PHILIPPINE REPORTS

VOL. 645

SEPTEMBER 13, 2010 TO SEPTEMBER 27, 2010

VOLUME 645

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

SEPTEMBER 13, 2010 TO SEPTEMBER 27, 2010

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 172060. September 13, 2010]

JOSELITO R. PIMENTEL, *petitioner, vs.* **MARIA CHRYSANTINE L. PIMENTEL and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTION; ELEMENTS OF A PREJUDICIAL QUESTION.— Section 7, Rule 111 of the 2000 Rules on Criminal Procedure provides: Section 7. Elements of Prejudicial Question. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action and (b) the resolution of such issue determines whether or not the criminal action may proceed.

2. ID.; ID.; ID.; ID.; PREJUDICIAL QUESTION; ELUCIDATED.— There is a prejudicial question when a civil action and a criminal action are both pending, and there exists in the civil action an issue which must be preemptively resolved before the criminal action may proceed because howsoever the issue raised in the civil action is resolved would be determinative of the guilt or innocence of the accused in the criminal case. A prejudicial question is defined as: x x x one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the

crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.

3. ID.; ID.; ID.; ID.; CIVIL CASE FOR ANNULMENT OF MARRIAGE, NOT A PREJUDICIAL QUESTION TO THE CRIME OF PARRICIDE.— The relationship between the offender and the victim is a key element in the crime of parricide, which punishes any person "who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse." The relationship between the offender and the victim distinguishes the crime of parricide from murder or homicide. However, the issue in the annulment of marriage is not similar or intimately related to the issue in the criminal case for parricide. Further, the relationship between the offender and the victim is not determinative of the guilt or innocence of the accused. The issue in the civil case for annulment of marriage under Article 36 of the Family Code is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The issue in parricide is whether the accused killed the victim. In this case, since petitioner was charged with frustrated parricide, the issue is whether he performed all the acts of execution which would have killed respondent as a consequence but which, nevertheless, did not produce it by reason of causes independent of petitioner's will. At the time of the commission of the alleged crime, petitioner and respondent were married. The subsequent dissolution of their marriage, in case the petition in Civil Case No. 04-7392 is granted, will have no effect on the alleged crime that was committed at the time of the subsistence of the marriage. In short, even if the marriage between petitioner and respondent is annulled, petitioner could still be held criminally liable since at the time of the commission of the alleged crime, he was still married to respondent.

APPEARANCES OF COUNSEL

Augustus Cesar E. Azura for petitioner.
The Solicitor General for public respondent.
Eduardo Fabian for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] of the Court of Appeals, promulgated on 20 March 2006, in CA-G.R. SP No. 91867.

The Antecedent Facts

The facts are stated in the Court of Appeals' decision:

On 25 October 2004, Maria Chrysantine Pimentel *y* Lacap (private respondent) filed an action for frustrated parricide against Joselito R. Pimentel (petitioner), docketed as Criminal Case No. Q-04-130415, before the Regional Trial Court of Quezon City, which was raffled to Branch 223 (RTC Quezon City).

On 7 February 2005, petitioner received summons to appear before the Regional Trial Court of Antipolo City, Branch 72 (RTC Antipolo) for the pre-trial and trial of Civil Case No. 04-7392 (*Maria Chrysantine Lorenza L. Pimentel v. Joselito Pimentel*) for Declaration of Nullity of Marriage under Section 36 of the Family Code on the ground of psychological incapacity.

On 11 February 2005, petitioner filed an urgent motion to suspend the proceedings before the RTC Quezon City on the ground of the existence of a prejudicial question. Petitioner asserted that since the relationship between the offender and the victim is a key element in parricide, the outcome of Civil Case No. 04-7392 would have a bearing in the criminal case filed against him before the RTC Quezon City.

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

[2] *Rollo*, pp. 27-34. Penned by Associate Justice Regalado E. Maambong with Associate Justices Rodrigo V. Cosico and Lucenito N. Tagle, concurring.

The Decision of the Trial Court

The RTC Quezon City issued an Order dated 13 May 2005[3] holding that the pendency of the case before the RTC Antipolo is not a prejudicial question that warrants the suspension of the criminal case before it. The RTC Quezon City held that the issues in Criminal Case No. Q-04-130415 are the injuries sustained by respondent and whether the case could be tried even if the validity of petitioner's marriage with respondent is in question. The RTC Quezon City ruled:

> WHEREFORE, on the basis of the foregoing, the Motion to Suspend Proceedings On the [Ground] of the Existence of a Prejudicial Question is, for lack of merit, DENIED.
>
> SO ORDERED.[4]

Petitioner filed a motion for reconsideration. In its 22 August 2005 Order,[5] the RTC Quezon City denied the motion.

Petitioner filed a petition for *certiorari* with application for a writ of preliminary injunction and/or temporary restraining order before the Court of Appeals, assailing the 13 May 2005 and 22 August 2005 Orders of the RTC Quezon City.

The Decision of the Court of Appeals

In its 20 March 2006 Decision, the Court of Appeals dismissed the petition. The Court of Appeals ruled that in the criminal case for frustrated parricide, the issue is whether the offender commenced the commission of the crime of parricide directly by overt acts and did not perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance. On the other hand, the issue in the civil action for annulment of marriage is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The Court of Appeals ruled that even if the marriage between

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[3] *Id.* at 50-51. Penned by Presiding Judge Ramon A. Cruz.

[4] *Id.* at 51.

[5] *Id.* at 53.

petitioner and respondent would be declared void, it would be immaterial to the criminal case because prior to the declaration of nullity, the alleged acts constituting the crime of frustrated parricide had already been committed. The Court of Appeals ruled that all that is required for the charge of frustrated parricide is that at the time of the commission of the crime, the marriage is still subsisting.

Petitioner filed a petition for review before this Court assailing the Court of Appeals' decision.

The Issue

The only issue in this case is whether the resolution of the action for annulment of marriage is a prejudicial question that warrants the suspension of the criminal case for frustrated parricide against petitioner.

The Ruling of this Court

The petition has no merit.

Civil Case Must be Instituted Before the Criminal Case

Section 7, Rule 111 of the 2000 Rules on Criminal Procedure[6] provides:

> Section 7. Elements of Prejudicial Question. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action and (b) the resolution of such issue determines whether or not the criminal action may proceed.

The rule is clear that the civil action must be instituted first before the filing of the criminal action. In this case, the Information[7] for Frustrated Parricide was dated 30 August 2004. It was raffled to RTC Quezon City on 25 October 2004 as per the stamped date of receipt on the Information. The RTC Quezon City set Criminal Case No. Q-04-130415 for pre-trial and trial

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[6] Dated 1 December 2000.

[7] *Rollo*, p. 54.

on 14 February 2005. Petitioner was served summons in Civil Case No. 04-7392 on 7 February 2005.[8] Respondent's petition[9] in Civil Case No. 04-7392 was dated 4 November 2004 and was filed on 5 November 2004. Clearly, the civil case for annulment was filed after the filing of the criminal case for frustrated parricide. As such, the requirement of Section 7, Rule 111 of the 2000 Rules on Criminal Procedure was not met since the civil action was filed subsequent to the filing of the criminal action.

Annulment of Marriage is not a Prejudicial Question in Criminal Case for Parricide

Further, the resolution of the civil action is not a prejudicial question that would warrant the suspension of the criminal action.

There is a prejudicial question when a civil action and a criminal action are both pending, and there exists in the civil action an issue which must be preemptively resolved before the criminal action may proceed because howsoever the issue raised in the civil action is resolved would be determinative of the guilt or innocence of the accused in the criminal case.[10] A prejudicial question is defined as:

> x x x one that arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.[11]

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[8] *Id.* at 56.

[9] *Id.* at 61-65.

[10] *Jose v. Suarez*, G.R. No. 176795, 30 June 2008, 556 SCRA 773.

[11] *Go v. Sandiganbayan*, G.R. Nos. 150329-30, 11 September 2007, 532 SCRA 574, 577-578.

The relationship between the offender and the victim is a key element in the crime of parricide,[12] which punishes any person "who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse."[13] The relationship between the offender and the victim distinguishes the crime of parricide from murder[14] or homicide.[15] However, the issue in the annulment of marriage is not similar or intimately related to the issue in the criminal case for parricide. Further, the relationship between the offender and the victim is not determinative of the guilt or innocence of the accused.

The issue in the civil case for annulment of marriage under Article 36 of the Family Code is whether petitioner is psychologically incapacitated to comply with the essential marital obligations. The issue in parricide is whether the accused killed the victim. In this case, since petitioner was charged with frustrated parricide, the issue is whether he performed all the acts of execution which would have killed respondent as a consequence but which, nevertheless, did not produce it by reason of causes independent of petitioner's will.[16] At the time of the commission of the alleged crime, petitioner and respondent were married. The subsequent dissolution of their marriage, in case the petition in Civil Case No. 04-7392 is granted, will have no effect on the alleged crime that was committed at the time of the subsistence of the marriage. In short, even if the marriage between petitioner and respondent is annulled, petitioner could still be held criminally liable since at the time of the commission of the alleged crime, he was still married to respondent.

We cannot accept petitioner's reliance on *Tenebro v. Court of Appeals*[17] that "the judicial declaration of the nullity of a

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[12] *People v. Dalag*, 450 Phil. 304 (2003).

[13] Article 246 of the Revised Penal Code.

[14] Article 248 of the Revised Penal Code.

[15] Article 249 of the Revised Penal Code.

[16] See Article 6 of the Revised Penal Code.

[17] 467 Phil. 723 (2004).

marriage on the ground of psychological incapacity retroacts to the date of the celebration of the marriage insofar as the *vinculum* between the spouses is concerned x x x." First, the issue in *Tenebro* is the effect of the judicial declaration of nullity of a second or subsequent marriage on the ground of psychological incapacity on a criminal liability for bigamy. There was no issue of prejudicial question in that case. Second, the Court ruled in *Tenebro* that "[t]here is x x x a recognition *written into the law itself* that such a marriage, although void *ab initio*, may still produce legal consequences."[18] In fact, the Court declared in that case that "a declaration of the nullity of the second marriage on the ground of psychological incapacity is of absolutely no moment insofar as the State's penal laws are concerned."[19]

In view of the foregoing, the Court upholds the decision of the Court of Appeals. The trial in Criminal Case No. Q-04-130415 may proceed as the resolution of the issue in Civil Case No. 04-7392 is not determinative of the guilt or innocence of petitioner in the criminal case.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 20 March 2006 Decision of the Court of Appeals in CA-G.R. SP No. 91867.

SO ORDERED.

Peralta, Bersamin,[*] *Abad,* and *Villarama, Jr.,*[**] *JJ.,* concur.

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[18] *Id.* at 744. Italicization in the original.

[19] *Id.* at 742.

[*] Designated additional member per Special Order No. 886 dated 1 September 2010.

[**] Designated additional member per Raffle dated 8 September 2010.

EN BANC

[G.R. No. 171268. September 14, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRINGAS BUNAY *y* DAM-AT,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; HOW CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED; DEATH OF THE CONVICT; ELUCIDATED.— The death of the accused during the pendency of his appeal in this Court totally extinguished his criminal liability. Such extinction is based on Article 89 of the *Revised Penal Code*, which pertinently provides: Article 89. *How criminal liability is totally extinguished.* — **Criminal liability is totally extinguished:** 1. **By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.** x x x The death of the accused likewise extinguished the civil liability that was based exclusively on the crime for which the accused was convicted (*i.e.*, *ex delicto*), because no final judgment of conviction was yet rendered by the time of his death. Only civil liability predicated on a source of obligation other than the delict survived the death of the accused, which the offended party can recover by means of a separate civil action.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BERSAMIN, *J.*:

The Regional Trial Court (RTC), Branch 26, in Luna, Apayao tried and found the accused guilty of qualified rape in its decision dated December 11, 2001, the decretal portion of which reads:

WHEREFORE, finding the accused, BRINGAS BUNAY *y* DAM-AT guilty beyond reasonable doubt of the crime of Rape as charged against him, this court hereby sentences said accused to suffer the Supreme Penalty of DEATH.

The accused is further ordered to pay the victim, "AAA," the amount of Seventy Five Thousand (₱75,000.00) by way of civil indemnity plus exemplary and moral damages of Sixty Thousand Pesos (₱60,000.00).

The accused is ordered to be immediately shipped to New Bilibid Prisons, Muntinlupa City, for imprisonment thereat while awaiting the review of this decision by the Supreme Court.

IT IS SO ORDERED.[1]

On December 13, 2001, the accused was committed to the New Bilibid Prison in Muntinlupa City, per the certification issued on August 14, 2002 by the Director of the Bureau of Corrections.[2]

The conviction was brought for automatic review, but the Court transferred the case to the CA for intermediate review on November 9, 2004,[3] conformably with *People v. Mateo*.[4]

On August 10, 2005, the Court of Appeals (CA) affirmed the conviction of the accused for qualified rape in CA-G.R. CR-H.C. No. 00758,[5] *viz*:

IN LIGHT OF THE FOREGOING, the assailed Decision of the Regional Trial Court of Luna, Apayao, Branch 26 in Criminal Case No. 5-2001 is hereby AFFIRMED.

SO ORDERED.

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[1] Original Records, p. 116.

[2] CA *Rollo*, p. 30.

[3] *Id.*, p. 113.

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

[5] CA *Rollo*, pp. 115-123; penned by Associate Justice Jose L. Sabio, Jr. (retired) and concurred in by Associate Justice Hakim Abdulwahid and Associate Justice Magdangal De Leon.

Following the CA's denial of his motion for reconsideration, the accused now appeals to the Court.

On April 20, 2010, the Court received the letter dated April 15, 2010 from Bureau of Corrections Assistant Director for Operations Rodrigo A. Mercado, advising that the accused had died on March 25, 2010 at the New Bilibid Prison Hospital in Muntinlupa City. The report of Dr. Marylou V. Arbatin, Medical Officer III, revealed that the immediate cause of death had been cardio-respiratory arrest, with pneumonia as the antecedent cause.

On June 22, 2010, the Court required the Bureau of Corrections to submit a certified true copy of the death certificate of the accused.

By letter dated August 16, 2010, Armando T. Miranda, Chief Superintendent of the New Bilibid Prison, submitted the death certificate of the accused.

Under the foregoing circumstances, the death of the accused during the pendency of his appeal in this Court totally extinguished his criminal liability. Such extinction is based on Article 89 of the *Revised Penal Code*, which pertinently provides:

> Article 89. *How criminal liability is totally extinguished.* — **Criminal liability is totally extinguished:**
>
> 1. **By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.**
>
> x x x x x x x x x

The death of the accused likewise extinguished the civil liability that was based exclusively on the crime for which the accused was convicted (*i.e.*, *ex delicto*), because no final judgment of conviction was yet rendered by the time of his death. Only civil liability predicated on a source of obligation other than the delict survived the death of the accused, which the offended party can recover by means of a separate civil action.[6]

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[6] *People v. Bayotas*, G.R. No. 102007, September 2, 1994, 236 SCRA 239.

UPON THE FOREGOING CONSIDERATIONS, the appeal of the accused is dismissed, and this criminal case is considered closed and terminated.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Peralta, Del Castillo, Abad, Villarama, Jr., Perez, and *Sereno, JJ.*, concur.

Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.*, on leave.

SECOND DIVISION

[A.M. No. MTJ-10-1764. September 15, 2010]
(Formerly OCA IPI No. 09-2121-MTJ)

JUDITH S. SOLUREN, *complainant, vs.* **JUDGE LIZABETH G. TORRES, Metropolitan Trial Court, Branch 60, Mandaluyong City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; FAILURE TO DECIDE CASES WITHIN THE REGLEMENTARY PERIOD OF NINETY DAYS IS GROSS INEFFICIENCY THAT WARRANTS ADMINISTRATIVE SANCTION AS COMPLIANCE WITH THE PERIOD IS MANDATORY.— This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency. Section 15 (1), Article VIII of the 1987

Constitution mandates lower court judges to decide a case within the reglementary period of ninety days. The Code of Judicial Conduct, under Rule 3.05 of Canon 3, likewise enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the ninety-day period is mandatory.

2. ID.; ID.; ID.; ID.; EXTENSION OF TIME TO DECIDE CASES, IF NEEDED, MUST BE REQUESTED.— This Court is aware of the heavy case load of first level courts. We have allowed reasonable extensions of time needed to decide cases. But such extensions must first be requested from this Court. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law. Any delay, no matter how short, in the disposition of cases undermines the people's faith and confidence in the judiciary. It also deprives the parties of their right to the speedy disposition of their cases. Without any order of extension granted by this Court, failure to decide even a single case within the required period constitutes gross inefficiency that merits administrative sanction. The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions, for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

3. ID.; ID.; ID.; UNDUE DELAY IN RENDERING DECISION; PENALTY.— Under the new amendments to Rule 140 of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00. In this case, we deem it proper to impose a fine of ₱20,000.00.

D E C I S I O N

PERALTA, *J.*:

In a Complaint-Affidavit[1] dated February 19, 2009, complainant Judith S. Soluren (Soluren) charged Hon. Lizabeth G. Torres, Presiding Judge of Branch 60, Metropolitan Trial Court (MeTC), Mandaluyong City, with Violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct and Section 15 (1) of the Constitution, Gross Inefficiency and Misconduct.

Soluren is the respondent in a criminal case for grave oral defamation entitled *People of the Philippines versus Judith S. Soluren* docketed as Criminal Case No. 100833 filed before the MeTC of Mandaluyong City, Branch 60, presided by respondent judge.

On August 28, 2007, Assistant City Prosecutor Lawrence Mark A. Encinas (Encinas), of the City Prosecutor's Office of Mandaluyong City, issued a Resolution[2] in I.S. No. 07-71032-A dismissing the complaint for grave oral defamation against Soluren.

By virtue of said Resolution, on September 4, 2007, Encinas filed a Motion to Withdraw Information[3] in Criminal Case No. 100833. On September 28, 2007, private complainant in the said case filed a Comment and Opposition on the motion to withdraw information on the ground that there was a pending motion for reconsideration filed with the Prosecutor's Office of Mandaluyong City.

On November 6, 2007, the Prosecutor's Office of Mandaluyong City issued its Resolution denying private complainant's Motion for Reconsideration.

On December 12, 2007, the Motion to Withdraw Information was submitted for resolution.

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

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

[3] *Id.* at 6.

On July 30, 2008, Soluren, through her counsel, filed an Urgent Motion to Resolve the "Motion to Withdraw Information."[4] Judge Torres failed to act on the said motion.

On September 18, 2008, Soluren filed a Second Urgent Motion to Resolve the Motion to Withdraw Information.[5] However, Judge Torres, again, failed to resolve said motion.

As of the filing of the complaint, or one (1) year and two (2) months after the motion to withdraw information was submitted for resolution, respondent judge has yet to resolve the motion; thus, prompting Soluren to file the instant complaint against respondent judge for violation of Rule 3.05, Canon 3 of the Code of Judicial Conduct and Section 15 (1) of the Constitution.

On March 2, 2009, the Office of the Court Administrator (OCA) directed Judge Torres to file a comment on the instant complaint against her within ten (10) days from the receipt of the directive.[6]

In a Tracer Letter[7] dated June 22, 2009, it appeared, per records, that Judge Torres has yet to comply with the OCA's directive to file her comment on the complaint against her. Thus, it was reiterated anew that Judge Torres submit her comment within five (5) days from receipt of the letter.

In its Memorandum[8] dated December 15, 2009 to the Court, the OCA recommended that the Court direct Judge Torres — for the last time — to submit her Comment, otherwise, the case shall be deemed submitted for resolution on the basis of the pleadings on file.

Again, in a Resolution[9] dated February 8, 2010, the Court resolved to *DIRECT FOR THE LAST TIME* Judge Torres to

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

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

[6] *Id.* at 14.

[7] *Id.* at 15.

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

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

submit her comment, otherwise, the case shall be deemed submitted for decision on the basis of the pleadings on file.

In a Letter[10] dated January 6, 2010, Soluren manifested that, to date, the Motion to Withdraw Information remained unresolved. Likewise, no comment on the complaint was ever submitted by respondent judge.

RULING

This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency.

Section 15 (1), Article VIII of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of ninety days. The Code of Judicial Conduct, under Rule 3.05[11] of Canon 3, likewise enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the ninety-day period is mandatory.[12]

This Court is aware of the heavy case load of first level courts. We have allowed reasonable extensions of time needed to decide cases. But such extensions must first be requested

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[10] *Id.* at 20.

[11] Rule 3.05 – A judge shall dispose of the court's business promptly and decide cases within the required periods.

[12] *Re: Cases Submitted For Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal.*, A.M. No. 09-9-163-MTC, May 6, 2010.

from this Court. A judge cannot by himself choose to prolong the period for deciding cases beyond that authorized by law.[13] Any delay, no matter how short, in the disposition of cases undermines the people's faith and confidence in the judiciary. It also deprives the parties of their right to the speedy disposition of their cases.[14] Without any order of extension granted by this Court, failure to decide even a single case within the required period constitutes gross inefficiency that merits administrative sanction.

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions, for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[15]

The inefficiency of Judge Torres is evident in her failure to decide the motion within the mandatory reglementary period for no apparent reason. Neither did she offer any explanation for such delay nor even give any comment when required to do so. This we will not tolerate.

Under the new amendments to Rule 140 of the Rules of Court,[16] undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits

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[13] *Petallar v. Judge Pullos*, 464 Phil. 540, 546-547 (2003).

[14] *Re: Cases Submitted For Decision Before Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal, supra* note 12.

[15] *Id.*

[16] Section 9 (1), in relation to Section 11 (B); *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (*Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges*).

for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00. In this case, we deem it proper to impose a fine of ₱20,000.00.

WHEREFORE, the Court finds *JUDGE LIZABETH G. TORRES*, Presiding Judge of Branch 60, Metropolitan Trial Court, Mandaluyong City, *GUILTY of GROSS INEFFICIENCY* and is *ORDERED* to pay a *FINE* in the amount of Twenty Thousand Pesos *(₱20,000.00)*, with a stern warning that a repetition of the same offense will be dealt with more severely. Judge Torres is further *ORDERED* to *RESOLVE* with utmost dispatch the pending Motion to Withdraw Information if it is still unresolved.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 159588. September 15, 2010]

P/CHIEF SUPERINTENDENT ROBERTO L. CALINISAN, Regional Director, Police Regional Office III, Camp Olivas, San Fernando, Pampanga, and P/CHIEF SUPERINTENDENT REYNALDO M. ACOP, Directorate for Personnel and Records Management, National Headquarters, Philippine National Police, Camp Crame, Quezon City, *petitioners, vs.* **SPO2 REYNALDO ROAQUIN *y* LADERAS,** *respondent.*

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[*] Designated additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Jose Catral Mendoza, who are on leave per Special Order Nos. 883 and 886, respectively, both dated September 1, 2010.

SYLLABUS

1. REMEDIAL LAW; APPEAL TO THE COURT OF APPEALS; ISSUE OF FACT DISTINGUISHED FROM ISSUE OF LAW; APPEAL SHALL BE DISMISSED WHERE THE ISSUE INVOLVES ONLY QUESTIONS OF LAW.— An issue of fact exists when what is in question is the truth or falsity of the alleged facts, whereas an issue of law exists when what is in question is what the law is on a certain state of facts. The test, therefore, for determining whether an issue is one of law or of fact, is whether the CA could adjudicate it without reviewing or evaluating the evidence, in which case, it is an issue of law; otherwise, it is an issue of fact. Here the CA needed only to review the records, more particularly, the pleadings of the parties and their annexes to determine what law applied to Roaquin, Section 45 or Section 48 of R.A. 6975. Such question does not call for an examination of the probative value of the evidence of the parties since the essential facts of the case are not in dispute. As Roaquin's superior officers' appeal involves only questions of law, they erred in taking recourse to the CA by notice of appeal. Hence, the CA correctly dismissed their appeal.

2. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT 6975 (AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES), AS IMPLEMENTED BY NATIONAL POLICE COMMISSION MEMORANDUM CIRCULAR 96-010; SECTION 45 THEREOF DOES NOT APPLY ABSENT ADMINISTRATIVE CASE AGAINST A PNP MEMBER IN CONNECTION WITH THE CRIME OF WHICH HE WAS CHARGED IN COURT.— R.A. 6975, which took effect on January 1, 1991, provides the procedural framework for administrative actions against erring police officers. Sections 41 and 42 grant concurrent jurisdiction to the People's Law Enforcement Board, on the one hand, and the PNP Chief and regional directors, on the other, over administrative charges against police officers that are subject to dismissal. But Section 45 that Roaquin's superior officers invoked cannot apply to him since no one filed an administrative action against him in connection with

the crime of which he was charged in court. His superiors did not adduce evidence during the trial before the RTC that such action had been filed. They subsequently alleged in their pleadings the filing of some administrative case against him but they provided neither the specifics of that case nor a document evidencing its existence. At any rate, assuming that someone filed an administrative charge against Roaquin, still the law required the PNP to give him notice of such charge and the right to answer the same. This does not appear in the record. Additionally, Special Order 74 provided that Roaquin's mode of discharge was to be determined by higher headquarters. Again, nothing in the record of this case indicates that the PNP investigated Roaquin or conducted a summary proceeding to determine his liability in connection with the murder of which he was charged in court. The PNP gave him no chance to show why he should not be discharged. xxx The National Police Commission Memorandum Circular 96-010 cannot also be applied to Roaquin since it refers to rules and regulations governing the disposition of administrative cases involving PNP members. There had been no administrative case against him.

3. ID.; ID.; ID.; SECTIONS 46, 47 AND 48 THEREOF APPLIED TO CASE AT BAR; A DISCHARGED POLICE OFFICER IS ENTITLED, AFTER HIS ACQUITTAL FROM THE CRIMINAL CHARGES AGAINST HIM, TO REINSTATEMENT, BACK SALARIES, ALLOWANCES AND OTHER BENEFITS WITHHELD FROM HIM.— What apply to Roaquin are Sections 46, 47, and 48 of R.A. 6975 which direct his reinstatement after he was absolved of the crime of which he was charged in court. xxx. While the PNP may have validly suspended Roaquin from the service pending the adjudication of the criminal case against him, he was entitled after his acquittal not only to reinstatement but also to payment of the salaries, allowances, and other benefits withheld from him by reason of his discharge from the service.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Bertuldo N. Laforteza for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the right of a discharged police officer to reinstatement, back salaries, allowances, and other benefits after being absolved of a serious crime filed against him before a regular court.

The Facts and the Case

Respondent Reynaldo Roaquin served 16 years with the Philippine Constabulary at Camp Olivas, San Fernando, Pampanga before the Philippine National Police (PNP) absorbed him on January 2, 1991 in line with Republic Act (R.A.) 6975[1] and gave him the rank of a Senior Police Officer II (SPO2).[2]

On April 11, 1991 the government charged Roaquin with murder before the Regional Trial Court (RTC) of Olongapo City, Branch 72, in Criminal Case 216-91 for killing Alfredo Taluyo in a nightclub squabble. Consequently, the PNP detained him at his assigned station in Camp Lt. General Manuel Cabal in Olongapo City and later at the Olongapo City jail.

On June 20, 1991, while Roaquin was under detention, the PNP Headquarters of Regional Command 3 issued Special Order 74,[3] discharging him from the service based on Circular 17 of the Armed Forces of the Philippines dated October 2, 1987.[4] They discharged him notwithstanding that he had not been administratively charged in connection with the offense of which he was charged in court.

On June 8, 1994 the RTC of Olongapo City approved Roaquin's motion for admission to bail and granted him provisional liberty. Seven years later or on August 11, 1998 the RTC acquitted

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[1] The Department of the Interior and Local Government Act of 1990.

[2] *Rollo*, p. 38.

[3] *Id.* at 222.

[4] *Id.* at 81-89.

him of the crime of which he was charged upon a finding that he acted in complete self-defense.[5] Following this development, Roaquin asked the PNP to reinstate him into the police service.

Acting on the request, on November 23, 1998 P/Chief Superintendent Roberto Calinisan, Director of the PNP Regional Office III, reinstated Roaquin into service, citing Section 48 of R.A. 6975.[6] From then on, Roaquin served at the Olongapo City Police Force. On January 18, 2000, however, P/Chief Superintendent Reynaldo Acop, Head of the PNP Directorate for Personnel and Records Management, issued a memorandum,[7] directing Calinisan to nullify Roaquin's reinstatement. Acop said that what applied to Roaquin was Section 45 of R.A. 6975[8] as implemented by National Police Commission Memorandum Circular 96-010.[9] Roaquin could not be entitled to reinstatement since he failed to file a motion for reconsideration within 10 days of being notified of his discharge.

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[5] *Id.* at 91-102.

[6] Section 48. ***Entitlement to Reinstatement and Salary.*** – A member of the PNP who may have been suspended from office in accordance with the provisions of this Act or who shall have been terminated or separated from office shall, upon acquittal from the charges against him, be entitled to reinstatement and to prompt payment of salary, allowances and other benefits withheld from him by reason of such suspension or termination.

[7] *Rollo*, pp. 50-51.

[8] Section 45. ***Finality of Disciplinary Action.*** – The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: Provided, furthermore, That the regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: Provided, finally, That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.

[9] *Rollo*, pp. 108-117.

Acting on his superior's order, Calinisan issued Special Orders 102,[10] nullifying Roaquin's reinstatement. Roaquin sought reconsideration, but this was denied with an advice that he seek redress in court.[11]

On March 31, 2000 Roaquin filed a petition for *certiorari* and *mandamus* against his superior officers before the RTC of Olongapo City. The parties agreed to submit the case for decision on the basis of their respective memoranda. On November 20, 2000, the RTC rendered a decision,[12] ordering Roaquin's reinstatement. On appeal by Roaquin's superior officers, the Court of Appeals (CA) rendered judgment on August 14, 2003,[13] dismissing their appeal for lack of jurisdiction as the issues involved were purely legal, hence, this petition.

The Issues Presented

The issues presented in this case are:

1. Whether or not the CA correctly dismissed the appeal on the ground of lack of jurisdiction; and

2. Whether or not respondent Roaquin is entitled to reinstatement in the police service with back salaries, allowances, and other benefits.

The Court's Rulings

One. An issue of fact exists when what is in question is the truth or falsity of the alleged facts, whereas an issue of law exists when what is in question is what the law is on a certain state of facts.[14] The test, therefore, for determining whether an issue is one of law or of fact, is whether the CA could adjudicate

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[10] *Id.* at 248.

[11] *Id.* at 54.

[12] *Id.* at 121-127.

[13] *Id.* at 31-36.

[14] *Binay v. Odeña*, G.R. No. 163683, June 8, 2007, 524 SCRA 248, 255.

it without reviewing or evaluating the evidence, in which case, it is an issue of law; otherwise, it is an issue of fact.[15]

Here the CA needed only to review the records, more particularly, the pleadings of the parties and their annexes to determine what law applied to Roaquin, Section 45 or Section 48 of R.A. 6975. Such question does not call for an examination of the probative value of the evidence of the parties since the essential facts of the case are not in dispute. As Roaquin's superior officers' appeal involves only questions of law, they erred in taking recourse to the CA by notice of appeal. Hence, the CA correctly dismissed their appeal.[16]

Two. Besides, the petition has no merit. R.A. 6975,[17] which took effect on January 1, 1991, provides the procedural framework for administrative actions against erring police officers. Sections 41 and 42 grant concurrent jurisdiction to the People's Law Enforcement Board, on the one hand, and the PNP Chief and regional directors, on the other, over administrative charges against police officers that are subject to dismissal.[18]

But Section 45 that Roaquin's superior officers invoked cannot apply to him since no one filed an administrative action against him in connection with the crime of which he was charged in court. His superiors did not adduce evidence during the trial before the RTC that such action had been filed. They subsequently alleged in their pleadings the filing of some administrative case against him but they provided neither the specifics of that case nor a document evidencing its existence.

At any rate, assuming that someone filed an administrative charge against Roaquin, still the law required the PNP to give

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[15] *China Road and Bridge Corporation v. Court of Appeals*, 401 Phil. 590, 602 (2000).

[16] RULES OF COURT, Rule 50, Section 2.

[17] "An Act Establishing the Philippine National Police under a Reorganized Department of Interior and Local Government, and for Other Purposes," approved on December 13, 1990.

[18] *Quiambao v. Court of Appeals*, 494 Phil. 16, 31-33 (2005).

him notice of such charge and the right to answer the same. This does not appear in the record. Additionally, Special Order 74 provided that Roaquin's mode of discharge was to be determined by higher headquarters.[19] Again, nothing in the record of this case indicates that the PNP investigated Roaquin or conducted a summary proceeding to determine his liability in connection with the murder of which he was charged in court. The PNP gave him no chance to show why he should not be discharged.

What the Court found in the record is police officer Calinisan's Resolution,[20] stating that Roaquin's dismissal from the service was done without administrative due process, thus his recommendation that Roaquin be reinstated. Indeed, the RTC observed that:

> **The PNP however did not file any administrative charge against the accused preparatory to his dismissal and therefore the dismissal effected without any administrative complaint violated the right of the accused to substantive and procedural due process. x x x**
>
> **x x x x x x x x x**
>
> **The Rules and Regulations in the Disposition of Administrative cases involving PNP members before the PNP Disciplinary Authorities pursuant to Sections 41 and 42 of Republic Act 6975 cannot be applied to case of the petitioner simply because he was not charged of any administrative case in accordance with Section 42 of Republic Act 6975 x x x which provides the requirements of notice and hearing as part of the right of the petitioner to due process is not complied with.**[21]

The National Police Commission Memorandum Circular 96-010 cannot also be applied to Roaquin since it refers to rules and regulations governing the disposition of administrative cases involving PNP members. There had been no administrative case against him.

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[19] *Rollo*, p. 222.

[20] *Id.* at 246.

[21] *Id.* at 125-126.

What apply to Roaquin are Sections 46, 47, and 48 of R.A. 6975 which direct his reinstatement after he was absolved of the crime of which he was charged in court. These sections provide:

Section 46. *Jurisdiction in Criminal Cases*. – Any provision of law to the contrary notwithstanding, criminal cases involving PNP members shall within the exclusive jurisdiction of the regular courts x x x.

Section 47. *Preventive Suspension Pending Criminal Case*. – Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office until the case is terminated. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused.

Section 48. *Entitlement to Reinstatement and Salary*. – A member of the PNP who may have been suspended from office in accordance with the provisions of this Act or who shall have been terminated or separated from office shall, upon acquittal from the charges against him, be entitled to reinstatement and to prompt payment of salary, allowances and other benefits withheld from him by reason of such suspension or termination.

While the PNP may have validly suspended Roaquin from the service pending the adjudication of the criminal case against him, he was entitled after his acquittal not only to reinstatement but also to payment of the salaries, allowances, and other benefits withheld from him by reason of his discharge from the service.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decisions of the CA in CA-G.R. SP 63355 and the RTC in Special Civil Action 133-0-2000, reinstating SPO2 Reynaldo Roaquin into the service and ordering the Philippine National Police to pay him his back salaries, allowances, and other benefits during the time he was out of service. If reinstatement is no longer possible because police officer Roaquin has been assumed to have retired in due course, he is to be paid the back salaries, allowances, and other benefits, including retirement, to

which he is entitled from the time of his discharge to the time of his assumed retirement.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Bersamin,*[**] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 168707. September 15, 2010]

MARLA MACADAEG LAUREL, *petitioner, vs.* **SOCIAL SECURITY SYSTEM, a body corporate acting through the SOCIAL SECURITY COMMISSION and the PHILIPPINE ASSOCIATION OF RETIRED PERSONS (PARP), represented by HONESTO C. GENERAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MAY BE AVAILED OF WHERE THE PENALTY IMPOSED IN AN ADMINISTRATIVE CASE IS FINAL AND UNAPPEALABLE; APPLIED TO CASE AT BAR.— Under the law, the decisions of heads of departments, agencies, and instrumentalities involving disciplinary actions against its officers and employees are final and inappealable when the penalty they impose is suspension for not more than 30 days or, as the SSC meted out to Laurel, a fine not exceeding 30

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 883 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 886 dated September 1, 2010.

days salary. True, petitions for review under Rule 43 specifically cover decisions rendered by the SSC. But this applies only to SSC decisions where the remedy of appeal is available. Here, considering that the law regards the kind of penalty the SSC imposed on Laurel already final, she had no appeal or other plain, speedy and adequate remedy in the ordinary course of law against the decision of that body. Provided the SSC committed grave abuse of discretion in rendering the decision against her, Laurel can avail herself of the remedy of special civil action of *certiorari* under Rule 65.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CHARGE OF SIMPLE NEGLECT OF DUTY; NOT PROVED.— [T]he SSC found Laurel guilty of simple neglect of duty, meaning that she failed to pay attention to a task expected of her, signifying a disregard of a duty resulting from carelessness or indifference. The nature of this particular neglect is, however, not clear. The fact is that on June 14, 2001 Laurel, together with the SSS Executive Vice-President and the Senior Vice-President for Legal and Collection issued a *Memorandum* to all department heads, instructing them to advise their subordinates to continue observing office rules and regulations and avoid any actuation that could adversely affect their status and the operations of the SSS. On July 26, 2001 Laurel and the Senior Vice-President for Legal and Collection issued a second *Memorandum*, reminding all SSS officials and employees that they were prohibited from engaging in strikes and that the Civil Service Commission forbade mass absences without leave that would result in temporary stoppage of public service, acts that constitute grounds for administrative charges.

APPEARANCES OF COUNSEL

Herrera Teehankee Faylona & Cabrera for petitioner.
The Government Corporate Counsel for respondents.

D E C I S I O N

ABAD, *J.*:

This case refers to the appropriate remedy in an administrative case where the penalty is final and inappealable.

The Facts of the Case

On January 30, 2002 Honesto General, a Social Security System (SSS) member and a representative of the Philippine Association of Retired Persons, charged some SSS officers and employees, including its Senior Vice-President for Administration, petitioner Marla M. Laurel, with grave misconduct, conduct gravely prejudicial to the best interest of the service, and gross neglect in the performance of duty before the Office of the Ombudsman.

General alleged that on August 1 and 2, 2001 Laurel and the others with her held concerted strikes within the premises of the SSS Main Office, demanding the resignation of then SSS President and Chief Executive Officer (CEO) Vitaliano Nañagas II. The mass actions, General said, paralyzed vital SSS services nationwide, causing serious prejudice to thousands of its members. The strikes, he claimed, were preceded by several demonstrations during noontime breaks and distribution of propaganda materials, including a group *Manifesto* which Laurel signed. After evaluating the charges, the Overall Deputy Ombudsman referred the matter to the Social Security Commission (SSC) for disposition.

Laurel countered that she had no part in the strike and that General charged her based on the *guilty by association theory*. Indeed, on June 14, 2001 she issued a *Memorandum,* advising all SSS officers and employees to avoid any action that could adversely affect their status and the SSS operations and to stay within the bounds of the law.

On June 14, 2002 General amended the complaint, alleging conspiracy among the defendants and attaching supplemental affidavits of witnesses, to which amendment Laurel objected. On July 26, 2001 Laurel issued another *Memorandum*, reminding

SSS employees that they were prohibited from staging a strike and appealing to all officials and employees to peacefully settle the controversy.

On October 8, 2002 the SSC denied admission of General's amended complaint on the ground that the pieces of evidence he submitted did not sufficiently substantiate his allegation of conspiracy. Still, the SSC kept the supplemental and additional affidavits as part of the record for whatever they were worth.

Subsequently, on March 26, 2003 the SSC rendered a Decision in the case, finding Laurel guilty of simple neglect of duty and imposing on her a fine equivalent to one month salary. Feeling aggrieved, Laurel filed a petition for *certiorari* with the Court of Appeals (CA) under Rule 65 in CA-G.R. SP 77267.

On March 11, 2005 the CA rendered a decision, denying Laurel's petition. The CA ruled that the proper mode of appeal for her is a petition under Rule 43, not a special civil action of *certiorari*. She, thus, filed the present petition.

The Issues Presented

The issues presented in this case are:

1. Whether or not the CA erred in denying the petition on the technical ground it invoked; and

2. Whether or not the SSC gravely abused its discretion in finding Laurel guilty of simple neglect of duty.

The Rulings of the Court

One. The CA found that, although Laurel's petition may have been meritorious, she pursued the wrong mode of appeal — a special civil action for *certiorari* under Rule 65. The SSC is a quasi-judicial agency and, therefore, its decisions are reviewable by petition for review under Rule 43. The CA committed a serious error.

Under the law, the decisions of heads of departments, agencies, and instrumentalities involving disciplinary actions against its officers and employees are final and inappealable when the

penalty they impose is suspension for not more than 30 days or, as the SSC meted out to Laurel, a fine not exceeding 30 days salary.[1]

True, petitions for review under Rule 43 specifically cover decisions rendered by the SSC. But this applies only to SSC decisions where the remedy of appeal is available. Here, considering that the law regards the kind of penalty the SSC imposed on Laurel already final, she had no appeal or other plain, speedy and adequate remedy in the ordinary course of law against the decision of that body. Provided the SSC committed grave abuse of discretion in rendering the decision against her, Laurel can avail herself of the remedy of special civil action of *certiorari* under Rule 65.[2]

Two. To avoid multiplicity of actions, it would not do to remand the case to the CA for adjudication on its merits considering how the parties have raised the main issue before this Court and amply argued the same.

The SSC held that Laurel's actions proved that she was more than a mere bystander in the employees' restive actions at the SSS Main Office. The SSC relied on the affidavits of James Madrigal, a security guard in that office, and Ma. Luz Generoso, an SSS officer. Madrigal said that, at around 10:00 a.m. to 11:00 a.m. on August 1, 2001, Laurel came and asked to be let out of the SSS Main Office building. Once out, the strikers supposedly met her with loud cheers and applause. For her part, Generoso said that on August 1, 2001 at about 8:00 a.m., she saw Laurel with the SSS employees who barricaded the entrance to the Main Office building to prevent other employees from entering.

But, as it turned out, Generoso had no occasion to swear to her supposed affidavit. For this reason, the SSC could not take

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[1] P.D. 807 (Providing for the Organization of the Civil Service Commission in accordance with Provisions of the Constitution, Prescribing its Powers and Functions and for other Purposes), Article IX, Section 37 (b).

[2] RULES OF COURT, Rule 65.

it on its face value.[3] Madrigal's statement, on the other hand, had been notarized without his knowledge. And he executed another affidavit on August 30, 2001,[4] belying what he previously said. He claimed that Atty. Antonette Fernandez, an SSS officer, prepared his previous affidavit and just had him sign it.

Besides the evidence of Madrigal and Generoso were inconclusive. Laurel explained[5] that the strikers tended to cheer any officer they knew to have expressed a desire that Nañagas be replaced. Thus, they cheered her when they saw her go out of the SSS building. As for Generoso's allegations, the same were rich with vague generalities. For one, she did not say that Laurel had taken part in barricading the entrance to the main office or that she had prevented anyone from going in.

The SSC also regarded the July 15, 2001 *Manifesto* as a sign that Laurel encouraged the employees to engage in mass action. On the contrary, the *Manifesto* expressed Laurel's longing to see an end to the dispute between Nañagas and the SSS officers and employees. Laurel and other SSS officers were caught in the middle and had become targets of increasing animosities from the unyielding sides. They wanted to find a peaceful way to end it, prompting them to sign the *Manifesto* requesting then President Gloria Arroyo to just replace Nañagas as SSS President and CEO since he had declared that he was serving at the President's pleasure and so would not resign.

At any rate, the SSC found Laurel guilty of simple neglect of duty, meaning that she failed to pay attention to a task expected of her, signifying a disregard of a duty resulting from carelessness or indifference.[6] The nature of this particular neglect is, however, not clear. The fact is that on June 14, 2001 Laurel, together with the SSS Executive Vice-President and the Senior Vice-

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[3] *Rollo*, pp. 253-254.

[4] *Id.* at 235-237.

[5] *Id*. at 202.

[6] *Zamudio v. Auro*, A.M. No. P-04-1793, December 8, 2008, 573 SCRA 178, 185.

President for Legal and Collection issued a *Memorandum*[7] to all department heads, instructing them to advise their subordinates to continue observing office rules and regulations and avoid any actuation that could adversely affect their status and the operations of the SSS.

On July 26, 2001 Laurel and the Senior Vice-President for Legal and Collection issued a second *Memorandum*,[8] reminding all SSS officials and employees that they were prohibited from engaging in strikes and that the Civil Service Commission forbade mass absences without leave that would result in temporary stoppage of public service, acts that constitute grounds for administrative charges.

WHEREFORE, the Court *GRANTS* the petition and *REVERSES and SETS ASIDE* the assailed decision of the Court of Appeals in CA-G.R. SP 77267 dated March 11, 2005 and its Resolution dated June 27, 2005 as well as the decision of the Social Security Commission in Administrative Case 001-022 dated March 26, 2003, and *ABSOLVES* petitioner Marla Macadaeg Laurel of the charges against her.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Del Castillo,*[**] *JJ.,* concur.

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[7] *Rollo,* p. 211.

[8] *Id.* at 212.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 883 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per raffle dated July 21, 2010.

FIRST DIVISION

[G.R. No. 168715. September 15, 2010]

MEDLINE MANAGEMENT, INC. and GRECOMAR SHIPPING AGENCY, *petitioners, vs.* **GLICERIA ROSLINDA and ARIEL ROSLINDA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; SEAFARERS; PRESCRIPTIVE PERIOD FOR FILING MONEY CLAIMS IS THREE YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES, NOT ONE YEAR FROM THE DATE OF THE SEAFARER'S RETURN TO THE POINT OF HIRE; RULE APPLIED TO CASE AT BAR.— In *Southeastern Shipping v. Navarra, Jr.*, we ruled that "Article 291 is the law governing the prescription of money claims of seafarers, a class of overseas contract workers. This law prevails over Section 28 of the Standard Employment Contract for Seafarers which provides for claims to be brought only within one year from the date of the seafarer's return to the point of hire." We further declared that "for the guidance of all, Section 28 of the Standard Employment Contract for Seafarers, insofar as it limits the prescriptive period within which the seafarers may file their money claims, is hereby declared null and void. The applicable provision is Article 291 of the Labor Code, it being more favorable to the seafarers and more in accord with the State's declared policy to afford full protection to labor. The prescriptive period in the present case is thus three years from the time the cause of action accrues." In the present case, the cause of action accrued on August 27, 2001 when Juliano died. Hence, the claim has not yet prescribed, since the complaint was filed with the arbitration branch of the NLRC on September 4, 2003.

2. ID.; ID.; ID.; MONEY CLAIMS; HEIRS OF THE DECEASED SEAFARER HAVE THE PERSONALITY TO FILE THE CLAIM FOR DEATH BENEFITS; THE NLRC SHALL HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES ARISING OUT OF OR

BY VIRTUE OF THE POEA STANDARD EMPLOYMENT CONTRACT; CASE AT BAR.— Petitioners' claim that the Labor Arbiter has no jurisdiction to hear the case for want of employer-employee relationship between the parties lacks merit. Petitioners have not taken into consideration that respondents, as heirs of Juliano, have the personality to file the claim for death benefits. As the parties claiming benefits for the death of a seafarer, they can file a case with the Labor Arbiter as provided for under Section 28 of the POEA SEC. It is clearly provided therein that the NLRC shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of the Contract. Furthermore, Section 20 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels states: A. COMPENSATION AND BENEFITS FOR DEATH xxx. In filing the complaint for payment of death compensation, reimbursement of medical expenses, damages and attorney's fees before the Labor Arbitration Branch of the NLRC, respondents are actually enforcing their entitlement to the above provision of the contract of Juliano with petitioners. They are the real parties in interest as they stand to be benefited or injured by the judgment in this case, or the parties entitled to the avails of the case. Having shown that respondents have the personality to file the complaint and that the Labor Arbiter has the original and exclusive jurisdiction over the said claims, then this ground for petitioners' Motion to Dismiss has no basis and, therefore, its denial was proper.

