12.50 square meter parking space identified as Parking Slot No. 0405, for the stipulated consideration of ₱26,400.00 square meters or a total of ₱313,500.00.[9]

On 21 July 1999, respondents filed against petitioner and PPGI the complaint for the rescission of the aforesaid Contracts to Sell docketed before the HLURB as HLURB Case No. REM 072199-10567. Contending that they were assured by petitioner and PPGI that the subject condominium unit and parking space would be available for turn-over and occupancy in December 1998, respondents averred, among other matters, that in view of the non-completion of the project according to said representation, respondents instructed petitioner and PPGI to stop depositing the post-dated checks they issued and to cancel said Contracts to Sell; and, that despite several demands, petitioner and PPGI have failed and refused to refund the ₱611,519.52 they already paid under the circumstances. Together with the refund of said amount and interests thereon at the rate of 12% per annum, respondents prayed for the grant of their claims for moral and exemplary damages as well as attorney's fees and the costs.[10]

Specifically denying the material allegations of the foregoing complaint, PPGI filed its 7 September 1999 answer alleging that the delay in the completion of the project was attributable to the economic crisis which affected the country at the time; that the unexpected and unforeseen inflation as well as increase

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[7] *Id.* at 2.

[8] *Id.* at 6-8.

[9] *Id.* at 3-5.

[10] *Id.* at 9-12.

in interest rates and cost of building materials constitute *force majeure* and were beyond its control; that aware of its responsibilities, it offered several alternatives to its buyers like respondents for a transfer of their investment to its other feasible projects and for the amounts they already paid to be considered as partial payment for the replacement unit/s; and, that the complaint was prematurely filed in view of the on-going negotiations it is undertaking with its buyers and prospective joint venture partners. Aside from the dismissal of the complaint, PPGI sought the readjustment of the contract price and the grant of its counterclaims for attorney's fees and litigation expenses.[11]

Petitioner also specifically denied the material allegations of the complaint in separate answer dated 5 February 2002[12] which it amended on 20 May 2002. Calling attention to the fact that its prestation under the JVA consisted in contributing the property on which *The Meditel* was to be constructed, petitioner asseverated that, by the terms of the JVA, each party was individually responsible for the marketing and sale of the units pertaining to its share; that not being privy to the Contracts to Sell executed by PPGI and respondents, it did not receive any portion of the payments made by the latter; and, that without any contributory fault and negligence on its part, PPGI breached its undertakings under the JVA by failing to complete the condominium project. In addition to the dismissal of the complaint and the grant of its counterclaims for exemplary damages, attorney's fees, litigation expenses and the costs, petitioner interposed a cross-claim against PPGI for full reimbursement of any sum it may be adjudged liable to pay respondents.[13]

Acting on the position papers and draft decisions subsequently submitted by the parties,[14] Housing and Land Use (HLU) Arbiter Dunstan T. San Vicente went on to render the 30 July 2003

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[11] *Id.* at 23-29.

[12] *Id.* at 101-110.

[13] *Id.* at 133-147.

[14] *Id.* at 41-54; 56-77; 157-175; 178-210.

decision declaring the subject Contracts to Sell cancelled and rescinded on account of the non-completion of the condominium project. On the ground that the JVA created a partnership liability on their part, petitioner and PPGI, as co-owners of the condominium project, were ordered to pay: (a) respondents' claim for refund of the ₱611,519.52 they paid, with interest at the rate of 12% per annum from 5 February 1997; (b) damages in the sum of ₱75,000.00; (c) attorney's fees in the sum of ₱30,000.00; (d) the costs; and, (e) an administrative fine in the sum of ₱10,000.00 for violation of Sec. 20 in relation to Sec. 38 of Presidential Decree No. 957.[15] Elevated to the HLURB Board of Commissioners via the petition for review filed by petitioner,[16] the foregoing decision was modified to grant the latter's cross-claim in the 14 September 2004 decision rendered by said administrative body's Second Division in HLURB Case No. REM-A-031007-0240,[17] to wit:

Wherefore, the petition for review of the respondent Corporation is dismissed. However, the decision of the Office below dated July 30, 2003 is modified, hence, its dispositive portion shall read:

1. Declaring the contracts to sell, both dated February 5, 1997, as cancelled and rescinded, and ordering the respondents to immediately pay the complainants the following:
    a. The amount of ₱611,519.52, with interest at the legal rate reckoned from February 5, 1997 until fully paid;
    b. Damages of ₱75,000.00;
    c. Attorney's fees equivalent to ₱30,000.00; and
    d. The Cost of suit;
2. Ordering respondents to pay this Office administrative fine of ₱10,000.00 for violation of Section 20 in relation to Section 38 of P.D. 957; and

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[15] *Id.* at 211-214.

[16] *Id.* at 263-274.

[17] *Id.* at 396-399.

3. Ordering respondent Primetown to reimburse the entire amount which the respondent Corporation will be constrained to pay the complainants.

So ordered.[18]

With the denial of its motion for reconsideration of the foregoing decision,[19] petitioner filed a Notice of Appeal dated 28 February 2005 which was docketed before the Office of the President (OP) as O.P. Case No. 05-B-072.[20] On 3 March 2005, the OP issued an order directing petitioner to submit its appeal memorandum within 15 days from receipt thereof.[21] Acting on the motion therefor filed, the OP also issued another order on the same date, granting petitioner a period of 15 days from 28 February 2005 or until 15 March 2005 within which to file its appeal memorandum.[22] In view of petitioner's filing of a second motion for extension dated 15 March 2005,[23] the OP issued the 18 March 2005 order granting the former an additional 10 days from 15 March 2005 or until 25 March 2005 within which to file its appeal memorandum, "provided no further extension shall be allowed."[24] Claiming to have received the aforesaid 3 March 2005 order only on 16 March 2005, however, petitioner filed its 31 March 2005 motion seeking yet another extension of 10 days or until 10 April 2005 within which to file its appeal memorandum.[25]

On 7 April 2005, respondents filed their opposition to the 31 March 2005 motion for extension of petitioner[26] which eventually

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[18] *Id.* at 396.

[19] *Id.* at 401-408; 413-414.

[20] *Rollo*, 263-264.

[21] Record, HLURB Case No. REM-A-031007-0240/REM-072199-10567, at 424-425.

[22] *Id.* at 423.

[23] *Rollo*, pp. 270-271.

[24] *Id.* at 274.

[25] *Id.* at 278-279.

[26] *Id.* at 378-381.

filed its appeal memorandum by registered mail on 11 April 2005 in view of the fact that 10 April 2005 fell on a Sunday.[27] On 25 October 2005, the OP rendered a decision dismissing petitioner's appeal on the ground that the latter's appeal memorandum was filed out of time and that the HLURB Board committed no grave abuse of discretion in rendering the appealed decision.[28] Aggrieved by the denial of its motion for reconsideration of the foregoing decision in the 3 March 2006 order issued by the OP,[29] petitioner filed before the CA its 29 March 2006 motion for an extension of 15 days from 31 March 2006 or until 15 April 2006 within which to file its petition for review.[30] Accordingly, a non-extendible period of 15 days to file its petition for review was granted petitioner in the 31 March 2006 resolution issued by the CA Third Division in CA-G.R, SP No. 93841.[31]

Maintaining that 15 April 2006 fell on a Saturday and that pressures of work prevented its counsel from finalizing its petition for review, petitioner filed a motion on 17 April 2006, seeking for an additional time of 10 days or until 27 April 2006 within which to file said pleading.[32] Although petitioner filed by registered mail a motion to admit its attached petition for review on 19 April 2006,[33] the CA issued the herein assailed 23 May 2006 resolution,[34] disposing of the former's pending motion for extension as well as the petition itself in the following wise:

We resolve to DENY the second extension motion and rule to DISMISS the petition for being filed late.

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[27] *Id.* at 282-296.

[28] *Id.* at 405-409.

[29] *Id.* at 410-416; 420.

[30] Record, CA-G.R. SP No. 93841, pp. 2-3.

[31] *Id.* at 7.

[32] *Id.* at 8-10.

[33] *Id.* at 415-421; 422-452.

[34] *Id.* at 818-819.

Settled is that heavy workload is by no means excusable (*Land Bank of the Philippines vs. Natividad, 458 SCRA 441 [2005]*). If the failure of the petitioners' counsel to cope up with heavy workload should be considered a valid justification to sidestep the reglementary period, there would be no end to litigations so long as counsel had not been sufficiently diligent or experienced (*LTS Philippine Corporation vs. Maliwat, 448 SCRA 254, 259-260 [2005], citing Sublay vs. National Labor Relations Commission, 324 SCRA 188 [2000]*).

Moreover, lawyers should not assume that their motion for extension or postponement will be granted the length of time they pray for (*Ramos vs. Dajoyag, 378 SCRA 229 [2002]*).

SO ORDERED.[35]

Petitioner's motion for reconsideration of the foregoing resolution[36] was denied for lack of merit in the CA's second assailed 9 August 2006 resolution,[37] hence, this petition.

The Issues

Petitioner seeks the reversal of the assailed resolutions on the following grounds, to wit:

I. THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON MERE TECHNICALITY;

II. THE COURT OF APPEALS ERRED IN REFUSING TO RESOLVE THE PETITION ON THE MERITS THEREBY AFFIRMING THE OFFICE OF THE PRESIDENT'S DECISION (A) DISMISSING JTIC'S APPEAL ON A MERE TECHNICALITY; (B) AFFIRMING THE HLURB BOARD'S DECISION INSOFAR AS IT FOUND JTIC SOLIDARILY LIABLE WITH PRIMETOWN TO PAY SPOUSES ANG DAMAGES, ATTORNEY'S FEES AND THE

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[35] *Id.* at 819.

[36] *Id.* at 820-841.

[37] *Id.* at 859-860.

COST OF THE SUIT; AND (C) AFFIRMING THE HLURB BOARD'S DECISION INSOFAR AS IT FAILED TO AWARD JITC ITS COUNTERCLAIMS AGAINST SPOUSES ANG.[38]

The Court's Ruling

We find the petition bereft of merit.

While the dismissal of an appeal on purely technical grounds is concededly frowned upon,[39] it bears emphasizing that the procedural requirements of the rules on appeal are not harmless and trivial technicalities that litigants can just discard and disregard at will.[40] Neither being a natural right nor a part of due process, the rule is settled that the right to appeal is merely a statutory privilege which may be exercised only in the manner and in accordance with the provisions of the law.[41] The perfection of an appeal in the manner and within the period prescribed by law is, in fact, not only mandatory but jurisdictional.[42] Considering that they are requirements which cannot be trifled with as mere technicality to suit the interest of a party,[43] failure to perfect an appeal in the prescribed manner has the effect of rendering the judgment final and executory.[44]

Fealty to the foregoing principles impels us to discount the error petitioner imputes against the CA for denying its second motion for extension of time for lack of merit and dismissing

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[38] *Rollo,* pp. 25-26.

[39] *Ace Navigation Co., Inc. v. Court of Appeals,* 392 Phil. 606, 613 (2000).

[40] *Casim v. Flordeliza,* 425 Phil. 210, 220 (2002).

[41] *Producer's Bank of the Philippines v. Court of Appeals,* 430 Phil. 812, 828 (2002).

[42] *Dayrit v. Philippine Bank of Communication,* 435 Phil. 120, 128-129 (2002).

[43] *Cuevas v. Bais Steel Corporation,* 439 Phil. 793, 806 (2002).

[44] *Heirs of Teofilo Gaudiano v. Benemerito,* G.R. No. 174247, 21 February 2007, 516 SCRA 416, 424.

its petition for review for having been filed out of time. Acting on the 29 March 2006 motion filed for the purpose, after all, the CA had already granted petitioner an inextendible period of 15 days from 31 March 2006 or until 15 April 2006 within which to file its petition for review. Sec. 4, Rule 43 of the *1997 Rules of Civil Procedure* provides as follows:

> 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 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. (Underscoring supplied)

The record shows that, having been granted the 15-day extension sought in its first motion, petitioner filed a second motion for extension praying for an additional 10 days from 17 April 2006 within which to file its petition for review, on the ground that pressures of work and the demands posed by equally important cases prevented its counsel from finalizing the same. As correctly ruled by the CA, however, heavy workload cannot be considered as a valid justification to sidestep the reglementary period[45] since to do so would only serve to encourage needless delays and interminable litigations. Indeed, rules prescribing the time for doing specific acts or for taking certain proceedings are considered absolutely indispensable to prevent needless delays and to orderly and promptly discharge judicial business.[46] Corollary to the principle that the allowance or denial of a motion for extension of time is addressed to the sound discretion of

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[45] *LTS Philippines Corp. v. Maliwat*, 489 Phil. 230, 235 (2005).

[46] *Laguna Metts Corporation v. Court of Appeals*, G.R. No. 185220, July 27, 2009, 594 SCRA 139,143.

the court,[47] moreover, lawyers cannot expect that their motions for extension or postponement will be granted[48] as a matter of course.

Although technical rules of procedure are not ends in themselves, they are necessary for an effective and expeditious administration of justice and cannot, for said reason, be discarded with the mere expediency of claiming substantial merit.[49] This holds particularly true in the case at bench where, prior to the filing of its petition for review before the CA, petitioner's appeal before the OP was likewise dismissed in view of its failure to file its appeal memorandum within the extensions of time it had been granted by said office. After being granted an initial extension of 15 days to do the same, the records disclose that petitioner was granted by the OP a second extension of 10 days from 15 March 2005 or until 25 March 2005 within which to file its appeal memorandum, on the condition that no further extensions shall be allowed. Aside from not heeding said proviso, petitioner had, consequently, no more time to extend when it filed its 31 March 2005 motion seeking yet another extension of 10 days or until 10 April 2005 within which to file its appeal memorandum.

With the foregoing procedural antecedents, the initial 15-day extension granted by the CA and the injunction under Sec. 4, Rule 43 of the *1997 Rules of Civil Procedure* against further extensions "except for the most compelling reason," it was clearly inexcusable for petitioner to expediently plead its counsel's heavy workload as ground for seeking an additional extension of 10 days within which to file its petition for review. To our mind, petitioner would do well to remember that, rather than the low gate to which parties are unreasonably required to stoop, procedural rules are designed for the orderly conduct of

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[47] *Videogram Regulatory Board v. Court of Appeals*, 332 Phil. 820, 830 (1996).

[48] *R. Transport Corporation v. Philhino Sales Corporation*, G.R. No. 148150, 12 July 2006, 494 SCRA 630, 639.

[49] *Sy v. ALC Industries, Inc.* G.R. No. 168339, 10 October 2008, 568 SCRA 367, 375.

proceedings and expeditious settlement of cases in the courts of law. Like all rules, they are required to be followed[50] and utter disregard of the same cannot be expediently rationalized by harping on the policy of liberal construction[51] which was never intended as an unfettered license to disregard the letter of the law or, for that matter, a convenient excuse to substitute substantial compliance for regular adherence thereto. When it comes to compliance with time rules, the Court cannot afford inexcusable delay.[52]

Even prescinding from the foregoing procedural considerations, we also find that the HLURB Arbiter and Board correctly held petitioner liable alongside PPGI for respondents' claims and the ₱10,000.00 administrative fine imposed pursuant to Section 20 in relation to Section 38 of P.D. 957. By the express terms of the JVA, it appears that petitioner not only retained ownership of the property pending completion of the condominium project[53] but had also bound itself to answer liabilities proceeding from contracts entered into by PPGI with third parties. Article VIII, Section 1 of the JVA distinctly provides as follows:

"Sec. 1. *Rescission and damages*. Non-performance by either party of its obligations under this Agreement shall be excused when the same is due to *Force Majeure*. In such cases, the defaulting party must exercise due diligence to minimize the breach and to remedy the same at the soonest possible time. In the event that either party

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[50] *Republic v. Kenrick Development Corporation*, G.R. No. 149576, 8 August 2006, 498 SCRA 220, 231.

[51] *Digital Microwave Corporation v. Court of Appeals*, 384 Phil. 842, 848 (2000).

[52] *Moneytrend Lending Corporation v. Court of Appeals*, G.R. No. 165580, 20 February 2006, 482 SCRA 705, 713.

[53] Art. I. Sec. 6. Pending the completion of the Condominium Project, the ownership of the Property shall remain with the Owner. Upon the organization of the condominium corporation for the Condominium Project, the Owner shall transfer the ownership over the Property to the said corporation, shall cause the registration of the transfer with the appropriate Registry of Deeds and issuance of a new torrens title in the name of the said corporation.

defaults or breaches any of the provisions of this Agreement other than by reason of *Force Majeure*, the other party shall have the right to terminate this Agreement by giving notice to the defaulting party, without prejudice to the filing of a civil case for damages arising from the breach of the defaulting party.

In the event that the Developer shall be rendered unable to complete the Condominium Project, and such failure is directly and solely attributable to the Developer, the Owner shall send written notice to the Developer to cause the completion of the Condominium Project. If the developer fails to comply within One Hundred Eighty (180) days from such notice or, within such time, indicates its incapacity to complete the Project, the Owner shall have the right to take over the construction and cause the completion thereof. If the Owner exercises its right to complete the Condominium Project under these circumstances, this Agreement shall be automatically rescinded upon written notice to the Developer and the latter shall hold the former free and harmless from any and all liabilities to third persons arising from such rescission. In any case, the Owner shall respect and strictly comply with any covenant entered into by the Developer and third parties with respect to any of its units in the Condominium Project. To enable the owner to comply with this contingent liability, the Developer shall furnish the Owner with a copy of its contracts with the said buyers on a month-to-month basis. Finally, in case the Owner would be constrained to assume the obligations of the Developer to its own buyers, the Developer shall lose its right to ask for indemnity for whatever it may have spent in the Development of the Project.

Nevertheless, with respect to the buyers of the Developer for the First Phase, the area intended for the Second Phase shall not be bound and/or subjected to the said covenants and/or any other liability incurred by the Developer in connection with the development of the first phase." (Underscoring supplied)

Viewed in the light of the foregoing provision of the JVA, petitioner cannot avoid liability by claiming that it was not in any way privy to the Contracts to Sell executed by PPGI and respondents. As correctly argued by the latter, moreover, a joint venture is considered in this jurisdiction as a form of partnership and is, accordingly, governed by the law of

partnerships.[54] Under Article 1824 of the *Civil Code of the Philippines*, all partners are solidarily liable with the partnership for everything chargeable to the partnership, including loss or injury caused to a third person or penalties incurred due to any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners.[55] Whether innocent or guilty, all the partners are solidarily liable with the partnership itself.[56]

WHEREFORE, premises considered, the petition for review is *DENIED* for lack of merit.

SO ORDERED.

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

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[54] *Primelink Properties and Development Corporation v. Lazatin-Magat,* G.R. No. 167379, 27 June 2006, 493 SCRA 444, 467; *Aurbach v. Sanitary Wares Manufacturing Corporation,* 259 Phil. 606, 624 (1989).

[55] Art. 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

[56] *Muñasque vs. Court of Appeals,* 224 Phil. 79, 90 (1985).

[*] Per raffle dated 1 March 2010, Associate Justice Jose Catral Mendoza is designated as additional member in place of Associate Justice Mariano C. Del Castillo, who was a signatory in the questioned Resolution dated 23 May 2006.

THIRD DIVISION

[G.R. No. 176959. September 8, 2010]

METROPOLITAN BANK & TRUST COMPANY, INC. (as successor-in-interest of the banking operations of Global Business Bank, Inc. formerly known as PHILIPPINE BANKING CORPORATION), *petitioner, vs.* **THE BOARD OF TRUSTEES OF RIVERSIDE MILLS CORPORATION PROVIDENT AND RETIREMENT FUND, represented by ERNESTO TANCHI, JR., CESAR SALIGUMBA, AMELITA SIMON, EVELINA OCAMPO and CARLITOS Y. LIM, RMC UNPAID EMPLOYEES ASSOCIATION, INC., and THE INDIVIDUAL BENEFICIARIES OF THE PROVIDENT AND RETIREMENT FUND OF RMC,** *respondents.*

SYLLABUS

1. CIVIL LAW; TRUST; ELUCIDATED.— A trust is a "fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another." A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; EMPLOYEES' TRUSTS OR BENEFIT PLANS.— Employees' trusts or benefit plans are intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. They give security against certain hazards to which members of the Plan may be exposed. They are independent and additional sources of protection for the working group and established for their exclusive benefit and for no other purpose.