3. ID.; LABOR RELATIONS; NATIONAL LABOR RELATIONS COMMISSION (NLRC); RULES OF PROCEDURE; A MOTION TO DISMISS ON GROUND OF FAILURE TO COMPLY WITH A CONDITION PRECEDENT IS A PROHIBITED PLEADING; DENIAL OF THE MOTION TO DISMISS, PROPER.— Having shown that respondents failed to bring this matter to the Grievance Machinery as provided in the POEA SEC, can we now conclude that the Labor Arbiter erred in denying the Motion to Dismiss on the ground that respondents failed to comply with a condition precedent? We answer this in the negative. The denial by the Labor Arbiter of the Motion to Dismiss filed by petitioners on the ground of non-compliance with a condition precedent is still proper. Section 4, Rule III of the New Rules of Procedure of the NLRC

(As amended by NLRC Resolution No. 01-02, series of 2002) [e]xplicitly provides that a motion to dismiss that can be availed of is one which is based on lack of jurisdiction over the subject matter, improper venue, *res judicata*, prescription and forum shopping. Conversely, a motion to dismiss on the ground of failure to comply with a condition precedent is, therefore, a prohibited pleading. Hence, the Labor Arbiter did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when she denied the Motion to Dismiss filed by petitioners.

4. ID.; ID.; ID.; ID.; ONLY FINAL ORDERS OF THE LABOR ARBITER WILL BECOME FINAL AND EXECUTORY IF NOT APPEALED TO THE NLRC; ORDER DENYING A MOTION TO DISMISS IS AN INTERLOCUTORY ORDER; THUS, NOT APPEALABLE.— Section 3 (now Section 6) of Rule V and Section 1 of Rule VI of the NLRC Rules of Procedure, as amended xxx [and] Article 223 of the Labor Code xxx [r]efer to final orders and not interlocutory ones, such as, a denial of a motion to dismiss. Based on the above provisions, the Labor Arbiter's decisions, resolutions or orders shall be final and executory unless appealed to the Commission. Only a final order can attain the final and executory stage; an interlocutory order cannot go that far. Consequently, when the law says that the orders appealable to the Commission are those which will become final and executory if not appealed, it can only refer to a final order, not an interlocutory order, such as a denial of a motion to dismiss. There is no conflict between the above provisions. The CA therefore correctly dismissed the petition assailing the denial of the Motion to Dismiss based on Section 3 (now Section 6), Rule V of the NLRC Rules of Procedure because it involved an interlocutory order. Admittedly, the order denying a Motion to Dismiss is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of a case.

5. REMEDIAL LAW; APPEALS; THE SUPREME COURT MAY RESOLVE THE DISPUTE IN A SINGLE PROCEEDING, INSTEAD OF REMANDING THE CASE TO THE LOWER COURT FOR FURTHER PROCEEDINGS IF, BASED ON THE RECORDS, PLEADINGS, AND OTHER EVIDENCE, THE MATTER CAN READILY BE RULED UPON; APPLIED TO CASE AT BAR.— This Court is aware that in

this case, since the petition is denied, the normal procedure is for it to remand the case to the Labor Arbiter for further proceedings. "However, when there is enough basis on which the Court may render a proper evaluation of the merits of petitioners' case, x x x the Court may dispense with the time [-]consuming procedure in order to prevent further delays in the disposition of the case." Indeed, remand of the case to the Labor Arbiter for further reception of evidence is not conducive to the speedy administration of justice and it becomes unnecessary where the Court is in a position to resolve the dispute based on the records before it. Briefly stated, a remand of the instant case to the Labor Arbiter would serve no purpose save to further delay its disposition contrary to the spirit of fair play. "It is an accepted precept of procedural law that the Court may resolve the dispute in a single proceeding, instead of remanding the case to the lower court for further proceedings if, based on the records, pleadings, and other evidence, the matter can readily be ruled upon." Instead of remanding the case to the Labor Arbiter for further proceedings, we will resolve the dispute to serve the ends of justice.

6. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS; HEIRS OF THE DECEASED SEAFARER ARE ENTITLED TO DEATH COMPENSATION BENEFITS WHERE THE DEATH OCCURS DURING THE EFFECTIVITY OF THE EMPLOYMENT CONTRACT; APPLICATION.— In *Southeastern Shipping v. Navarra, Jr.*, we declared that "in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract." "The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable." Juliano did not die while he was under the employ of petitioners. His contract of employment ceased when he was discharged on January 20, 2000, after having completed his contract thereat. He died on August 27, 2001 or one year, seven months and seven days after the expiration of his contract. Thus, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers.

7. ID.; ID.; ID.; CONSTRUED LIBERALLY IN FAVOR OF THE SEAFARER BUT CLAIMS FOR COMPENSATION SHALL BE DENIED IF EVIDENCE PRESENTED NEGATES COMPENSABILITY.— Moreover, there is no evidence to show that Juliano's illness was acquired during the term of his employment with petitioners. In respondents' Position Paper, they admitted that Juliano was discharged not because of any illness but due to the expiration of his employment contract. xxx There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death. "While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, this Court has no choice but to deny the claim, lest we cause injustice to the employer."

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario for petitioners.
Dela Cruz Entero and Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

If a seafarer dies after the termination of his contract of employment, the Court can only commiserate with his heirs because it has no alternative but to declare that his beneficiaries are not entitled to the death benefits provided in the Philippine Overseas Employment Administration (POEA) Standard Employment Contract (SEC).

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated March 11, 2005 of the Court of Appeals (CA) in CA-G.R.

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[1] *Rollo*, pp. 25-81.

[2] CA *rollo*, pp. 221-228; penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Rebecca De Guia-Salvador and Aurora Santiago Lagman.

SP No. 87648, which dismissed the petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction and/or restraining order challenging the Resolution dated August 31, 2004[3] and October 15, 2004[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 040435-04. Also assailed is the Resolution[5] dated June 22, 2005 denying the Motion for Reconsideration.

Factual Antecedents

Petitioner Medline Management, Inc. (MMI), on behalf of its foreign principal, petitioner Grecomar Shipping Agency (GSA), hired Juliano Roslinda (Juliano) to work on board the vessel MV "Victory." Juliano was previously employed by the petitioners under two successive separate employment contracts of varying durations. His latest contract was approved by the POEA on September 9, 1998 for a duration of nine months.[6] In accordance with which, he boarded the vessel MV "Victory" on October 25, 1998 as an oiler and, after several months of extension, was discharged on January 20, 2000.

Months after his repatriation, or on March 6, 2000, Juliano consulted Dr. Pamela R. Lloren (Dr. Lloren) of Metropolitan Hospital. He complained about abdominal distention which is the medical term for a patient who vomits previously ingested foods. From March 8 to August 24, 2000, Juliano visited Dr. Lloren for a series of medical treatment.[7] In a Medical Certificate[8] issued by Dr. Lloren, the condition of Juliano required hemodialysis which was initially done twice a week for a period of two months and then once every 10 days. In medicine, hemodialysis is the method of removing waste products

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[3] *Id.* at 57-59.

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

[5] *Id.* at 261.

[6] *Id.* at 191.

[7] *Id.* at 104.

[8] *Id.* at 102.

such as creatinine and urea, as well as freeing water from the blood, when the kidneys are in renal failure.[9]

On August 27, 2001, Juliano died. On September 4, 2003, his wife Gliceria Roslinda and son Ariel Roslinda, respondents herein, filed a complaint against MMI and GSA for payment of death compensation, reimbursement of medical expenses, damages, and attorney's fees before the Labor Arbitration Branch of the NLRC.

Petitioners received on September 25, 2003 a copy of the summons[10] and complaint. Instead of filing an answer, they filed a Motion to Dismiss[11] on the grounds of prescription, lack of jurisdiction and prematurity. Petitioners contended that the action has already prescribed because it was filed three years, seven months and 22 days from the time the deceased seafarer reached the point of hire. They also argued that the case should be dismissed outright for prematurity because respondents failed to comply with a condition precedent by not availing of the grievance machinery. Lastly, petitioners opined that the Labor Arbiter had no jurisdiction because there exists no employer-employee relationship between the parties.

On January 9, 2004, respondents submitted their Position Paper with Opposition to Motion to Dismiss.[12] On January 26, 2004, petitioners submitted their Comment/Reply with Motion to Expunge Complainant's Position Paper.[13]

Ruling of the Labor Arbiter

On April 21, 2004, Labor Arbiter Fatima Jambaro-Franco denied the Motion to Dismiss filed by the petitioners. The dispositive portion provides:

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[9] http://en.wikipedia.org/wiki/Hemodialysis (visited September 13, 2010).

[10] CA *rollo*, p. 68.

[11] *Id.* at 72-84.

[12] *Id.* at 87-99.

[13] *Id.* at 143-151.

WHEREFORE, premises considered, the Motion to Dismiss is hereby DENIED for lack of merit.

In order to expedite the proceedings of this case, the respondents [herein petitioners] are hereby ordered to submit their position paper on May 18, 2004 at 9:30 a.m.

SO ORDERED.[14]

Ruling of the National Labor Relations Commission

Petitioners, instead of complying with the order of the Labor Arbiter to submit their position paper, filed their Notice of Appeal with Memorandum[15] of Appeal on May 7, 2004 with the NLRC.

Petitioners asserted that the Labor Arbiter seriously erred in disregarding the basic provision of the POEA Contract. According to them, the POEA contract is clear that any claim arising from the employment of a seafarer should be filed within one year from the seafarer's return to the point of hire; otherwise, it shall be barred forever. In addition, petitioners claimed that the Labor Arbiter also erred when she issued an order without resolving the other issues in their Motion to Dismiss. The Labor Arbiter failed to take into consideration that respondents have no employer-employee relationship with herein petitioners, which means that the former have no cause of action against the latter. Lastly, they opined that the Labor Arbiter failed to resolve the issue of prematurity when the present case was filed without passing through the grievance committee.

On August 31, 2004, the NLRC issued its Resolution, the dispositive portion of which provides:

PREMISES CONSIDERED, respondents' appeal from the Order dated April 21, 2004 is hereby DISMISSED for lack of merit. Let records herein be REMANDED to Arbitration Branch of origin for immediate appropriate proceedings.

SO ORDERED.[16]

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[14] *Id.* at 65.

[15] *Id.* at 152-186.

[16] *Id.* at 58.

Ruling of the Court of Appeals

After reviewing the case on *certiorari*, the CA ruled that the claim was filed within the three-year prescriptive period which must be reckoned from the time of Juliano's death on August 27, 2001 and not from the date of his repatriation on January 20, 2000. As to the denial of the Motion to Dismiss, it found that under Section 3 of Rule V of the NLRC Rules of Procedure, an order denying the Motion to Dismiss or suspension of its resolution until the final determination of the case, is not appealable. Anent the issue that the Labor Arbiter had no jurisdiction over the case because there exists no employee-employer relationship between the parties, the CA held that such matter is a factual issue which should be threshed out in the trial of the case. Being a factual matter needing evidence for its existence, a motion to dismiss is not the proper remedy. The dispositive portion of the CA Decision states:

> IN VIEW OF ALL THE FOREGOING, the instant petition is ordered DISMISSED. Costs against the petitioners.
>
> SO ORDERED.[17]

After the denial by the CA of their Motion for Reconsideration, petitioners filed the present petition for review on *certiorari*.

Issues

Petitioners raise the following issues:

I.

Whether the CA seriously erred in holding that the Order of the Labor Arbiter dismissing the Motion to Dismiss is not appealable.

II.

Whether the CA seriously erred in ruling that the claim is not yet barred by prescription despite the fact that it was filed beyond the one-year prescriptive period provided by the POEA Standard Employment Contract.

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[17] *Id.* at 227.

III.

Whether the ruling of the CA is contrary to the jurisprudence laid down in the case of *Fem's Elegance Lodging House vs. Murillo* decided by this Court.

Petitioners' Arguments

Petitioners contend that although Rule 1, Section 3 of the NLRC Rules of Procedure provides for the suppletory application of the Rules of Court, the same is proper only in the absence of applicable provision in the NLRC Rules of Procedure to the issue at hand. Here, Section 1, Rule VI of the NLRC Rules of Procedure and Article 223 of the Labor Code specifically provide that any order of the Labor Arbiter is appealable to the NLRC, regardless if it is final or interlocutory in nature. Hence, there is no room for the suppletory application of the Rules of Court in the case at bench.

Petitioners also argue that the POEA SEC provides that the employer and the seafarer agree that all claims arising from the contract shall be made within one year from the date of seafarer's return to the point of hire. Hence, respondents' claim for death benefits has clearly prescribed because they filed their complaint before the NLRC Arbitration Branch only on September 11, 2003 or three years seven months and 22 days after the return of Juliano to the point of hire on January 20, 2000.

Respondents' Arguments

Respondents posit that Section 3, Rule V of the NLRC Rules of Procedure clearly provides that an order denying a motion to dismiss or suspension of its resolution until the final determination of the case is not appealable. It is for this reason that petitioners were required to proceed with the Arbitration Branch of origin for further proceedings.

Moreover, respondents argue that the Motion to Dismiss filed by the petitioners was properly denied by the Labor Arbiter because the cause of action has not yet prescribed. The prescriptive period that should apply is three years and not one year as provided for in the POEA SEC. Therefore, when the

complaint was filed on September 4, 2003, it is well within the three-year prescriptive period. The reckoning point is the time when the cause of action accrued which is from the time of death of the seafarer and not from the time of repatriation.

Our Ruling

A close perusal of the three issues presented for our review readily reveals a single issue of substance – that the Labor Arbiter seriously erred in denying the Motion to Dismiss filed by the petitioners without ruling on all the grounds raised by them. Another issue involved a procedural ground – that the CA erred in dismissing the petition assailing the denial of the Motion to Dismiss based on Section 3, Rule V of the NLRC Rules of Procedure.

The Labor Arbiter Properly Denied the Motion to Dismiss

The denial of the Motion to Dismiss by the Labor Arbiter, the NLRC, and the CA was made in accordance with prevailing law and jurisprudence. It should be noted that in the Motion to Dismiss filed by the petitioners before the Labor Arbiter, they cited prescription, lack of jurisdiction and failure to comply with a condition precedent, as the three grounds for dismissal of the case.

Prescription

The employment contract signed by Juliano stated that "Upon approval, the same shall be deemed an integral part of the Standard Employment Contract (SEC) for seafarers."[18] Section 28 of the POEA SEC states:

SECTION 28. *JURISDICTION*

The Philippine Overseas Employment Administration (POEA) or the National Labor Relations Commission (NLRC) shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of this Contract.

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[18] *Id.* at 191.

Recognizing the peculiar nature of overseas shipboard employment, the employer and the seafarer agree that all claims arising from this contract shall be made within one (1) year from the date of the seafarer's return to the point of hire. (Emphasis supplied)

On the other hand, the Labor Code states:

ART. 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 forever be barred.

x x x (Emphasis supplied)

In *Southeastern Shipping v. Navarra, Jr.*,[19] we ruled that "Article 291 is the law governing the prescription of money claims of seafarers, a class of overseas contract workers. This law prevails over Section 28 of the Standard Employment Contract for Seafarers which provides for claims to be brought only within one year from the date of the seafarer's return to the point of hire." We further declared that "for the guidance of all, Section 28 of the Standard Employment Contract for Seafarers, insofar as it limits the prescriptive period within which the seafarers may file their money claims, is hereby declared null and void. The applicable provision is Article 291 of the Labor Code, it being more favorable to the seafarers and more in accord with the State's declared policy to afford full protection to labor. The prescriptive period in the present case is thus three years from the time the cause of action accrues."

In the present case, the cause of action accrued on August 27, 2001 when Juliano died. Hence, the claim has not yet prescribed, since the complaint was filed with the arbitration branch of the NLRC on September 4, 2003.

Lack of Jurisdiction

Petitioners' claim that the Labor Arbiter has no jurisdiction to hear the case for want of employer-employee relationship between the parties lacks merit. Petitioners have not taken into

[19] G.R. No. 167678, June 22, 2010.

consideration that respondents, as heirs of Juliano, have the personality to file the claim for death benefits. As the parties claiming benefits for the death of a seafarer, they can file a case with the Labor Arbiter as provided for under Section 28 of the POEA SEC. It is clearly provided therein that the NLRC shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of the Contract.

Furthermore, Section 20 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels states:

A. COMPENSATION AND BENEFITS FOR DEATH

1. In the case of work-related death of the seafarer during the term of his contract, the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$ 50,000.00) and an additional amount of Seven Thousand US Dollars (US$ 7,000.00) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

In filing the complaint for payment of death compensation, reimbursement of medical expenses, damages and attorney's fees before the Labor Arbitration Branch of the NLRC, respondents are actually enforcing their entitlement to the above provision of the contract of Juliano with petitioners. They are the real parties in interest as they stand to be benefited or injured by the judgment in this case, or the parties entitled to the avails of the case.

Having shown that respondents have the personality to file the complaint and that the Labor Arbiter has the original and exclusive jurisdiction over the said claims, then this ground for petitioners' Motion to Dismiss has no basis and, therefore, its denial was proper.

Failure to Comply with a Condition Precedent

Petitioners likewise contend that the present claim should have been dismissed on the ground that respondents prematurely

filed the present complaint because the employment contract requires respondents to first bring their claim before the Grievance Machinery.

Indeed, the records of this case would not give us any idea on what actions were taken by respondents before they filed the case. What can only be deduced from the records is that respondents demanded from petitioners the payment of death benefits and the reimbursement of medical expenses incurred by Juliano from the time of his repatriation on January 20, 2000 until his death on August 27, 2001 amounting to ₱149,490.00 which was refused by petitioners. There is therefore no showing that they complied with the provisions of the employment contract to first bring the matter before the Grievance Machinery.

Having shown that respondents failed to bring this matter to the Grievance Machinery as provided in the POEA SEC, can we now conclude that the Labor Arbiter erred in denying the Motion to Dismiss on the ground that respondents failed to comply with a condition precedent? We answer this in the negative. The denial by the Labor Arbiter of the Motion to Dismiss filed by petitioners on the ground of non-compliance with a condition precedent is still proper.

Section 4, Rule III of the New Rules of Procedure of the NLRC (As amended by NLRC Resolution No. 01-02, series of 2002) provides:

> SECTION 4. PROHIBITED PLEADINGS AND MOTIONS. – The following pleadings, motions or petitions shall not be allowed in the cases covered by these Rules:
>
> (a) Motion to dismiss the complaint except on the ground of lack of jurisdiction over the subject matter, improper venue, *res adjudicata*, prescription and forum shopping;
>
> x x x x x x x x x

The above provision thus explicitly provides that a motion to dismiss that can be availed of is one which is based on lack of jurisdiction over the subject matter, improper venue, *res judicata*, prescription and forum shopping. Conversely, a motion to

dismiss on the ground of failure to comply with a condition precedent is, therefore, a prohibited pleading. Hence, the Labor Arbiter did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when she denied the Motion to Dismiss filed by petitioners.

Having shown that the Labor Arbiter properly denied the Motion to Dismiss, the NLRC and the CA have likewise acted in accordance with law in denying the appeal of the dismissal of such Motion to Dismiss.

The CA Properly Denied the Petition Based on Section 3, Rule V of the NLRC Rules of Procedure

Petitioners contend that Section 3 (now Section 6), Rule V of the NLRC Rules of Procedure is in direct conflict with the provisions of Section 1, Rule VI of the same NLRC Rules of Procedure and Article 223 of the Labor Code and, hence, it should be the latter which should prevail.

We do not agree.

Section 3 (now Section 6) of Rule V and Section 1 of Rule VI of the NLRC Rules of Procedure, as amended, provide:

SECTION 3. MOTION TO DISMISS. – On or before the date set for the conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue, or that the cause of action is barred by prior judgment, prescription or forum shopping, shall be immediately resolved by the Labor Arbiter by a written order. An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.

SECTION 1. PERIODS OF APPEAL. – Decisions, resolutions or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, resolutions or orders of the Labor Arbiter and in case of a decision of the Regional Director within five (5) calendar days from receipt of such decisions, resolutions, or orders. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or a holiday, the last day to perfect the appeal shall be the next working day.

Another provision cited by petitioners is Article 223 of the Labor Code which states:

> ART. 223. Appeal. – Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:
>
> x x x x x x x x x

However, all the three provisions above-mentioned refer to final orders and not interlocutory ones, such as, a denial of a motion to dismiss. Based on the above provisions, the Labor Arbiter's decisions, resolutions or orders shall be final and executory unless appealed to the Commission. Only a final order can attain the final and executory stage; an interlocutory order cannot go that far. Consequently, when the law says that the orders appealable to the Commission are those which will become final and executory if not appealed, it can only refer to a final order, not an interlocutory order, such as a denial of a motion to dismiss.

There is no conflict between the above provisions. The CA therefore correctly dismissed the petition assailing the denial of the Motion to Dismiss based on Section 3 (now Section 6), Rule V of the NLRC Rules of Procedure because it involved an interlocutory order. Admittedly, the order denying a Motion to Dismiss is an interlocutory order because it still requires a party to perform certain acts leading to the final adjudication of a case.

Lastly, petitioners' reliance in *FEM's Elegance Lodging House v. Murillo*[20] to justify their position that an interlocutory order like the denial of their Motion to Dismiss can be appealed is misplaced. The CA properly addressed this issue in this wise:

> Reliance in the case of *FEM's Elegance vs. Murillo* is misdirected. In that case, the Labor Arbiter's denial was appealed directly to the Supreme Court and did not pass the Court of Appeals. In ruling that

[20] 310 Phil. 107 (1995).

orders of the Labor Arbiter shall be appealable to the Court of Appeals, the High Court, to Our mind, was simply saying that you cannot go and seek review directly from the Labor Arbiter to the Supreme Court. One has to pass first the NLRC.[21]

For Expediency, this Court can Decide the Merits of this Case

This Court is aware that in this case, since the petition is denied, the normal procedure is for it to remand the case to the Labor Arbiter for further proceedings. "However, when there is enough basis on which the Court may render a proper evaluation of the merits of petitioners' case, x x x the Court may dispense with the time[-]consuming procedure in order to prevent further delays in the disposition of the case."[22] Indeed, remand of the case to the Labor Arbiter for further reception of evidence is not conducive to the speedy administration of justice and it becomes unnecessary where the Court is in a position to resolve the dispute based on the records before it. Briefly stated, a remand of the instant case to the Labor Arbiter would serve no purpose save to further delay its disposition contrary to the spirit of fair play.

"It is an accepted precept of procedural law that the Court may resolve the dispute in a single proceeding, instead of remanding the case to the lower court for further proceedings if, based on the records, pleadings, and other evidence, the matter can readily be ruled upon."[23] Instead of remanding the case to the Labor Arbiter for further proceedings, we will resolve the dispute to serve the ends of justice.

The complete records of this case have already been elevated to this Court. The pleadings on record will fully support this adjudication.

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[21] CA *rollo*, p. 226.

[22] *Somoso v. Court of Appeals*, G.R. No. 78050, October 23, 1989, 178 SCRA 654, 663.

[23] *Bunao v. Social Security System*, G.R. No. 159606, December 13, 2005, 477 SCRA 564, 571.

Respondents are not Entitled to the Death Benefits Provided Under the POEA Standard Employment Contract

In *Southeastern Shipping v. Navarra, Jr.*,[24] we declared that "in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract." "The death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits. Once it is established that the seaman died during the effectivity of his employment contract, the employer is liable."[25]

Juliano did not die while he was under the employ of petitioners. His contract of employment ceased when he was discharged on January 20, 2000, after having completed his contract thereat. He died on August 27, 2001 or one year, seven months and seven days after the expiration of his contract. Thus, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers.

Moreover, there is no evidence to show that Juliano's illness was acquired during the term of his employment with petitioners. In respondents' Position Paper,[26] they admitted that Juliano was discharged not because of any illness but due to the expiration of his employment contract.[27] Although they stated that Juliano was hospitalized on August 28, 1999, or five months before his contract expired, they presented no proof to support this allegation. Instead, what respondents presented were the Medical Certificates[28] issued by Dr. Lloren attesting to the fact that on March 6, 2000, Juliano consulted her complaining of abdominal distention. We find this not substantial evidence to prove that Juliano's illness which caused his death was contracted during

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[24] *Supra* note 19.

[25] *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157, 168.

[26] CA *rollo*, pp. 87-99.

[27] *Id.* at 88.

[28] *Id.* at 102-103.

the term of his contract.[29] "Indeed, the death of a seaman several months after his repatriation for illness does not necessarily mean that: a) the seaman died of the same illness; b) his working conditions increased the risk of contracting the illness which caused his death; and c) the death is compensable, unless there is some reasonable basis to support otherwise."[30] In the instant case, Juliano was repatriated not because of any illness but because his contract of employment expired. There is likewise no proof that he contracted his illness during the term of his employment or that his working conditions increased the risk of contracting the illness which caused his death.

"While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, this Court has no choice but to deny the claim, lest we cause injustice to the employer."[31]

WHEREFORE, the instant petition for review on *certiorari* is *DENIED.* We hereby declare that the claim for death benefits of respondents Gliceria Roslinda and Ariel Roslinda has not yet prescribed but petitioners are not liable to pay to respondents death compensation benefits under the Standard Employment Contract for Seafarers considering that Juliano's death occurred after the effectivity of his contract. The Labor Arbiter is therefore *DIRECTED* to dismiss the complaint filed by herein respondents against the petitioners for payment of death compensation, reimbursement of medical expenses, damages and attorney's fees.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Perez, JJ.,* concur.

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[29] *Hermogenes v. Osco Shipping Services, Inc.*, G.R. No. 141505, August 18, 2005, 467 SCRA 301, 308.

[30] *Id.* at 309.

[31] *Southeastern Shipping v. Navarra, Jr., supra* note 19.

[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro, per Special Order No. 884 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 169004. September 15, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (THIRD DIVISION) and ROLANDO PLAZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; JURISDICTION; JURISDICTION OF A COURT TO TRY A CRIMINAL CASE IS TO BE DETERMINED AT THE TIME OF THE INSTITUTION OF THE ACTION, NOT AT THE TIME OF THE COMMISSION OF THE OFFENSE; REPUBLIC ACT 8249 APPLIES TO CASE AT BAR.— Section 4 of P.D. 1606, as amended by Section 2 of R.A. 7975 which took effect on May 16, 1995, which was again amended on February 5, 1997 by R.A. 8249, is the law that should be applied in the present case, the offense having been allegedly committed on or about December 19, 1995 and the Information having been filed on March 25, 2004. As extensively explained in the [Case of *People v. Sandiganbayan and Amante*], **The jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense. The exception contained in R.A. 7975, as well as R.A. 8249, where it expressly provides that to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code is not applicable in the present case as the offense involved herein is a violation of The Auditing Code of the Philippines.** xxx Like in the earlier case, the present case definitely falls under Section 4 (b) where other offenses and felonies committed by public officials or employees in relation to their office are involved where the said provision, contains no exception. Therefore, what applies in the present case is the general rule that jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense. The present case having been instituted on March 25, 2004, the provisions of R.A. 8249 shall govern.

2. ID.; ID.; SANDIGANBAYAN; JURISDICTION THEREOF; P.D. 1606, AS AMENDED BY R.A. 8249, SECTION 4 (A) THEREOF, CONSTRUED; A MEMBER OF THE SANGGUNIANG PANLUNGSOD DURING THE ALLEGED COMMISSION OF AN OFFENSE IN RELATION TO HIS OFFICE, NECESSARILY FALLS WITHIN THE ORIGINAL JURISDICTION OF THE SANDIGANBAYAN.— [T]he case of *People v. Sandiganbayan and Amante* interpreted [Section 4 (a) (1) of P.D. 1606, as amended by R.A. 8249], thus: The above law is clear as to the composition of the original jurisdiction of the Sandiganbayan. Under Section 4 (a), the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the Sandiganbayan to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. **Those that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law.** Particularly and exclusively enumerated are provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads; officials of the diplomatic service occupying the position as consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank; PNP chief superintendent and PNP officers of higher rank; City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. **In connection therewith, Section 4 (b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under**

the jurisdiction of the Sandiganbayan. Clearly, as decided in the earlier case and by simple application of the pertinent provisions of the law, respondent Plaza, a member of the *Sangguniang Panlungsod* during the alleged commission of an offense in relation to his office, necessarily falls within the original jurisdiction of the Sandiganbayan.

3. ID.; ID.; ID.; JURISDICTION OF THE SANDIGANBAYAN, CLARIFIED; RULING IN THE CASE OF *PEOPLE v. SANDIGANBAYAN AND AMANTE* (G.R. No. 167304), CITED.— [A]s to the inapplicability of the *Inding* case wherein it was ruled that the officials enumerated in (a) to (g) of Section 4 (a) (1) of P.D. 1606, as amended, are included within the original jurisdiction of the Sandiganbayan regardless of salary grade and which the Sandiganbayan relied upon in its assailed Resolution, this Court enunciated, still in the earlier case of *People v. Sandiganbayan and Amante*, that **the *Inding* case did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4 (a) (1) of P.D. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. 3019, R.A. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code.** As thoroughly discussed: x x x In the *Inding* case, the public official involved was a member of the Sangguniang Panlungsod with Salary Grade 25 and was charged with violation of R.A. No. 3019. In ruling that the Sandiganbayan had jurisdiction over the said public official, this Court concentrated its disquisition on the provisions contained in Section 4 (a) (1) of P.D. No. 1606, as amended, where the offenses involved are specifically enumerated and not on Section 4 (b) where offenses or felonies involved are those that are in relation to the public officials' office. Section 4 (b) of P.D. No. 1606, as amended, provides xxx. A simple analysis after a plain reading of the above provision shows that **those public officials enumerated in Sec. 4 (a) of P.D. No. 1606, as amended, may not only be charged in the Sandiganbayan with violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code, but also with other offenses or felonies in relation to their office.** The said other offenses and felonies are broad in scope but are limited only to those that are committed in relation to the public official or employee's office. This Court

had ruled that **as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office.** xxx With the resolution of the present case and the earlier case of *People v. Sandiganbayan and Amante*, the issue as to the jurisdiction of the Sandiganbayan has now attained clarity.

APPEARANCES OF COUNSEL

Santos Santos & Santos Law Offices for private respondent.

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is a petition[1] dated September 2, 2005 under Rule 45 of the Rules of Court that seeks to reverse and set aside the Resolution[2] of the Sandiganbayan (Third Division), dated July 20, 2005, dismissing Criminal Case No. 27988, entitled *People of the Philippines v. Rolando Plaza* for lack of jurisdiction.

The facts follow.

Respondent Rolando Plaza, a member of the *Sangguniang Panlungsod* of Toledo City, Cebu, at the time relevant to this case, with salary grade 25, had been charged in the Sandiganbayan with violation of Section 89 of Presidential Decree (P.D.) No. 1445, or *The Auditing Code of the Philippines* for his failure to liquidate the cash advances he received on

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[1] *Rollo*, pp. 28-55.

[2] Penned by Associate Justice Godofredo L. Legaspi, ret. (Chairperson), with Associate Justices Efren N. De La Cruz and Norberto Y. Geraldez (members), (concurring), *id.* at 13-25.

December 19, 1995 in the amount of Thirty-Three Thousand Pesos (₱33,000.00). The Information reads:

> That on or about December 19, 1995, and for sometime prior or subsequent thereto at Toledo City, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ROLANDO PLAZA, a high-ranking public officer, being a member of the Sangguniang Panlungsod of Toledo City, and committing the offense, in relation to office, having obtained cash advances from the City Government of Toledo in the total amount of THIRTY THREE THOUSAND PESOS (₱33,000.00), Philippine Currency, which he received by reason of his office, for which he is duty bound to liquidate the same within the period required by law, with deliberate intent and intent to gain, did then and there, willfully, unlawfully and criminally fail to liquidate said cash advances of ₱33,000.00, Philippine Currency, despite demands to the damage and prejudice of the government in the aforesaid amount.
>
> CONTRARY TO LAW.

Thereafter, respondent Plaza filed a Motion to Dismiss[3] dated April 7, 2005 with the Sandiganbayan, to which the latter issued an Order[4] dated April 12, 2005 directing petitioner to submit its comment. Petitioner filed its Opposition[5] to the Motion to Dismiss on April 19, 2005. Eventually, the Sandiganbayan promulgated its Resolution[6] on July 20, 2005 dismissing the case for lack of jurisdiction, without prejudice to its filing before the proper court. The dispositive portion of the said Resolution provides:

> WHEREFORE, premises considered, the instant case is hereby ordered dismissed for lack of jurisdiction without prejudice to its filing in the proper court.
>
> SO ORDERED.

Thus, the present petition.

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[3] *Rollo*, pp. 74-76.

[4] *Id.* at 78.

[5] *Id.* at 80-85.

[6] *Id.* at 13-25.

Petitioner contends that the Sandiganbayan has criminal jurisdiction over cases involving public officials and employees enumerated under Section 4 (a) (1) of P.D. 1606, (as amended by Republic Act [R.A.] Nos. 7975 and 8249), whether or not occupying a position classified under salary grade 27 and above, who are charged not only for violation of R.A. 3019, R.A. 1379 or any of the felonies included in Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, but also for crimes committed in relation to office. Furthermore, petitioner questioned the Sandiganbayan's appreciation of this Court's decision in *Inding v. Sandiganbayan*,[7] claiming that the *Inding* case did not categorically nor implicitly constrict or confine the application of the enumeration provided for under Section 4 (a) (1) of P.D. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. 3019, R.A. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code. Petitioner adds that the enumeration in Section 4 (a) (1) of P.D. 1606, as amended by R.A. 7975 and R.A. 8249, which was made applicable to cases concerning violations of R.A. 3019, R.A. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code, equally applies to offenses committed in relation to public office.

In his Comment[8] dated November 30, 2005, respondent Plaza argued that, as phrased in Section 4 of P.D. 1606, as amended, it is apparent that the jurisdiction of the Sandiganbayan was defined first, while the exceptions to the general rule are provided in the rest of the paragraph and sub-paragraphs of Section 4; hence, the Sandiganbayan was right in ruling that it has original jurisdiction only over the following cases: (a) where the accused is a public official with salary grade 27 and higher; (b) in cases where the accused is a public official below grade 27 but his position is one of those mentioned in the enumeration in Section 4 (a) (1) (a) to (g) of P. D. 1606, as amended and his offense involves a violation of R.A. 3019, R.A. 1379 and Chapter II, Section 2, Title VII of the Revised Penal Code;

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[7] 478 Phil. 506 (2004).

[8] *Rollo*, pp. 91-98.

and (c) if the indictment involves offenses or felonies other than the three aforementioned statutes, the general rule that a public official must occupy a position with salary grade 27 and higher in order that the Sandiganbayan could exercise jurisdiction over him must apply.

In a nutshell, the core issue raised in the petition is whether or not the Sandiganbayan has jurisdiction over a member of the *Sangguniang Panlungsod* whose salary grade is below 27 and charged with violation of The Auditing Code of the Philippines.

This Court has already resolved the above issue in the affirmative. *People v. Sandiganbayan and Amante*[9] is a case with uncanny similarities to the present one. In fact, the respondent in the earlier case, Victoria Amante and herein respondent Plaza were both members of the *Sangguniang Panlungsod* of Toledo City, Cebu at the time pertinent to this case. The only difference is that, respondent Amante failed to liquidate the amount of Seventy-One Thousand Ninety-Five Pesos (₱71,095.00) while respondent Plaza failed to liquidate the amount of Thirty-Three Thousand Pesos (₱33,000.00).

In ruling that the Sandiganbayan has jurisdiction over a member of the *Sangguniang Panlungsod* whose salary grade is below 27 and charged with violation of The Auditing Code of the Philippines, this Court cited the case of *Serana v. Sandiganbayan, et al.*[10] as a background on the conferment of jurisdiction of the Sandiganbayan, thus:

> x x x The Sandiganbayan was created by P.D. No. 1486, promulgated by then President Ferdinand E. Marcos on June 11, 1978. It was promulgated to attain the highest norms of official conduct required of public officers and employees, based on the concept that public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain at all times accountable to the people.[11]

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[9] G.R. No. 167304, August 25, 2009, 597 SCRA 49.

[10] G.R. No. 162059, January 22, 2008, 542 SCRA 238-240.

[11] *Id.*, citing Presidential Decree No. 1486.

P.D. No. 1486 was, in turn, amended by P.D. No. 1606 which was promulgated on December 10, 1978. P.D. No. 1606 expanded the jurisdiction of the Sandiganbayan.[12]

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[12] *Id.*, citing Section 4. *Jurisdiction*. – The Sandiganbayan shall have jurisdiction over:

(a) Violations of Republic Act No. 3019, as amended, otherwise, known as the Anti-Graft and Corrupt Practices Act, and Republic Act No. 1379;

(b) Crimes committed by public officers and employees including those employed in government-owned or controlled corporations, embraced in Title VII of the Revised Penal Code, whether simple or complexed with other crimes; and

(c) Other crimes or offenses committed by public officers or employees, including those employed in government-owned or controlled corporations, in relation to their office.

The jurisdiction herein conferred shall be original and exclusive if the offense charged is punishable by a penalty higher than *prision correccional*, or its equivalent, except as herein provided; in other offenses, it shall be concurrent with the regular courts.

In case private individuals are charged as co-principals, accomplices or accessories with the public officers or employees including those employed in government-owned or controlled corporations, they shall be tried jointly with said public officers and employees.

Where an accused is tried for any of the above offenses and the evidence is insufficient to establish the offense charged, he may nevertheless be convicted and sentenced for the offense proved, included in that which is charged.

Any provision of law or the Rules of Court to the contrary notwithstanding, the criminal action and the corresponding civil action for the recovery of civil liability arising from the offense charged shall, at all times, be simultaneously instituted with, and jointly determined in the same proceeding by, the Sandiganbayan, the filing of the criminal action being deemed to necessarily carry with it the filing of the civil action, and no right to reserve the filing of such action shall be recognized; Provided, however, that, in cases within the exclusive jurisdiction of the Sandiganbayan, where the civil action had therefore been filed separately with a regular court but judgment therein has not yet been rendered and the criminal case is hereafter filed with the Sandiganbayan, said civil action shall be transferred to the Sandiganbayan for consolidation and joint determination with the criminal action, otherwise, the criminal action may no longer be filed with the Sandiganbayan, its exclusive jurisdiction over the same notwithstanding, but may be filed and prosecuted only in the regular courts of competent jurisdiction; Provided, further, that, in cases within the concurrent jurisdiction of the Sandiganbayan and the regular courts, where either the criminal or civil action is first filed with the regular courts, the

P.D. No. 1606 was later amended by P.D. No. 1861 on March 23, 1983, further altering the Sandiganbayan jurisdiction. R.A. No. 7975 approved on March 30, 1995 made succeeding amendments to P.D. No. 1606, which was again amended on February 5, 1997 by R.A. No. 8249. Section 4 of R.A. No. 8249 further modified the jurisdiction of the Sandiganbayan. x x x.

Section 4 of P.D. 1606, as amended by Section 2 of R.A. 7975 which took effect on May 16, 1995, which was again amended on February 5, 1997 by R.A. 8249, is the law that should be applied in the present case, the offense having been allegedly committed on or about December 19, 1995 and the Information having been filed on March 25, 2004. As extensively explained in the earlier mentioned case,

The jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense.[13] **The exception contained in R.A. 7975, as well as R.A. 8249, where it expressly provides that to determine the jurisdiction of the Sandiganbayan in cases involving violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code is not applicable in the present case as the offense involved herein is a violation of The Auditing Code of the Philippines.** The last clause of the opening sentence of paragraph (a) of the said two provisions states:

> Sec. 4. *Jurisdiction*. – The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving:
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> A. Violations of Republic Act No. 3019, as amended, other known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following

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corresponding civil or criminal action, as the case may be, shall only be filed with the regular courts of competent jurisdiction.

Excepted from the foregoing provisions, during martial law, are criminal cases against officers and members of the armed forces in the active service.

[13] *People v. Sandiganbayan and Amante, supra* note 9, citing *Subido, Jr. v. Sandiganbayan*, 266 SCRA 379 (1996).

> positions in the government, whether in a permanent, acting or interim capacity, **at the time of the commission of the offense:** x x x.[14]

Like in the earlier case, the present case definitely falls under Section 4 (b) where other offenses and felonies committed by public officials or employees in relation to their office are involved where the said provision, contains no exception. Therefore, what applies in the present case is the general rule that jurisdiction of a court to try a criminal case is to be determined at the time of the institution of the action, not at the time of the commission of the offense. The present case having been instituted on March 25, 2004, the provisions of R.A. 8249 shall govern. P.D. 1606, as amended by R.A. 8249 states that:

Sec. 4. *Jurisdiction*. — The Sandiganbayan shall exercise original jurisdiction in all cases involving:

A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code, where one or more of the principal accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

> (1) Officials of the executive branch occupying the positions of regional director and higher, otherwise classified as grade "27" and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758), specifically including:
>
> > (a) Provincial governors, vice-governors, members of the sangguniang panlalawigan and provincial treasurers, assessors, engineers, and other city department heads;
> >
> > (b) City mayors, vice mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads;
> >
> > (c) Officials of the diplomatic service occupying the position of consul and higher;

[14] Emphasis supplied.

(d) Philippine army and air force colonels, naval captains, and all officers of higher rank;

(e) PNP chief superintendent and PNP officers of higher rank;

(f) City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and Special Prosecutor;

(g) Presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations;

(2) Members of Congress and officials thereof classified as Grade "27" and up under the Compensation and Position Classification Act of 1989;

(3) Members of the judiciary without prejudice to the provisions of the Constitution;

(4) Chairmen and members of Constitutional Commissions, without prejudice to the provisions of the Constitution; and

(5) All other national and local officials classified as Grade "27" and higher under the Compensation and Position Classification Act of 1989.

B. Other offenses or felonies, whether simple or complexed with other crimes committed by the public officials and employees mentioned in subsection (a) of this section in relation to their office.

C. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A.

Again, the earlier case interpreted the above provisions, thus:

The above law is clear as to the composition of the original jurisdiction of the Sandiganbayan. Under Section 4 (a), the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the Sandiganbayan to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. **Those**

that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law. Particularly and exclusively enumerated are provincial governors, vice-governors, members of the sangguniang panlalawigan, and provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the sangguniang panlungsod, city treasurers, assessors, engineers, and other city department heads; officials of the diplomatic service occupying the position as consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank; PNP chief superintendent and PNP officers of higher rank; City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. **In connection therewith, Section 4 (b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the Sandiganbayan.**[15]

Clearly, as decided in the earlier case and by simple application of the pertinent provisions of the law, respondent Plaza, a member of the *Sangguniang Panlungsod* during the alleged commission of an offense in relation to his office, necessarily falls within the original jurisdiction of the Sandiganbayan.

Finally, as to the inapplicability of the *Inding*[16] case wherein it was ruled that the officials enumerated in (a) to (g) of Section 4 (a) (1) of P.D. 1606, as amended, are included within the original jurisdiction of the Sandiganbayan regardless of salary grade and which the Sandiganbayan relied upon in its assailed Resolution, this Court enunciated, still in the earlier case of *People v. Sandiganbayan and Amante*,[17] that **the *Inding* case did not categorically nor implicitly constrict or confine the**

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[15] *People v. Sandiganbayan and Amante, supra* note 9, at 59-60. (Emphasis supplied.)

[16] *Supra* note 7.

[17] *Supra* note 9.

application of the enumeration provided for under Section 4 (a) (1) of P.D. 1606, as amended, exclusively to cases where the offense charged is either a violation of R.A. 3019, R.A. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code. As thoroughly discussed:

x x x In the *Inding* case, the public official involved was a member of the Sangguniang Panlungsod with Salary Grade 25 and was charged with violation of R.A. No. 3019. In ruling that the Sandiganbayan had jurisdiction over the said public official, this Court concentrated its disquisition on the provisions contained in Section 4 (a) (1) of P.D. No. 1606, as amended, where the offenses involved are specifically enumerated and not on Section 4 (b) where offenses or felonies involved are those that are in relation to the public officials' office. Section 4 (b) of P.D. No. 1606, as amended, provides that:

> b. Other offenses or felonies committed by public officials and employees mentioned in subsection (a) of this section in relation to their office.

A simple analysis after a plain reading of the above provision shows that **those public officials enumerated in Sec. 4 (a) of P.D. No. 1606, as amended, may not only be charged in the Sandiganbayan with violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code, but also with other offenses or felonies in relation to their office.** The said other offenses and felonies are broad in scope but are limited only to those that are committed in relation to the public official or employee's office. This Court had ruled that **as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his official functions, there being no personal motive to commit the crime and had the accused not have committed it had he not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his office.**[18] Thus, in the case of *Lacson v. Executive Secretary, et al.*,[19] where the crime involved was murder, this Court held that:

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[18] *Rodriguez, et al. v. Sandiganbayan, et al.*, 468 Phil. 374, 387 (2004), citing *People v. Montejo*, 108 Phil. 613 (1960).

[19] G.R. No. 128096, January 20, 1999, 301 SCRA 298.

> The phrase "other offenses or felonies" is too broad as to include the crime of murder, provided it was committed in relation to the accused's official functions. Thus, under said paragraph b, what determines the Sandiganbayan's jurisdiction is the official position or rank of the offender – that is, whether he is one of those public officers or employees enumerated in paragraph a of Section 4. x x x

Also, in the case *Alarilla v. Sandiganbayan*,[20] where the public official was charged with grave threats, this Court ruled:

> x x x In the case at bar, the amended information contained allegations that the accused, petitioner herein, took advantage of his official functions as municipal mayor of Meycauayan, Bulacan when he committed the crime of grave threats as defined in Article 282 of the Revised Penal Code against complainant Simeon G. Legaspi, a municipal councilor. The Office of the Special Prosecutor charged petitioner with aiming a gun at and threatening to kill Legaspi during a public hearing, after the latter had rendered a privilege speech critical of petitioner's administration. Clearly, based on such allegations, the crime charged is intimately connected with the discharge of petitioner's official functions. This was elaborated upon by public respondent in its April 25, 1997 resolution wherein it held that the "accused was performing his official duty as municipal mayor when he attended said public hearing" and that "accused's violent act was precipitated by complainant's criticism of his administration as the mayor or chief executive of the municipality, during the latter's privilege speech. It was his response to private complainant's attack to his office. If he was not the mayor, he would not have been irritated or angered by whatever private complainant might have said during said privilege speech." Thus, based on the allegations in the information, the Sandiganbayan correctly assumed jurisdiction over the case.

Proceeding from the above rulings of this Court, a close reading of the Information filed against respondent Amante for violation of The Auditing Code of the Philippines reveals that the said offense was committed in relation to her office, making her fall under Section 4 (b) of P.D. No. 1606, as amended.

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[20] G.R. No. 136806, August 22, 2000, 338 SCRA 498.

According to the assailed Resolution of the Sandiganbayan, if the intention of the law had been to extend the application of the exceptions to the other cases over which the Sandiganbayan could assert jurisdiction, then there would have been no need to distinguish between violations of R.A. No. 3019, R.A. No. 1379 or Chapter II, Section 2, Title VII of the Revised Penal Code on the one hand, and other offenses or felonies committed by public officials and employees in relation to their office on the other. The said reasoning is misleading because a distinction apparently exists. **In the offenses involved in Section 4 (a), it is not disputed that public office is essential as an element of the said offenses themselves, while in those offenses and felonies involved in Section 4 (b), it is enough that the said offenses and felonies were committed in relation to the public officials or employees' office.** In expounding the meaning of *offenses deemed to have been committed in relation to office*, this Court held:

> In *Sanchez v. Demetriou* [227 SCRA 627 (1993)], the Court elaborated on the scope and reach of the term "offense committed in relation to [an accused's] office" by referring to the principle laid down in *Montilla v. Hilario* [90 Phil 49 (1951)], and to an exception to that principle which was recognized in *People v. Montejo* [108 Phil 613 (1960)]. The principle set out in *Montilla v. Hilario* is that an offense may be considered as committed in relation to the accused's office if "the offense cannot exist without the office" such that "the office [is] a constituent element of the crime x x x." In *People v. Montejo*, the Court, through Chief Justice Concepcion, said that "although public office is not an element of the crime of murder in [the] abstract," the facts in a particular case may show that
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> x x x the offense therein charged is intimately connected with [the accused's] respective offices and was perpetrated while they were in the performance, though improper or irregular, of their official functions. Indeed, [the accused] had no personal motive to commit the crime and they would not have committed it had they not held their aforesaid offices. x x x"[21]

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[21] *Cunanan v. Arceo*, G.R. No. 116615, March 1, 1995, 242 SCRA 88.