3. ID.; ID.; TERMINATION; DISMISSAL FOR JUST CAUSE DISTINGUISHED FROM DISMISSAL FOR AUTHORIZED

CAUSE.— Under the Labor Code, as amended, an employee may be dismissed for just or authorized causes. A dismissal for just cause under Article 282 of the Labor Code, as amended, implies that the employee is guilty of some misfeasance towards his employer, *i.e.* the employee has committed serious misconduct in relation to his work, is guilty of fraud, has perpetrated an offense against the employer or any immediate member of his family, or has grossly and habitually neglected his duties. Essentially, it is an act of the employee that sets off the dismissal process in motion. On the other hand, a dismissal for an authorized cause under Article 283 and 284 of the Labor Code, as amended, does not entail any wrongdoing on the part of the employee. Rather, the termination of employment is occasioned by the employer's exercise of management prerogative or by the illness of the employee – matters beyond the worker's control. The distinction between just and authorized causes for dismissal lies in the fact that payment of separation pay is required in dismissals for an authorized cause but not so in dismissals for just cause. The rationale behind this rule was explained in the case of *Phil. Long Distance Telephone Co. v. NLRC* and reiterated in *San Miguel Corporation v. Lao*, thus: We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. x x x *The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.* At best[,] it may mitigate the penalty but it certainly will not condone the offense.

4. COMMERCIAL LAW; CORPORATION LAW; DISSOLVED CORPORATION TO CONTINUE AS BODY CORPORATE FOR THREE (3) YEARS; TRUSTEE THEREOF MAY COMMENCE SUIT WHICH CAN PROCEED FINAL JUDGMENT EVEN BEYOND THREE (3) YEAR PERIOD OF LIQUIDATION.— Under Section 122 of the Corporation Code,

a dissolved corporation shall nevertheless continue as a body corporate for three (3) years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. Within those three (3) years, the corporation may appoint a trustee or receiver who shall carry out the said purposes beyond the three (3)-year winding-up period. Thus, a trustee of a dissolved corporation may commence a suit which can proceed to final judgment even beyond the three (3)-year period of liquidation.

5. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; PROPRIETY THEREOF.— Article 2208(2) of the Civil Code allows the award of attorney's fees in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Attorney's fees may be awarded by a court to one (1) who was compelled to litigate with third persons or to incur expenses to protect his or her interest by reason of an unjustified act or omission of the party from whom it is sought.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.

Nathaniel F. Sauz for RMC Unpaid Employees Association Inc. & the Beneficiaries of Provident Fund.

Tan & Venturanza Law Offices for Ernesto Tanchi, Jr.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, prays for the reversal of the Decision[1] dated November 7, 2006 and Resolution[2] dated

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[1] *Rollo*, pp. 38-45. Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

[2] *Id.* at 63.

March 5, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 76642. The CA had affirmed the Decision[3] dated June 27, 2002 of the Regional Trial Court (RTC), Branch 137, Makati City in Civil Case No. 97-997 which declared invalid the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund (RMCPRF) to the outstanding obligation of Riverside Mills Corporation (RMC) with Philippine Banking Corporation (Philbank).

The facts are as follows:

On November 1, 1973, RMC established a Provident and Retirement Plan[4] (Plan) for its regular employees. Under the Plan, RMC and its employees shall each contribute 2% of the employee's current basic monthly salary, with RMC's contribution to increase by 1% every five (5) years up to a maximum of 5%. The contributions shall form part of the provident fund (the Fund) which shall be held, invested and distributed by the Commercial Bank and Trust Company. Paragraph 13 of the Plan likewise provided that the Plan "may be amended or terminated by the Company at any time on account of business conditions, but no such action shall operate to permit any part of the assets of the Fund to be used for, or diverted to purposes other than for the exclusive benefit of the members of the Plan and their … beneficiaries. In no event shall any part of the assets of the Fund revert to [RMC] before all liabilities of the Plan have been satisfied."[5]

On October 15, 1979, the Board of Trustees of RMCPRF (the Board) entered into an Investment Management Agreement[6] (Agreement) with Philbank (now, petitioner Metropolitan Bank and Trust Company). Pursuant to the Agreement, petitioner shall act as an agent of the Board and shall hold, manage, invest and reinvest the Fund in Trust Account No. 1797 in its behalf.

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[3] *Id.* at 89-98.

[4] Records, Vol. 2, pp. 409-411.

[5] *Id.*

[6] *Id.* at 295-301.

The Agreement shall be in force for one (1) year and shall be deemed automatically renewed unless sooner terminated either by petitioner bank or by the Board.

In 1984, RMC ceased business operations. Nonetheless, petitioner continued to render investment services to respondent Board. In a letter[7] dated September 27, 1995, petitioner informed respondent Board that Philbank's Board of Directors had decided to apply the remaining trust assets held by it in the name of RMCPRF against part of the outstanding obligations of RMC.

Subsequently, respondent RMC Unpaid Employees Association, Inc. (Association), representing the terminated employees of RMC, learned of Trust Account No. 1797. Through counsel, they demanded payment of their share in a letter[8] dated February 4, 1997. When such demand went unheeded, the Association, along with the individual members of RMCPRF, filed a complaint for accounting against the Board and its officers, namely, Ernesto Tanchi, Jr., Carlitos Y. Lim, Amelita G. Simon, Evelina S. Ocampo and Cesar Saligumba, as well as petitioner bank. The case was docketed as Civil Case No. 97-997 in the RTC of Makati City, Branch 137.

On June 2, 1998, during the trial, the Board passed a Resolution[9] in court declaring that the Fund belongs exclusively to the employees of RMC. It authorized petitioner to release the proceeds of Trust Account No. 1797 through the Board, as the court may direct. Consequently, plaintiffs amended their complaint to include the Board as co-plaintiffs.

On June 27, 2002, the RTC rendered a decision in favor of respondents. The trial court declared invalid the reversion and application of the proceeds of the Fund to the outstanding obligation of RMC to petitioner bank. The *fallo* of the decision reads:

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[7] *Id.* at 316.

[8] *Id.* at 427-428.

[9] Records, Vol. I, p. 241.

WHEREFORE, judgment is hereby rendered:

1. Declaring INVALID the reversion or application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation.

2. Defendant Philippine Banking Corporation (now [Global Bank]) is hereby ordered to:

    a. Reverse the application of the Riverside Mills Corporation Provident and Retirement Fund as payment for the outstanding obligation of Riverside Mills Corporation with defendant Philippine Banking Corporation;

    b. Render a complete accounting of the Riverside Mills Corporation Provident and Retirement Fund; the Fund will then be subject to disposition by plaintiff Board of Trustees in accordance with law and the Provident Retirement Plan;

    c. Pay attorney's fees equivalent to 10% of the total amounts due to plaintiffs Riverside Mills Unpaid Employees Association and the individual beneficiaries of the Riverside Mills Corporation Provident and Retirement Fund; and costs of suit.

3. The Riverside Mills Corporation Provident and Retirement Fund is ordered to determine the beneficiaries of the FUND entitled to benefits, the amount of benefits per beneficiary, and pay such benefits to the individual beneficiaries.

SO ORDERED.[10]

On appeal, the CA affirmed the trial court. It held that the Fund is distinct from RMC's account in petitioner bank and may not be used except for the benefit of the members of RMCPRF. Citing Paragraph 13 of the Plan, the appellate court stressed that the assets of the Fund shall not revert to the Company until after the liabilities of the Plan had been satisfied. Further, the Agreement was specific that upon the termination of the Agreement, petitioner shall deliver the Fund to the Board

[10] *Rollo,* pp. 97-98.

or its successor, and not to RMC as trustor. The CA likewise sustained the award of attorney's fees to respondents.[11]

Hence, this petition.

Before us, petitioner makes the following assignment of errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE REVERSION AND APPLICATION BY PHILBANK OF THE FUND IN PAYMENT OF THE LOAN OBLIGATIONS OF RIVERSIDE MILLS CORPORATION WERE INVALID.[12]

II.

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DECLARING THAT "BY HAVING ENTERED INTO AN AGREEMENT WITH THE BOARD, (PHILBANK) IS NOW ESTOPPED TO QUESTION THE LATTER'S AUTHORITY AS WELL AS THE TERMS AND CONDITIONS THEREOF."[13]

III.

THE HONORABLE COURT COMMITTED REVERSIBLE ERROR IN AWARDING ATTORNEY'S FEES TO PLAINTIFFS-APPELLEES ON THE BASIS THAT "[PHILBANK] WAS REMISS IN ITS DUTY TO TREAT RMCPRF'S ACCOUNT WITH THE HIGHEST DEGREE OF CARE CONSIDERING THE FIDUCIARY NATURE OF THEIR RELATIONSHIP, PERFORCE, THE PLAINTIFFS-APPELLEES WERE COMPELLED TO LITIGATE TO PROTECT THEIR RIGHT."[14]

The fundamental issue for our determination is whether the proceeds of the RMCPRF may be applied to satisfy RMC's debt to Philbank.

Petitioner contends that RMC's closure in 1984 rendered the RMCPRF Board of Trustees *functus officio* and devoid of authority to act on behalf of RMCPRF. It thus belittles the

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

[12] *Id.* at 22.

[13] *Id.* at 26.

[14] *Id.* at 28.

RMCPRF Board Resolution dated June 2, 1998, authorizing the release of the Fund to several of its supposed beneficiaries. Without known claimants of the Fund for eleven (11) years since RMC closed shop, it was justifiable for petitioner to consider the Fund to have "technically reverted" to, and formed part of RMC's assets. Hence, it could be applied to satisfy RMC's debts to Philbank. Petitioner also disputes the award of attorney's fees in light of the efforts taken by Philbank to ascertain claims before effecting the reversion.

Respondents for their part, belie the claim that petitioner exerted earnest efforts to ascertain claims. Respondents cite petitioner's omission to publish a notice in newspapers of general circulation to locate claims against the Fund. To them, petitioner's act of addressing the letter dated September 27, 1995 to the Board is a recognition of its authority to act for the beneficiaries. For these reasons, respondents believe that the reversion of the Fund to RMC is not only unwarranted but unconscionable. For being compelled to litigate to protect their rights, respondents also defend the award of attorney's fees to be proper.

The petition has no merit.

A trust is a "fiduciary relationship with respect to property which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another." A trust is either express or implied. Express trusts are those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.[15]

Here, the RMC Provident and Retirement Plan created an express trust to provide retirement benefits to the regular employees of RMC. RMC retained legal title to the Fund but held the same in trust for the employees-beneficiaries. Thus, the allocation under the Plan is directly credited to each member's account:

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[15] *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 144516, February 11, 2004, 422 SCRA 459, 472.

6. Allocation:

a. Monthly Contributions:

1. Employee – to be **credited to his account**.

2. Employer – to be **credited to the respective member's account** as stated under the contribution provision.

b. Investment Earnings – semestral valuation of the fund shall be made and any earnings or losses shall **be credited or debited, as the case may be, to each member's account** in proportion to his account balances based on the last proceeding (sic) [preceding] accounting period.

c. Forfeitures – shall be retained in the fund.[16] (Emphasis supplied.)

The trust was likewise a revocable trust as RMC reserved the power to terminate the Plan after all the liabilities of the Fund to the employees under the trust had been paid. Paragraph 13 of the Plan provided that "[i]n no event shall any part of the assets of the Fund revert to the Company before all liabilities of the Plan have been satisfied."

Relying on this clause, petitioner, as the Fund trustee, considered the Fund to have "technically reverted" to RMC, allegedly after no further claims were made thereon since November 1984. Thereafter, it applied the proceeds of the Fund to RMC's debt with the bank pursuant to Paragraph 9 of Promissory Note No. 1618-80[17] which RMC executed on May 12, 1981. The pertinent provision of the promissory note reads:

IN THE EVENT THAT THIS NOTE IS NOT PAID AT MATURITY OR WHEN THE SAME BECOMES DUE UNDER ANY OF THE PROVISIONS HEREOF, I/WE HEREBY AUTHORIZE THE BANK AT ITS OPTION AND WITHOUT NOTICE, TO APPLY TO THE PAYMENT OF THIS NOTE, ANY AND ALL MONEYS, SECURITIES AND THINGS OF VALUE WHICH MAY BE IN ITS HAND OR ON

[16] Records, Vol. 2, p. 409.

[17] *Id.* at 512.

DEPOSIT OR OTHERWISE **BELONGING TO ME/US** AND, FOR THIS PURPOSE, I/WE HEREBY, JOINTLY AND SEVERALLY, IRREVOCABLY CONSTITUTE AND APPOINT THE SAID BANK TO BE MY/OUR TRUE ATTORNEY-IN-FACT WITH FULL POWER AND AUTHORITY FOR ME/US AND IN MY/OUR NAME AND BEHALF, AND WITHOUT PRIOR NOTICE, TO NEGOTIATE, SELL AND TRANSFER ANY MONEYS, SECURITIES AND THINGS OF VALUE WHICH IT MAY HOLD, BY PUBLIC OR PRIVATE SALE, AND APPLY THE PROCEEDS THEREOF TO THE PAYMENT OF THIS NOTE. (Emphasis supplied.)

Petitioner contends that it was justified in supposing that reversion had occurred because its efforts to locate claims against the Fund from the National Labor Relations Commission (NLRC), the lower courts, the CA and the Supreme Court proved futile.

We are not convinced.

Employees' trusts or benefit plans are intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. They give security against certain hazards to which members of the Plan may be exposed. They are independent and additional sources of protection for the working group and established for their exclusive benefit and for no other purpose.[18] Here, while the Plan provides for a reversion of the Fund to RMC, this cannot be done until all the liabilities of the Plan have been paid. And when RMC ceased operations in 1984, the Fund became liable for the payment not only of the benefits of qualified retirees at the time of RMC's closure but also of those who were separated from work as a consequence of the closure. Paragraph 7 of the Retirement Plan states:

Separation from Service:

A member who is separated from the service of the Company before satisfying the conditions for retirement due to resignation **or any reason other than dismissal for cause shall be paid the balance**

[18] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 95022, March 23, 1992, 207 SCRA 487, 495.

of his account as of the last day of the month prior to separation. The amount representing the Company's contribution and income thereon standing to the credit of the separating member shall be paid to him as follows:

Completed Years of Membership	% of Company's Contribution and Earnings Thereon Payable
0 – 5	NIL
6 – 10	20%
11 – 15	40%
16 – 20	60%
21 – 25	80%
25 – over	100%

A member who is separated for cause shall not be entitled to withdraw the total amount representing his contribution and that of the Company including the earned interest thereon, and the employer's contribution shall be retained in the fund.[19] (Emphasis supplied.)

The provision makes reference to a member-employee who is dismissed for cause. Under the Labor Code, as amended, an employee may be dismissed for just or authorized causes. A dismissal for just cause under Article 282[20] of the Labor Code, as amended, implies that the employee is guilty of some

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[19] Records, Vol. 2, pp. 409-410.

[20] ART. 282. *TERMINATION BY EMPLOYER*.-An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

misfeasance towards his employer, *i.e.* the employee has committed serious misconduct in relation to his work, is guilty of fraud, has perpetrated an offense against the employer or any immediate member of his family, or has grossly and habitually neglected his duties. Essentially, it is an act of the employee that sets off the dismissal process in motion.

On the other hand, a dismissal for an authorized cause under Article 283[21] and 284[22] of the Labor Code, as amended, does not entail any wrongdoing on the part of the employee. Rather, the termination of employment is occasioned by the employer's exercise of management prerogative or by the illness of the employee – matters beyond the worker's control.

The distinction between just and authorized causes for dismissal lies in the fact that payment of separation pay is required in dismissals for an authorized cause but not so in dismissals

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[21] ART. 283. *CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL*. - The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or at least (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[22] ART. 284. *DISEASE AS GROUND FOR TERMINATION*. - An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

for just cause. The rationale behind this rule was explained in the case of *Phil. Long Distance Telephone Co. v. NLRC*[23] and reiterated in *San Miguel Corporation v. Lao*,[24] thus:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.
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> *The policy of social justice is not intended to countenance wrongdoing simply because it is committed by the underprivileged.* At best[,] it may mitigate the penalty but it certainly will not condone the offense.

In *San Miguel Corporation v. Lao*, we reversed the CA ruling which granted retirement benefits to an employee who was found by the Labor Arbiter and the NLRC to have been properly dismissed for willful breach of trust and confidence.

Applied to this case, the penal nature of the provision in Paragraph 7 of the Plan, whereby a member separated for cause shall not be entitled to withdraw the contributions made by him and his employer, indicates that the "separation for cause" being referred to therein is any of the just causes under Article 282 of the Labor Code, as amended.

To be sure, the cessation of business by RMC is an authorized cause for the termination of its employees. Hence, not only those qualified for retirement should receive their total benefits under the Fund, but those laid off should also be entitled to collect the balance of their account as of the last day of the month prior to RMC's closure. In addition, the Plan provides

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[23] No. 80609, August 23, 1988, 164 SCRA 671, 682.

[24] G.R. Nos. 143136-37, July 11, 2002, 384 SCRA 504, 511.

that the separating member shall be paid a maximum of 40% of the amount representing the Company's contribution and its income standing to his credit. Until these liabilities shall have been settled, there can be no reversion of the Fund to RMC.

Under Paragraph 6[25] of the Agreement, petitioner's function shall be limited to the liquidation and return of the Fund to the Board upon the termination of the Agreement. Paragraph 14 of said Agreement further states that "it shall be the duty of the Investment Manager to assign, transfer, and pay over to its successor or successors all cash, securities, and other properties held by it constituting the fund less any amounts constituting the charges and expenses which are authorized [under the Agreement] to be payable from the Fund."[26] Clearly, petitioner had no power to effect reversion of the Fund to RMC.

The reversion petitioner effected also could hardly be said to have been done in good faith and with due regard to the rights of the employee-beneficiaries. The restriction imposed under Paragraph 13 of the Plan stating that "in no event shall any part of the assets of the Fund revert to the Company before all liabilities of the Plan have been satisfied," demands more than a passive stance as that adopted by petitioner in locating claims against the Fund. Besides, the beneficiaries of the Fund are readily identifiable – the regular or permanent employees of RMC who were qualified retirees and those who were terminated as a result of its closure. Petitioner needed only to secure a list of the employees concerned from the Board of Trustees which was its principal under the Agreement and the trustee of the Plan or from RMC which was the trustor of the Fund under the Retirement Plan. Yet, petitioner notified respondent Board of Trustees only after Philbank's Board of

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[25] The power, duties and discretion conferred upon the Investment Manager by virtue of this Agreement shall continue for purposes of **liquidation and return of the Fund only**, after the notice of termination of this Agreement has been served in writing **until final delivery of the Fund to the Board of Trustees** or its successors-in-interest or assigns. (Emphasis supplied.) Records, Vol. 2, p. 297.

[26] Records, Vol. 2, p. 299.

Directors had decided to apply the remaining trust assets of RMCPRF to the liabilities of the company.

Petitioner nonetheless assails the authority of the Board of Trustees to issue the Resolution of June 2, 1998 recognizing the exclusive ownership of the Fund by the employees of RMC and authorizing its release to the beneficiaries as may be ordered by the trial court. Petitioner contends that the cessation of RMC's operations ended not only the Board members' employment in RMC, but also their tenure as members of the RMCPRF Board of Trustees.

Again, we are not convinced. Paragraph 13 of the Plan states that "[a]lthough it is expected that the Plan will continue indefinitely, it may be amended or terminated by the Company at any time on account of business conditions." There is no dispute as to the management prerogative on this matter, considering that the Fund consists primarily of contributions from the salaries of members-employees and the Company. However, it must be stressed that the RMC Provident and Retirement Plan was primarily established for the benefit of regular and permanent employees of RMC. As such, the Board may not unilaterally terminate the Plan without due regard to any accrued benefits and rightful claims of members-employees. Besides, the Board is bound by Paragraph 13 prohibiting the reversion of the Fund to RMC before all the liabilities of the Plan have been satisfied.

As to the contention that the functions of the Board of Trustees ceased upon with RMC's closure, the same is likewise untenable.