Moreover, it is beyond clarity that the same provisions of Section 4 (b) does not mention any qualification as to the public officials involved. It simply stated, *public officials and employees mentioned in subsection (a) of the same section*. Therefore, it refers to those public officials with Salary Grade 27 and above, except those specifically enumerated. It is a well-settled principle of legal hermeneutics that words of a statute will be interpreted in their natural, plain and ordinary acceptation and signification,[22] unless it is evident that the legislature intended a technical or special legal meaning to those words.[23] The intention of the lawmakers – who are, ordinarily, untrained philologists and lexicographers – to use statutory phraseology in such a manner is always presumed. (Italics supplied.)[24]

With the resolution of the present case and the earlier case of *People v. Sandiganbayan and Amante*,[25] the issue as to the jurisdiction of the Sandiganbayan has now attained clarity.

WHEREFORE, the Petition dated September 2, 2005 is hereby *GRANTED* and the Resolution of the Sandiganbayan (Third Division) dated July 20, 2005 is hereby *NULLIFIED* and *SET ASIDE*. Let the case be *REMANDED* to the Sandiganbayan for further proceedings.

SO ORDERED.

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

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[22] *Romualdez v. Sandiganbayan,* 479 Phil. 265, 287 (2004), citing *Mustang Lumber, Inc. v. Court of Appeals,* 257 SCRA 430, 448 (1996).

[23] *PLDT v. Eastern Telecommunications Phil., Inc.*, G.R. No. 94374, August 27, 1992, 213 SCRA 16, 26.

[24] *People v. Sandiganbayan and Amante, supra* note 9, at 62-65, citing *Romualdez v. Sandiganbayan, et al.*, *supra* note 22, citing *Estrada v. Sandiganbayan,* 421 Phil. 443 (2001).

[25] *Supra* note 9.

[*] Designated additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Jose Catral Mendoza, who are on official leave per Special Order Nos. 883 and 886, respectively, both dated September 1, 2010.

SECOND DIVISION

[G.R. Nos. 172476-99. September 15, 2010]

BRIG. GEN. (Ret.) JOSE RAMISCAL, JR., *petitioner, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; RULES OF PROCEDURE; THE FILING OF A MOTION FOR RECONSIDERATION OF THE RESOLUTION FINDING PROBABLE CAUSE CANNOT BAR THE FILING OF THE CORRESPONDING INFORMATION AND THE SUBSEQUENT ARRAIGNMENT OF THE ACCUSED.— The Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 15, Series of 2001, sanction the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration. Section 7, Rule II of the Rules, as amended, provides: xxx b) The filing of a motion for reconsideration/reinvestigation **shall not bar** the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion. If the filing of a motion for reconsideration of the resolution finding probable cause cannot bar the filing of the corresponding information, then neither can it bar the arraignment of the accused, which in the normal course of criminal procedure logically follows the filing of the information.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; ARRAIGNMENT; EXPLAINED; THE ACCUSED MUST BE ARRAIGNED WITHIN 30 DAYS FROM THE TIME THE COURT ACQUIRES JURISDICTION OVER THE PERSON OF THE ACCUSED.— An arraignment is that stage where, in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty. Under Section 7

of Republic Act No. 8493, otherwise known as the Speedy Trial Act of 1998, the court must proceed with the arraignment of an accused within 30 days from the filing of the information or from the date the accused has appeared before the court in which the charge is pending, whichever is later xxx. Section 1 (g), Rule 116 of the Rules of Court [i]mplements Section 7 of RA 8493 xxx. Section 1(g), Rule 116 of the Rules of Court and the last clause of Section 7 of RA 8493 mean the same thing, that the 30-day period shall be counted from the time the court acquires jurisdiction over the person of the accused, which is when the accused appears before the court.

3. ID.; ID.; ID.; GROUNDS FOR SUSPENSION THEREOF; NOT PRESENT.— The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which applies suppletorily in matters not provided under the Rules of Procedure of the Office of the Ombudsman or the Revised Internal Rules of the *Sandiganbayan*, thus: Sec. 11. *Suspension of arraignment*. – Upon motion by the proper party, the arraignment shall be suspended in the following cases: (a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose. (b) There exists a prejudicial question; and (c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. Petitioner failed to show that any of the instances constituting a valid ground for suspension of arraignment obtained in this case. Thus, the *Sandiganbayan* committed no error when it proceeded with petitioner's arraignment, as mandated by Section 7 of RA 8493.

4. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; FILING OF A SECOND MOTION FOR RECONSIDERATION QUESTIONING AGAIN THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE IS NOT ALLOWED.— Further, as correctly pointed out by the *Sandiganbayan* in its assailed Resolution, petitioner's motion

for reconsideration filed on 26 January 2006 was already his second motion for reconsideration of the Ombudsman's finding of probable cause against him. The Ombudsman, in its 19 December 2005 memorandum, has already denied petitioner's first motion for reconsideration, impugning for the first time the Ombudsman's finding of probable cause against him. Under Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, petitioner can no longer file another motion for reconsideration questioning yet again the same finding of the Ombudsman. Otherwise, there will be no end to litigation.

5. REMEDIAL LAW; EVIDENCE; DEFENSES WHICH ARE EVIDENTIARY IN NATURE ARE BEST THRESHED OUT IN THE TRIAL OF THE CASE ON THE MERITS.— We agree with the *Sandiganbayan* that petitioner's defenses are evidentiary in nature and are best threshed out in the trial of the case on the merits. Petitioner's claim that the Ombudsman made conflicting conclusions on the existence of probable cause against him is baseless. The memorandum of the OMB-Military, recommending the dropping of the cases against petitioner, has been effectively overruled by the memorandum of the panel of prosecutors. xxx

6. POLITICAL LAW; ADMINISTRATIVE LAW; OFFICE OF THE OMBUDSMAN; THE SUPREME COURT WILL NOT ORDINARILY INTERFERE WITH THE OMBUDSMAN'S FINDING OF PROBABLE CAUSE; RATIONALE.— [T]he decision of the panel of prosecutors finding probable cause against petitioner prevails. This Court does not ordinarily interfere with the Ombudsman's finding of probable cause. The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. As this Court succinctly stated in *Alba v. Hon. Nitorreda*: Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

7. REMEDIAL LAW; COURTS; SANDIGANBAYAN; ABSENT GRAVE ABUSE OF DISCRETION, THE SUPREME COURT WILL NOT INTERFERE WITH THE SANDIGANBAYAN'S JURISDICTION AND CONTROL OVER A CASE PROPERLY FILED BEFORE IT; APPLIED.— [W]hile it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the *Sandiganbayan*, once the case has been filed with said court, it is the *Sandiganbayan*, and no longer the Ombudsman, which has full control of the case. In this case, petitioner failed to establish that the *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion to set aside his arraignment. There is grave abuse of discretion when power is exercised in an arbitrary, capricious, whimsical, or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of a positive duty or virtual refusal to perform a duty enjoined by law. Absent a showing of grave abuse of discretion, this Court will not interfere with the *Sandiganbayan's* jurisdiction and control over a case properly filed before it. The *Sandiganbayan* is empowered to proceed with the trial of the case in the manner it determines best conducive to orderly proceedings and speedy termination of the case. There being no showing of grave abuse of discretion on its part, the *Sandiganbayan* should continue its proceedings with all deliberate dispatch.

8. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; MERE FILING THEREOF DOES NOT BY ITSELF MERIT A SUSPENSION OF THE PROCEEDINGS BEFORE THE SANDIGANBAYAN UNLESS A TEMPORARY RESTRAINING ORDER OR A WRIT OF PRELIMINARY INJUNCTION HAS BEEN ISSUED AGAINST IT.— We remind respondent to abide by this Court's ruling in *Republic v. Sandiganbayan*, where we stated that the mere filing of a petition for *certiorari* under Rule 65 of the Rules of Court does not by itself merit a suspension of the proceedings before the *Sandiganbayan*, unless a temporary restraining order or a writ of preliminary injunction has been issued against the *Sandiganbayan*.

APPEARANCES OF COUNSEL

Garayblas Garayblas De La Cruz Cairme Law Offices for petitioner.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a special civil action for *certiorari*[1] seeking to annul the 5 April 2006 Resolution[2] of the *Sandiganbayan* Fourth Division in Criminal Case Nos. 25122-45. The assailed Resolution denied petitioner's motion to set aside his arraignment on 26 February 2006 pending resolution of his motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Facts

Petitioner Jose S. Ramiscal, Jr. was a retired officer of the Armed Forces of the Philippines (AFP), with the rank of Brigadier General, when he served as President of the AFP-Retirement and Separation Benefits System (AFP-RSBS) from 5 April 1994 to 27 July 1998.[3]

During petitioner's term as president of AFP-RSBS, the Board of Trustees of AFP-RSBS approved the acquisition of 15,020 square meters of land situated in General Santos City for development as housing projects.[4]

On 1 August 1997, AFP-RSBS, represented by petitioner, and Atty. Nilo J. Flaviano, as attorney-in-fact of the 12 individual vendors,[5] executed and signed bilateral deeds of sale over the subject property, at the agreed price of ₱10,500.00 per square

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[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 264-269. Penned by Associate Justice Rodolfo A. Ponferrada, with Associate Justices Jose R. Hernandez (Acting Chairman) and Roland B. Jurado (Sitting as Special Member per Administrative Order No. 25 dated 24 March 2006), concurring.

[3] *Id.* at 338.

[4] *Id.* at 565.

[5] Alex Guaybar, Jack Guiwan, Mad Guaybar, Oliver Guaybar, Jonathan Guaybar, Miguela Cabi-ao, Jose Rommel Saludar, Joel Teves, Rico Altizo, Martin Saycon, Johnny Medillo, and Jolito Poralan.

meter. Petitioner forthwith caused the payment to the individual vendors of the purchase price of ₱10,500.00 per square meter of the property.

Subsequently, Flaviano executed and signed unilateral deeds of sale over the same property. The unilateral deeds of sale reflected a purchase price of only ₱3,000.00 per square meter instead of the actual purchase price of ₱10,500.00 per square meter. On 24 September 1997, Flaviano presented the unilateral deeds of sale for registration. The unilateral deeds of sale became the basis of the transfer certificates of title issued by the Register of Deeds of General Santos City to AFP-RSBS.[6]

On 18 December 1997, Luwalhati R. Antonino, the Congresswoman representing the first district of South Cotabato, which includes General Santos City, filed in the Ombudsman a complaint-affidavit[7] against petitioner, along with 27 other respondents, for (1) violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act; and (2) malversation of public funds or property through falsification of public documents. The case was docketed as Case No. OMB-3-98-0020.

After preliminary investigation, the Ombudsman, in its 20 January 1999 Resolution,[8] found petitioner probably guilty of violation of Section 3(e) of RA 3019 and falsification of public documents, thus:

> WHEREFORE, PREMISES CONSIDERED, this Office finds and so holds that the following crimes were committed and that respondents, whose names appear below, are probably guilty thereof:
>
> x x x x x x x x x
>
> 4. JOSE RAMISCAL, JR., WILFREDO PABALAN, NILO FLAVIANO, conspirators for twelve (12) counts of falsification of public documents relative to the twelve (12) unilateral Deeds of Sale;
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> x x x x x x x x x

[6] *Rollo*, p. 565.

[7] *Id.* at 359-375.

[8] *Id.* at 393-425.

6. JOSE RAMISCAL, JR. WILFREDO PABALAN, and NILO FLAVIANO twelve (12) counts of violation of Section 3(e) of RA 3019 for short-changing the government in the correct amount of taxes due for the sale of Lot X to AFP-RSBS;[9]

On 28 January 1999, the Ombudsman filed in the *Sandiganbayan* 12 informations[10] for violation of Section 3(e) of RA 3019 and 12 informations[11] for falsification of public documents against petitioner and several other co-accused.

Petitioner filed his first motion for reconsideration dated 12 February 1999,[12] with a supplemental motion dated 28 May 1999,[13] of the Ombudsman's finding of probable cause against him. In its 11 June 1999 Order,[14] the *Sandiganbayan* disposed of petitioner's first motion for reconsideration, thus:

> WHEREFORE, the prosecution is given 60 days from today within which to evaluate its evidence and to do whatever is appropriate on the Motion for Reconsideration dated February 12, 1999 and supplemental motion thereof dated May 28, 1999 of accused Jose Ramiscal and to inform this Court within the said period as to its findings and recommendations together with the action thereon of the Ombudsman.

In a memorandum dated 22 November 2001, the Office of the Special Prosecutor (OMB-OSP) recommended that petitioner be excluded from the informations. On review, the Office of Legal Affairs (OMB-OLA), in a memorandum dated 18 December 2001, recommended the contrary, stressing that petitioner participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the subject property.[15]

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[9] *Id.* at 423-424.

[10] *Id.* at 426-461.

[11] *Id.* at 462-485.

[12] *Id.* at 498-525.

[13] *Id.* at 526-559.

[14] *Id.* at 560.

[15] *Id.* at 561, 566.

The memoranda of OMB-OSP and OMB-OLA were forwarded for comment to the Office of the Ombudsman for Military (OMB-Military). In a memorandum dated 21 August 2002, the OMB-Military adopted the memorandum of OMB-OSP recommending the dropping of petitioner's name from the informations. Acting Ombudsman Margarito Gervacio approved the recommendation of the OMB-Military. However, the recommendation of the OMB-Military was not manifested before the *Sandiganbayan* as a final disposition of petitioner's first motion for reconsideration.

A panel of prosecutors[16] was tasked to review the records of the case. After thorough review, the panel of prosecutors found that petitioner indeed participated in and affixed his signature on the contracts to sell, bilateral deeds of sale, and various agreements, vouchers, and checks for the purchase of the property at the price of ₱10,500.00 per square meter. The panel of prosecutors posited that petitioner could not feign ignorance of the execution of the unilateral deeds of sale, which indicated the false purchase price of ₱3,000.00 per square meter. The panel of prosecutors concluded that probable cause existed for petitioner's continued prosecution. In its 19 December 2005 memorandum,[17] the panel of prosecutors recommended the following:

WHEREFORE, premises considered, undersigned prosecutors recommend the following:

1. The August 2002 approved Recommendation of the Ombudsman-Military be set aside and **the Motion for Reconsideration filed by Ramiscal (petitioner) be DENIED**;

2. Another information for violation of Section 3(e) of RA 3019 be filed against Ramiscal and all the other accused for causing damage to the government when it caused the payment of the amount of Php 10,500.00 per square meter for the subject lots when the actual amount should only be Php 3,000.00 per square meter.[18] (Emphasis supplied)

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[16] Consisting of Acting Deputy Special Prosecutor Wendell E. Barreras-Sulit, Acting Director of the Prosecution Bureau John I.C. Turalba, and Assistant Special Prosecutor Almira A. Abella-Orfanel.

[17] *Rollo*, pp. 564-570.

[18] *Id.* at 570.

Ombudsman Ma. Merceditas N. Gutierrez approved the recommendation of the panel of prosecutors. Upon receipt of the final findings of the Ombudsman, the *Sandiganbayan* scheduled the arraignment of petitioner.

Meanwhile, on 26 January 2006, petitioner filed his second motion for reconsideration[19] of the Ombudsman's finding of probable cause against him.

On 26 February 2006, petitioner was arraigned. For his refusal to enter a plea, the *Sandiganbayan* entered in his favor a plea of not guilty. On 9 March 2006, petitioner filed a motion to set aside his arraignment[20] pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him.

The Ruling of the *Sandiganbayan*

The *Sandiganbayan* pointed out that petitioner's second motion for reconsideration of the Ombudsman's finding of probable cause against him was a prohibited pleading. The *Sandiganbayan* explained that whatever defense or evidence petitioner may have should be ventilated in the trial of the case. In its assailed 5 April 2006 Resolution, the *Sandiganbayan* denied for lack of merit petitioner's motion to set aside his arraignment, thus:

> WHEREFORE, the Motion to Set Aside Arraignment is hereby DENIED for lack of merit.
>
> SO ORDERED.[21]

The Issue

Did the *Sandiganbayan* commit grave abuse of discretion when it denied petitioner's motion to set aside his arraignment pending resolution of his second motion for reconsideration of the Ombudsman's finding of probable cause against him?

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[19] *Id.* at 572-578.

[20] *Id.* at 579-581.

[21] *Id.* at 268.

The Court's Ruling

The petition has no merit.

Petitioner contends that the Ombudsman should have excluded him from the informations. He claims lack of probable cause to indict him considering the prior findings of the Ombudsman recommending the dropping of the cases against him. Petitioner claims that heads of offices have to rely to a reasonable extent on their subordinates and that there should be grounds other than the mere signature appearing on a questioned document to sustain a conspiracy charge.

Respondent *Sandiganbayan* counters that it correctly denied petitioner's motion to set aside his arraignment. Respondent court argues that petitioner's motion for reconsideration, filed on 26 January 2006 and pending with the Ombudsman at the time of his arraignment, violated Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, as amended. Respondent court maintains that the memorandum of the panel of prosecutors finding probable cause against petitioner was the final decision of the Ombudsman.

The Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 15, Series of 2001,[22] sanction the immediate filing of an information in the proper court upon a finding of probable cause, even during the pendency of a motion for reconsideration. Section 7, Rule II of the Rules, as amended, provides:

Section 7. *Motion for Reconsideration.* –

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where the information has already been filed in court;

b) The filing of a motion for reconsideration/reinvestigation **shall not bar** the filing of the corresponding information in Court on the

[22] Signed on 16 February 2001.

basis of the finding of probable cause in the resolution subject of the motion. (Emphasis supplied)

If the filing of a motion for reconsideration of the resolution finding probable cause cannot bar the filing of the corresponding information, then neither can it bar the arraignment of the accused, which in the normal course of criminal procedure logically follows the filing of the information.

An arraignment is that stage where, in the mode and manner required by the Rules, an accused, for the first time, is granted the opportunity to know the precise charge that confronts him. The accused is formally informed of the charges against him, to which he enters a plea of guilty or not guilty.[23]

Under Section 7 of Republic Act No. 8493,[24] otherwise known as the Speedy Trial Act of 1998, the court must proceed with the arraignment of an accused within 30 days from the filing of the information or from the date the accused has appeared before the court in which the charge is pending, whichever is later, thus:

Section 7. *Time Limit Between Filing of Information and Arraignment and Between Arraignment and Trial.* – **The arraignment of an accused shall be held within thirty (30) days from the filing of the information, or from the date the accused has appeared before the justice, judge or court in which the charge is pending, whichever date last occurs.** x x x (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court, which implements Section 7 of RA 8493, provides:

Section 1. *Arraignment and plea; how made.* –
(g) Unless a shorter period is provided by special law or Supreme Court circular, **the arraignment shall be held within thirty (30)**

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[23] *Albert v. Sandiganbayan*, G.R. No. 164015, 26 February 2009, 580 SCRA 279.

[24] AN ACT TO ENSURE A SPEEDY TRIAL OF ALL CRIMINAL CASES BEFORE THE SANDIGANBAYAN, REGIONAL TRIAL COURT, METROPOLITAN TRIAL COURT, MUNICIPAL TRIAL COURT, AND MUNICIPAL CIRCUIT TRIAL COURT, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on 12 February 1998.

days from the date the court acquires jurisdiction over the person of the accused. xxx (Emphasis supplied)

Section 1(g), Rule 116 of the Rules of Court and the last clause of Section 7 of RA 8493 mean the same thing, that the 30-day period shall be counted from the time the court acquires jurisdiction over the person of the accused, which is when the accused appears before the court.

The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which applies suppletorily in matters not provided under the Rules of Procedure of the Office of the Ombudsman or the Revised Internal Rules of the *Sandiganbayan*, thus:

Sec. 11. *Suspension of arraignment*. – Upon motion by the proper party, the arraignment shall be suspended in the following cases:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose.

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.[25]

Petitioner failed to show that any of the instances constituting a valid ground for suspension of arraignment obtained in this case. Thus, the *Sandiganbayan* committed no error when it proceeded with petitioner's arraignment, as mandated by Section 7 of RA 8493.

Further, as correctly pointed out by the *Sandiganbayan* in its assailed Resolution, petitioner's motion for reconsideration filed on 26 January 2006 was already his second motion for reconsideration of the Ombudsman's finding of probable cause against him. The Ombudsman, in its 19 December 2005

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[25] Revised Rules of Criminal Procedure. Effective 1 December 2000.

memorandum, has already denied petitioner's first motion for reconsideration,[26] impugning for the first time the Ombudsman's finding of probable cause against him. Under Section 7, Rule II of the Rules of Procedure of the Office of the Ombudsman, petitioner can no longer file another motion for reconsideration questioning yet again the same finding of the Ombudsman. Otherwise, there will be no end to litigation.

We agree with the *Sandiganbayan* that petitioner's defenses are evidentiary in nature and are best threshed out in the trial of the case on the merits. Petitioner's claim that the Ombudsman made conflicting conclusions on the existence of probable cause against him is baseless. The memorandum of the OMB-Military, recommending the dropping of the cases against petitioner, has been effectively overruled by the memorandum of the panel of prosecutors, thus:

> WHEREFORE, premises considered, undersigned prosecutors recommend the following:
>
> 1. **The August 2002 approved Recommendation of the Ombudsman-Military be set aside** and the Motion for Reconsideration filed by Ramiscal be DENIED;[27] (Emphasis supplied)

As the final word on the matter, the decision of the panel of prosecutors finding probable cause against petitioner prevails. This Court does not ordinarily interfere with the Ombudsman's finding of probable cause.[28] The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints.[29] As this Court succinctly stated in *Alba v. Hon. Nitorreda*:[30]

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[26] Dated 12 February 1999, with a supplemental motion for reconsideration dated 28 May 1999.

[27] *Rollo*, p. 570.

[28] *Venus v. Desierto*, 358 Phil. 675 (1998).

[29] *Presidential Commission on Good Government v. Desierto*, 445 Phil. 154 (2003).

[30] 325 Phil. 229 (1996).

Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.[31]

In *Ocampo, IV v. Ombudsman*,[32] the Court explained the rationale behind this policy, thus:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[33]

Significantly, while it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the *Sandiganbayan*, once the case has been filed with said court, it is the *Sandiganbayan*, and no longer the Ombudsman, which has full control of the case.[34]

In this case, petitioner failed to establish that the *Sandiganbayan* committed grave abuse of discretion amounting to lack or excess of jurisdiction when it denied petitioner's motion to set aside his arraignment. There is grave abuse of discretion when power is exercised in an arbitrary, capricious, whimsical, or despotic manner by reason of passion or personal hostility so patent and

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[31] *Id.* at 244.

[32] G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725.

[33] *Id.* at 730.

[34] *Nava v. National Bureau of Investigation*, 495 Phil. 354 (2005).

gross as to amount to evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[35]

Absent a showing of grave abuse of discretion, this Court will not interfere with the *Sandiganbayan's* jurisdiction and control over a case properly filed before it. The *Sandiganbayan* is empowered to proceed with the trial of the case in the manner it determines best conducive to orderly proceedings and speedy termination of the case.[36] There being no showing of grave abuse of discretion on its part, the *Sandiganbayan* should continue its proceedings with all deliberate dispatch.

We remind respondent to abide by this Court's ruling in *Republic v. Sandiganbayan,*[37] where we stated that the mere filing of a petition for *certiorari* under Rule 65 of the Rules of Court does not by itself merit a suspension of the proceedings before the *Sandiganbayan,* unless a temporary restraining order or a writ of preliminary injunction has been issued against the *Sandiganbayan*. Section 7, Rule 65 of the Rules of Court so provides:

> Section 7. *Expediting proceedings; injunctive relief.* – The court in which the petition [for *certiorari*, prohibition and *mandamus*] is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. **The petition shall not interrupt the course of the principal case *unless* a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case.** (Emphasis supplied)

WHEREFORE, we *DENY* the petition. We *AFFIRM* the assailed 5 April 2006 Resolution of the *Sandiganbayan* in Criminal Case Nos. 25122-45, which denied petitioner's motion to set aside his arraignment. This Decision is immediately executory.