Under Section 122[27] of the Corporation Code, a dissolved corporation shall nevertheless continue as a body corporate

[27] SEC. 122. *Corporate liquidation*. - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.

for three (3) years for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established. Within those three (3) years, the corporation may appoint a trustee or receiver who shall carry out the said purposes beyond the three (3)-year winding-up period. Thus, a trustee of a dissolved corporation may commence a suit which can proceed to final judgment even beyond the three (3)-year period of liquidation.[28]

In the same manner, during and beyond the three (3)-year winding-up period of RMC, the Board of Trustees of RMCPRF may do no more than settle and close the affairs of the Fund. The Board retains its authority to act on behalf of its members, *albeit*, in a limited capacity. It may commence suits on behalf of its members but not continue managing the Fund for purposes of maximizing profits. Here, the Board's act of issuing the Resolution authorizing petitioner to release the Fund to its beneficiaries is still part of the liquidation process, that is, satisfaction of the liabilities of the Plan, and does not amount to doing business. Hence, it was properly within the Board's power to promulgate.

At any time during said three (3) years, said corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interests which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

Upon winding up of the corporate affairs, any asset distributable to any creditor or stockholder or member who is unknown or cannot be found shall be escheated to the city or municipality where such assets are located.

Except by decrease of capital stock and as otherwise allowed by this Code, no corporation shall distribute any of its assets or property except upon lawful dissolution and after payment of all its debts and liabilities.

[28] *Knecht v. United Cigarette Corp.*, G.R. No. 139370, July 4, 2002, 384 SCRA 45, 57, citing *Reburiano v. Court of Appeals*, G.R. No. 102965, January 21, 1999, 301 SCRA 342, 353.

Anent the award of attorney's fees to respondents, we find the same to be in order. Article 2208(2) of the Civil Code allows the award of attorney's fees in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Attorney's fees may be awarded by a court to one (1) who was compelled to litigate with third persons or to incur expenses to protect his or her interest by reason of an unjustified act or omission of the party from whom it is sought.[29]

Here, petitioner applied the Fund in satisfaction of the obligation of RMC without authority and without bothering to inquire regarding unpaid claims from the Board of Trustees of RMCPRF. It wrote the members of the Board only after it had decided to revert the Fund to RMC. Upon being met with objections, petitioner insisted on the reversion of the Fund to RMC, despite the clause in the Plan that prohibits such reversion before all liabilities shall have been satisfied, thereby leaving respondents with no choice but to seek judicial relief.

WHEREFORE, the petition for review on *certiorari* is hereby *DENIED*. The Decision dated November 7, 2006 and the Resolution dated March 5, 2007 of the Court of Appeals in CA-G.R. CV No. 76642 are *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

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

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[29] *Republic v. Court of Appeals*, G.R. No. 160379, August 14, 2009, 596 SCRA 57, 76.

[*] Designated additional member per Special Order No. 879 dated August 13, 2010.

THIRD DIVISION

[G.R. No. 177240. September 8, 2010]

PRUDENTIAL GUARANTEE AND ASSURANCE INC., *petitioner, vs.* **ANSCOR LAND, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CONSTRUCTION INDUSTRY ARBITRATION COMMISSION; JURISDICTION. — Section 4 of EO No. 1008 defines the jurisdiction of the CIAC: Sec. 4. Jurisdiction. The CIAC shall have original and exclusive jurisdiction over disputes *arising from, or connected with*, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must *agree to submit the same to voluntary arbitration*. The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost. Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. EO No. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes *arising from or connected with* construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. Under the aforequoted provision, it is apparent that a dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: *first*, the dispute must be somehow connected to a construction contract; and *second*, the parties must have agreed to submit the dispute to arbitration proceedings.

2. CIVIL LAW; SPECIAL CONTRACTS; GUARANTY AS AN ACCESSORY CONTRACT; SHOULD BE CONSTRUED TOGETHER WITH THE MAIN CONTRACT.— A guarantee

or a surety contract under Article 2047 of the Civil Code of the Philippines is an accessory contract because it is dependent for its existence upon the principal obligation guaranteed by it. x x x [I]t is well settled that accessory contracts should not be read independently of the main contract. They should be construed together in order to arrive at their true meaning. In *Velasquez v. Court of Appeals,* the Court labeled such rule as the "complementary contracts construed together" doctrine. It states: That the "complementary contracts construed together" doctrine applies in this case finds support in the principle that the surety contract is merely an accessory contract and must be interpreted with its principal contract, which in this case was the loan agreement. This doctrine closely adheres to the spirit of Art. 1374 of the Civil Code which states that – Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly

3. ID.; OBLIGATIONS AND CONTRACTS; PERFORMANCE BOND; TIME-BAR PROVISION; THE WORD "CLAIM" GIVEN GENERAL INTERPRETATION.— The *time-bar provision* in the Performance Bond provides that any claim against the bond should be "discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest." The purpose of this provision in the performance bond is to give the issuer, in this case PGAI, notice of the claim at the earliest possible time and to afford the issuer sufficient time to evaluate, and examine the validity of the claim while the evidence or indicators of breach are fresh. In the construction industry, time is precious, delay costs money and postponement in making a claim could cause additional expenses. x x x In interpreting the *time-bar provision*, the absence of any ambiguity in the words used would lead to the conclusion that the generally accepted meaning of the words shall control. In the *time-bar provision*, the word "*claim*" does not give rise to any ambiguity in interpretation and does not call for a stretched understanding. In *Finasia Investments and Finance Corporation v. Court of Appeals*, the Court had the occasion to rule that: The word "claim" is also defined as: Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or

unsecured; or *right to an equitable remedy for breach of performance if such breach gives rise to a right to payment,* whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured. In conflicts of law, a receiver may be appointed in any state which has jurisdiction over the defendant who owes a claim.

APPEARANCES OF COUNSEL

Felipe Antonio B. Remollo & Associates for petitioner.
Ponce Enrile Reyes & Manalastas for Anscor Land Inc.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision[1] dated April 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 72854 which modified the Decision[2] promulgated on September 2, 2002 by the Construction Industry Arbitration Commission (CIAC) to the effect that herein petitioner Prudential Guarantee and Assurance Inc. (PGAI) was declared solidarily liable with its principal Kraft Realty and Development Corporation (KRDC) under the performance bond.

The facts follow.

On August 2, 2000, Anscor Land, Inc. (ALI) and KRDC entered into a Construction Contract[3] for the construction of an 8-unit townhouse (project) located in Capitol Hills, Quezon City.

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[1] *Rollo*, pp. 47-64. Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Rebecca De Guia-Salvador and Aurora Santiago-Lagman concurring.

[2] *Id.* at 83-114.

[3] CA *rollo*, pp. 89-106.

Under the contract, KRDC was to build and complete the project within 275 continuous calendar days from the date of receipt of a notice to proceed for the consideration of ₱18,800,000.00.

As part of its undertaking, KRDC submitted a surety bond amounting to ₱4,500,000.00 to secure the reimbursement of the down payment paid by ALI in case of failure to finish the project and a performance bond amounting to ₱4,700,000.00 to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. The said bonds were issued in favor of ALI by herein petitioner PGAI.

Under the Performance Bond,[4] the parties agreed on a *time-bar provision* which states:

> …Furthermore, it is hereby agreed and understood that PRUDENTIAL GUARANTEE AND ASSURANCE INC., shall not be liable for any claim not discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest, and that the obligee hereby waives his right to file any claim against the Surety after the termination of the period of ten days above mentioned after which time this bond shall definitely terminate and be deemed absolutely cancelled.

KRDC then received a notice to proceed on November 24, 1999. On October 16, 2000 or 325 days after KRDC received the notice to proceed, and 50 days beyond the contract date of completion, ALI sent PGAI a letter[5] notifying the latter that the contract with KRDC was terminated due to "very serious delays." The letter also informed PGAI that ALI "may be making claims against the said bonds."

KRDC, through a letter on October 20, 2000, asked ALI to reconsider its decision to terminate the contract and requested that it be allowed to continue with the project. On October 27,

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[4] *Id.* at 57.

[5] *Id.* at 200.

2000, ALI replied[6] with regrets that it stands by its earlier decision to terminate the construction contract.

Through a letter[7] dated November 29, 2001, or exactly one (1) year after the expiration date in the performance bond, ALI reiterated its claim against the performance bond issued by PGAI amounting to ₱3,852,800.84. PGAI however did not respond to the letter.

On February 7, 2002, ALI commenced arbitration proceedings against KRDC and PGAI in the CIAC. PGAI answered with cross-claim contending that it was not a party to the construction contract and that the claim of ALI against the bonds was filed beyond the expiration period.

On September 2, 2002, the CIAC rendered judgment[8] awarding a total of ₱7,552,632.74 to ALI and a total of ₱1,292,487.81 to KRDC. CIAC also allowed the offsetting of the awards to both parties which resulted to a net amount due to ALI of ₱6,260,144.93 to be paid by KRDC. Meanwhile, the CIAC found PGAI liable for the reimbursement of the unliquidated portion of the down payment as a solidary liability under the surety bond in the amount of ₱1,771,264.06.[9]

In the same judgment, the CIAC absolved PGAI from a claim against the performance bond. It reasoned that ALI belatedly filed its claim on the performance bond. The CIAC accepted the view that the November 29, 2001 letter of ALI to PGAI was the first and only claim on the performance bond, which was filed unquestionably beyond the allowed period for filing claims under the contract.

The CIAC ruled that the October 16, 2000 letter of ALI to PGAI did not constitute a proper "claim" under the performance bond. In so ruling, the CIAC relied on the tenor of the letter which used the phrase "may be making claims against the said

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[6] *Id.* at 201.

[7] *Id.* at 202.

[8] *Id.* at 24-56.

[9] *Id.* at 53-55.

bonds." The CIAC interpreted this phrase as tentative at best and far from a positive claim against PGAI. According to the CIAC, the letter merely informed PGAI of the termination of the construction contract between ALI and KRDC and in no sense did such letter present a valid claim against the performance bond issued by PGAI.

ALI then filed a petition for review on October 3, 2002[10] with the CA questioning the decision of the CIAC to release PGAI from its solidary liability on the performance bond.

The CA found the petition meritorious in its questioned Decision[11] dated April 28, 2006, to wit:

> WHEREFORE, the petition is **GRANTED**. The decretal portion of the decision is **MODIFIED** to the effect that PGAI is hereby pronounced solidarily liable with KRDC under the performance bond.
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> SO ORDERED.[12]

Petitioner PGAI now comes to this Court to seek relief.

Petitioner argues that the CIAC had no jurisdiction over the dispute as regards the claim of ALI against the performance bond because petitioner was not a party to the construction contract. It maintains that Executive Order (EO) No. 1008[13] did not vest jurisdiction on the CIAC to settle disputes between a party to a construction contract on one hand and a non-party on the other.

The petitioner contends that CIAC's jurisdiction was limited to the construction industry and cannot extend to surety or guarantee contracts. By reason of the lack of jurisdiction of the CIAC over the dispute, the September 2, 2002 judgment[14] of the CIAC was void with regard to the liability of PGAI.

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[10] *Id.* at 6.

[11] *Rollo*, pp. 47-64.

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

[13] CREATING AN ARBITRATION MACHINERY IN THE CONSTRUCTION INDUSTRY OF THE PHILIPPINES, February 4, 1985.

[14] CA *rollo*, pp. 24-56.

As to the award made by the CIAC on ALI's claims, petitioner maintains that it cannot be held liable under the performance bond because clearly, under the *time-bar provision* in the said bond, the claim made by ALI in its letter to PGAI dated November 29, 2001 was submitted one (1) year late. Petitioner points out that such letter was the first and only definite claim that ALI made against the performance bond and unfortunately, it was filed beyond the allowed period. Hence, the Decision of the CA declaring PGAI solidarily liable with KRDC under the performance bond is erroneous and should be struck down.

On the other hand, respondent avers that the construction contract itself provided that the performance and surety bond shall be deemed part of the construction contract, to wit:

> Article 1
>
> **CONTRACT DOCUMENTS**
>
> 1.1 The following shall form part of this Contract and together with this Contract, are known as the "Contract Documents":
>
> a. Bid Proposal
>
> x x x x x x x x x
>
> d. Notice to proceed
>
> x x x x x x x x x
>
> j. Appendices A & B (respectively, Surety Bond for Performance and, Supply of Materials by the Developer)[15]

By reason of this express provision in the construction contract, respondent maintains that petitioner PGAI became a party to such contract when it submitted its Surety and Performance bonds. Consequently, petitioner's argument that CIAC has not acquired jurisdiction over PGAI because the latter was not a party to the construction contract, is untenable.

As to the alleged lack of jurisdiction of CIAC over the dispute arising from the surety contract, respondent cites EO No. 1008, which provides that any dispute connected with a construction

[15] *Id.* at 90.

contract comes within the original and exclusive jurisdiction of the CIAC. The surety bond being an integral part of the construction contract, it is necessarily connected thereto which brings it under the jurisdiction of the CIAC.

On the issue of timeliness of the "claim," respondent insists that its letter dated October 16, 2000 was for all intents and purposes a notification of termination of the construction contract and at the same time a notice to petitioner that respondent is in fact making a claim on the performance bond. Contrary to PGAI's view that the November 29, 2001 letter was the first and only claim made, respondent asserts that the said letter was merely a reiteration of its earlier October 16, 2000 claim.

In fine, there are two (2) main issues for this Court to resolve, to wit:

I.

Whether or not the CIAC had jurisdiction over the dispute.

II.

Whether or not the respondent made its claim on the performance bond within the period allowed by the *time-bar provision*.

First Issue – *Jurisdiction of the CIAC*

Section 4 of EO No. 1008 defines the jurisdiction of the CIAC:

Sec. 4. Jurisdiction. The CIAC shall have original and exclusive jurisdiction over disputes *arising from, or connected with*, contracts entered into by parties involved in construction in the Philippines, whether the dispute arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must *agree to submit the same to voluntary arbitration*.

The jurisdiction of the CIAC may include but is not limited to violation of specifications for materials and workmanship; violation of the terms of agreement; interpretation and/or application of contractual time and delays; maintenance and defects; payment, default of employer or contractor and changes in contract cost.

Excluded from the coverage of this law are disputes arising from employer-employee relationships which shall continue to be covered by the Labor Code of the Philippines. (Italics supplied.)

EO No. 1008 expressly vests in the CIAC original and exclusive jurisdiction over disputes *arising from or connected with* construction contracts entered into by parties that have agreed to submit their dispute to voluntary arbitration. Under the aforequoted provision, it is apparent that a dispute must meet two (2) requirements in order to fall under the jurisdiction of the CIAC: *first*, the dispute must be somehow connected to a construction contract; and *second*, the parties must have agreed to submit the dispute to arbitration proceedings.

As regards the first requirement, the Performance Bond issued by the petitioner was meant to guarantee the supply of labor, materials, tools, equipment, and necessary supervision to complete the project. A guarantee or a surety contract under Article 2047[16] of the Civil Code of the Philippines is an accessory contract because it is dependent for its existence upon the principal obligation guaranteed by it.[17]

In fact, the primary and only reason behind the acquisition of the performance bond by KRDC was to guarantee to ALI that the construction project would proceed in accordance with the contract terms and conditions. In effect, the performance bond becomes liable for the completion of the construction project in the event KRDC fails in its contractual undertaking.

Because of the performance bond, the construction contract between ALI and KRDC is guaranteed to be performed even

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[16] ART. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship.

[17] *Intra-Strata Assurance Corporation v. Republic*, G.R. No. 156571, July 9, 2008, 557 SCRA 363, 369, citing *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, November 20, 1990, 191 SCRA 493, 495.

if KRDC fails in its obligation. In practice, a performance bond is usually a condition or a necessary component of construction contracts. In the case at bar, the performance bond was so connected with the construction contract that the former was agreed by the parties to be a condition for the latter to push through and at the same time, the former is reliant on the latter for its existence as an accessory contract.

Although not the construction contract itself, the performance bond is deemed as an associate of the main construction contract that it cannot be separated or severed from its principal. The Performance Bond is significantly and substantially connected to the construction contract that there can be no doubt it is the CIAC, under Section 4 of EO No. 1008, which has jurisdiction over any dispute arising from or connected with it.

On the second requirement that the parties to a dispute must have previously agreed to submit to arbitration, it is clear from Article 24 of the Construction Contract itself that the parties have indeed agreed to submit their disputes to arbitration, to wit:

> Article 24
>
> DISPUTES AND ARBITRATION
>
> All disputes, controversies, or differences between the parties arising out of or in connection with this Contract, or arising out of or in connection with the execution of the WORK shall be settled in accordance with the procedures laid down by the Construction Industry Arbitration Commission. The cost of arbitration shall be borne jointly by both CONTRACTOR and DEVELOPER on a fifty-fifty (50-50) basis.[18]

Petitioner however argues that such provision in the construction contract does not bind it because it is not a party to such contract and in effect did not give its consent to submit to arbitration in case of any dispute on the performance bond. Such argument is untenable. The Performance Bond issued by petitioner states that PGAI agreed –

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[18] CA *rollo*, p. 103.

To guarantee the supply of labor, materials, tools, equipment and necessary supervision to complete the construction of Proposed Sigma Townhouses of the Obligee as per Notice to Proceed dated November 23, 1999, copy of which is hereto attached and made an integral part of this bond.[19]

When it executed the performance bond, PGAI's undertaking thereunder was that of a surety to the obligation of KRDC, the principal under the construction contract. PGAI should not be allowed now to insist that it had nothing to do with the construction contract and should be viewed as a non-party. Since the liability of petitioner as surety is solidary with that of KRDC, it was properly impleaded as it would be the party ultimately answerable under the bond should KRDC be adjudged liable for breach of contract. Furthermore, it is well settled that accessory contracts should not be read independently of the main contract. They should be construed together in order to arrive at their true meaning.[20] In *Velasquez v. Court of Appeals*,[21] the Court labeled such rule as the "complementary contracts construed together" doctrine. It states:

That the "complementary contracts construed together" doctrine applies in this case finds support in the principle that the surety contract is merely an accessory contract and must be interpreted with its principal contract, which in this case was the loan agreement. This doctrine closely adheres to the spirit of Art. 1374 of the Civil Code which states that–

> Art. 1374. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.

In the case at bar, the performance bond was silent with regard to arbitration. On the other hand, the construction contract was clear as to arbitration in the event of disputes. Applying

[19] *Id.* at 57.

[20] *Rigor v. Consolidated Orix Leasing and Finance Corporation*, G.R. No. 136423, August 20, 2002, 387 SCRA 437, 445, citing *National Power Corporation v. Court of Appeals*, No. L-43706, November 14, 1986, 145 SCRA 533, 539.

[21] G.R. No. 124049, June 30, 1999, 309 SCRA 539, 546.

the said doctrine, we rule that the silence of the accessory contract in this case could only be construed as acquiescence to the main contract. The construction contract breathes life into the performance bond. We are not ready to assume that the performance bond contains reservations with regard to some of the terms and conditions in the construction contract where in fact it is silent. On the other hand, it is more reasonable to assume that the party who issued the performance bond carefully and meticulously studied the construction contract that it guaranteed, and if it had reservations, it would have and should have mentioned them in the surety contract.

Second Issue – *Petitioner's Liability Under the Performance Bond*

On the second issue, the crux of the controversy revolves upon a letter dated October 16, 2000 sent by ALI to PGAI. It reads:

x x x x x x x x x

This pertains to the contract between Kraft Realty Development Corp. and Anscor Land, Inc., which is covered by surety and performance bonds by your good company.

Please be advised that *we are now terminating the contract of Kraft due to the breach by Kraft of the terms and conditions of the construction contract*. More specifically, the project has accumulated very serious delays, in spite of the full cooperation that this company has extended to Kraft.

Kindly refer to the attached letter of termination dated 16 October 2000.

Anscor Land [Inc.] may be making claims against the said bonds and in this regard, kindly coordinate with the following for any matter with which we can assist you with.

Engr. Teodelito de Vera
Anscor Land, Inc.
Tel. 812-7941 to 48 Fax 813-5301

Thank you for your kind attention.[22] (Italics supplied.)

[22] CA *rollo*, p. 200.

The question really is whether or not the foregoing letter constituted a valid claim and effectively complied with the *time-bar provision* in the performance bond.

It is clear that ALI communicated two (2) important points to PGAI in the letter. First, that ALI is terminating the construction contract with KRDC and second, that ALI *may* be making a claim on the bonds issued by PGAI.

The *time-bar provision* in the Performance Bond provides that any claim against the bond should be "discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest." The purpose of this provision in the performance bond is to give the issuer, in this case PGAI, notice of the claim at the earliest possible time and to afford the issuer sufficient time to evaluate, and examine the validity of the claim while the evidence or indicators of breach are fresh. In the construction industry, time is precious, delay costs money and postponement in making a claim could cause additional expenses.

In line with the rationale behind the *time-bar provision*, we rule that the letter dated October 16, 2000 was a sufficient claim. The tenor of the letter adequately put PGAI on notice that ALI has terminated the contract because of serious delays tantamount to breach by KRDC of its obligations. The letter timely informed PGAI that ALI was in fact terminating the construction contract and thereby giving rise to the obligation of PGAI under the performance bond. PGAI was informed within the *time-bar provision* and had all the opportunity to conduct its evaluation and examination as to the validity of the termination.

The CA thus correctly ruled that:

> The fact of contract termination had been made known to PGAI as early as October 16, 2000. This termination consequently meant that the principal KRDC would no longer be able to supply "*labor, materials, tools, equipment and necessary supervision*" to complete the project. It was at this time, therefore, that PGAI's obligation guaranteeing the project completion arose, although the amount of payment was still undetermined.

That ALI merely used the word "*may*" in expressing its intent to proceed against the bond does not make its claim any less categorical as argued by PGAI. The point is the very condition giving rise to the obligation to pay, *i.e.* KRDC's default and the resulting contract termination, was clearly mentioned in the 16 October 2000 letter. The citation of this fact is more than sufficient to place PGAI in notice that ALI shall be making claims on the bonds.

x x x x x x x x x

But the important consideration is that ALI, by its 16 October 2000 letter, was informing PGAI of the contract termination, the very condition for its liabilities under the performance bond to accrue. **ALI had no other purpose in sending the letter than to notify PGAI that it was intending to proceed against the performance bond**. PGAI makes much out of ALI's failure to identify the particular bond against which it would be claiming. But the contract termination necessarily implies that there would be hiatus in the supply of labor and materials.

Surely, no bond would answer for the non-implementation of contractual provisions other than the performance bond. Further, the surety bond only guarantees reimbursement of the portion of the downpayment and not the supply of labor, materials and equipment.[23] (Emphasis supplied, italics in the original.)

In interpreting the *time-bar provision*, the absence of any ambiguity in the words used would lead to the conclusion that the generally accepted meaning of the words shall control. In the *time-bar provision*, the word "*claim*" does not give rise to any ambiguity in interpretation and does not call for a stretched understanding.

In *Finasia Investments and Finance Corporation v. Court of Appeals*,[24] the Court had the occasion to rule that:

The word "*claim*" is also defined as:

Right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or *right*

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[23] *Rollo*, pp. 61 and 63.

[24] G.R. No. 107002, October 7, 1994, 237 SCRA 447, 450.

to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, unsecured.

In conflicts of law, a receiver may be appointed in any state which has jurisdiction over the defendant who owes a claim.[25] (Italics supplied.)

In the case at bar, the claim of ALI against PGAI arose from the failure of KRDC to perform its obligation under the construction contract. ALI therefore already had the "claim" or "right to payment" against PGAI in the maximum amount of ₱4,700,000.00 from the moment KRDC failed to comply with its obligation. According to the *time-bar provision*, in order to enforce such claim or recover the said amount, ALI shall *present* its claim within ten (10) days from the occurrence of the default or failure of KRDC.

The October 16, 2000 letter was the presentation of the claim. ALI's intent to recover its claim was communicated clearly to PGAI. By informing PGAI of the termination of the contract with KRDC, ALI in effect presented a situation where PGAI is put on notice that ALI in fact has a right to payment by virtue of the performance bond and it intends to recover it. Undeniably, ALI has substantially complied with the *time-bar provision* of the performance bond.

WHEREFORE, the petition is *DENIED* and the Decision dated April 28, 2006 of the Court of Appeals in CA-G.R. SP No. 72854 is hereby *AFFIRMED*.

With costs against the petitioner.

SO ORDERED.

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

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[25] BLACK'S LAW DICTIONARY, 5th ed., p. 224.

[*] Designated additional member per Special Order No. 879 dated August 13, 2010.

FIRST DIVISION

[G.R. No. 178062. September 8, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ABDUL AMINOLA *y* OMAR and MIKE MAITIMBANG *y* ABUBAKAR,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — The following elements must be established for a conviction in the special complex crime of robbery with homicide: 1. The taking of personal property is committed with violence or intimidation against persons; 2. The property taken belongs to another; 3. The taking is *animo lucrandi*; and 4. By reason of the robbery or on the occasion thereof, homicide is committed. Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.

2. REMEDIAL LAW; EVIDENCE; ALIBI; WEAK DEFENSE THAT MUST BE SUFFICIENTLY ESTABLISHED.— Alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove. To establish alibi, an accused must prove (1) that he was present at another place at the time the crime was perpetrated; and (2) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."

3. ID.; ID.; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY; FINDINGS OF TRIAL COURT THEREON, RESPECTED.— Denial and alibi cannot prevail over the positive and categorical testimony of the witness identifying a person as the perpetrator of the crime absent proof of ill motive. No reason or motive was given for Oliva to falsely testify against accused-appellants on such a serious crime. As often noted, the trial court is in a better position to observe the

demeanor and candor of the witnesses and to decide who is telling the truth. We, thus, defer to the trial court's findings especially when duly affirmed by the appellate court.

4. ID.; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; OBJECTION THERETO WAIVED WHEN PERSON ARRESTED SUBMITS TO ARRAIGNMENT WITHOUT ANY OBJECTION.— A warrantless arrest is not a jurisdictional defect and any objection to it is waived when the person arrested submits to arraignment without any objection, as in this case. Accused-appellants are questioning their arrest for the first time on appeal and are, therefore, deemed to have waived their right to the constitutional protection against illegal arrests and searches.

5. CRIMINAL LAW; ROBBERY WITH HOMICIDE; PROPER PENALTY.— The Revised Penal Code provides: Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer: 1. The penalty of *reclusion perpetua* to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x The RTC sentenced both accused-appellants to death. But consonant to the abolition of death penalty under Republic Act No. (RA) 9346, the CA reduced the penalty to *reclusion perpetua*. x x x And Section 2 of RA 9346 provides that sentences "which will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole."

6. ID.; ID.; CIVIL PENALTIES.— Anent accused-appellants' pecuniary liability, x x x civil indemnity of PhP 50,000 is given without need of proof other than the fact of death as a result of the crime and proof of the accused's responsibility for it. If, however, the commission of robbery with homicide is attended by a qualifying aggravating circumstance, as here, that requires the imposition of the death penalty (such as the use of an unlicensed firearm), the civil indemnity for the victim shall be PhP 75,000. Moral damages awarded in the amount of PhP 50,000 must also be increased to PhP 75,000 pursuant to current jurisprudence. The exemplary damages of PhP 30,000 was correctly awarded, since under Article 2230 of the Civil

Code, exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances, as in the instant case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the February 12, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01300 entitled *People of the Philippines v. Abdul Aminola y Omar and Mike Maitimbang y Abubakar*, which affirmed the January 21, 2004 Decision in Criminal Case Nos. 116595-H and 116596 of the Regional Trial Court (RTC), Branch 156 in Pasig City. The RTC found accused-appellants guilty of Robbery with Homicide and sentenced them to *reclusion perpetua*.

The Facts

In Criminal Case No. 116595-H, an Information charged accused-appellants as follows:

On or about August 31, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with an unlicensed gun, with intent to gain, did then and there willfully, unlawfully and feloniously take, rob and divest one Nestor Aranas Gabuya cash amounting to ₱150,000.00, placed inside the bag of the said victim which was forcibly taken by the respondents, necklace worth ₱35,000.00, Timex watch worth ₱4,000.00 and a licensed 9 mm. Bernardelli gun with serial number 302617-50 worth ₱45,000.00; that by reason or on the occasion of the crime of robbery, accused, Datu Ban Ampatuan *y* Panaguilan, Abdul Aminola *y* Omar, *a.k.a.* "Roy," Alimudin Laminda *y* Macacua, *a.k.a.* "Modin," Abdulan Sandaton *y* Sangcopan, *a.k.a.* "Kulem" and Mike Batimbang *y* Abubakar, *a.k.a.* "Nuke" with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault

and shot Nestor Aranas Gabuya with the gun into the different parts of his body, thereby inflicting upon him mortal gunshot wounds which directly caused his death.[1]

In Criminal Case No. 116596, an Information charged accused-appellant Abdul Aminola *y* Omar with illegal possession of firearms allegedly as follows:

> On or about August 31, 1999 in Taguig, Metro Manila and within the jurisdiction of this Honorable Court, the accused, being then a private person, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one caliber (1) magazine loaded with two (2) live ammos, without first securing the necessary license or permit from the proper authorities.[2]

During their arraignment, accused-appellants gave a negative plea. Thereafter, the two cases were jointly tried.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Police Major Rolando Migano, Ballistician III Ireneo S. Ordiano, and Jesus Oliva, the eyewitness.

In the afternoon of August 31, 1999, at around five, Nestor Gabuya closed shop at his motorcycle and bicycle spare parts store located in Upper Bicutan, Taguig. He then headed home on his bike. Unbeknownst to him, accused-appellant Abdul Aminola and accused Alimudin Laminda were observing him from a nearby basketball court. Aminola proceeded to follow Gabuya. Upon catching up with Gabuya, Aminola put his arms around Gabuya and wrestled for the bag Gabuya was carrying. Gabuya refused to let go of his bag, whereupon Aminola pulled out a gun and shot him. Gabuya fell to the ground but still resisted, prompting Aminola to take another shot.[3]

Accused-appellant Mike Maitimbang then approached and took something from the fallen Gabuya. Maitimbang shot Gabuya

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[1] CA *rollo*, pp. 12-13.

[2] *Id.* at 15.

[3] *Rollo*, pp. 7-8.

behind and fled towards the direction of eyewitness Oliva. Joel, Gabuya's caretaker, gave chase but was fired upon by Maitimbang.[4] Oliva testified seeing the incident while he was on Genera Valdez St. in Purok V, Upper Bicutan.[5]

Regina, Gabuya's wife, reported the incident that same afternoon. Based on her information, Major Migano formed a team to investigate the crime.[6]

Later that evening, an informant known as "Abdul" told the police that he witnessed what had happened to Gabuya and could tell them where the suspects could be found. True enough, Abdul led Major Migano and his men. A blocking force was organized while Col. Bernido formed a team to make the arrests on the suspects.

In the evening of September 1, 1999, Major Migano's team once again went to the hideout, where Abdul identified four of Gabuya's assailants. One of them, Aminola, was found in possession of an unlicensed .45 caliber gun with one (1) magazine and two (2) ammunitions.[7]

The four men arrested, identified as Aminola, Laminda, Datu Ban Ampatuan, and Abdulan Sandaton, were then brought to the Criminal Investigation Division at Camp Crame, Quezon City for further investigation.[8] On September 2, 1999, Maitimbang was also arrested.

The result of the post-mortem examination of Gabuya, conducted by Dr. David, showed that he had four (4) gunshot wounds with three (3) entry wounds and one (1) exit wound.[9] Two (2) slugs were recovered from the Gabuya's body, one from the brain and the other from his lungs.[10]

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[4] *Id.*

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

[6] *Rollo*, p. 8.

[7] *Id.* at 9.

[8] *Id.*

[9] *Id.* at 55.

[10] *Id.* at 9.

Version of the Defense

The defense offered the testimonies of accused-appellant Maitimbang, Laminda, Sandaton, accused-appellant Aminola, and their witnesses Mymona Quirod and Senior Police Officer 2 (SPO2) Bero Saud Lukman.

Maitimbang testified that he was arrested on September 2, 1999 after arriving home from work due to a grenade found in his possession. At the police precinct, he was not informed that his arrest was made in connection with the death of Gabuya. It was only during the inquest, according to him, that he saw his fellow accused for the first time. He further averred that Gabuya's widow pinpointed him as one of the suspects when she learned he was a Muslim. He claimed his name was only included and superimposed on the list of suspects.[11]

Laminda, for his part, narrated that he was nabbed together with his cousin Sandaton in the early morning of September 1, 1999 at their house on Rogan St., Maharlika Village, Taguig. He disavowed any knowledge of the reason for their arrest and claimed that the arresting police officers had neither a warrant of arrest nor a search warrant. He likewise denied acting as a lookout in the robbery resulting in the death of Gabuya. He attested that he was a tricycle driver, and that on August 31, 1999, he was ferrying passengers in his usual route of Maharlika-Triumph-Signal. He denied having fellow accused Ampatuan as a passenger and only came to know of Aminola because the latter was also a tricycle driver.[12]

Mymona Quirod corroborated Laminda's story. On the witness stand, Quirod testified that she boarded Lamida's tricycle at around 5:10 in the afternoon of August 31, 1999 and got off at exactly six in the evening. She was in Davao when she heard that Laminda had been implicated in Gabuya's death and felt compelled to come back to help Laminda who she believed was innocent.[13]

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[11] *Id.* at 56.

[12] *Id.* at 57.

[13] *Id.*

Sandaton, on the other hand, narrated that it was only during the inquest proceedings that he learned of the criminal charge against him. He denied knowing Oliva and being a lookout while Gabuya was being robbed and killed.[14]

Aminola testified that he was at home on September 1, 1999 when policemen suddenly entered and arrested him and brought him to the police station in Maharlika Village, Taguig. He was brought there together with Ampatuan, Sandaton and Laminda. He denied knowing Oliva but admitted knowing Laminda and Ampatuan as acquaintances.[15]

SPO2 Lukman was presented to establish Aminola's whereabouts at about the time of Gabuya's killing. According to SPO2 Lukman, at around half past five in the afternoon of August 31, 1999, he was talking to Aminola outside the latter's house until six in the evening.[16]

Instead of testifying for his defense, Ampatuan filed a Demurrer to Evidence.

The Ruling of the Trial Court

Finding no proof of Ampatuan's involvement in the robbery with homicide, the trial court granted his Demurrer to Evidence.

After trial, the RTC found accused-appellants Aminola and Maitimbang guilty of robbery with homicide, but acquitted accused Sandaton and Laminda. The trial court, however, cleared Aminola of the crime charged in Criminal Case No. 116596.

The *fallo* of the RTC's Joint Decision dated January 21, 2004 reads:

WHEREFORE, premises considered, the Court find on [sic] Criminal Case No. 116595 accused Abdul Aminola *y* Omar and Mike

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[14] *Id.*

[15] *Id.*

[16] *Id.*

Maitimbang *y* Abubakar GUILTY beyond reasonable doubt of the crime of "Robbery with Homicide" defined and punished under par. 1 of Article 294 of the Revised Penal Code with the aggravating circumstance of use of unlicensed firearm, applying Section 1 of Republic Act 8294 [July 6, 1997] they are hereby sentenced to suffer the penalty of Death while accused Alimudin Laminda *y* Macacua and Abdulan Sandaton *y* Sangcopan are hereby ACQUITTED of the charge for failure of the prosecution to present the quantum of proof mandated by law to establish conspiracy in the killing of Nestor Aranas Gabuya and are further ordered immediately released from confinement unless held for some other lawful cause/s.

The accused Abdul Aminola *y* Omar and Mike Maitimbang *y* Abubakar are likewise sentenced, separately:

a) To indemnify the heirs of NESTOR ARANAS GABUYA in the amount of Fifty Thousand (₱50,000.00) Pesos as death indemnity.

b) The amount of Fifty Thousand (₱50,000.00) Pesos each as moral damages.

c) The amount of Thirty Thousand (₱30,000.00) each as exemplary damages.

In Criminal Case No. 116596, accused Abdul Aminola *y* Omar is ACQUITTED.

SO ORDERED.[17]

As before the RTC, accused-appellant Aminola on appeal put up the defense of alibi, maintaining that he could not have committed the crime for he was at home talking with SPO2 Lukman at the time of the incident. Aminola likewise questioned his warrantless arrest. On the other hand, accused-appellant Maitimbang reiterated his innocence, claiming that there was no reason for his arrest other than the fact that a grenade was found in his possession. He also asserted that he was merely included in the list of suspects with his name superimposed on the list.

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[17] CA *rollo*, p. 38. Penned by Judge Alex L. Quiroz.

The Ruling of the Appellate Court

The CA affirmed the trial court's decision but reduced the penalty imposed to *reclusion perpetua* in view of the abolition of the death penalty.[18]

Disagreeing with the appellate court's decision, accused-appellants timely filed their Notice of Appeal with this Court.

On August 8, 2007, the Court required the parties to submit supplemental briefs if they so desired. The People of the Philippines, thru the Office of the Solicitor General (OSG), informed the Court that it is submitting the case for decision based on records and pleadings previously filed. Accused-appellants, on the other hand, averred in their Supplemental Brief that they were erroneously convicted despite the existence of reasonable doubt.

The Issue

WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT.

Insisting on his innocence, accused-appellant Maitimbang maintains that he should have been identified as a suspect at the onset of the investigation if he were really one of the perpetrators.

Accused-appellant Aminola, on the other hand, claims that the appellate court erroneously disregarded his alibi, a defense indisputably corroborated by SPO2 Lukman.

Accused-appellants question the legality of their warrantless arrest, arguing that there was no hot pursuit to speak of, since there was no indication that they were committing or attempting to commit an offense in the presence of the arresting officers or that they had just committed an offense. As claimed, a considerable period of time had elapsed between their arrest

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[18] *Rollo*, p. 16. The Decision was penned by Associate Justice Lucenito N. Tagle and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Mariano C. Del Castillo (now a member of this Court).

and the commission of the crime, thus necessitating a warrant of arrest.

The OSG counters that what transpired were hot pursuit arrests, for the arresting team's investigation and the data gathered from informant Abdul were sufficient reasonable grounds to believe that accused-appellants indeed robbed and killed Gabuya. The fact that Aminola was arrested a day after the incident while Maitimbang was arrested two days later would bring the arrests within the purview of hot pursuit arrests, made as they were within a brief interval between the actual commission of the crime and the arrests effected.

Our Ruling

We affirm accused-appellants' conviction.

Elements of the Crime

The following elements must be established for a conviction in the special complex crime of robbery with homicide:

1. The taking of personal property is committed with violence or intimidation against persons;

2. The property taken belongs to another;

3. The taking is *animo lucrandi*; and

4. By reason of the robbery or on the occasion thereof, homicide is committed.[19]

Essential for conviction of robbery with homicide is proof of a direct relation, an intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes are committed at the same time.[20]

The prosecution was able to establish that accused-appellants committed robbery with homicide through the totality of their

[19] *People v. Esoy*, G.R. No. 185849, April 7, 2010.

[20] *People v. Quemeggen*, G.R. No. 178205, July 27, 2009, 594 SCRA 94, 104.

evidence. The first three elements were established when Oliva testified that he saw, and positively identified, accused-appellants taking Gabuya's property by force and both shooting Gabuya. Gabuya's death resulting from their attack proves the last element of the complex crime as duly confirmed by the post-mortem report.

Defense of Alibi Unavailing

Accused-appellants cannot avoid liability by way of their defenses. Alibi is the weakest of all defenses because it is easy to concoct and difficult to disprove.[21] To establish alibi, an accused must prove (1) that he was present at another place at the time the crime was perpetrated; and (2) that it was physically impossible for him to be at the scene of the crime. Physical impossibility "refers to the distance between the place where the accused was when the crime transpired and the place where it was committed, as well as the facility of access between the two places."[22]

The fact that Aminola's witness, *i.e.*, SPO2 Lukman, corroborated Aminola's testimony about not being at the *situs* of the crime when Gabuya was robbed and killed does not, without more, serve to strengthen Aminola's alibi. As the appellate court aptly observed, SPO2 Lukman's testimony did not prove the physical impossibility for Aminola to be at the scene of the crime. SPO2 Lukman did not categorically specify the time he was with Aminola on the date of the incident. His testimony did not preclude the possibility of Aminola perpetrating the crime after their meeting. As the trial court perceptively observed:

> The time interval from Rogan Street to Bonifacio Street is just five (5) or ten (10) minutes. Such distance does not preclude the accused from being at the place of the crime at the time of its

[21] *People v. Guillera*, G.R. No. 175829, March 20, 2009, 582 SCRA 161, 170; citing *People v. Bonbon*, G.R. No. 143085, March 10, 2004, 425 SCRA 178, 187 and *People v. Caraang*, G.R. Nos. 148424-27, December 11, 2003, 418 SCRA 321, 349.