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[35] *Fuentes, Jr. v. Office of the Ombudsman*, G.R. No. 164865, 11 November 2005, 474 SCRA 779.

[36] *Serapio v. Sandiganbayan*, 444 Phil. 499 (2003).

[37] G.R. No. 166859, 26 June 2006, 492 SCRA 747.

Costs against petitioner.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Bersamin,*[**] and *Abad, JJ.,* concur.

THIRD DIVISION

[G.R. No. 173863. September 15, 2010]

CHEVRON PHILIPPINES, INC. (Formerly CALTEX PHILIPPINES, INC.), *petitioner, vs.* **BASES CONVERSION DEVELOPMENT AUTHORITY and CLARK DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; STATE; POLICE POWER; TAX AND REGULATION, DISTINGUISHED.— In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue is generated. Thus, in *Gerochi v. Department of Energy*, the Court stated: The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation

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[*] Designated additional member per Special Order No. 883 dated 1 September 2010.

[**] Designated additional member per Special Order No. 886 dated 1 September 2010.

is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.

2. ID.; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; CLARK DEVELOPMENT CORPORATION; ROYALTY FEES IMPOSED ON FUEL DELIVERED BY OUTSIDE SUPPLIERS INSIDE THE CLARK SPECIAL ECONOMIC ZONE (CSEZ) ARE FOR REGULATORY PURPOSES, AND NOT FOR THE GENERATION OF INCOME.— In the case at bar, we hold that the subject royalty fee was imposed primarily for *regulatory* purposes, and not for the generation of income or profits as petitioner claims. The Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone provides: **DECLARATION OF POLICY** It is hereby declared the policy of CDC **to develop and maintain the Clark Special Economic Zone (CSEZ) as a highly secured zone** free from threats of any kind, which could possibly endanger the lives and properties of locators, would-be investors, visitors, and employees. It is also declared the policy of CDC to operate and manage the CSEZ as a separate customs territory **ensuring free flow or movement of goods and capital within, into and exported out of the CSEZ**. From the foregoing, it can be gleaned that the Policy Guidelines was issued, first and foremost, to ensure the safety, security, and good condition of the petroleum fuel industry within the CSEZ. The questioned royalty fees form part of the regulatory framework to ensure "free flow or movement" of petroleum fuel to and from the CSEZ. The fact that respondents have the exclusive right to distribute and market petroleum products within CSEZ pursuant to its JVA with SBMA and CSBTI does not diminish the regulatory purpose of the royalty fee for fuel products supplied by petitioner to its client at the CSEZ.

3. ID.; ID.; ID.; ID.; POWERS AND FUNCTIONS THEREOF.— [I]t was erroneous for petitioner to argue that such exclusive right of respondent CDC to market and distribute fuel inside CSEZ is the sole basis of the royalty fees imposed under the Policy Guidelines. Being the administrator of CSEZ, the responsibility of ensuring the safe, efficient and orderly distribution of fuel products within the Zone falls on CDC. Addressing specific concerns demanded by the nature of goods

or products involved is encompassed in the range of *services* which respondent CDC is expected to provide under the law, in pursuance of its general power of *supervision* and *control* over the movement of all supplies and equipment into the CSEZ. xxx

4. ID.; ID.; ID.; ID.; FEES IMPOSED FOR REGULATORY PURPOSES, CONDITIONS; MET IN THE IMPOSITION OF THE QUESTIONED ROYALTY FEES.— In relation to the regulatory purpose of the imposed fees, this Court in *Progressive Development Corporation v. Quezon City*, stated that "x x x the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well." In the case at bar, there can be no doubt that the oil industry is greatly imbued with public interest as it vitally affects the general welfare. In addition, fuel is a highly combustible product which, if left unchecked, poses a serious threat to life and property. Also, the reasonable relation between the royalty fees imposed on a "per liter" basis and the regulation sought to be attained is that the higher the volume of fuel entering CSEZ, the greater the extent and frequency of supervision and inspection required to ensure safety, security, and order within the Zone.

5. ID.; ID.; ADMINISTRATIVE ISSUANCES HAVE THE FORCE AND EFFECT OF LAW AND PRESUMED VALID AND CONSTITUTIONAL; SUBJECT ROYALTY FEE PRESUMED VALID AND REASONABLE.— Administrative issuances have the force and effect of law. They benefit from the same presumption of validity and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations. Petitioner's plain allegations are simply not enough to overcome the presumption of validity and reasonableness of the subject imposition.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leano for petitioner.
Legal Department (BCDA) for BCDA.
Legal Department (CDC) for Clark Development Corp.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated November 30, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 87117, which affirmed the Resolution[2] dated August 2, 2004 and the Order[3] dated September 30, 2004 of the Office of the President in O.P. Case No. 04-D-170.

The facts follow.

On June 28, 2002, the Board of Directors of respondent Clark Development Corporation (CDC) issued and approved Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone (CSEZ)[4] which provided, among others, for the following fees and charges:

1. Accreditation Fee

x x x x x x x x x

2. Annual Inspection Fee

x x x x x x x x x

3. Royalty Fees

Suppliers delivering fuel from outside sources shall be assessed the following royalty fees:

- **Php0.50 per liter** – those delivering Coastal petroleum fuel to CSEZ locators not sanctioned by CDC
- **Php1.00 per liter** – those bringing-in petroleum fuel (except Jet A-1) from outside sources

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[1] *Rollo*, pp. 33-40. Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Ruben T. Reyes (now a retired member of this Court) and Rebecca De Guia-Salvador, concurring.

[2] CA *rollo*, pp. 35-37.

[3] *Id.* at 38-40.

[4] *Id.* at 41-50.

x x x x x x x x x

4. Gate Pass Fee

x x x x x x x x x[5]

The above policy guidelines were implemented effective July 27, 2002. On October 1, 2002, CDC sent a letter[6] to herein petitioner Chevron Philippines, Inc. (formerly Caltex Philippines, Inc.), a domestic corporation which has been supplying fuel to Nanox Philippines, a locator inside the CSEZ since 2001, informing the petitioner that a royalty fee of ₱0.50 per liter shall be assessed on its deliveries to Nanox Philippines effective August 1, 2002. Thereafter, on October 21, 2002 a Statement of Account[7] was sent by CDC billing the petitioner for royalty fees in the amount of ₱115,000.00 for its fuel sales from Coastal depot to Nanox Philippines from August 1-31 to September 3-21, 2002.

Claiming that nothing in the law authorizes CDC to impose royalty fees or any fees based on a per unit measurement of any commodity sold within the special economic zone, petitioner sent a letter[8] dated October 30, 2002 to the President and Chief Executive Officer of CDC, Mr. Emmanuel Y. Angeles, to protest the assessment for royalty fees. Petitioner nevertheless paid the said fees under protest on November 4, 2002.

On August 18, 2003, CDC again wrote a letter[9] to petitioner regarding the latter's unsettled royalty fees covering the period of December 2002 to July 2003. Petitioner responded through a letter[10] dated September 8, 2003 reiterating its continuing objection over the assessed royalty fees and requested a refund of the amount paid under protest on November 4, 2002. The

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

[6] *Id.* at 51.

[7] *Id.* at 52.

[8] *Id.* at 53.

[9] *Id.* at 54.

[10] *Id.* at 55.

letter also asked CDC to revoke the imposition of such royalty fees. The request was denied by CDC in a letter[11] dated September 29, 2003.

Petitioner elevated its protest before respondent Bases Conversion Development Authority (BCDA) arguing that the royalty fees imposed had no reasonable relation to the probable expenses of regulation and that the imposition on a per unit measurement of fuel sales was for a revenue generating purpose, thus, akin to a "tax." The protest was however denied by BCDA in a letter[12] dated March 3, 2004.

Petitioner appealed to the Office of the President which dismissed[13] the appeal for lack of merit on August 2, 2004 and denied[14] petitioner's motion for reconsideration thereof on September 30, 2004.

Aggrieved, petitioner elevated the case to the CA which likewise dismissed[15] the appeal for lack of merit on November 30, 2005 and denied[16] the motion for reconsideration on July 26, 2006.

The CA held that in imposing the challenged royalty fees, respondent CDC was exercising its right to regulate the flow of fuel into CSEZ, which is bolstered by the fact that it possesses exclusive right to distribute fuel within CSEZ pursuant to its Joint Venture Agreement (JVA)[17] with Subic Bay Metropolitan Authority (SBMA) and Coastal Subic Bay Terminal, Inc. (CSBTI) dated April 11, 1996. The appellate court also found that royalty fees were assessed on fuel delivered, not on the sale, by petitioner and that the basis of such imposition was petitioner's delivery receipts to Nanox Philippines. The fact

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[11] *Id.* at 56-57.

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

[13] *Id.* at 35-37.

[14] *Id.* at 38-40.

[15] *Rollo*, p. 40.

[16] *Id.* at 41.

[17] *Id.* at 154-167.

that revenue is incidentally also obtained does not make the imposition a tax as long as the primary purpose of such imposition is regulation.[18]

Petitioner filed a motion for reconsideration but the CA denied the same in its Resolution[19] dated July 26, 2006.

Hence, this petition raising the following grounds:

I. THE ISSUE RAISED BEFORE THE COURT *A QUO* IS A QUESTION OF SUBSTANCE NOT HERETOFORE DETERMINED BY THE HONORABLE SUPREME COURT.

II. THE RULING OF THE COURT OF APPEALS THAT THE CDC HAS THE POWER TO IMPOSE THE QUESTIONED "ROYALTY FEES" IS CONTRARY TO LAW.

III. THE COURT OF APPEALS WAS MANIFESTLY MISTAKEN AND COMMITTED GRAVE ABUSE OF DISCRETION AND A CLEAR MISUNDERSTANDING OF FACTS WHEN IT RULED CONTRARY TO THE EVIDENCE THAT: (i) THE QUESTIONED "ROYALTY FEE" IS PRIMARILY FOR REGULATION; AND (ii) ANY REVENUE EARNED THEREFROM IS MERELY INCIDENTAL TO THE PURPOSE OF REGULATION.

IV. THE COURT OF APPEALS FAILED TO GIVE DUE WEIGHT AND CONSIDERATION TO THE EVIDENCE PRESENTED BY CPI SUCH AS THE LETTERS COMING FROM RESPONDENT CDC ITSELF PROVING THAT THE QUESTIONED ROYALTY FEES ARE IMPOSED ON THE BASIS OF FUEL SALES (NOT DELIVERY OF FUEL) AND NOT FOR REGULATION BUT PURELY FOR INCOME GENERATION, *I.E.* AS PRICE OR CONSIDERATION FOR THE RIGHT TO MARKET AND DISTRIBUTE FUEL INSIDE THE CSEZ.[20]

Petitioner argues that CDC does not have any power to impose royalty fees on sale of fuel inside the CSEZ on the

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[18] *Id.* at 39.

[19] *Id.* at 41.

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

basis of purely income generating functions and its exclusive right to market and distribute goods inside the CSEZ. Such imposition of royalty fees for revenue generating purposes would amount to a tax, which the respondents have no power to impose. Petitioner stresses that the royalty fee imposed by CDC is not regulatory in nature but a revenue generating measure to increase its profits and to further enhance its exclusive right to market and distribute fuel in CSEZ.[21]

Petitioner would also like this Court to note that the fees imposed, assuming *arguendo* they are regulatory in nature, are unreasonable and are grossly in excess of regulation costs. It adds that the amount of the fees should be presumed to be unreasonable and that the burden of proving that the fees are not unreasonable lies with the respondents.[22]

On the part of the respondents, they argue that the purpose of the royalty fees is to regulate the flow of fuel to and from the CSEZ. Such being its main purpose, and revenue (if any) just an incidental product, the imposition cannot be considered a tax. It is their position that the regulation is a valid exercise of police power since it is aimed at promoting the general welfare of the public. They claim that being the administrator of the CSEZ, CDC is responsible for the safe distribution of fuel products inside the CSEZ.[23]

The petition has no merit.

In distinguishing tax and regulation as a form of police power, the determining factor is the purpose of the implemented measure. If the purpose is primarily to raise revenue, then it will be deemed a tax even though the measure results in some form of regulation. On the other hand, if the purpose is primarily to regulate, then it is deemed a regulation and an exercise of the police power of the state, even though incidentally, revenue

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[21] *Id.* at 220-229.

[22] *Id.* at 230-234.

[23] *Id.* at 255-256.

is generated. Thus, in *Gerochi v. Department of Energy*,[24] the Court stated:

> The conservative and pivotal distinction between these two (2) powers rests in the purpose for which the charge is made. If generation of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that revenue is incidentally raised does not make the imposition a tax.

In the case at bar, we hold that the subject royalty fee was imposed primarily for *regulatory* purposes, and not for the generation of income or profits as petitioner claims. The Policy Guidelines on the Movement of Petroleum Fuel to and from the Clark Special Economic Zone[25] provides:

> **DECLARATION OF POLICY**
>
> It is hereby declared the policy of CDC **to develop and maintain the Clark Special Economic Zone (CSEZ) as a highly secured zone** free from threats of any kind, which could possibly endanger the lives and properties of locators, would-be investors, visitors, and employees.
>
> It is also declared the policy of CDC to operate and manage the CSEZ as a separate customs territory **ensuring free flow or movement of goods and capital within, into and exported out of the CSEZ**.[26] (Emphasis supplied.)

From the foregoing, it can be gleaned that the Policy Guidelines was issued, first and foremost, to ensure the safety, security, and good condition of the petroleum fuel industry within the CSEZ. The questioned royalty fees form part of the regulatory framework to ensure "free flow or movement" of petroleum fuel to and from the CSEZ. The fact that

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[24] G.R. No. 159796, July 17, 2007, 527 SCRA 696, 715, citing *Progressive Development Corporation v. Quezon City*, G.R. No. L-36081, April 24, 1989, 172 SCRA 629, 635.

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

[26] *Id.* at 43.

respondents have the exclusive right to distribute and market petroleum products within CSEZ pursuant to its JVA with SBMA and CSBTI does not diminish the regulatory purpose of the royalty fee for fuel products supplied by petitioner to its client at the CSEZ.

As pointed out by the respondents in their Comment, from the time the JVA took effect up to the time CDC implemented its Policy Guidelines on the Movement of Petroleum Fuel to and from the CSEZ, suppliers/distributors were allowed to bring in petroleum products inside CSEZ without any charge at all. But this arrangement clearly negates CDC's mandate under the JVA as exclusive distributor of CSBTI's fuel products within CSEZ and respondents' ownership of the Subic-Clark Pipeline.[27] On this score, respondents were justified in charging royalty fees on fuel delivered by outside suppliers.

However, it was erroneous for petitioner to argue that such exclusive right of respondent CDC to market and distribute fuel inside CSEZ is the sole basis of the royalty fees imposed under the Policy Guidelines. Being the administrator of CSEZ, the responsibility of ensuring the safe, efficient and orderly distribution of fuel products within the Zone falls on CDC. Addressing specific concerns demanded by the nature of goods or products involved is encompassed in the range of *services* which respondent CDC is expected to provide under the law, in pursuance of its general power of *supervision* and *control* over the movement of all supplies and equipment into the CSEZ.

Section 2 of Executive Order No. 80[28] provides:

SEC. 2. *Powers and Functions of the Clark Development Corporation.* – The BCDA, as the incorporator and holding company

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[27] *Id.* at 139-140.

[28] AUTHORIZING THE ESTABLISHMENT OF THE CLARK DEVELOPMENT CORPORATION AS THE IMPLEMENTING ARM OF THE BASES CONVERSION AND DEVELOPMENT AUTHORITY FOR THE CLARK SPECIAL ECONOMIC ZONE, AND DIRECTING ALL HEADS OF DEPARTMENTS, BUREAUS, OFFICES, AGENCIES AND INSTRUMENTALITIES OF GOVERNMENT TO SUPPORT THE PROGRAM.

of its Clark subsidiary, shall determine the powers and functions of the CDC. Pursuant to Section 15 of RA 7227, the CDC shall have the specific powers of the Export Processing Zone Authority as provided for in Section 4 of Presidential Decree No. 66 (1972) as amended.

Among those specific powers granted to CDC under Section 4 of Presidential Decree No. 66 are:

(a) To operate, administer and manage the export processing zone established in the Port of Mariveles, Bataan, and such other export processing zones as may be established under this Decree; to construct, acquire, own, lease, operate and maintain infrastructure facilities, factory building, warehouses, dams, reservoir, water distribution, electric light and power system, telecommunications and transportation, or such other facilities and services necessary or useful in the conduct of commerce or in the attainment of the purposes and objectives of this Decree;

x x x x x x x x x

(g) To fix, assess and collect storage charges and fees, including rentals for the lease, use or occupancy of lands, buildings, structure, warehouses, facilities and other properties owned and administered by the Authority; and **to fix and collect the fees and charges for** the issuance of permits, licenses and **the rendering of services not enumerated herein**, the provisions of law to the contrary notwithstanding;

(h) For the due and effective exercise of the powers conferred by law and to the extend (sic) [extent] requisite therefor, to exercise exclusive jurisdiction and sole police authority over all areas owned or administered by the Authority. For this purpose, the Authority shall have **supervision and control over the bringing in or taking out of the Zone, including the movement therein, of all** cargoes, wares, articles, machineries, equipment, **supplies or merchandise of every type and description**;

x x x (Emphasis supplied.)

In relation to the regulatory purpose of the imposed fees, this Court in *Progressive Development Corporation v. Quezon City*,[29] stated that "x x x the imposition questioned must relate

[29] *Supra* note 24, at 636.

to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well."

In the case at bar, there can be no doubt that the oil industry is greatly imbued with public interest as it vitally affects the general welfare.[30] In addition, fuel is a highly combustible product which, if left unchecked, poses a serious threat to life and property. Also, the reasonable relation between the royalty fees imposed on a "per liter" basis and the regulation sought to be attained is that the higher the volume of fuel entering CSEZ, the greater the extent and frequency of supervision and inspection required to ensure safety, security, and order within the Zone.

Respondents submit that increased administrative costs were triggered by security risks that have recently emerged, such as terrorist strikes in airlines and military/government facilities. Explaining the regulatory feature of the charges imposed under the Policy Guidelines, then BCDA President Rufo Colayco in his letter dated March 3, 2004 addressed to petitioner's Chief Corporate Counsel, stressed:

> The need for regulation is more evident in the light of the 9/11 tragedy considering that what is being moved from one location to another are highly combustible fuel products that could cause loss of lives and damage to properties, hence, a set of guidelines was promulgated on 28 June 2002. It must be emphasized also that greater security measure must be observed in the CSEZ because of the presence of the airport which is a vital public infrastructure.

We are therefore constrained to sustain the imposition of the royalty fees on deliveries of CPI's fuel products to Nanox Philippines.[31]

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[30] *Caltex Philippines, Inc. v. Commission on Audit*, G.R. No. 92585, May 8, 1992, 208 SCRA 726, 756.

[31] CA *rollo*, p. 61.

As to the issue of reasonableness of the amount of the fees, we hold that no evidence was adduced by the petitioner to show that the fees imposed are unreasonable.

Administrative issuances have the force and effect of law.[32] They benefit from the same presumption of validity and constitutionality enjoyed by statutes. These two precepts place a heavy burden upon any party assailing governmental regulations.[33] Petitioner's plain allegations are simply not enough to overcome the presumption of validity and reasonableness of the subject imposition.

WHEREFORE, the petition is *DENIED* for lack of merit and the Decision of the Court of Appeals dated November 30, 2005 in CA-G.R. SP No. 87117 is hereby *AFFIRMED.*

With costs against the petitioner.

SO ORDERED.

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

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[32] *Mirasol v. Department of Public Works and Highways,* G.R. No. 158793, June 8, 2006, 490 SCRA 318, 347, citing *Eslao v. Commission on Audit,* G.R. No. 108310, September 1, 1994, 236 SCRA 161, 175.

[33] *Id.* at 347-348, citing *JMM Promotion and Management, Inc. v. Court of Appeals*, G.R. No. 120095, August 5, 1996, 260 SCRA 319.

[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 173930. September 15, 2010]

SALVADOR O. ECHANO, JR., *petitioner, vs.* **LIBERTY TOLEDO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; DEFINED; ELEMENTS OF CORRUPTION, CLEAR INTENT TO VIOLATE THE LAW OR FLAGRANT DISREGARD OF ESTABLISHED RULE MUST BE MANIFEST.— There is no doubt, based on the evidence that Echano was guilty of grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest. As the CA pointed out, Echano, as Acting Branch Cashier, should have exercised a high degree of diligence and care in handling Perez' second-endorsed checks since her rediscounting of checks was not a regular banking transaction. Moreover, the manager's check in this case had been crossed and issued for the payee's account only. This meant that Medical Center Trading Corporation intended it to be deposited to the account of the payee, namely, the City Treasurer of Manila. And Echano cannot plead simple oversight because he had approved for deposit to Perez' accounts more or less 26 second-endorsed checks intended for the City Treasurer of Manila. What is more, Echano failed to prove that Perez had indeed been a valued client of his bank or that her questionable transactions carried the approval of higher bank officials.

2. ID.; ID.; ID.; PETITIONER FOUND GUILTY OF GRAVE MISCONDUCT AND DISHONESTY.— As Acting Branch Cashier, petitioner was charged with responsibility of handling the bank's daily transactions which could run into large amounts. There is a tremendous difference between the

degree of responsibility, care, and trustworthiness expected of a clerk or ordinary employee in the bureaucracy and that required of bank managers, cashiers, finance officers, and other officials directly handling large sums of money and properties. The evidence clearly shows that Echano took light of such responsibility and flagrantly disregarded established banking rules and practices. His misconduct and dishonesty paved the way for the commission of fraud against, and consequent damage to, the City Government of Manila.

3. ID.; ID.; ID.; GRAVE MISCONDUCT; PUNISHABLE BY DISMISSAL FOR THE FIRST OFFENSE; CLAIM OF GOOD FAITH WILL NOT BE CONSIDERED IN THE IMPOSITION OF PENALTY WHERE THE VIOLATION OF THE BANKING RULES WAS WILLFUL AND DISHONEST.— Under Section 52, Rule IV of the Civil Service Commission's Uniform Rules on Administrative Cases, grave misconduct carries with it the penalty of dismissal for the first offense. Section 53, however, allows mitigating circumstances to be considered in the determination of the penalties to be imposed. While Echano claims good faith, the Court cannot close its eyes to the fact that he approved for deposit to Perez' personal account about 26 other second-endorsed checks payable to the City Treasurer of Manila. His violation of the banking rules was certainly willful and dishonest.

APPEARANCES OF COUNSEL

Reyes Francisco & Associates Law Office for petitioner.
Joseph C. Aquino for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the liability of a government-owned bank cashier for allowing an unauthorized person to deposit to her savings account second-endorsed checks payable to the Office of the City Treasurer of Manila.

The Facts and the Case

On August 8, 2000 Laurence V. Taguinod of the Medical Center Trading Corporation verified with the Office of the City Treasurer of Manila the authenticity of their 1st Quarter 2000 Municipal License Receipt. He claimed that he entrusted a January 18, 2000 manager's check for ₱55,205.36 to Rogelio S. Reyes (Reyes), an officer of the City Treasurer's Business License Division in payment of his company's business tax. Reyes photocopied the check and signed the photocopy as proof that he received it. He also issued the subject receipt.

After investigation, respondent Liberty M. Toledo, the City Treasurer of Manila, discovered that the receipt was spurious since its validation imprint was copied from the official validation imprint of a Municipal License Receipt issued to Co Siu Kheng. She also found that the city did not receive the manager's check nor was it deposited to its account with the Land Bank of the Philippines-YMCA Branch. As it turned out Liza E. Perez (Perez), a stenographer in the Office of the Clerk of Court, Regional Trial Court (RTC) of Manila, deposited the check in her personal account with the Land Bank-Taft Avenue Branch. The dorsal portion of the check showed Perez' signature and a signature of an unidentified person who was supposedly the first endorser. The deposit was approved by petitioner Salvador O. Echano, Jr. (Echano), Acting Branch Cashier of the Land Bank-Taft Avenue Branch.