[22] *People v. Esoy*, *supra* note 19.

commission. Hence SPO2 Lukman's testimony could not be given more weight than prosecution witness Oliva's testimony.[23]

The defense of Maitimbang, likewise, cannot overcome the positive identification by Oliva. Under oath, Oliva testified seeing Maitimbang take Gabuya's property and shot Gabuya at the back while already prone on the ground.

Denial and alibi cannot prevail over the positive and categorical testimony of the witness[24] identifying a person as the perpetrator of the crime absent proof of ill motive. No reason or motive was given for Oliva to falsely testify against accused-appellants on such a serious crime. As often noted, the trial court is in a better position to observe the demeanor and candor of the witnesses and to decide who is telling the truth. We, thus, defer to the trial court's findings especially when duly affirmed by the appellate court.

Legality of Warrantless Arrests

The CA correctly ruled on the question of legality of the warrantless arrests of accused-appellants. A warrantless arrest is not a jurisdictional defect and any objection to it is waived when the person arrested submits to arraignment without any objection,[25] as in this case. Accused-appellants are questioning their arrest for the first time on appeal and are, therefore, deemed to have waived their right to the constitutional protection against illegal arrests and searches.[26]

Penalty

The Revised Penal Code provides:

Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

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[23] CA *rollo*, p. 35.

[24] *People v. Bulasag*, G.R. No. 172869, July 28, 2008, 560 SCRA 245, 253.

[25] *People v. Del Rosario*, G.R. No. 127755, April 14, 1999, 305 SCRA 740, 760-761.

[26] *People v. Rivera*, G.R. No. 177741, August 27, 2009, 597 SCRA 299, 305.

1. The penalty of *reclusion perpetua* to death, when by reason or on the occasion of the robbery, the crime of homicide shall have been committed or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x

The RTC sentenced both accused-appellants to death. But consonant to the abolition of death penalty under Republic Act No. (RA) 9346,[27] the CA reduced the penalty to *reclusion perpetua*. While the penalty reduction was legally correct, the CA omitted to include in the imposition that both accused-appellants shall be ineligible for parole. Section 2 of RA 9346 provides that sentences "which will be reduced to *reclusion perpetua* by reason of the law, shall not be eligible for parole." Thus, the sentence handed down by the CA must be accordingly modified.

Anent accused-appellants' pecuniary liability, we modify the damages awarded by the lower court. Civil indemnity of PhP 50,000 is given without need of proof other than the fact of death as a result of the crime and proof of the accused's responsibility for it.[28] If, however, the commission of robbery with homicide is attended by a qualifying aggravating circumstance, as here, that requires the imposition of the death penalty (such as the use of an unlicensed firearm), the civil indemnity for the victim shall be PhP 75,000.[29] Moral damages awarded in the amount of PhP 50,000 must also be increased to PhP 75,000 pursuant to current jurisprudence.[30]

The exemplary damages of PhP 30,000 was correctly awarded, since under Article 2230 of the Civil Code, exemplary damages

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[27] "An Act Prohibiting the Imposition of Death Penalty in the Philippines," which took effect on June 30, 2006.

[28] *People v. Berondo, Jr.*, G.R. No. 177827, March 30, 2009, 582 SCRA 547, 554; citing *People v. Whisenhunt*, G.R. No. 123819, November 14, 2001, 368 SCRA 586, 610.

[29] *People v. Villanueva*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 548; citing *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106, 117.

[30] *People v. Villanueva*, *supra* note 29.

may be imposed when the crime was committed with one or more aggravating circumstances, as in the instant case.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 01300 finding accused-appellants guilty beyond reasonable doubt of robbery with homicide is *AFFIRMED*, with *MODIFICATIONS* that accused-appellants are to suffer the penalty of *reclusion perpetua* without eligibility for parole, and each of them is ordered to pay the increased amount of PhP 75,000 as civil indemnity and PhP 75,000 as moral damages, in addition to PhP 30,000 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Nachura,[*] *Leonardo-de Castro,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179918. September 8, 2010]

SHELL PHILIPPINES EXPLORATION B.V., represented by its Managing Director, Jeremy Cliff, *petitioner, vs.* **EFREN JALOS, JOVEN CAMPANG, ARNALDO MIJARES, CARLITO TRIVINO, LUCIANO ASERON, CHARLITO ALDOVINO, ROBERTO FADERA, RENATO MANTALA, GERTRUDES MENESES, NORBERTO HERNANDEZ, JOSE CABASE, DANILO VITTO, EDWIN MARIN, SAMUEL MARIN, ARMANDO MADERA, EDGARDO MARINO, HERMINO RELOX, ROLANDO TARROBACO, ERNESTO RELOX, ROSALITO RUGAS, ELDIE DIMALIBOT, PLARIDEL MUJE, REYMUNDO CARMONA, RONILO RIOFLORIDO, LEONIDES**

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[*] Additional member per September 6, 2010 raffle.

MANCIA, JONAR GERANCE, RODEL CASAPAO, CARMENCITA MENDOZA, SEVERINO MEDRANO, EDWIN MENDOZA, DOMINEZ SANTIAGO, ROGER MUJE, REYNALDO MORALES, WILLIAM MENDOZA, NELSON SOLIS, ALBERTO MATRE, MARGARITO GADO, BONIFACIO LEOTERIO, NEMESIO PEREZ, JR., ARIEL MENDOZA, PEPITO MENDOZA, SALVADOR FALCULAN, JR., CEASAR ROBLEDO, SUZIMO CERNA, VIRGILIO VATAL, JIMMY ALBAO, CRISANTO SABIDA, LAUDRINO MIRANDA, LEOPOLDO MISANA, JIMMY DELACION, FREJEDO MAGPILI, ROLANDO DIMALIBOT, PEDRO MAPALAD, FAUSTINO BALITOSTOS, LEONARDO DIMALIBOT, MARIANO MAGYAYA, RAUL MIRANO, ERNESTO MATRE, ROMEO ROBLEDO, GILBERT SADICON, ROMEO SIENA, NESTOR SADICON, NOEL SIENA, REDENTER CAMPANG, ARNEL HERNENDEZ, RESTITUTO BAUTISTA, JOSE MUJE, DANILO BILARMINO, ADRIAN MAGANGO, VALERIANO SIGUE, BERNIE MORALES, JOSEPH SALAZAR, PABLITO MENDOZA, JR., ERWIN BAUTISTA, RUBEN BAUTISTA, ALEXANDER ROVERO, EDUARDO QUARTO, RUBEN RIOFLORIDO, NESTOR DELACION, SEVERINO MEDRANO, JOEY FAJECULAY, NICOLAS MEDRANO, FELIX MEDRANO, RODELIO CASAPAO, FELIPE LOLONG, MARCELINO LOLONG, ELDY DIMALIBOT, ROBERTO CASAPAO, SIMEON CASAPAO, HENRY DIMALIBOT, RONALDO MORALES, PEPING CASAPAO, JOEL GERANCE, JAYREE DIMALIBOT, MARIO DIMALIBOT, SANTO DIMALIBOT, ZERAPIN DIMALIBOT, FLORENCIO ROVERO, *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; POLLUTION CONTROL LAW (PD 984); POLLUTION, DEFINED.— Section

2(a) of P.D. 984 defines "pollution" as "**any alteration of the physical, chemical and biological properties of any water** x x x as will or is likely to create or render such water x x x harmful, detrimental or injurious to public health, safety or welfare or which will **adversely affect their utilization** for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes."

2. ID.; ID.; POLLUTION ADJUDICATION BOARD (PAB); POWERS AND FUNCTIONS; FINAL DECISIONS OF THE PAB MAY BE REVIEWED BY THE CA.— Executive Order 192 (1987) transferred to the PAB the powers and functions of the National Pollution and Control Commission provided in R.A. 3931, as amended by P.D. 984. These empowered the PAB to "[d]etermine the location, magnitude, extent, severity, **causes and effects**" of water pollution. Among its functions is to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." In this regard, the PAB has the power to conduct hearings, impose penalties for violation of P.D. 984, and issue writs of execution to enforce its orders and decisions. The PAB's final decisions may be reviewed by the CA under Rule 43 of the Rules of Court.

3. ID.; ID.; ID.; RECOURSE TO THE PAB ON POLLUTION-RELATED MATTERS MUST BE MADE BEFORE FILING COMPLAINT WITH THE REGULAR COURTS.— Jalos, *et al.* had an administrative recourse before filing their complaint with the regular courts. The laws creating the PAB and vesting it with powers are wise. The definition of the term "pollution" itself connotes the need for specialized knowledge and skills, technical and scientific, in determining the presence, the cause, and the effects of pollution. These knowledge and skills are not within the competence of ordinary courts. Consequently, resort must first be made to the PAB, which is the agency possessed of expertise in determining pollution-related matters.

4. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS OF AND MOTION TO DISMISS FOR LACK OF CAUSE OF ACTION.— A cause of action is the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff. Its elements consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or

omission of the defendant in violation of such right. To sustain a motion to dismiss for lack of cause of action, however, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain. x x x The test for determining the sufficiency of a cause of action rests on whether the complaint alleges facts which, if true, would justify the relief demanded.

5. CIVIL LAW; AGENCY, ELUCIDATED.— An agent is a person who binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter. The essence of an agency is the agent's ability to represent his principal and bring about business relations between the latter and third persons. An agent's ultimate undertaking is to execute juridical acts that would create, modify or extinguish relations between his principal and third persons. It is this power to affect the principal's contractual relations with third persons that differentiates the agent from a service contractor.

6. POLITICAL LAW; ADMINISTRATIVE LAW; OIL EXPLORATION AND DEVELOPMENT ACT OF 1972; SHELL'S ROLE FOR THE MALAMPAYA NATURAL GAS PROJECT NOT AS AN AGENT OF THE PHILIPPINE GOVERNMENT AND MAY THUS BE SUED IN RELATION TO THE PROJECT.— Shell's main undertaking under Service Contract 38 is to "[p]erform all petroleum operations and provide all necessary technology and finance" as well as other connected services to the Philippine government. As defined under the contract, petroleum operation means the "searching for and obtaining Petroleum within the Philippines," including the "transportation, storage, handling and sale" of petroleum whether for export or domestic consumption. Shell's primary obligation under the contract is not to represent the Philippine government for the purpose of transacting business with third persons. Rather, its contractual commitment is to develop and manage petroleum operations on behalf of the State. Consequently, Shell is not an agent of the Philippine government, but a provider of services, technology and financing for the Malampaya Natural Gas Project. It is not immune from suit and may be sued for claims even without the State's consent. Notably, the Philippine

government itself recognized that Shell could be sued in relation to the project. This is evident in the stipulations agreed upon by the parties under Service Contract 38.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
Soller and Omila Law Offices for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about a question of jurisdiction over an action against a petroleum contractor, whose pipeline operation has allegedly driven the fish away from coastal areas, inflicting loss of earnings among fishermen.

The Facts and the Case

On December 11, 1990 petitioner Shell Philippines Exploration B.V. (Shell) and the Republic of the Philippines entered into Service Contract 38 for the exploration and extraction of petroleum in northwestern Palawan. Two years later, Shell discovered natural gas in the Camago-Malampaya area and pursued its development of the well under the Malampaya Natural Gas Project. This entailed the construction and installation of a pipeline from Shell's production platform to its gas processing plant in Batangas. The pipeline spanned 504 kilometers and crossed the Oriental Mindoro Sea.

On May 19, 2003, respondents Efren Jalos, Joven Campang, Arnaldo Mijares, and 75 other individuals (Jalos, *et al.*) filed a complaint for damages[1] against Shell before the Regional Trial Court (RTC), Branch 41, Pinamalayan, Oriental Mindoro. Jalos, *et al.* claimed that they were all subsistence fishermen from the coastal *barangay* of Bansud, Oriental Mindoro whose

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[1] Docketed as Civil Case P-1818-03 (also referred to as Civil Case R-1818-03 in some parts of the records).

livelihood was adversely affected by the construction and operation of Shell's natural gas pipeline.

Jalos, *et al.* claimed that their fish catch became few after the construction of the pipeline. As a result, their average net income per month fell from a high of ₱4,848.00 to only ₱573.00. They said that "the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea." They now have to stay longer and farther out at sea to catch fish, as the pipeline's operation has driven the fish population out of coastal waters.[2]

Instead of filing an answer, Shell moved for dismissal of the complaint. It alleged that the trial court had no jurisdiction over the action, as it is a "pollution case" under Republic Act (R.A.) 3931, as amended by Presidential Decree (P.D.) 984 or the Pollution Control Law. Under these statutes, the Pollution Adjudication Board (PAB) has primary jurisdiction over pollution cases and actions for related damages.[3]

Shell also claimed that it could not be sued pursuant to the doctrine of state immunity without the State's consent. Shell said that under Service Contract 38, it served merely as an agent of the Philippine government in the development of the Malampaya gas reserves.

Moreover, said Shell, the complaint failed to state a cause of action since it did not specify any actionable wrong or particular act or omission on Shell's part that could have caused the alleged injury to Jalos, *et al.* The complaint likewise failed to comply with requirements of a valid class suit, verification and certification against forum shopping, and the requisites for a suit brought by pauper litigants.[4]

On March 24, 2004 the RTC dismissed the complaint. It ruled that the action was actually pollution-related, although denominated as one for damages. The complaint should thus

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[2] *Rollo*, p. 119.

[3] *Id.* at 141-143.

[4] *Id.* at 146-157.

be brought first before the PAB, the government agency vested with jurisdiction over pollution-related cases.[5]

Jalos, *et al*. assailed the RTC's order through a petition for *certiorari*[6] before the Court of Appeals (CA). In due course, the latter court reversed such order and upheld the jurisdiction of the RTC over the action. It said that Shell was not being sued for committing pollution, but for constructing and operating a natural gas pipeline that caused fish decline and considerable reduction in the fishermen's income. The claim for damages was thus based on a quasi-delict over which the regular courts have jurisdiction.

The CA also rejected Shell's assertion that the suit was actually against the State. It observed that the government was not even impleaded as party defendant. It gave short shrift to Shell's insistence that, under the service contract, the government was solidarily liable with Shell for damages caused to third persons. Besides, the State should be deemed to have given its consent to be sued when it entered into the contract with Shell.

The CA also held that the complaint sufficiently alleged an actionable wrong. Jalos, *et al*. invoked their right to fish the sea and earn a living, which Shell had the correlative obligation to respect. Failure to observe such obligation resulted in a violation of the fishermen's rights and thus gave rise to a cause of action for damages.[7]

Finally, the CA held that Jalos, *et al*. substantially complied with the technical requirements for filing the action. But since they failed to prove the requisites of a class suit, only those who have verified the complaint should be deemed party plaintiffs.[8]

Shell moved for reconsideration of the CA's decision but the same was denied.[9] Hence, it filed this petition for review under Rule 45.

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[5] *Id.* at 114.

[6] Docketed as CA-G.R. CV 82404.

[7] *Rollo*, pp. 96-100.

[8] *Id.* at 102.

[9] *Id.* at 108-110.

The Issues Presented

The case presents the following issues:

1. Whether or not the complaint is a pollution case that falls within the primary jurisdiction of the PAB;

2. Whether or not the complaint sufficiently alleges a cause of action against Shell; and

3. Whether or not the suit is actually against the State and is barred under the doctrine of state immunity.

The Court's Rulings

First. Although the complaint of Jalos, *et al*. does not use the word "pollution" in describing the cause of the alleged fish decline in the Mindoro Sea, it is unmistakable based on their allegations that Shell's pipeline produced some kind of poison or emission that drove the fish away from the coastal areas. While the complaint did not specifically attribute to Shell any specific act of "pollution," it alleged that "the pipeline greatly affected biogenically hard-structured communities such as coral reefs and led [to] stress to the marine life in the Mindoro Sea."[10] This constitutes "pollution" as defined by law.

Section 2(a) of P.D. 984 defines "pollution" as "**any alteration of the physical, chemical and biological properties of any water** x x x as will or is likely to create or render such water x x x harmful, detrimental or injurious to public health, safety or welfare or which will **adversely affect their utilization** for domestic, commercial, industrial, agricultural, recreational or other legitimate purposes."

It is clear from this definition that the stress to marine life claimed by Jalos, *et al.* is caused by some kind of pollution emanating from Shell's natural gas pipeline. The pipeline, they said, "greatly affected" or altered the natural habitat of fish and affected the coastal waters' natural function as fishing grounds. Inevitably, in resolving Jalos, *et al.*'s claim for damages,

[10] Biogenic means "essential to life and its maintenance." (*Webster's Third New International Dictionary*, Unabridged, p. 218.)

the proper tribunal must determine whether or not the operation of the pipeline adversely altered the coastal waters' properties and negatively affected its life sustaining function. The power and expertise needed to determine such issue lies with the PAB.

Executive Order 192 (1987) transferred to the PAB the powers and functions of the National Pollution and Control Commission provided in R.A. 3931, as amended by P.D. 984.[11] These empowered the PAB to "[d]etermine the location, magnitude, extent, severity, **causes and effects**" of water pollution.[12] Among its functions is to "[s]erve as arbitrator for the determination of reparation, or restitution of the damages and losses resulting from pollution." In this regard, the PAB has the power to conduct hearings,[13] impose penalties for violation of P.D. 984,[14] and issue writs of execution to enforce its orders and decisions.[15] The PAB's final decisions may be reviewed by the CA under Rule 43 of the Rules of Court.[16]

Jalos, *et al*. had, therefore, an administrative recourse before filing their complaint with the regular courts.[17] The laws creating the PAB and vesting it with powers are wise. The definition of the term "pollution" itself connotes the need for specialized knowledge and skills, technical and scientific, in determining the presence, the cause, and the effects of pollution. These knowledge and skills are not within the competence of ordinary courts.[18] Consequently, resort must first be made to the PAB, which is the agency possessed of expertise in determining pollution-related matters.

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[11] *Estrada v. Court of Appeals*, 484 Phil. 730, 742 (2004).

[12] P.D. 984, Section 6(a).

[13] *Id.*, Section 6(d).

[14] *Id.*, Section (9).

[15] *Id.*, Section 7(d).

[16] *Id.*, Section 7(c).

[17] *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*, G.R. No. 169228, September 11, 2009, 599 SCRA 452, 461.

[18] *Mead v. Hon. Argel*, 200 Phil. 650, 662 (1982).

To this extent, the failure of Jalos, *et al.* to allege in their complaint that they had first taken resort to PAB before going to court means that they failed to state a cause of action that the RTC could act on. This warranted the dismissal of their action.[19]

Second. Still, Shell points out that the complaint also states no cause of action because it failed to specify any actionable wrong or particular act or omission on Shell's part. The Court cannot agree.

As mentioned above, the complaint said that the natural gas pipeline's construction and operation "greatly affected" the marine environment, drove away the fish, and resulted in reduced income for Jalos, *et al.* True, the complaint did not contain some scientific explanation regarding how the construction and operation of the pipeline disturbed the waters and drove away the fish from their usual habitat as the fishermen claimed. But lack of particulars is not a ground for dismissing the complaint.

A cause of action is the wrongful act or omission committed by the defendant in violation of the primary rights of the plaintiff.[20] Its elements consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right.[21] To sustain a motion to dismiss for lack of cause of action, however, the complaint must show that the claim for relief does not exist and not only that the claim was defectively stated or is ambiguous, indefinite or uncertain.[22]

Here, all the elements of a cause of action are present. First, Jalos, *et al.* undoubtedly had the right to the preferential use

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[19] *Supra* note 11, at 739.

[20] *Remedial Law Compendium*, Vol. I (2002 Ed.), Justice Florenz D. Regalado, p. 66.

[21] *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 546.

[22] *Philippine Bank of Communications v. Trazo*, G.R. No. 165500, August 30, 2006, 500 SCRA 242, 255.

of marine and fishing resources which is guaranteed by no less than the Constitution.[23] Second, Shell had the correlative duty to refrain from acts or omissions that could impair Jalos, *et al.*'s use and enjoyment of the bounties of the seas. Lastly, Shell's construction and operation of the pipeline, which is an act of physical intrusion into the marine environment, is said to have disrupted and impaired the natural habitat of fish and resulted in considerable reduction of fish catch and income for Jalos, *et al*.

Thus, the construction and operation of the pipeline may, in itself, be a wrongful act that could be the basis of Jalos, *et al.*'s cause of action. The rules do not require that the complaint establish in detail the causal link between the construction and operation of the pipeline, on the one hand, and the fish decline and loss of income, on the other hand, it being sufficient that the complaint states the ultimate facts on which it bases its claim for relief. The test for determining the sufficiency of a cause of action rests on whether the complaint alleges facts which, if true, would justify the relief demanded.[24] In this case, a valid judgment for damages can be made in favor of Jalos, *et al.*, if the construction and operation of the pipeline indeed caused fish decline and eventually led to the fishermen's loss of income, as alleged in the complaint.

Third. Shell claims that it cannot be sued without the State's consent under the doctrine of state immunity from suit. But, to begin with, Shell is not an agent of the Republic of the Philippines.

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[23] Article XIII, Section 7 provides:

SEC. 7. The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of the communal marine and fishing resources, both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources. The protection shall extend to offshore fishing grounds of subsistence fishermen against foreign intrusion. Fishworkers shall receive a just share from their labor in the utilization of marine and fishing resources.

[24] *Raytheon International, Inc. v. Rouzie, Jr.*, G.R. No. 162894, February 26, 2008, 546 SCRA 555, 565.

It is but a service contractor for the exploration and development of one of the country's natural gas reserves. While the Republic appointed Shell as the exclusive party to conduct petroleum operations in the Camago-Malampayo area under the State's full control and supervision,[25] it does not follow that Shell has become the State's "agent" within the meaning of the law.

An agent is a person who binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.[26] The essence of an agency is the agent's ability to represent his principal and bring about business relations between the latter and third persons.[27] An agent's ultimate undertaking is to execute juridical acts that would create, modify or extinguish relations between his principal and third persons.[28] It is this power to affect the principal's contractual relations with third persons that differentiates the agent from a service contractor.

Shell's main undertaking under Service Contract 38 is to "[p]erform all petroleum operations and provide all necessary technology and finance" as well as other connected services[29] to the Philippine government. As defined under the contract, petroleum operation means the "searching for and obtaining Petroleum within the Philippines," including the "transportation, storage, handling and sale" of petroleum whether for export or domestic consumption.[30] Shell's primary obligation under the contract is not to represent the Philippine government for the purpose of transacting business with third persons. Rather, its contractual commitment is to develop and manage petroleum operations on behalf of the State.

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[25] *Rollo*, p. 378.

[26] CIVIL CODE OF THE PHILIPPINES, Article 1869.

[27] *Philex Mining Corporation v. Commissioner of Internal Revenue*, G.R. No. 148187, April 16, 2008, 551 SCRA 428, 442.

[28] *Nielson & Company, Inc. v. Lepanto Consolidated Mining Company*, 135 Phil. 532, 541 (1968).

[29] *Rollo*, p. 384.

[30] *Id.* at 380.

Consequently, Shell is not an agent of the Philippine government, but a provider of services, technology and financing[31] for the Malampaya Natural Gas Project. It is not immune from suit and may be sued for claims even without the State's consent. Notably, the Philippine government itself recognized that Shell could be sued in relation to the project. This is evident in the stipulations agreed upon by the parties under Service Contract 38.

Article II, paragraph 8, Annex "B" of Service Contract 38[32] states that legal expenses, including "judgments obtained against the Parties or any of them on account of the Petroleum Operations," can be recovered by Shell as part of operating expenses to be deducted from gross proceeds. Article II, paragraph 9B of the same document allows a similar recovery for "[a]ll actual expenditures incurred and paid by CONTRACTOR [Shell] in settlement of any and all losses, claims, damages, judgments, and any other expenses not covered by insurance, including legal services." This signifies that the State itself acknowledged the suability of Shell. Since payment of claims and damages pursuant to a judgment against Shell can be deducted from gross proceeds, the State will not be required to perform any additional affirmative act to satisfy such a judgment.

In sum, while the complaint in this case sufficiently alleges a cause of action, the same must be filed with the PAB, which

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[31] See Sections 6 and 7, Presidential Decree 87 or The Oil Exploration and Development Act of 1972.

[32] *Rollo*, p. 403. The stipulation reads in full:

"8. Legal Expenses.

All costs and expenses of litigation, or legal service otherwise necessary or expedient for the protection of the joint interests, including attorney's fees and expenses as hereinafter provided, together with all judgments obtained against the Parties or any of them on account of the Petroleum Operations, and actual expenses incurred in securing evidence for the purpose of defending against the Operations of the subject matter of the Contract. In the event actions or claims affecting interests under the Contract shall be handled by the legal staff not otherwise charged to Operating Expenses of one or more of the Parties, a charge commensurate with the cost of providing and furnishing such services may be made against Operating Expenses."

is the government agency tasked to adjudicate pollution-related cases. Shell is not an agent of the State and may thus be sued before that body for any damages caused by its operations. The parties may appeal the PAB's decision to the CA. But pending prior determination by the PAB, courts cannot take cognizance of the complaint.

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* the decision of the Court of Appeals in CA-G.R. CV 82404 dated November 20, 2006. Respondent Efren Jalos, *et al*.'s complaint for damages against Shell Philippines Exploration B.V. in Civil Case P-1818-03 of the Regional Trial Court, Branch 41, Pinamalayan, Oriental Mindoro is ordered *DISMISSED* without prejudice to its refiling with the Pollution Adjudication Board or PAB.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182622. September 8, 2010]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY [PLDT], *petitioner, vs.* **ROBERTO R. PINGOL,** *respondent.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION OF ACTIONS; ACTION UPON AN INJURY TO THE RIGHTS OF THE PLAINTIFF LIKE ILLEGAL DISMISSAL FROM EMPLOYMENT MUST BE INSTITUTED WITHIN FOUR YEARS.— Article 1146 of the

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 7, 2010.

New Civil Code provides: Art. 1146. The following actions must be instituted within four years: (1) Upon an injury to the rights of the plaintiff; x x x As this Court stated in *Callanta v. Carnation*, when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within four (4) years.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MONEY CLAIMS; PRESCRIPTIVE PERIOD.— With regard to the prescriptive period for money claims, Article 291 of the Labor Code states: Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

3. REMEDIAL LAW; CIVIL PROCEDURE; CAUSE OF ACTION; ELEMENTS.— It is a settled jurisprudence that a cause of action has three (3) elements, to wit: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.

4. ID.; EVIDENCE; JUDICIAL ADMISSIONS; APPRECIATION THEREOF.— Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive and so does not require further evidence to prove them. These admissions cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was made.

5. CIVIL LAW; PRESCRIPTION OF ACTIONS; COUNTED FROM THE DAY ACTION MAY BE BROUGHT.— The Labor Code has no specific provision on when a claim for illegal dismissal or a monetary claim accrues. Thus, the general law on prescription applies. Article 1150 of the Civil Code states: Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall

be counted **from the day they may be brought**. *The day the action may be brought* is the day a claim starts as a legal possibility.

6. ID.; ID.; INTERRUPTION THEREOF MADE APPLICABLE TO LABOR CASES.— The rule interrupting prescriptive period of actions is covered by Article 1155 of the Civil Code. Its applicability in labor cases was upheld in the case of *International Broadcasting Corporation v. Panganiban* where it was written: Like other causes of action, the prescriptive period for money claims is subject to interruption, and in the absence of an equivalent Labor Code provision for determining whether the said period may be interrupted, *Article 1155 of the Civil Code* may be applied, to wit: ART. 1155. The prescription of actions is interrupted when they are filed before the Court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor. Thus, the prescription of an action is interrupted by (a) the filing of an action, (b) a written extrajudicial demand by the creditor, and (c) a written acknowledgment of the debt by the debtor.

7. LABOR AND SOCIAL LEGISLATION; PROTECTION TO LABOR WILL NOT DENY MANAGEMENT OF ITS RIGHTS.— Although the Constitution is committed to the policy of social justice and the protection of the working class, it does not necessary follow that every labor dispute will be automatically decided in favor of labor. The management also has its own rights. Out of Its concern for the less privileged in life, this Court, has more often than not inclined, to uphold the cause of the worker in his conflict with the employer. Such leaning, however, does not blind the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

APPEARANCES OF COUNSEL

Confucius M. Amistad for petitioner.
Teresita D. Capulong for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court filed by petitioner Philippine Long Distance Telephone Company *(PLDT)* which seeks to reverse and set aside: (1) the December 21, 2007 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 98670, affirming the November 15, 2006[2] and January 31, 2007[3] Resolutions of the National Labor Relations Commission *(NLRC*); and (2) its April 18, 2008 Resolution[4] denying the Motion for Reconsideration of petitioner.

THE FACTS

In 1979, respondent Roberto R. Pingol *(Pingol)* was hired by petitioner PLDT as a maintenance technician.

On April 13, 1999, while still under the employ of PLDT, Pingol was admitted at The Medical City, Mandaluyong City, for "paranoid personality disorder" due to financial and marital problems. On May 14, 1999, he was discharged from the hospital. Thereafter, he reported for work but frequently absented himself due to his poor mental condition.

From September 16, 1999 to December 31, 1999, Pingol was absent from work without official leave. According to PLDT, notices were sent to him with a stern warning that he would be dismissed from employment if he continued to be absent without official leave "pursuant to PLDT Systems Practice A-007 which provides that 'Absence without authorized leaves for seven (7) consecutive days is subject to termination from the service.'"[5]

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[1] *Rollo* pp. 134-140. Penned by Associate Justice Japar D. Dimaampao with Associate Justice Mario L. Guariña III and Associate Justice Sixto C. Marella, Jr., concurring.

[2] *Id.* at 126-129.

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

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

[5] *Id.* at 18.

Despite the warning, he failed to show up for work. On January 1, 2000, PLDT terminated his services on the grounds of unauthorized absences and abandonment of office.

On **March 29, 2004,** four years later, Pingol filed a Complaint for Constructive Dismissal and Monetary Claims[6] against PLDT. In his complaint, he alleged that he was hastily dismissed from his employment on **January 1, 2000**. In response, PLDT filed a motion to dismiss claiming, among others, that respondent's cause of action had already prescribed as the complaint was filed four (4) years and three (3) months after his dismissal.

Pingol, however, countered that in computing the prescriptive period, the years 2001 to 2003 must not be taken into account. He explained that from 2001 to 2003, he was inquiring from PLDT about the financial benefits due him as an employee who was no longer allowed to do his work, but he merely got empty promises. It could not, therefore, result in abandonment of his claim.

On July 30, 2004, the Labor Arbiter *(LA)* issued an order granting petitioner's Motion to Dismiss on the ground of prescription, pertinent portions of which read:

> As correctly cited by (PLDT), as ruled by the Supreme Court in the case of *Callanta vs. Carnation Phils.*, 145 SCRA 268, the complaint for illegal dismissal must be filed within four (4) years from and after the date of dismissal.
>
> Needless to state, the money claims have likewise prescribed.
>
> Article 291 of the Labor Code provides:
>
> > 'All money claims arising from employer-employee relations accruing from the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued, otherwise they shall be forever barred.'
>
> WHEREFORE, let this case be, as it is hereby DISMISSED on the ground of prescription.

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[6] *Id.* at 124-125.

SO ORDERED.[7]

Pingol appealed to the NLRC arguing that the 4-year prescriptive period has not yet lapsed because PLDT failed to categorically deny his claims. The NLRC in its November 15, 2006 Resolution reversed the LA's resolution and favored Pingol. The dispositive portion thereof reads:

> WHEREFORE, the foregoing premises considered, the instant appeal is GRANTED and the Order appealed from is REVERSED and SET ASIDE.
>
> Accordingly, let the entire records of the case be REMANDED to the Labor Arbiter *a quo* for further proceedings.
>
> SO ORDERED.[8]

PLDT moved for reconsideration but the same was denied by the NLRC in its Resolution dated January 31, 2007.

Unsatisfied, PLDT elevated the case to the CA by way of a petition for *certiorari* under Rule 65 alleging grave abuse of discretion on the part of the NLRC in issuing the assailed resolutions.

The CA denied the petition in its December 21, 2007 Decision, the fallo of which reads:

> WHEREFORE, the *Petition for Certiorari* is hereby DISMISSED. The Resolutions dated 15 November 2006 and 31 January 2007 of the National Labor Relations Commission are AFFIRMED.
>
> SO ORDERED.[9]

PLDT moved for reconsideration but the same was denied by the CA in a Resolution dated April 18, 2008.

THE ISSUES

Not in conformity with the ruling of the CA, PLDT seeks relief with this Court raising the following issues:

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[7] *Id.* at 136.

[8] *Id.* at 129.

[9] *Id.* at 139.

THE HONORABLE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT PROBABLY IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.

THE HONORABLE COURT OF APPEALS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.[10]

The issues boil down to whether or not respondent Pingol filed his complaint for constructive dismissal and money claims within the prescriptive period of four (4) years as provided in Article 1146 of the Civil Code[11] and three (3) years as provided in Article 291 of the Labor Code,[12] respectively.

Petitioner PLDT argues that the declaration under oath made by respondent Pingol in his complaint before the LA stating January 1, 2000 as the date of his dismissal, should have been treated by the NLRC and the CA as a judicial admission pursuant to Section 4, Rule 129 of the Revised Rules of Court.[13] According to petitioner, respondent has never contradicted his admission under oath. On the basis of said declaration, petitioner posits that the LA was correct in finding that Pingol's complaint for illegal dismissal was filed beyond the prescriptive period of four (4) years from the date of dismissal pursuant to Article 1146 of the New Civil Code.

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[10] *Id.* at 31.

[11] Art. 1146. The following actions must be instituted within four years:

(1) upon an injury to the rights of the plaintiff. xxx

[12] Article 291. Money claims. – All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three years from the time the cause of action accrued, otherwise they shall be forever barred.

[13] Sec. 4. Judicial admissions.—An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

In his Comment,[14] respondent Pingol counters that petitioner PLDT could not have sent those notices with warning as that claim "has never been supported by sufficient proof not only before the Labor Arbiter but likewise before the Court of Appeals."[15] He further alleges that his dismissal is likewise unsupported by any evidence. He insists that both the NLRC and the CA correctly stated that his cause of action has not yet prescribed as he was not formally dismissed on January 1, 2000 or his monetary claims categorically denied by petitioner.

THE COURT'S RULING

The Court finds the petition meritorious.

Parties apparently do not dispute the applicable prescriptive period.

Article 1146 of the New Civil Code provides:

> Art. 1146. The following actions must be instituted within four years:
>
> (1) Upon an injury to the rights of the plaintiff;
>
> x x x x x x x x x

As this Court stated in *Callanta v. Carnation*,[16] when one is arbitrarily and unjustly deprived of his job or means of livelihood, the action instituted to contest the legality of one's dismissal from employment constitutes, in essence, an action predicated "upon an injury to the rights of the plaintiff," as contemplated under Art. 1146 of the New Civil Code, which must be brought within four (4) years.

With regard to the prescriptive period for money claims, Article 291 of the Labor Code states:

> Article 291. Money Claims. – All money claims arising from employer-employee relations accruing during the effectivity of this

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[14] *Rollo* pp. 62-76.

[15] *Id.* at 70.

[16] 229 Phil. 279, 289 (1986).

Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

The pivotal question in resolving the issues is the date when the cause of action of respondent Pingol accrued.

It is a settled jurisprudence that a cause of action has three (3) elements, to wit: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant violative of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff.[17]

Respondent asserts that his complaint was filed within the prescriptive period of four (4) years. He claims that his cause of action did not accrue on January 1, 2000 because he was not categorically and formally dismissed or his monetary claims categorically denied by petitioner PLDT on said date. Further, respondent Pingol posits that the continuous follow-up of his claim with petitioner PLDT from 2001 to 2003 should be considered in the reckoning of the prescriptive period.

Petitioner PLDT, on the other hand, contends that respondent Pingol was dismissed from the service on January 1, 2000 and such fact was even alleged in the complaint he filed before the LA. He never contradicted his previous admission that he was dismissed on January 1, 2000. Such admitted fact does not require proof.

The Court agrees with petitioner PLDT. Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive and so does not require further evidence to prove them. These admissions cannot be contradicted unless previously shown to have been made through palpable mistake or that no such admission was

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[17] *"J" Marketing Corporation v. Taran*, G.R. No. 163924, June 18, 2009, 589 SCRA 428, 440, citing *Auto Bus Transport Systems, Inc. v. Bautista*, 497 Phil. 863 (2005).

made.[18] In *Pepsi Cola Bottling Company v. Guanzon,*[19] it was written:

> xxx that the dismissal of the private respondent's complaint was still proper since it is **apparent from its face** that the action has **prescribed**. Private respondent **himself alleged in the complaint** that he was unlawfully dismissed in 1979 while the complaint was filed only on November 14, 1984. xxx (Emphasis supplied. Citations omitted.)

In the case at bench, Pingol himself alleged the date **January 1, 2000** as the date of his dismissal in his complaint[20] filed on **March 29, 2004**, exactly four (4) years and three (3) months later. Respondent never denied making such admission or raised palpable mistake as the reason therefor. Thus, the petitioner correctly relied on such allegation in the complaint to move for the dismissal of the case on the ground of prescription.

The Labor Code has no specific provision on when a claim for illegal dismissal or a monetary claim accrues. Thus, the general law on prescription applies. Article 1150 of the Civil Code states:

> Article 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted **from the day they may be brought**. (Emphasis supplied)

The day the action may be brought is the day a claim starts as a legal possibility.[21] In the present case, January 1, 2000 was the date that respondent Pingol was not allowed to perform his usual and regular job as a maintenance technician. Respondent Pingol cited the same date of dismissal in his complaint before the LA. As, thus, correctly ruled by the LA, the complaint filed had already prescribed.

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[18] *Damasco v. NLRC*, 400 Phil. 568, 586 (2000), citing *Philippine American General Insurance Inc. v. Sweet Lines, Inc.*, G.R. No. 87434, August 5, 1992, 212 SCRA 194.

[19] 254 Phil. 578, 586 (1989).

[20] *Rollo,* p. 124.

[21] *Anabe v. Asian Construction*, G.R. No. 183233, December 23, 2009, 609 SCRA 213, 221.

Respondent claims that between 2001 and 2003, he made follow-ups with PLDT management regarding his benefits. This, to his mind, tolled the running of the prescriptive period.

The rule in this regard is covered by Article 1155 of the Civil Code. Its applicability in labor cases was upheld in the case of *International Broadcasting Corporation v. Panganiban*[22] where it was written:

> Like other causes of action, the prescriptive period for money claims is subject to interruption, and in the absence of an equivalent Labor Code provision for determining whether the said period may be interrupted, *Article 1155 of the Civil Code* may be applied, to wit:
>
> ART. 1155. The prescription of actions is interrupted when they are filed before the Court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.
>
> Thus, the prescription of an action is interrupted by (a) the filing of an action, (b) a written extrajudicial demand by the creditor, and (c) a written acknowledgment of the debt by the debtor.

In this case, respondent Pingol never made any written extrajudicial demand. Neither did petitioner make any written acknowledgment of its alleged obligation. Thus, the claimed "follow-ups" could not have validly tolled the running of the prescriptive period. It is worthy to note that respondent never presented any proof to substantiate his allegation of follow-ups.