As a result, Toledo filed charges of grave misconduct and conduct prejudicial to the service against Reyes, Perez, Echano, and a certain John Doe with the Office of the Ombudsman. The latter office dropped the charge against Perez and referred her case to the Office of the Court Administrator. The Ombudsman case against Reyes and Echano proceeded.

Echano claimed that Perez became his bank's client in 1993 and had been depositing second-endorsed checks to her accounts with the bank since 1995. He did not know her personally. Edwin Quesada, the Assistant Department Manager, introduced her to him as a valued client with a long-standing business

relationship with the bank. Quesada told him that Perez was in the business of rediscounting checks and it was not unusual for her to deposit numerous second-endorsed checks at any given time. Liwliwa Eli, Echano's predecessor as Acting Branch Cashier, also called him to facilitate Perez' transactions, she being a valued client of the bank.

Echano added that he was unaware, prior to the filing of the complaint, that Perez had been able to deposit in her accounts second-endorsed checks that were payable to the City Treasurer of Manila. He claimed that he may have inadvertently missed out the payee's name on the check when he examined it prior to signing the stamp of approval on the dorsal side.

On September 30, 2002 the Office of the Ombudsman found Reyes and Echano guilty of grave misconduct and dishonesty and meted out to them the penalty of dismissal from the service with forfeiture of leave credits and perpetual disqualification from employment in the government and in government-owned and controlled corporations. On appeal, the Court of Appeals (CA)[1] affirmed the Ombudsman decision.

The Issues Presented

Two issues are raised:

1. Whether or not the Office of the Ombudsman erred in finding Echano guilty of grave misconduct and dishonesty; and

2. Whether or not the Office of the Ombudsman erred in imposing on him the penalty of dismissal from the service with forfeiture of leave credits and perpetual disqualification from employment in the government service.

The Court's Ruling

One. There is no doubt, based on the evidence that Echano was guilty of grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly,

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[1] *Rollo*, pp. 8-21. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Edgardo P. Cruz and Sesinando E. Villon, concurring.

unlawful behavior or gross negligence by a public officer. As differentiated from simple misconduct, in grave misconduct the elements of corruption, clear intent to violate the law or flagrant disregard of established rule, must be manifest.[2]

As the CA pointed out, Echano, as Acting Branch Cashier, should have exercised a high degree of diligence and care in handling Perez' second-endorsed checks since her rediscounting of checks was not a regular banking transaction. Moreover, the manager's check in this case had been crossed and issued for the payee's account only. This meant that Medical Center Trading Corporation intended it to be deposited to the account of the payee, namely, the City Treasurer of Manila. And Echano cannot plead simple oversight because he had approved for deposit to Perez' accounts more or less 26 second-endorsed checks intended for the City Treasurer of Manila. What is more, Echano failed to prove that Perez had indeed been a valued client of his bank or that her questionable transactions carried the approval of higher bank officials.

Echano claims that Judge Antonio J. de Castro, who presided over Branch 3 of the RTC of Manila, requested and guaranteed the deposit of Perez' second-endorsed checks. But the evidence shows that those requests were made in 1995 and 1996 and under the premise that the checks were payable to the court. The transaction in this case occurred in 2000 and there is no showing that Judge De Castro guaranteed it.

As Acting Branch Cashier, petitioner was charged with responsibility of handling the bank's daily transactions which could run into large amounts. There is a tremendous difference between the degree of responsibility, care, and trustworthiness expected of a clerk or ordinary employee in the bureaucracy and that required of bank managers, cashiers, finance officers, and other officials directly handling large sums of money and properties.[3] The evidence clearly shows that Echano took light

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[2] *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

[3] *Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission*, G.R. No. 100599, April 8, 1992, 207 SCRA 801, 812.

of such responsibility and flagrantly disregarded established banking rules and practices. His misconduct and dishonesty paved the way for the commission of fraud against, and consequent damage to, the City Government of Manila.[4]

Two. Under Section 52, Rule IV of the Civil Service Commission's Uniform Rules on Administrative Cases, grave misconduct carries with it the penalty of dismissal for the first offense. Section 53, however, allows mitigating circumstances to be considered in the determination of the penalties to be imposed. While Echano claims good faith, the Court cannot close its eyes to the fact that he approved for deposit to Perez' personal account about 26 other second-endorsed checks payable to the City Treasurer of Manila. His violation of the banking rules was certainly willful and dishonest.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the assailed decision of the Court of Appeals in CA-G.R. SP No. 75681 dated April 17, 2006.

SO ORDERED.

Carpio (Chairperson), Velasco, Jr.,[*] *Peralta,* and *Bersamin,*[**] *JJ.,* concur.

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[4] *Bureau of Internal Revenue v. Organo, supra* note 2, at 119.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 883 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 886 dated September 1, 2010.

FIRST DIVISION

[G.R. No. 175195. September 15, 2010]

VIRGILIO BUG-ATAN, BERNIE LABANDERO and GREGORIO MANATAD, *petitioners, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PLEA; PLEA OF GUILTY TO LESSER OFFENSE; APPROVAL OF THE PLEA BARGAINING AGREEMENT NOT LEGALLY FLAWED EVEN IF THE ARRAIGNMENT, PLEA BARGAINING AND CONVICTION OCCURRED ON A SINGLE DAY; AN ACCUSED IS ALLOWED TO CHANGE HIS PLEA, ON A PLEA BARGAIN, IMMEDIATELY AFTER A PREVIOUS PLEA OF NOT GUILTY.— We find no legal flaw in the assailed actions of the trial court in Criminal Case No. DU-3721. At the outset, it is easily discernable that petitioners failed to point out any rule of procedure or provision of law that was transgressed by the trial court. On the contrary, the plea bargain was validly acted upon despite the fact that all the proceedings, *i.e.* arraignment, plea bargaining and conviction, occurred on a single day. Section 2, Rule 116 of the Rules of Court, which authorizes plea bargain for a lesser offense in a criminal case, is explicit on how and when a plea bargain may be allowed. xxx [T]here is nothing in the law which expressly or impliedly prohibits the trial court from allowing an accused to change his plea, on a plea bargain, immediately after a previous plea of not guilty. In approving the plea bargaining agreement, the trial court undoubtedly took into consideration the timeliness of the plea bargaining and its compliance with the requirements of the law.

2. ID.; ID.; ID.; ID.; INTRODUCTION OF EVIDENCE IS NO LONGER NECESSARY AFTER ENTERING A PLEA OF GUILTY.— Neither do we see any error in the trial court's holding that there were no aggravating or mitigating circumstances to appreciate even with Maramara's confession of murder for the obvious reason that introduction of evidence became no longer necessary after entering a plea of guilty.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES RELATING TO MINOR DETAILS DO NOT AFFECT THE CREDITWORTHINESS OF THE WITNESS TESTIFYING AND THAT MINOR INCONSISTENCIES TEND TO SHOW THAT THE WITNESSES WERE NOT COACHED OR REHEARSED.— [The] perceived inconsistencies provide no persuasive reason for us to distrust the credibility of Maramara. They refer to minor details and not to the central fact of the crime. They are too trivial to affect his straightforward account of the killing of the victim and the complicity of the petitioners. It is settled that inconsistencies relating to minor details do not affect the creditworthiness of the witness testifying and that minor inconsistencies tend to show that the witnesses were not coached or rehearsed. This is a well-settled doctrine which need not require much documentation. The testimony of a witness must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider only its isolated parts and anchor a conclusion on the basis of said parts. At any rate, Maramara had adequately explained and properly corrected himself regarding these alleged inconsistencies during his examination in court.

4. ID.; ID.; ID.; THE DETERMINATION OF THE CHARACTER OF A WITNESS IS NOT A PREREQUISITE TO BELIEVE IN HIS TESTIMONY; CONVICTION OF A CRIME, UNLESS OTHERWISE PROVIDED BY LAW, SHALL NOT BE A GROUND FOR DISQUALIFICATION OF WITNESSES.— Maramara's previous conviction neither detracts his competency as a witness nor necessarily renders his testimony totally untrustworthy and inadmissible. While Maramara admitted to having been previously convicted in Criminal Case No. DU-3721, this circumstance does not necessarily make him or his testimony *ipso facto* incredible. The determination of the character of a witness is not a prerequisite to belief in his testimony. His alleged bad reputation, even if true, should not sway the court in the evaluation of the veracity of his testimony. Other important factors should be considered in determining the inherent probability of his statements for a convicted person is not necessarily a liar. After all, conviction of a crime, unless otherwise provided by law, shall not be a ground for

disqualification of witnesses. More importantly, the testimony of Maramara who undeniably pleaded guilty in killing the victim should definitely be given more weight inasmuch as his testimony pertains in not insignificant points to the specific incident. It is to be noted that Dr. Crisostomo Abbu, the medical officer who conducted the post-mortem examination on the body of the victim, provided collaborating testimony regarding the location of the inflicted wound, thereby rendering more credible the testimonial account of Maramara. In fine, we defer to the trial court's finding, sustained by the appellate court, giving full weight and credit to Maramara's testimony. The trial court's findings regarding the witness's credibility are accorded the highest degree of respect.

5. ID.; ID.; ID.; THE ABSENCE OF EVIDENCE OF IMPROPER MOTIVE TENDS TO INDICATE THAT A WITNESS' TESTIMONY IS WORTHY OF FULL FAITH AND CREDENCE.— The Court finds the supposed enmity of Maramara not sufficient reason to impel him to implicate petitioners in the killing of the victim. While it may be conceded that Labandero was a witness against Maramara in a murder case while Bug-atan was instrumental in Maramara's arrest, still, the defense was unable to conclusively establish that Maramara was ill-motivated in denouncing petitioners as his co-conspirators in the commission of the crime. There is no proof that Maramara had the intention to pervert the truth and prevaricate just to implicate petitioners in so serious a crime as murder. In fact, the trial court did not perceive such improper motivation on his part. All that petitioners had are pure speculation and afterthought. The absence of evidence of improper motive tends to indicate that a witness' testimony is worthy of full faith and credence.

6. ID.; ID.; ID.; THE TESTIMONY OF A WITNESS, CORROBORATED BY THE TESTIMONIES OF OTHER WITNESSES AND WAS GIVEN UNHESITATINGLY IN A STRAIGHTFORWARD MANNER AND FULL OF DETAILS, SHOULD BE GIVEN FULL WEIGHT AND CREDIT.— We see no reason to deviate from the trial court's keen observation that the credibility of Maramara as witness has remained intact notwithstanding the attempts of the defense to demolish it. Hence, his testimony should be given full weight

and credit. We likewise agree with the appellate court in holding that the trial court did not err in appreciating the testimony of Maramara since it was corroborated by the testimonies of other witnesses and was given unhesitatingly in a straightforward manner and full of details which could not have been the result of deliberate afterthought. His testimony is too rich in details brought out during his examination in court which cannot simply be swept aside as mere fabrication. The declarations of the other prosecution witnesses, individually considered, may have been circumstantial and lacking in full details. But their combined testimonies somehow supplement in no small measure the testimonial account of Maramara. As we and the courts below cautiously determined, they strengthen the prosecution's evidence not only with respect to the fact of killing but also on the conspiracy angle of the case.

7. ID.; ID.; CONSPIRACY; TO BE A CONSPIRATOR, ONE NEED NOT PARTICIPATE IN EVERY DETAIL OF THE EXECUTION NOR TAKE PART IN EVERY ACT AND MAY NOT EVEN KNOW THE EXACT PART TO BE PERFORMED BY THE OTHERS IN THE EXECUTION OF THE CONSPIRACY; CONSPIRACY WAS DULY PROVEN IN CASE AT BAR.— Like the courts below, we are equally convinced that there is sufficient evidence of conspiracy as convincing as the evidence of the participation of each of the petitioners. The records teem with circumstances correctly outlined by the trial court clearly indicating the collective and individual acts of the petitioners which reveal their common purpose to assault and liquidate the victim. xxx [T]hese circumstances are clear enough to show that petitioners acted in concert in the implementation of a common objective – to kill the victim. In conspiracy, proof of the agreement need not rest on direct evidence. Conspiracy may be deduced from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest. To be a conspirator, one need not participate in every detail of the execution nor take part in every act and may not even know the exact part to be performed by the others in the execution of the conspiracy. But once conspiracy is shown, as in this case, the act of one is the act of all.

8. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE PHYSICAL IMPOSSIBILITY FOR HIM TO BE AT THE *LOCUS CRIMINIS* OR WITHIN ITS IMMEDIATE VICINITY; DEFENSE OF ALIBI NOT GIVEN MERIT.— For alibi to prevail, the established doctrine is that the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus criminis* or within its immediate vicinity. Physical impossibility means that the accused was at such other place for such a length of time that it was impossible for him to have been at the crime scene either before or after the time he was at such other place. Manatad's alibi is that from April 11 to 15, 1993, he was in Cuyang, San Remigio and Tigbawan, Tabuelan, doing faith healing. His alibi, assuming it to be true, cannot be given merit. He could have easily been at the scene of the crime at the time of its commission considering that San Remigio and Tabuelan are municipalities located in the province of Cebu. His presence therein did not, therefore, render impossible his being at the scene of the killing at Labogon, Mandaue City, a place also located in the province of Cebu.

9. ID.; ID.; ID.; SELF-SERVING AND DESERVING OF NO WEIGHT IN LAW WHEN UNCORROBORATED AND UNSUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.— For his part, Labandero posits that he was in Manila at the time of the incident because of a previous death threat on him after giving his testimony in Criminal Case No. 24099 such that it was physically impossible for him to be at the *locus criminis*. Considering that his alibi and supposed death threat were uncorroborated and unsubstantiated by clear and convincing evidence, the Court finds the same self-serving and deserving of no weight in law. Moreover, the fact that he has no derogatory record will not affect the outcome of his case since it does not disprove his complicity in the commission of the offense.

10. ID.; ID.; DENIAL; ABSENT ANY STRONG EVIDENCE OF NON-CULPABILITY, A DENIAL CRUMBLES IN THE FACE OF POSITIVE DECLARATIONS.— Respecting the denial of Bug-atan, suffice it to state that a mere denial constitutes negative evidence and warrants the least credibility

or none at all. Absent any strong evidence of non-culpability, a denial crumbles in the face of positive declarations.

11. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ESSENCE.— Treachery qualifies the crime to murder. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender arising from the defense that the offended party might make. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to himself.

12. ID.; ID.; ID.; APPRECIATED WHERE THE DEFENSELESS VICTIM WAS SHOT FROM BEHIND.— In the present case, the presence of the qualifying circumstance of treachery was indubitably established. The attack on the unarmed victim was so sudden, unexpected, without preliminaries and provocation. The victim was totally unprepared and oblivious of the attack since he was peacefully resting inside his house. The single shot found its mark at the back portion of his head indicating that he was shot from behind with his back turned to the assailant. This position was disadvantageous to the victim since he was not in a position to defend himself or to retaliate. Moreover, the location of the wound obviously indicates that the assailant deliberately and consciously aimed for the vital part of the victim's body to ensure the commission of the crime. The attack from the rear is treacherous. As has been held many times, treachery exists since the defenseless victim was shot from behind. The fact that Bug-atan furnished the deadly weapon used in the shooting eloquently shows that they made a deliberate and conscious adoption of the means to kill the victim. These facts, established by evidence on record, clearly constitute treachery as defined in Article 14(16) of the Revised Penal Code.

13. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS TO BE APPRECIATED; FULFILLED IN CASE AT BAR.— Before evident premeditation may be appreciated, the following elements must be proved: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused has clung to his determination; and, c) sufficient

lapse of time between the determination and execution to allow him to reflect upon the consequences of his act. The foregoing requisites were fulfilled.

14. ID.; MURDER; DEFINED; PROPER PENALTY; APPLICATION TO CASE AT BAR.— As the evidence stands, the crime committed by petitioners is murder in view of the attending circumstances of treachery and evident premeditation. Murder, as defined under Article 248 of the Revised Penal Code is the unlawful killing of a person which is not parricide or infanticide, provided that treachery or evident premeditation, *inter alia*, attended the killing. The presence of any one of the enumerated circumstances under Article 248 is enough to qualify a killing as murder punishable by *reclusion perpetua* to death. When more than one qualifying circumstance is proven, as in this case, the rule is that the other must be considered as generic aggravating. In the present case, the qualifying circumstance of evident premeditation will be considered as a generic aggravating circumstance warranting the imposition of the penalty of death in the absence of any mitigating circumstance. Since the imposition of the death penalty has been prohibited by Republic Act No. 9346, a law favorable to petitioners which took effect on June 24, 2006, the penalty that should be imposed on petitioners is reduced to *reclusion perpetua* without eligibility for parole.

15. ID.; ID.; CIVIL LIABILITY OF ACCUSED-PETITIONERS.— The Decision of the trial court as affirmed by the appellate court only awarded ₱50,000.00 to the legal heirs of the victim without stating the nature of this grant. As held in *People v. Zamoraga*, civil indemnity and moral damages, being based on different *jurat* foundations are separate and distinct from each other. Thus, it becomes imperative for this Court to rectify the error and award additional damages following precedents. In line with prevailing jurisprudence, we award the fixed amount of ₱75,000.00 for the death of the victim as civil indemnity *ex delicto* without any need of proof other than the commission of the crime. An award of moral damages is also in order even though the prosecution did not present any proof of the heirs' emotional suffering apart from the fact of death of the victim, since the emotional wounds from the vicious killing of the victim cannot be denied. The award of ₱75,000.00 is proper pursuant to established jurisprudence. Although the prosecution

presented evidence that the heirs had incurred actual expenses, no receipts were presented in the trial court. An award of temperate damages in lieu of actual damages in the amount of ₱25,000.00 to the heirs of the victim is warranted because it is reasonable to presume that when death occurs, the family of the victim suffered pecuniary loss for the wake and funeral of the victim although the exact amount was not proved. In addition, exemplary damages in the amount of ₱30,000.00 should be awarded considering the attendance of the aggravating circumstance of treachery that qualified the killing to murder and evident premeditation which served as generic aggravating circumstance. Exemplary damages are awarded when treachery attended the commission of the crime.

16. CIVIL LAW; DAMAGES; DAMAGES WHICH MAY BE RECOVERED WHEN DEATH OCCURS DUE TO A CRIME.— When death occurs due to a crime, the following damages may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and, (6) interest, in proper cases.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuña and Sepulveda for petitioners.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The testimony of a co-conspirator is not sufficient for the conviction of the accused unless such testimony is supported by other evidence. As an exception, however, the testimony of a co-conspirator, even if uncorroborated, will be considered sufficient if given in a straightforward manner and contains details which could not have been the result of deliberate afterthought.[1]

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[1] *People v. Mamarion*, 459 Phil. 51, 76-77 (2003) citing *People v. Sala*, 370 Phil. 323, 363 (1999).

This petition for review on *certiorari*[2] assails the Decision[3] of the Court of Appeals (CA) dated May 25, 2006 which upheld the Judgment[4] dated September 20, 1994 of the Regional Trial Court (RTC), Branch 28, Mandaue City finding petitioners guilty beyond reasonable doubt of homicide.

For the death of Pastor Papauran (victim) on April 15, 1993, Norman Maramara (Maramara) was indicted for murder.[5] After pleading not guilty but before his trial, Maramara moved and was allowed by the trial court to enter into a plea bargaining with the prosecution and the victim's next of kin. Accordingly, Maramara, upon re-arraignment, pleaded guilty to a lesser offense of homicide, a crime necessarily included in the charge of murder.[6] It would appear, however, that before he was indicted or thereabout, Maramara executed an extrajudicial confession[7] wherein he admitted shooting the victim to death and implicated as his co-conspirators herein petitioners Gregorio Manatad (Manatad), Virgilio Bug-atan (Bug-atan) and Bernie Labandero (Labandero).

Based on the account of Maramara, petitioners were accordingly charged with murder in an Information dated August 25, 1993, the accusatory portion of which reads:

> The State accuses GREGORIO MANATAD, VIRGILIO BUG-ATAN and BERNIE LABANDERO of MURDER, committed as follows:
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> That on or about the 15th day of April 1993, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the aforenamed accused in conspiracy with NORMAN MARAMARA whose information for murder was filed on June 9, 1993, docketed

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[2] *Rollo*, pp. 10-56.

[3] CA *rollo*, pp. 252-260; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Ramon M. Bato, Jr. and Apolinario D. Bruselas, Jr.

[4] Records, pp. 215-277.

[5] Criminal Case No. DU-3721.

[6] Decision dated July 19, 1993, records pp. 144-145.

[7] Records, pp. 3-6.

as Criminal Case No. DU-3721 who was convicted on July 19, 1993, and with others who shall be prosecuted separately once sufficient and/or corroborative evidence are gathered and secured, and proper preliminary investigation is conducted thereon, with deliberate intent to kill and with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously conspire, confederate and help one another in inducing and causing the said NORMAN MARAMARA to attack, assault and shoot Pastor Papauran with a handgun, thereby inflicting upon the latter mortal wound at his vital portion which caused his death soon thereafter.

CONTRARY TO LAW.[8]

Petitioners, when arraigned, pleaded not guilty. Thereafter, trial ensued.

Factual Antecedents

The CA, in its assailed Decision, chronicled the facts in this sequence:

On April 14, 1993, at around 12:00 o'clock noon, accused-appellants Manatad and Bug-atan arrived at La Paloma, Labangon, Cebu City to meet with Maramara [whom] they instructed x x x to go to Mandaue City and kill Pastor Papauran. Accused-appellants Bug-atan and Manatad gave Maramara a .38 caliber revolver with three reserve[d] bullets and ₱500.00 for transportation money. The sum of ₱30,000.00 was also offered to Maramara as part of the considerations for his killing Pastor Papauran, together with a promise that accused-appellant Bug-atan would move for the dismissal of Criminal Case No. CBU-24099, a case for murder filed against Maramara which was pending before the sala of then Judge Portia Hormachuelos.

Sometime in the morning of April 15, 1993, Maramara met with accused-appellants Bug-atan and Labandero at Labangon, Cebu City. Thereafter, Maramara and accused-appellant Labandero boarded a passenger jeepney and proceeded to Mandaue City to carry out the task of killing Pastor Papauran. Accused-appellant Bug-atan, on the other hand, road [sic] his motorcycle to Labogon, Mandaue City and waited in the corner outside Pastor Papauran's house to act as back-up. Maramara and accused-appellant Labandero arrived at

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

Labogon and proceeded to the house of Pastor Papauran. Maramara shot Pastor Papauran once in the head and then he and accused-appellant Labandero walked away and ran towards the highway. They boarded a passenger jeepney towards Consolacion. Three days later, accused-appellant Bug-atan and Maramara went to Labogon on a motorcycle to confirm if Pastor Papauran was really dead. When they saw that Pastor Papauran was already dead, accused-appellant Bug-atan told Maramara to keep silent about the killing and that he would pay the latter on April 21, 1999.[9] However, Maramara was already arrested by the police on April 21, 1999.[10]

Petitioners denied the accusation against them. They respectively interposed the defense of denial and alibi and ascribed ill-motive on prosecution principal witness Maramara. Thus:

x x x. In denying criminal liability, accused-appellant Manatad interposed the defense of alibi. He testified that, on April 11 to 15, 1993 he was allegedly in Luyag, San Remegio and Tigbawan, Labuelan, all places located in the province of Cebu. The accused-appellant Labandero declared that he was an eye-witness for the State in the case of "*People v. Nicolas Yolen and Norman Maramara*, Criminal Case No. CBU-24099," and accordingly, after testifying against Maramara, he immediately left for Manila since he had received death threats that he would be the next to be killed. Thus, accused-appellant Labandero claims that he was in Manila at the time of the killing of Pastor Papauran and that the extrajudicial confession and testimony of Maramara is false, fabricated and was concocted by the latter as a means of revenge. Accused-appellant Bug-atan, on the other hand, simply denied having participated in the commission of the offense charged.[11]

Ruling of the Regional Trial Court

The trial court accorded full faith and credence to the testimonies of the prosecution witnesses particularly that of Maramara and found the existence of conspiracy among the petitioners in the commission of the crime. It rejected their alibi holding that the

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[9] Should be 1993.

[10] CA *rollo*, pp. 254-255.