Unfortunately, respondent Pingol has no one but himself to blame for his own predicament. By his own allegations in his complaint, he has barred his remedy and extinguished his right of action. Although the Constitution is committed to the policy of scial justice and the protection of the working class, it does not necessary follow that every labor dispute will be automatically decided in favor of labor. The management also has its own

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[22] G.R. No. 151407, February 6, 2007, 514 SCRA 404, 411-412, citing *Laureano v. Court of Appeals,* 381 Phil. 403, 412, (2000).

rights. Out of Its concern for the less privileged in life, this Court, has more often than not inclined, to uphold the cause of the worker in his conflict with the employer. Such leaning, however, does not blind the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[23]

WHEREFORE, the petition is *GRANTED*. The assailed December 21, 2007 Decision and April 18, 2008 Resolution of the Court of Appeals, in CA-G.R. SP No. 98670, are *REVERSED* and *SET ASIDE* and a new judgment entered *DISMISSING* the complaint of Roberto R. Pingol.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184761. September 8, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JULIUS GADIANA *y* REPOLLO,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; NOT APPRECIATED WHEN THERE IS DOUBT ON THE CHAIN OF CUSTODY.— Chain of custody establishes the identity of the subject substance. It requires that testimony be presented about every link in the chain, from the moment

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[23] *Maribago Bluewater Beach Resort, Inc. v. Dual,* G.R. No. 180660, July 20, 2010.

the item is seized up to the time it is offered in evidence. When nagging doubts persist on whether the item confiscated is the same specimen examined and established to be prohibited drug, there can be no crime of illegal possession of a prohibited drug.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; REQUIREMENTS; NON-COMPLIANCE THEREOF NECESSITATES JUSTIFIABLE GROUNDS TO WARRANT EXCEPTION.— Paragraph 1, Section 21, Article II of R.A. No. 9165 provides: 1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, *physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official* who shall be required to sign the copies of the inventory and be given a copy thereof. x x x Non-compliance with the above-quoted requirements does not of course necessarily render void and invalid the seizure of the dangerous drugs, *provided* that there are justifiable grounds to warrant exception therefrom. The prosecution must, therefore, explain the reasons behind the procedural lapses and must show that the integrity and value of the seized evidence had been preserved.

3. ID.; CRIMINAL PROCEDURE; ARREST; WARRANTLESS ARREST; NOT JUSTIFIED IN CASE AT BAR.— Parenthetically, appellant's arrest, not to mention resulting confiscation of the alleged confiscation of the plastic sachets of crystalline substances in his possession, leaves nagging doubts on its validity in light of the fact that what PO1 Busico merely saw was appellant's placing of the plastic sachets in his pocket which, without more, does not justify his warrantless arrest under the Rules.

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.*:

Julius Gadiana *y* Repollo (appellant) was convicted of violation of Section 11, Article II of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act) by the Regional Trial Court of Cebu City, Branch 15 under what appears to be a form Information[1] reading:

> The undersigned Prosecutor II of the City of Cebu accuses Julius Gadiana *y* Repollo, for Violation of Sec. 11, Art. 9165, committed as follows:
>
> That on or about the 7th day of February, 2004, at about 3:40 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, x x x, with deliberate intent, did then and there have in his/her possession and under his/her control the following:
>
> A – Two (2) heat-sealed transparent plastic packets of white crystalline substance with a total net weight of 0.09 grams.
>
> locally known as '*SHABU*,' containing methamphetamine hydrochloride a dangerous drug/s, without being authorized by law.[2]
>
> CONTRARY TO LAW.
>
> BAIL RECOMMENDED: ₱200.000 (sic)
>
> Cebu City, Philippines, February 19, 2004.
>
> JESUS P. FELICIANO
> Prosecutor II, Cebu City[3]
>
> (underscoring in the original)

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[1] Exhibit "A", records, p. 5. The form appears to be a photocopy. But the typewritten entries above the blank spaces appear to be original.

[2] The underlined portions appear to have been blank spaces over which the data filled over then were supplied with a different typeset.

[3] Records at 1.

At the pre-trial, the parties stipulated "that the Forensic Officer Jude Daniel Mendoza will testify, and affirm and confirm his findings and conclusion within the four corners of his forensic report" with the clarification that what was admitted was the "existence but not the source" [4] of the two sachets.

Lone prosecution witness PO1 Julius Busico (PO1 Busico) adopted as his testimony at the witness stand the February 9, 2004 Joint Affidavit[5] which he and PO3 Joseph Dinauanao (PO3 Dinauanao) executed. In the Joint Affidavit, the police officers related the following version:

At about 3:40 P.M. on February 7, 2004, while PO1 Busico, along with PO3 Dinauanao, PO2 Erwin Ferrer, and three other police officers, was conducting saturation drive at Sitio San Roque, Barangay Mambaling, Cebu City, he chanced upon appellant holding two small plastic sachets containing crystalline substances which he was about to place inside his pocket.[6]

The policemen, identifying themselves as such, apprehended appellant at once, confiscated the two sachets from his right hand, brought him with the confiscated sachets to their office, and turned over the sachets to the Philippine National Police (PNP) Crime Laboratory Service which found them positive for methamphetamine hydrochloride.[7]

PO1 Busico added the following details at the witness stand:

PROSEC. AGAN:

Q After you recovered these [two plastic sachets] from the possession of the accused, what did you do?

A We submitted it to the PNP Crime Laboratory.

Q Can you still recall who prepared the letter request for laboratory examination?

A PO2 Erwin Ferrer.

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[4] *People v. Almorfe*, G.R. No. 181831, March 29, 2010.

[5] *Vide* note 1.

[6] *Ibid.*

[7] *Ibid.*

Q If shown to you would you be able to identify it?
A Yes.

Q Are you referring to this letter request dated February 17 [sic], 2004?
A Yes.

PROSEC. AGAN:

We request, your Honor, that the letter request be marked as our exhibit C.

COURT:

Mark it.

PROSEC. AGAN:

Who brought the letter request to the PNP Crime Laboratory?
A PO2 Erwin Ferrer.

Q Do you know the result of the laboratory examination?
A. Yes.

Q What was the result?
A Positive.

PROSEC. AGAN:

We request, your Honor, that Chemistry Report No. D-241-2004 be marked as our Exhibit D.

COURT:

Mark it.

PROSEC. AGAN:

Q Do you affirm and confirm to the truthfulness of the contents [of the] joint affidavit?
A Yes ma'am.[8] (underscoring supplied)

Upon the other hand, appellant, denying the accusation, gave the following version:

While he was, on the date and time in question, walking along an alley in Sitio Tromar, Mambaling, Cebu City (where

[8] Transcript of Stenographic Notes (TSN), June 21, 2005, pp. 5-7.

his house is situated) on his way to Sitio Paglaum where he used to stand by,[9] after three of the six above-named policemen passed by him, the fourth, prosecution witness PO1 Busico, uttered "*This is the one, this is the one. This is very obvious.*"[10] PO1 Busico at once held his arms and dipped into his (appellant's) pocket[11] upon which he (appellant) suggested that he (appellant) would just be the one to do it,[12] thereby catching the policeman's ire. He was at once handcuffed by PO1 Busico who is familiar to him as he always saw him "every Friday afternoon [when he and company went] roving there."

Appellant specifically denied the claim of PO1 Busico that he was holding two plastic packs of *shabu* which he was about to pocket.

By Decision of October 12, 2005, Branch 15 of the Regional Trial Court of Cebu City convicted appellant as charged, disposing as follows:

> WHEREFORE, in view of the foregoing, the Court finds the accused Julius Gadiana *y* Repollo GUILTY beyond reasonable doubt for violation of Section 11, Article II of R.A. 9165 and applying the Indeterminate Sentence Law, he is hereby sentenced to suffer imprisonment of EIGHT (8) YEARS AND ONE (1) DAY OR *PRISION MAYOR* AS MINIMUM TO TWELVE (12) YEARS AND ONE (1) DAY OF *RECLUSION TEMPORAL* AS MAXIMUM AND TO PAY A FINE OF THREE HUNDRED THOUSAND (₱300,000.00) PESOS together with all accessory penalties provided for by law. The physical evidence is hereby forfeited in favor of the government to be disposed of in accordance with law.
>
> SO ORDERED.[13]

In convicting appellant, the trial court gave a one-paragraph ratiocination, *viz.*

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[9] TSN, September 27, 2005 at 3-4.

[10] *Id.* at 4.

[11] *Id.* at 5.

[12] *Ibid.*

[13] Records, p. 59.

With the bare and lame denials of the accused, abjectly uncorroborated and without substantiation, apart from his self-serving attempt at extenuation as against the **positive testimony** of the arresting police officer who enjoys **the presumption of regularity** in the performance of his official duties, there being **no showing of malicious motive** to testify against the accused, it is the Court's view that the State has successfully discharged its prosecutory function by sufficiently showing the concurrence of the elements of the offense charged.[14] (emphasis and underscoring supplied)

On appeal, the appellate court, by Decision of April 30, 2008,[15] *affirmed* that of the trial court's but *modified* the penalty, holding that the nomenclature and periods of the penalties under the Revised Penal Code should not have been used by the trial court in the determination thereof as it (the trial court) should have been guided by the provisions of the Indeterminate Sentence Law. Thus the appellate court disposed:

WHEREFORE, the appealed Decision dated October 12, 2005 of the RTC of Cebu City, in Criminal Case No. CBU-68618 convicting accused-appellant Julius Gadiana *y* Repollo for violation of Section 11, Article II of R.A. 9165, is **AFFIRMED** with **MODIFICATION.** As modified, accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment from TWELVE (12) YEARS AND ONE (1) DAY as minimum, to FOURTEEN (14) YEARS as maximum.

SO ORDERED.[16] (underscoring supplied)

Hence, the present appeal.

Appellant maintains that his guilt was not proven beyond reasonable doubt.

As reflected above, the trial court credited the "positive" version of PO1 Busico in light of the presumption of regularity

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[14] *Id.* at 58-59.

[15] Penned by Justice Francisco P. Acosta, with the concurrence of Justices Amy C. Lazaro-Javier and Florito S. Macalino, CA *rollo,* pp. 77-90.

[16] *Id.* at 90.

in the performance of his official duties and absent a showing of malice.

Recall, however, that during the pre-trial, the "existence but not the source" of the two sachets was stipulated on by the parties. It was thus incumbent on the prosecution to prove the chain of custody rule.

Chain of custody establishes the identity of the subject substance.[17] It requires that testimony be presented about every link in the chain, from the moment the item is seized up to the time it is offered in evidence.[18] When nagging doubts persist on whether the item confiscated is the same specimen examined and established to be prohibited drug,[19] there can be no crime of illegal possession of a prohibited drug.

Except for the charge sheet[20] prepared against appellant which stated that evidence consisted of "two (2) heat-sealed clear plastic sachets containing *shabu* with markings 'JGR-1' and 'JGR-2,'" nowhere in the record is a showing that the marking was done in the presence of appellant or his representatives or that a physical inventory and photograph of the seized items were taken as required under paragraph 1, Section 21, Article II of R.A. No. 9165 reading:

> 1) The apprehending team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof. (emphasis supplied)

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[17] *People v. Barba,* G.R. No. 182420, July 23, 2009, 593 SCRA 711.

[18] *People v. Habana,* G.R. No. 188900, March 5, 2010.

[19] *Valdez v. People,* G.R. No. 170180, November 23, 2007, 538 SCRA 611.

[20] Records, p. 8.

x x x x x x x x x

Non-compliance with the above-quoted requirements does not of course necessarily render void and invalid the seizure of the dangerous drugs, *provided* that there are justifiable grounds to warrant exception therefrom.[21] The prosecution must, therefore, explain the reasons behind the procedural lapses[22] and must show that the integrity and value of the seized evidence had been preserved.[23]

In their Joint Affidavit[24] which served as part of PO1 Busico's testimony, he and PO3 Joseph merely stated that they brought appellant, together with the confiscated evidence, to their office for proper documentation and filing of appropriate charges. No statement was made that the allegedly seized sachets were the same sachets which were subject of the letter-request for laboratory examination prepared and brought to the Crime Laboratory by PO2 Ferrer per PO1 Busico.

The general rule is that the trial court's findings, its assessment of probative weight of the evidence of the parties, and its

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[21] Section 21 (a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165:

> (a) The apprehending officer/team having initial custody and control of the drugs **shall**, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x Provided, further that non-compliance with these requirements under **justifiable grounds**, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[22] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 272.

[23] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 212.

[24] *Vide* note 1.

conclusion anchored on such findings are entitled to great respect as, among other things, *it has the opportunity to observe the demeanor of witnesses*.[25]

During his brief testimony earlier quoted, aside from confirming the contents of the Joint Affidavit he executed with PO3 Dinauanao which served as his direct testimony, PO1 Busico declared that PO2 Edwin Ferrer prepared and brought the letter-request for laboratory examination to the PNP Crime Laboratory. On pages 6-7 of the Records which appear to be a segment of the police blotter reflecting the arrest on February 7, 2004 of appellant, appears the following information:

> A/Taken: Evidence . . . submitted to the PNP Crime Laboratory.
>
> Received by: SPO1 Abundio C. Cabahug, PNP

Not only was PO1 Busico's testimony that Ferrer prepared the letter-request for laboratory examination hearsay as he did not claim having seen PO3 Dinauanao actually prepare it. The transcripts of stenographic notes do not show that the trial court tested the credibility of witness PO1 Busico and of his testimony. The trial court's conviction of appellant upon its above-quoted one-paragraph ratiocination, which was affirmed by the appellate court, does not thus merit this Court's affirmance.

Parenthetically, appellant's arrest, not to mention resulting confiscation of the alleged confiscation of the plastic sachets of crystalline substances in his possession, leaves nagging doubts on its validity in light of the fact that what PO1 Busico merely saw was appellant's placing of the plastic sachets in his pocket which, without more, does not justify his warrantless arrest under the Rules.[26]

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[25] *Quinto v. Andres*, G.R. No. 155791, March 16, 2005, 453 SCRA 511, 526.

[26] Section 5 of Rule 113 of the Rules of Court provide:

A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

WHEREFORE, the April 30, 2008 Decision of the Court of Appeals is *REVERSED* and *SET ASIDE*. Appellant, Julius Gadiana *y* Repollo, is *ACQUITTED* of the crime charged and ordered immediately *RELEASED* from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is *ORDERED* to forthwith implement this decision and to *INFORM* this Court, within five days from receipt hereof, of action taken.

Let a copy of this Decision be forwarded to the Secretary of Justice, the PNP Director, and the Director General of the Philippine Drug Enforcement Agency, for information and guidance. No costs.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.*, and *Sereno, JJ.*, concur.

(b) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112.

[*] Additional member per Special Order No. 879 dated August 13, 2010.

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Certificate of service — A mere surplusage when the minutes of a hearing shows that the employee-party is present. (Sr. State Prosecutor Velasco *vs*. Judge Angeles, A.M. OCA IPI No. 05-2353-RTJ, Sept. 06, 2010) p. 252

Dishonesty — A grave offense punishable by dismissal which carries the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits (except leave credits), and disqualification from reemployment in the government service. (Carbonel *vs*. Civil Service Commission, G.R. No. 187689, Sept. 07, 2010) p. 470

Omnibus Rules on Leave — A civil servant is required to file a leave of absence if he has been absent for a fraction of three-fourths or more of a full day. (Sr. State Prosecutor Velasco *vs*. Judge Angeles, A.M. OCA IPI No. 05-2353-RTJ, Sept. 06, 2010) p. 252

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — The factors for the determination of just compensation in Section 17 of R.A. No. 6657, and consequently converted into a formula in A.O. No. 6, Series of 1992, as amended by A.O. No. 11, Series of 1994, is mandatory. (Land Bank of the Phils. *vs*. Colarina, G.R. No. 176410, Sept. 01, 2010) p. 76

COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)

Chain of custody rule — Failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to the guidelines, is not fatal and does not automatically render accused's arrest illegal or the items

seized/confiscated from him inadmissible. (People *vs*. Eugenio, G.R. No. 186459, Sept. 01, 2010) p. 215

— Integrity of seized articles must be established by the prosecution. *(Id.)*

— Non-compliance with the requirements does not necessarily render void and invalid the seizure of the dangerous drugs, provided that there are justifiable grounds to warrant exception therefrom. (People *vs*. Gadiana, G.R. No. 184761, Sept. 08, 2010) p. 686

Illegal possession of prohibited or regulated drugs — Not established when there is doubt on whether the item confiscated is the same as the specimen examined. (People *vs*. Gadiana, G.R. No. 184761, Sept. 08, 2010) p. 686

CONSPIRACY

Existence of — Must be shown as clearly and convincingly as the commission of the offense itself. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

CONSTRUCTION INDUSTRY ARBITRATION LAW (E.O. NO. 1008)

Jurisdiction — Original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines. (Prudential Guarantee and Assurance Inc. *vs*. Anscor Land, Inc., G.R. No. 177240, Sept. 08, 2010) p. 634

CONTRACTS

Performance bond — The time-bar provision therein provides that any claim against the bond should be discovered and presented to the company within ten days from the expiration of this bond or from the occurrence of the default or failure of the principal, whichever is the earliest. (Prudential Guarantee and Assurance Inc. *vs*. Anscor Land, Inc., G.R. No. 177240, Sept. 08, 2010) p. 634

Validity of — Stipulations made upon the convenience of the parties are valid only if they are not contrary to law. (St. Mary's Academy of Dipolog City *vs*. Palacio, G.R. No. 164913, Sept. 08, 2010) p. 532

Void contracts — Generally has no effect except as when return of what may have been given under a void contract is permitted. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

CORPORATIONS

Corporate officers — Officers who entered into contracts in behalf of the corporation cannot be held personally liable; exceptions. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

Dissolved corporation — Shall continue as body corporate for three (3) years; trustee thereof may commence suit which can proceed to final judgment even beyond the three (3) year period of liquidation. (Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

COURTS

Hierarchy of courts — Rule may be relaxed in view of the transcendental importance of an issue. (Dept. of Foreign Affairs *vs*. Judge Falcon, G.R. No. 176657, Sept. 01, 2010) p. 105

DAMAGES

Actual damages — Competent proof of the actual amount of loss is necessary. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Attorney's fees — Awarded when a party is compelled to litigate to protect their rights and prove that the adverse party acted in bad faith. (Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

Civil indemnity — Granted to the heirs of the victim without need of proof other than the commission of the crime. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

(Crisostomo *vs.* People, G.R. No. 171526, Sept. 01, 2010) p. 53

Exemplary damages — Imposed in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances. (People *vs*. Lasanas, G.R. No. 183829, Sept. 06, 2010) p. 287

— Imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

— Intended to serve as a deterrent to serious wrongdoings, a vindication of undue sufferings and wanton invasion of the rights of an injured, or a punishment for those guilty of outrageous conduct. (People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— Must be commensurate to the loss or injury suffered. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

Moral damages — Awarded in case of robbery with homicide. (Crisostomo *vs.* People, G.R. No. 171526, Sept. 01, 2010) p. 53

— Must be commensurate to the loss or injury suffered. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

— Not intended to enrich a plaintiff at the expense of the defendant. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

— Not punitive in nature and were never intended to enrich the claimant at the expense of the defendant. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

DENIAL OF THE ACCUSED

Defense of — Assumes primacy when the case for the prosecution is at the margin of sufficiency in establishing proof beyond reasonable doubt. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

— Cannot prevail over positive identification made by witnesses. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

EDUCATION

Discipline in education — As mandated by the 1987 Constitution, all educational institutions shall teach the rights and duties of citizenship, strengthen ethical and spiritual values, develop moral character and personal discipline. (Jenosa *vs*. Rev. Fr. Delariarte, O.S.A., G.R. No. 172138, Sept. 08, 2010) p. 565

EMPLOYEES, KINDS OF

Project employee — Defined as one whose employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season. (Dacuital *vs*. Camus Engineering Corp. and/or Luis M. Camus, G.R. No. 176748; Sept. 01, 2010) p. 158

Regular employees — Failure to present the individual project employment contract gives rise to the presumption that employees are regular. (Dacuital *vs*. Camus Engineering Corp. and/or Luis M. Camus, G.R. No. 176748; Sept. 01, 2010) p. 158

— Failure to submit termination report as required by Department Order No. 19 was an indication that employees were not project but regular employees. *(Id.)*

EMPLOYMENT, TERMINATION OF

Abandonment as a ground — Employer should prove: (1) that the failure to report for work was without justifiable reason, and (2) employee's intention to sever the employer-employee relationship as shown by some overt acts. (Pasig Cylinder Mfg. Corp. *vs*. Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of his actual reinstatement. (Dacuital *vs*. Camus Engineering Corp. and/or Luis M. Camus, G.R. No. 176748; Sept. 01, 2010) p. 158

— Non-compliance with the twin requirement of notice and hearing renders the dismissal illegal. *(Id.)*

— Officers of a corporation are not liable unless they acted in bad faith. *(Id.)*

— Present when there is premature dismissal of the employees from the service. (St. Mary's Academy of Dipolog City *vs*. Palacio, G.R. No. 164913, Sept. 08, 2010) p. 532

Just causes — Distinguished from authorized cause. (Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

EVIDENCE

Acquittal of a co-accused — Does not necessarily benefit the other accused. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 298

Admissibility of — Testimonial evidence carries more weight than an affidavit. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Ballistic examination — Not a prerequisite for conviction. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Circumstantial evidence — A conviction based on circumstantial evidence must exclude each and every hypothesis consistent with innocence. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

— Must exclude the possibility that some other person has committed the offense. *(Id.)*

— Sufficient for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. *(Id.)*

Corroborating evidence — Exception to the rule thereon applies only if the state witness is an eyewitness since the testimony would then be direct evidence. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

Offer of evidence — Evidence which has not been formally offered cannot be considered. (People *vs*. Villanueva, G.R. No. 181829, Sept. 01, 2010) p. 175

Presentation of — The prosecution need not present each and every witness as long as it meets the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. (People *vs*. Lasanas, G.R. No. 183829, Sept. 06, 2010) p. 287

Weight and sufficiency of — Determined by the credibility, nature and quality of the testimony. (People *vs*. Lasanas, G.R. No. 183829, Sept. 06, 2010) p. 287

EXEMPLARY DAMAGES

Award of — Imposed in criminal cases as part of the civil liability when the crime was committed with one or more aggravating circumstances. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

GOVERNMENT INFRASTRUCTURE PROJECTS (R.A. NO. 8975)

Infrastructure projects — Do not include an E-Passport project that is protected from a lower court issued injunction. (Dept. of Foreign Affairs *vs*. Judge Falcon, G.R. No. 176657, Sept. 01, 2010) p. 105

— Under Section 3(d) of R.A. No. 8975, trial courts are prohibited from issuing a TRO or a writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract. *(Id.)*

GUARANTY

As an accessory contract — Should be construed together with the main contract. (Prudential Guarantee and Assurance Inc. *vs*. Anscor Land, Inc., G.R. No. 177240, Sept. 08, 2010) p. 634

HABEAS DATA

Writ of — A judicial remedy enforcing the right to privacy, most especially the right to informational privacy of individuals. (In the Matter of the Petition for the Writ of *Amparo* and the Writ of *Habeas* Data in Favor of Melissa C. Roxas, G.R. No. 189155, Sept. 07, 2010) p. 480

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Jurisdiction — Exclusive over cases involving: (1) unsound real estate business practices; (2) claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and (3) cases involving specific performance of contractual and statutory obligations filed by a buyer of a subdivision lot or condominium unit against the owner, developer, dealer, broker, or salesman. (Sps. Lim *vs*. Ruby Shelter Builders and Realty Dev't. Corp., G.R. No. 182707, Sept. 01, 2010) p. 195

— The controlling fact in determining HLURB's jurisdiction is not the size of the original lot that the developer had subdivided but the fact that the buyer bought the portion

of the lot from a licensed land developer whose dealings on properties are regulated by the HLURB. *(Id.)*

IDENTIFICATION OF THE ACCUSED

Out-of-court identification — The danger signals which give warning that the identification may be erroneous even though the method is proper, cited. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Photographic identification — Must be devoid of any impermissible suggestions in order to prevent a miscarriage of justice. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

— The first rule in proper photographic identification procedure is that a series of photographs must be shown, and not merely that of the suspect and the second rule directs that when a witness is shown a group of pictures, their arrangement and display should in no way suggest which one of the pictures pertains to the suspect. *(Id.)*

Police line-up identification — The inadmissibility thereof should not necessarily foreclose the admissibility of an independent in-court identification. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Positive identification of the accused — The veracity and weight of the witness' positive identification of the accused as the perpetrator are not impaired by discrepancies relating to minor and collateral matters. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Bersamin, J., concurring opinion*) p. 296

Proper identification — The greatest care should be taken in considering the identification of the accused especially, when the identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

— The reliability of the actual identification of the perpetrator may be determined by more and better circumstances

other than the initial sketch of a police artist. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Bersamin, J., concurring opinion*) p. 296

Totality of circumstances test — Factors to be considered, cited. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

— (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

INDETERMINATE SENTENCE LAW (ACT NO. 4103)

Application — Act No. 4103 is not applicable to persons convicted of offenses punished with the death penalty or life imprisonment and to persons convicted to suffer the penalty of reclusion perpetua. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

INJUNCTIONS

Application for — He who must apply for it must come to court with clean hands. (Jenosa *vs*. Rev. Fr. Delariarte, O.S.A., G.R. No. 172138, Sept. 08, 2010) p. 565

JUDGMENTS

Conviction — Positive identification of the accused made by a credible witness is required to sustain a conviction. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

Forms and contents of judgments — A judgment shall clearly state the facts and the law on which it is based. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Memorandum decision — Considered valid provided that the decision clearly and distinctly states sufficient findings of fact and the law on which they are based. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

Validity of — Not impaired by the fact that the judge who heard the evidence was not himself the one who penned the decision. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

(Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Bersamin, J., concurring opinion*) p. 296

LABOR RELATIONS

Money claims — Shall be filed within three (3) years from the time the cause of action accrued, otherwise they shall be barred forever. (PLDT *vs*. Pingol, G.R. No. 182622, Sept. 08, 2010) p. 675

Security of tenure — Should not be infringed by the exercise of the employer's right to protect its interest. (St. Mary's Academy of Dipolog City *vs*. Palacio, G.R. No. 164913, Sept. 08, 2010) p. 532

LEASE

Termination of lease — A lessee is obliged to return the thing(s) leased and be responsible for any deterioration or loss of the properties, except for those that were not his fault. (University Physicians' Services, Inc. *vs*. Marian Clinics, Inc., G.R. No. 152303, Sept. 01, 2010) p. 1

— Stipulations requiring the replacement of certain movables subject of the lease upon expiration of the contract is held valid. *(Id.)*

— The responsibility of the lessee in case of loss or deterioration is not dependent on the presence of inventories. *(Id.)*

MOTION FOR RECONSIDERATION

Second motion for reconsideration — Not allowed under Section 4, Rule 43 and Section 2, Rule 52 of the Rules of Court; exception. (Sr. State Prosecutor Velasco *vs*. Judge Angeles, A.M. OCA IPI No. 05-2353-RTJ, Sept. 06, 2010) p. 252

MOTION TO DISMISS

*Denial o*f — In case of a denial of a motion to dismiss, the defendant should file an answer, go to trial and, if the decision is adverse, reiterate the issues on appeal; exception. (Chang Ik Jin *vs*. Choi Sung Bong, G.R. No. 166358, Sept. 08, 2010) p. 551

— The issuance of the writ of preliminary injunction does not amount to the denial of the motion to dismiss. *(Id.)*

MOTIONS

Motion for inhibition — Must be denied if filed after the Court had already given its opinion on the merits of the case, the rationale being that "a litigant cannot be permitted to speculate upon the action of the court only to raise an objection of this sort after a decision had been rendered. (Crisostomo *vs.* People, G.R. No. 171526, Sept. 01, 2010) p. 53

NATIONAL LABOR RELATIONS COMMISSION

Jurisdiction — The Commission is precluded from receiving and evaluating pieces of evidence in light of their apparent merit, consistent with equity and the basic notion of fairness. (Pasig Cylinder Mfg. Corp. *vs*. Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE

Agent for purposes of serving court processes on juridical persons — The word "agent" refers to a representative so integrated with the corporation sued as to make it a priori supposable that he will realize his responsibilities and know what he should do with any legal papers served on him; it does not necessarily connote an officer of the corporation. (Pasig Cylinder Mfg. Corp. *vs*. Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

Appeal — Memorandum signed by only one of the complainants is valid. (Dacuital *vs*. Camus Engineering Corp. and/or Luis M. Camus, G.R. No. 176748, Sept. 01, 2010) p. 158

Appeal bond — A reduced appeal bond is not fatal to an appeal. (Pasig Cylinder Mfg. Corp. *vs.* Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

Proof and completeness of service — The return is prima facie proof of the facts indicated therein and service by registered mail is complete upon receipt by the addressee or his agent; but if the addressee fails to claim his mail from the

post office within five (5) days from the date of first notice of the postmaster, service shall take effect after such time. (Pasig Cylinder Mfg. Corp. *vs*. Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

Service of notices and resolutions — In cases of decision(s) and final awards, copies thereof shall be served on both parties and their counsel/representative by registered mail. (Pasig Cylinder Mfg. Corp. *vs*. Rollo, G.R. No. 173631, Sept. 08, 2010) p. 588

PARTIES TO CIVIL ACTIONS

Death of a party — If the action survives despite the death of a party, it is the duty of the deceased's counsel to inform the court of such death and to give the names and addresses of the deceased's legal representatives. (Cruz *vs*. Cruz, G.R. No. 173292, Sept. 01, 2010) p. 67

PARTNERSHIP

Joint venture considered as partnership — All partners are solidarily liable with the partnership for everything chargeable to the partnership. (J. Tiosejo Investment Corp. *vs*. Sps. Ang, G.R. No. 174149, Sept. 08, 2010) p. 601

PHILIPPINE TEACHERS PROFESSIONALIZATION ACT OF 1994 (R.A. NO. 7836)

Practice of teaching profession — Mandatory requirement of registration must be complied with until September 19, 2000. (St. Mary's Academy of Dipolog City *vs*. Palacio, G.R. No. 164913, Sept. 08, 2010) p. 532

PLEADINGS

Verification — Rule may be relaxed in the interest of justice. (Dept. of Foreign Affairs *vs*. Judge Falcon, G.R. No. 176657, Sept. 01, 2010) p. 105

POLLUTION CONTROL LAW (P.D. NO. 984)

Pollution Adjudication Board — Empowered to determine the location, magnitude, extent, severity, causes and effects of water pollution and has the power to conduct hearings,

impose penalties for violation of P.D. No. 984, and issue writs of execution to enforce its orders and decisions. (Shell Phils. Exploration B.V. *vs*. Jalos, G.R. No. 179918, Sept. 08, 2010) p. 662

Water pollution — Defined as any alteration of the physical, chemical and biological properties of any water x x x as will or is likely to create or render such water x x x harmful, detrimental or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes. (Shell Phils. Exploration B.V. *vs*. Jalos, G.R. No. 179918, Sept. 08, 2010) p. 662

PRELIMINARY INJUNCTION

Prohibition from issuing temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions on government infrastructure projects under R.A. No. 8975 — Under Section 3(d) of R.A. No. 8975, trial courts are prohibited from issuing a TRO or a writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract. (Dept. of Foreign Affairs *vs*. Judge Falcon, G.R. No. 176657, Sept. 01, 2010) p. 105

PRESCRIPTION

Defense of — Not deemed waived when such defense was raised in an answer and on appeal, specifically prayed for the reliefs mentioned in their respective answers before the trial court. (Feliciano *vs*. Canoza, G.R. No. 161746, Sept. 01, 2010) p. 15

PRESCRIPTION OF ACTIONS

Action for money claims — The prescription of an action for money claims in labor cases is interrupted by: (1) the filing of an action, (2) a written extrajudicial demand by the creditor, and (3) a written acknowledgment of the debt by the debtor. (PLDT *vs*. Pingol, G.R. No. 182622, Sept. 08, 2010) p. 675

Action to annul a deed of extrajudicial partition — Must be brought within four (4) years from the discovery of the fraud. (Feliciano *vs.* Canoza, G.R. No. 161746, Sept. 01, 2010) p. 15

Action upon an injury to the rights of the plaintiff like illegal dismissal from employment — Must be instituted within four (4) years. (PLDT *vs*. Pingol, G.R. No. 182622, Sept. 08, 2010) p. 675

Application — The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought. (PLDT *vs*. Pingol, G.R. No. 182622, Sept. 08, 2010) p. 675

PRESUMPTIONS

Presumption in case of robbery — When stolen property is found in the possession of one, not the owner and without a satisfactory explanation of such possession, he is presumed to be the thief. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

PROPERTY RELATIONS BETWEEN HUSBAND AND WIFE

Conjugal partnership of gains — Any alienation or encumbrance of conjugal property made during the effectivity of the Family Code is governed by Article 124 of the Family Code; it may also be applied retroactively if it will not prejudice vested or acquired rights existing before the effectivity of the Family Code. (Sps. Aggabao *vs*. Parulan, Jr., G.R. No. 165803, Sept. 01, 2010) p. 26

— The void sale of conjugal property is construed as a continuing offer until the offer is withdrawn. *(Id.)*

— Under the Family Code, sale of conjugal property without the consent of the other spouse is void and it cannot be ratified. *(Id.)*

PROSECUTION OF OFFENSES

Review of criminal cases — Guiding principle in reviewing criminal cases. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

PUBLIC OFFICERS AND EMPLOYEES

Dishonesty — A serious offense, which reflects on the person's character and exposes the moral decay which virtually destroys his honor, virtue, and integrity. (Carbonel *vs*. Civil Service Commission, G.R. No. 187689, Sept. 07, 2010) p. 470

QUALIFIED THEFT

Commission of — Established when a person failed to account for the subject funds which he/she was under obligation to deposit which constitutes asportation with intent of gain, committed with grave abuse of confidence reposed on her. (People *vs.* Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

Imposable penalty — To prove the amount of the property taken for fixing the penalty imposable against the accused, the prosecution must present more than a mere uncorroborated estimate. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

QUALIFYING CIRCUMSTANCES

Evident premeditation — Its essence is that the execution of the crime is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a span of time sufficient to arrive at a calm judgment. (Lumanog *vs.* People, G.R. No. 182555, Sept. 07, 2010) p. 296

Minority and relationship as special qualifying circumstances — Must be proved with equal certainty and clearness as the crime itself; otherwise, there can be no conviction of the crime in its qualified form. (People *vs.* Villanueva, G.R. No. 181829, Sept. 01, 2010) p. 175

Treachery — Appreciated when the attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

R. A. NO. 8975 (AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES

Infrastructure projects — Do not include the E-Passport project that is protected from a lower court issued injunction. (Dept. of Foreign Affairs *vs*. Judge Falcon, G.R. No. 176657, Sept. 01, 2010) p. 105

— Under Section 3(d) of R.A. No. 8975, trial courts are prohibited from issuing a TRO or a writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract. *(Id.)*

RAPE

Civil liabilities of accused — Cited. (People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

(People *vs*. Villanueva, G.R. No. 181829, Sept. 01, 2010) p. 175

Commission of — Imposable penalty. (People *vs*. Villanueva, G.R. No. 181829, Sept. 01, 2010) p. 175

— Laceration, whether healed or fresh, are considered the best physical evidence of forcible defloration. (People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— Medical examination or medical report is not indispensable to prove the commission of rape. (People *vs*. Lasanas, G.R. No. 183829, Sept. 06, 2010) p. 287

(People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— The crime is usually committed under a cloak of privacy that only parties directly involved therein can attest to what actually transpired. *(Id.)*

Element of force and intimidation — Any degree of force or intimidation that compels the victim's submission to the offender is sufficient for the crime of rape to be committed. (People *vs.* De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— Findings and conclusion of the doctor who examined the victim, along with the victim's immediate reporting of the incident to the authorities before which she at once narrated the details thereof, negate consensuality, and confirm victim's claim that the intercourse was committed with intimidation and force. (People *vs.* Bustillo, G.R. No. 187540, Sept. 01, 2010) p. 224

— The test is whether the threat or intimidation produces a reasonable fear in the mind of the victim that if she resists, the threat would be carried out. (People *vs.* De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

Prosecution of rape cases — Guiding principles in the determination of the innocence or guilt of the accused. (People *vs.* De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— No mother would subject her daughter to a public trial for rape, if said charges were not true. (People *vs.* Lasanas, G.R. No. 183829, Sept. 06, 2010) p. 287

— When a rape victim's testimony passes the test of credibility, the accused can be convicted on the basis thereof. (People *vs.* De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

ROBBERY

Presumptions — When stolen property is found in the possession of one, who is not the owner and without a satisfactory explanation of such possession, he is presumed to be the thief. (People *vs.* Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

ROBBERY WITH HOMICIDE

Commission of — Civil liabilities of the accused, cited. (People *vs.* Aminola, G.R. No. 178062, Sept. 08, 2010) p. 649

— Elements for conviction are: (1) The taking of personal property is committed with violence or intimidation against persons; (2) The property taken belongs to another; (3) The taking is animo lucrandi; and (4) By reason of the robbery or on the occasion thereof, homicide is committed. *(Id.)*

(People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

— Established when a homicide is committed either by reason, or on occasion, of the robbery. (Crisostomo *vs*. People, G.R. No. 171526, Sept. 01, 2010) p. 53

— Imposable penalty. (People *vs*. Aminola, G.R. No. 178062, Sept. 08, 2010) p. 649

(Crisostomo *vs*. People, G.R. No. 171526, Sept. 01, 2010) p. 53

— The intent to rob must precede the taking of human life but the killing may occur before, during, or after the robbery. *(Id.)*

— When a homicide takes place by reason or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing. *(Id.)*

SALES

Buyer of conjugal property — Must observe two kinds of requisite diligence, namely: (1) the diligence in verifying the validity of the title covering the property; and (2) the diligence in inquiring into the authority of the transacting spouse to sell conjugal property in behalf of the other spouse. (Sps. Aggabao *vs*. Parulan, Jr., G.R. No. 165803, Sept. 01, 2010) p. 26

SECURITIES ACT, REVISED (B.P. Blg. 178)

Validity of contracts — Every contract executed in violation of any provision of the Act, or any rule or regulation thereunder, and every contract, including any contract

for listing a security on an exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule and regulation thereunder, shall be void. (Queensland-Tokyo Commodities, Inc. *vs*. George, G.R. No. 172727, Sept. 08, 2010) p. 574

SOCIAL LEGISLATION

Employees' trust or benefit plans — Intended to provide economic assistance to employees upon the occurrence of certain contingencies, particularly, old age retirement, death, sickness, or disability. (Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

STATE WITNESS

Discharge of an accused to be a state witness — Requisites. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

Testimony of — Must be substantially corroborated in its material points. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

— Where the state witness is not an eyewitness, the testimony partakes of the nature of circumstantial evidence and the rule thereon applies. *(Id.)*

SUMMONS

Substituted service of summons — Valid if made at the party's place of business with some competent person in charge thereof. (Gentle Supreme Phils., Inc. *vs*. Consulta, G.R. No. 183182, Sept. 01, 2010) p. 200

TESTIMONIES

Admissibility — Accused's failure to testify in his defense cannot be considered against him, but it may help in determining his guilt. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

— The testimony of the witness regarding the inadmissible identification cannot be admitted as well. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Carpio, J., dissenting opinion*) p. 296

Weight of — Testimonial evidence is given more weight than affidavits. (Crisostomo *vs*. People, G.R. No. 171526, Sept. 01, 2010) p. 53

THEFT

Commission of — Elements. (People *vs*. Anabe, G.R. No. 179033, Sept. 06, 2010) p. 261

— When qualified. *(Id.)*

TRUSTS

Concept — A fiduciary relationship with respect to property, which involves the existence of equitable duties imposed upon the holder of the title to the property to deal with it for the benefit of another. (Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

Express trust — Those which the direct and positive acts of the parties create, by some writing or deed, or will, or by words evincing an intention to create a trust.(Metropolitan Bank & Trust Co., Inc. *vs*. Board of Trustees of Riverside Mills Corp. Provident and Retirement Fund, G.R. No. 176959, Sept. 08, 2010) p. 617

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

(People *vs*. Villanueva, G.R. No. 181829, Sept. 01, 2010) p. 175

— In the crime of rape, accused may be convicted solely on the testimony of the victim. (People *vs*. De Guzman, G.R. No. 188352, Sept. 01, 2010) p. 229

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. *(Id.)*

— Positive and categorical declarations of prosecution witnesses deserve full faith and credence in the absence of ill motive. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010) p. 296

— When testimony of the witness is not sufficiently credible to support the finding of guilt of all the accused. (Lumanog *vs*. People, G.R. No. 182555, Sept. 07, 2010; *Abad, J., dissenting opinion*) p. 296

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