[11] *Id.* at 255.

same is self-serving and uncorroborated. Thus, on September 20, 1994, judgment was rendered against the petitioners:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered finding the accused, Gregorio Manatad, Virgilio Bug-atan and Bernie Labandero guilty beyond reasonable doubt for the crime of Homicide, the said accused are hereby [each sentenced] to undergo an indeterminate penalty [of] imprisonment of Eight (8) Years, One (1) Day of *Prision Mayor* as minimum to Fourteen (14) Years, Eight (8) Months and One (1) Day of *Reclusion Temporal* as Maximum with the accessories of the law and to indemnify jointly and severally the legal heirs of Pastor Papauran in the amount of ₱50,000.00 without subsidiary imprisonment in case of insolvency and to pay their proportionate share of the cost.
>
> All accused being detention prisoners shall be credited in the service of their respective sentences full time during which they have undergone preventive imprisonment.
>
> SO ORDERED.[12]

Ruling of the Court of Appeals

On appeal, the CA affirmed the trial court's Decision. Like the trial court, the appellate court found the testimonies of the prosecution witnesses credible and sustained the trial court's finding of conspiracy. It noted that petitioners' identities were duly established by Maramara's positive identification and, thus, disregarded petitioners' denial and alibi. On May 25, 2006, the appellate court disposed the appeal:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFIRMING the Decision dated September 20, 1994 of the RTC in Mandaue City in Criminal Case No. DU-3938.
>
> SO ORDERED.[13]

The appellate court, in the challenged October 4, 2006 Resolution[14] denied petitioners' Motion for Reconsideration

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[12] *Id.* at 260.

[13] *Id.* at 66.

[14] *Id.* at 290-291.

prompting the latter to institute before this Court the instant Petition for Review on *Certiorari*. We note that petitioners did not enumerate any specific assignment of errors but instead presented arguments on procedural and substantive matters.

Issues

As we gleaned from the arguments of the petitioners, the main issues formulated thereon for resolution are: (1) whether Maramara is a credible witness; (2) whether conspiracy was proven; and, (3) whether the guilt of petitioners was proven beyond reasonable doubt. But before dwelling on these matters, we opted to tackle an issue brought beforehand by petitioners concerning a procedural point. Though it is our opinion that the discussion on this point is not relevant in the resolution of the guilt or innocence of petitioners, we still find it necessary to determine what crime was actually committed and its corresponding penalty.

Our Ruling

Preliminarily, petitioners are challenging, on procedural standpoint, the manner in which the proceeding in Criminal Case No. DU-3721 entitled *People v. Norman Maramara* was conducted. They point out that after Maramara was arraigned in the morning of July 19, 1993, the trial court hastily heard and approved a plea bargain motion in the afternoon leading to his immediate conviction on the same day. They also fault the trial court in concluding that there were no aggravating or mitigating circumstances to appreciate despite Maramara's confession to the murder of the victim. They likewise question why the filing of Criminal Case Nos. DU-3721 and DU-3938[15] was done separately and not simultaneously. According to petitioners, the conviction of Maramara in Criminal Case No. DU-3721 was precipitately done following a skewed procedure.

We disagree. We find no legal flaw in the assailed actions of the trial court in Criminal Case No. DU-3721.

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[15] The instant case.

At the outset, it is easily discernable that petitioners failed to point out any rule of procedure or provision of law that was transgressed by the trial court. On the contrary, the plea bargain was validly acted upon despite the fact that all the proceedings, *i.e.* arraignment, plea bargaining and conviction, occurred on a single day. Section 2, Rule 116 of the Rules of Court, which authorizes plea bargain for a lesser offense in a criminal case, is explicit on how and when a plea bargain may be allowed. The rule pertinently provides:

> Sec. 2. *Plea of guilty to lesser offense.* – At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary.

As clearly worded, there is nothing in the law which expressly or impliedly prohibits the trial court from allowing an accused to change his plea, on a plea bargain, immediately after a previous plea of not guilty. In approving the plea bargaining agreement, the trial court undoubtedly took into consideration the timeliness of the plea bargaining and its compliance with the requirements of the law.

Neither do we see any error in the trial court's holding that there were no aggravating or mitigating circumstances to appreciate even with Maramara's confession of murder for the obvious reason that introduction of evidence became no longer necessary after entering a plea of guilty.

Respecting the non-simultaneous filing of Criminal Case Nos. DU-3721 and DU-3938, suffice it to say that at the time Maramara pleaded guilty, the present charge against petitioners was still in the initial stage of preliminary investigation.

We now proceed to the substantive arguments raised in the petition.

Evaluation of the witnesses' credibility is a matter best left to the trial court.

Indubitably, the credibility of the testimony of prosecution's prime witness Maramara is the meat of the instant controversy. Petitioners postulate that he is not a credible witness. They point out that there were inconsistencies in his testimonies *vis-à-vis* his confession, and that his declarations should be totally rejected considering his questionable reputation and personal background as evidenced by his previous conviction. Being a confessed conspirator, his testimony was procured from a polluted source. Moreover, he had the ill-motive of revenge against Labandero and Bug-atan considering that Labandero was a witness against Maramara in the killing of Lanogan while Bug-atan was responsible for his arrest on April 21, 1993.

We are not convinced.

Petitioners try to discredit Maramara by highlighting his alleged inconsistent statements in his extrajudicial confession and his testimony in court, *i.e.*, he allegedly averred in his confession that Manatad and Bug-atan went to see him on April 9, 1993 whereas in his direct examination, he merely stated that there was only one person who went to him. Petitioners also invite our attention to the variance regarding the place where the meeting was held, whether it was at the house of Maramara's aunt or at the pier.

These perceived inconsistencies provide no persuasive reason for us to distrust the credibility of Maramara. They refer to minor details and not to the central fact of the crime. They are too trivial to affect his straightforward account of the killing of the victim and the complicity of the petitioners. It is settled that inconsistencies relating to minor details do not affect the creditworthiness of the witness testifying and that minor inconsistencies tend to show that the witnesses were not coached or rehearsed. This is a well-settled doctrine which need not require much documentation. The testimony of a witness must be considered in its entirety instead of in truncated parts. The technique in deciphering a testimony is not to consider

only its isolated parts and anchor a conclusion on the basis of said parts.[16] At any rate, Maramara had adequately explained and properly corrected himself regarding these alleged inconsistencies during his examination in court.[17]

Maramara's previous conviction neither detracts his competency as a witness nor necessarily renders his testimony totally untrustworthy and inadmissible. While Maramara admitted to having been previously convicted in Criminal Case No. DU-3721, this circumstance does not necessarily make him or his testimony *ipso facto* incredible. The determination of the character of a witness is not a prerequisite to belief in his testimony.[18] His alleged bad reputation, even if true, should not sway the court in the evaluation of the veracity of his testimony. Other important factors should be considered in determining the inherent probability of his statements for a convicted person is not necessarily a liar. After all, conviction of a crime, unless otherwise provided by law, shall not be a ground for disqualification of witnesses.[19] More importantly, the testimony of Maramara who undeniably pleaded guilty in killing the victim should definitely be given more weight inasmuch as his testimony pertains in not insignificant points to the specific incident. It is to be noted that Dr. Crisostomo Abbu, the medical officer who conducted the post-mortem examination on the body of the victim, provided collaborating testimony regarding the location of the inflicted wound, thereby rendering more credible the testimonial account of Maramara. In fine, we defer to the trial court's finding, sustained by the appellate court, giving full weight and credit to Maramara's testimony. The trial court's findings regarding the witness' credibility are accorded the highest degree of respect.[20]

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[16] *Northwest Airlines, Inc. v. Chiong*, G.R. No. 155550, January 31, 2008, 543 SCRA 308, 324.

[17] TSN, Maramara, October 28, 1993, pp. 8-12.

[18] *People v. Cuadra*, 175 Phil. 72, 82 (1978).

[19] RULES OF COURT, Rule 130, Section 20, par. 2.

[20] *People v. Bajada*, G.R. No. 180507, November 20, 2008, 571 SCRA 455, 467.

The Court finds the supposed enmity of Maramara not sufficient reason to impel him to implicate petitioners in the killing of the victim. While it may be conceded that Labandero was a witness against Maramara in a murder case while Bug-atan was instrumental in Maramara's arrest, still, the defense was unable to conclusively establish that Maramara was ill-motivated in denouncing petitioners as his co-conspirators in the commission of the crime. There is no proof that Maramara had the intention to pervert the truth and prevaricate just to implicate petitioners in so serious a crime as murder. In fact, the trial court did not perceive such improper motivation on his part. All that petitioners had are pure speculation and afterthought. The absence of evidence of improper motive tends to indicate that a witness' testimony is worthy of full faith and credence.[21]

We see no reason to deviate from the trial court's keen observation that the credibility of Maramara as witness has remained intact notwithstanding the attempts of the defense to demolish it. Hence, his testimony should be given full weight and credit. We likewise agree with the appellate court in holding that the trial court did not err in appreciating the testimony of Maramara since it was corroborated by the testimonies of other witnesses and was given unhesitatingly in a straightforward manner and full of details which could not have been the result of deliberate afterthought. His testimony is too rich in details brought out during his examination in court which cannot simply be swept aside as mere fabrication. The declarations of the other prosecution witnesses, individually considered, may have been circumstantial and lacking in full details. But their combined testimonies somehow supplement in no small measure the testimonial account of Maramara. As we and the courts below cautiously determined, they strengthen the prosecution's evidence not only with respect to the fact of killing but also on the conspiracy angle of the case.

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[21] *People v. Dela Cruz*, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 720.

Conspiracy was duly proven.

Like the courts below, we are equally convinced that there is sufficient evidence of conspiracy as convincing as the evidence of the participation of each of the petitioners. The records teem with circumstances correctly outlined by the trial court clearly indicating the collective and individual acts of the petitioners which reveal their common purpose to assault and liquidate the victim. For emphasis, we need to quote a portion of the ratiocination of the appellate court in this regard:

> In the case at bench, as categorically attested to by witness Maramara, accused-appellants asked him to kill Pastor Papauran in exchange for money and dropping an earlier case, Criminal Case No. 24099, filed against him. They also accompanied him on the day of the shooting to see to it that the job was done. The concerted acts of accused-appellants reveal a consciously adopted plan and clearly demonstrate their joint design to exterminate Pastor Papauran. Conspiracy having been established, the act of one is the act of all.[22]

Needless to stress, these circumstances are clear enough to show that petitioners acted in concert in the implementation of a common objective – to kill the victim. In conspiracy, proof of the agreement need not rest on direct evidence. Conspiracy may be deduced from the acts of the accused before, during and after the commission of the crime which indubitably point to and are indicative of a joint purpose, concert of action and community of interest.[23] To be a conspirator, one need not participate in every detail of the execution nor take part in every act and may not even know the exact part to be performed by the others in the execution of the conspiracy.[24] But once conspiracy is shown, as in this case, the act of one is the act of all.

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[22] CA *rollo*, p. 259.

[23] *Olalia, Jr. v. People*, G.R. No. 177276, August 20, 2008, 562 SCRA 723, 735-736.

[24] *People v. De Jesus*, 473 Phil. 405, 429 (2004).

Defense of alibi and denial was correctly rejected.

For alibi to prevail, the established doctrine is that the accused must prove not only that he was at some other place at the time of the commission of the crime but also that it was physically impossible for him to be at the *locus criminis* or within its immediate vicinity.[25] Physical impossibility means that the accused was at such other place for such a length of time that it was impossible for him to have been at the crime scene either before or after the time he was at such other place.[26]

Manatad's alibi is that from April 11 to 15, 1993, he was in Cuyang, San Remigio and Tigbawan, Tabuelan, doing faith healing. His alibi, assuming it to be true, cannot be given merit. He could have easily been at the scene of the crime at the time of its commission considering that San Remigio and Tabuelan are municipalities located in the province of Cebu. His presence therein did not, therefore, render impossible his being at the scene of the killing at Labogon, Mandaue City, a place also located in the province of Cebu.

To corroborate his exculpatory tale, Manatad presented, among others, Patrocino Vaflor and Rafaela Maglinte to support his alleged alibi. However, these witnesses were shown to be biased since they have the tendency to falsely testify in Manatad's favor for they admittedly owed him a great debt of gratitude.[27]

For his part, Labandero posits that he was in Manila at the time of the incident because of a previous death threat on him after giving his testimony in Criminal Case No. 24099 such that it was physically impossible for him to be at the *locus criminis*. Considering that his alibi and supposed death threat were uncorroborated and unsubstantiated by clear and convincing evidence, the Court finds the same self-serving and deserving

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[25] *People v. Santos*, G.R. No. 176735, June 26, 2008, 555 SCRA 578, 600.

[26] *People v. Santos*, G.R. No. 171452, October 17, 2008, 569 SCRA 544, 574.

[27] TSN, Vaflor, February 23, 1994, pp. 10-11; TSN, Maglinte, February 23, 1994, p. 20.

of no weight in law. Moreover, the fact that he has no derogatory record will not affect the outcome of his case since it does not disprove his complicity in the commission of the offense.

Respecting the denial of Bug-atan, suffice it to state that a mere denial constitutes negative evidence and warrants the least credibility or none at all. Absent any strong evidence of non-culpability, a denial crumbles in the face of positive declarations.[28]

In fine, petitioners failed to rebut the prosecution's evidence and their defense of alibi and denial must be rejected.

The foregoing notwithstanding, this Court has perused the lengthy discussion of the trial court and the assailed Decision of the appellate court.

Prosecution's evidence sufficiently established the presence of treachery and evident premeditation.

Treachery qualifies the crime to murder. There is treachery when the offender commits any of the crimes against persons, employing means, method or forms which tend directly and especially to ensure its execution, without risk to the offender arising from the defense that the offended party might make.[29] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to himself.[30]

In the present case, the presence of the qualifying circumstance of treachery was indubitably established. The attack on the unarmed victim was so sudden, unexpected,

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[28] *Fernandez v. Rubillos,* A.M. No. P-08-2451, October 17, 2008, 569 SCRA 283, 289.

[29] *People v. Ballesteros,* G.R. No. 172696, August 11, 2008, 561 SCRA 657, 670.

[30] *People v. Dela Cruz,* G.R. No. 168173, December 24, 2008, 575 SCRA 412, 443.

without preliminaries and provocation. The victim was totally unprepared and oblivious of the attack since he was peacefully resting inside his house. The single shot found its mark at the back portion of his head indicating that he was shot from behind with his back turned to the assailant. This position was disadvantageous to the victim since he was not in a position to defend himself or to retaliate. Moreover, the location of the wound obviously indicates that the assailant deliberately and consciously aimed for the vital part of the victim's body to ensure the commission of the crime. The attack from the rear is treacherous. As has been held many times, treachery exists since the defenseless victim was shot from behind. The fact that Bug-atan furnished the deadly weapon used in the shooting eloquently shows that they made a deliberate and conscious adoption of the means to kill the victim. These facts, established by evidence on record, clearly constitute treachery as defined in Article 14(16) of the Revised Penal Code.

Before evident premeditation may be appreciated, the following elements must be proved: a) the time when the accused determined to commit the crime; b) an act manifestly indicating that the accused has clung to his determination; and, c) sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act.

The foregoing requisites were fulfilled. First, it was on April 14, 1993 when Manatad and Bug-atan gave Maramara a .38 caliber revolver and ₱500.00 as expenses for transportation, instructing the latter to proceed to Mandaue City and kill the victim. Undisputedly, these presuppose planning. Second, the execution of the crime was done the following morning of April 15, 1993 where Bug-atan and Labandero accompanied Maramara to the house of the victim. Third, the more than one day period, at the very least, was substantial interval of time clearly sufficient to afford a full opportunity for meditation and reflection upon the consequences of their nefarious acts. These proved their premeditated design to end the life of the victim which was accomplished.

Crime committed and proper penalty

While the Decision of the trial court recognized the guilt of the petitioners for the offense as charged to have been proven beyond reasonable doubt, the trial court went on to hold them guilty to a lesser offense of homicide citing the Court's ruling in *People v. Tapalla*.[31] In said case, this Court declared that if the prosecution accepts from any of the defendants charged with conspiracy in the commission of a crime, a plea of guilty to a lesser offense included in the one alleged in the information, such acceptance will benefit his co-defendants. In arriving at this conclusion, the trial court was of the impression that Maramara's plea of guilty to a lesser offense of homicide in Criminal Case No. DU-3721 should benefit the petitioners in this case.

The case of *Tapalla*,[32] invoked by the trial court as authority in arriving at such conclusion, is not applicable in the present case. The information in Criminal Case No. DU-3721 indicting Maramara alone of murder is distinct and separate from the information charging petitioners for the same offense in the instant case. Moreover, Maramara was neither charged as co-accused of petitioners nor of conspiring to commit a crime in either case. As correctly observed by the trial court, Maramara was only a principal witness in this case[33] though admittedly a conspirator in the commission of the crime. These circumstances provide a distinction from the *Tapalla* case where the accused Tingzon, who pleaded guilty to the lesser offense of homicide, was a co-accused in the same information charging him along with others of conspiring to commit murder. We therefore cannot agree with the trial court's conclusion drawn from the principle laid down in the *Tapalla* case and neither can we give *imprimatur* on the appellate court's affirmation thereof. The basis thus used is, in our opinion, wrong.

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[31] 45 Official Gazette 3418.

[32] *Id.*

[33] TSN, December 6, 1993, p. 3.

As the evidence stands, the crime committed by petitioners is murder in view of the attending circumstances of treachery and evident premeditation. Murder, as defined under Article 248 of the Revised Penal Code is the unlawful killing of a person which is not parricide or infanticide, provided that treachery or evident premeditation, *inter alia*, attended the killing. The presence of any one of the enumerated circumstances under Article 248 is enough to qualify a killing as murder punishable by *reclusion perpetua* to death. When more than one qualifying circumstance is proven, as in this case, the rule is that the other must be considered as generic aggravating.[34] In the present case, the qualifying circumstance of evident premeditation will be considered as a generic aggravating circumstance warranting the imposition of the penalty of death in the absence of any mitigating circumstance.[35] Since the imposition of the death penalty has been prohibited by Republic Act No. 9346,[36] a law favorable to petitioners which took effect on June 24, 2006, the penalty that should be imposed on petitioners is reduced to *reclusion perpetua* without eligibility for parole. Sections 2 and 3 of the Act provide:

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;

x x x x x x x x x

Section 3. Person convicted of offenses punishable with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* by

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[34] *People v. Reynes*, 423 Phil. 363, 384 (2001).

[35] Article 63. *Rules for the application of indivisible penalty.* – x x x In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

x x x x x x x x x

[36] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

reason of this Act, shall not be eligible for parole under Act No. 4103 otherwise known as the Indeterminate Sentence Law, as amended.

Civil Liability

When death occurs due to a crime, the following damages may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and, (6) interest, in proper cases.[37]

The Decision of the trial court as affirmed by the appellate court only awarded ₱50,000.00 to the legal heirs of the victim without stating the nature of this grant. As held in *People v. Zamoraga*,[38] civil indemnity and moral damages, being based on different *jurat* foundations are separate and distinct from each other. Thus, it becomes imperative for this Court to rectify the error and award additional damages following precedents.

In line with prevailing jurisprudence, we award the fixed amount of ₱75,000.00 for the death of the victim[39] as civil indemnity *ex delicto* without any need of proof other than the commission of the crime. An award of moral damages is also in order even though the prosecution did not present any proof of the heirs' emotional suffering apart from the fact of death of the victim, since the emotional wounds from the vicious killing of the victim cannot be denied.[40] The award of ₱75,000.00 is proper pursuant to established jurisprudence.

Although the prosecution presented evidence that the heirs had incurred actual expenses, no receipts were presented in the trial court. An award of temperate damages in lieu of actual damages in the amount of ₱25,000.00 to the heirs of the victim is warranted because it is reasonable to presume that when death occurs, the family of the victim suffered pecuniary loss

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[37] *Nueva España v. People*, 499 Phil. 547, 557 (2005).

[38] G.R. No. 178066, February 6, 2008, 544 SCRA 143, 154.

[39] *People v. Sanchez*, G.R. No. 188610, June 29, 2010.

[40] *People v. Caraig*, 448 Phil. 78, 98 (2003).

for the wake and funeral of the victim although the exact amount was not proved.[41]

In addition, exemplary damages in the amount of ₱30,000.00 should be awarded considering the attendance of the aggravating circumstance of treachery that qualified the killing to murder and evident premeditation which served as generic aggravating circumstance. Exemplary damages are awarded when treachery attended the commission of the crime.[42]

WHEREFORE, the appealed judgment is *AFFIRMED with MODIFICATIONS.* Petitioners Gregorio Manatad, Virgilio Bug-atan and Bernie Labandero are found *GUILTY* beyond reasonable doubt of murder, not homicide, qualified by treachery, and sentenced to suffer *reclusion perpetua* without eligibility for parole.

Petitioners are *ORDERED* to pay the heirs of victim Pastor Papauran the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱25,000.00 as temperate damages and ₱30,000.00 as exemplary damages. Costs against petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Perez, JJ.,* concur.

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[41] *People v. Ballesta,* G.R. No. 181632, September 25, 2008, 566 SCRA 400, 423.

[42] *Olalia, Jr. v. People*, *supra* note 23 at 725.

[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 884 dated September 1, 2010.

THIRD DIVISION

[G.R. No. 176675. September 15, 2010]

SPS. ALFREDO BONTILAO and SHERLINA BONTILAO, *petitioners, vs.* **DR. CARLOS GERONA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCTRINE OF *RES IPSA LOQUITUR*; DISCUSSED; APPLICATION.— The trial court erred in applying the doctrine of *res ipsa loquitur* to pin liability on respondent for Allen's death. *Res ipsa loquitur* is a rebuttable presumption or inference that the defendant was negligent. The presumption only arises upon proof that the instrumentality causing injury was in the defendant's exclusive control, and that the accident was one (1) which ordinarily does not happen in the absence of negligence. It is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened, provided that the character of the accident and circumstances attending it lead reasonably to the belief that in the absence of negligence it would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer. Under this doctrine, the happening of an injury permits an inference of negligence where the plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of the defendant, and that the injury was such that in the ordinary course of things would not happen if reasonable care had been used. However, *res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied, depending upon the circumstances of each case. In malpractice cases, the doctrine is generally restricted to situations where a layman is able to say, *as a matter of common knowledge and observation*, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. In other words, as held in *Ramos v. Court of Appeals*, the real question is whether or not in the process of the operation, any extraordinary incident or unusual event outside of the routine performance occurred

which is beyond the regular scope of professional activity in such operations, and which, if unexplained, would themselves *reasonably speak to the average man* as the negligent cause or causes of the untoward consequence. Here, we find that the CA correctly found that petitioners failed to present substantial evidence of any specific act of negligence on respondent's part or of the surrounding facts and circumstances which would lead to the reasonable inference that the untoward consequence was caused by respondent's negligence.

2. ID.; ID.; ID.; ALLOWS THE MERE EXISTENCE OF AN INJURY TO JUSTIFY A PRESUMPTION OF NEGLIGENCE ON THE PART OF THE PERSON WHO CONTROLS THE INSTRUMENT CAUSING THE INJURY; REQUISITES.—We note that in the instant case, the instrument which caused the damage or injury was not even within respondent's exclusive management and control as Dr. Jabagat was exclusively in control and management of the anesthesia and the endotracheal tube. The doctrine *of res ipsa loquitur* allows the mere existence of an injury to justify a presumption of negligence on the part of the person who controls the instrument causing the injury, provided that the following requisites concur: 1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence; 2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and 3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.

3. ID.; ID.; BURDEN OF PROOF; IN CIVIL CASES, THE BURDEN OF PROOF TO BE ESTABLISHED IS ON THE PLAINTIFF WHO IS ASSERTING THE AFFIRMATIVE ISSUE; UNLESS THE PARTY ASSERTING THE AFFIRMATIVE OF AN ISSUE SUSTAINS THE BURDEN OF PROOF, HIS CAUSE WILL NOT SUCCEED; APPLIED.— The respondent could only supervise Dr. Jabagat to make sure that he was performing his duties. But respondent could not dictate upon Dr. Jabagat the particular anesthesia to administer, the dosage thereof, or that it be administered in any particular way not deemed appropriate by Dr. Jabagat. Respondent's specialization not being in the field of anesthesiology, it would be dangerous for him to substitute

his judgment for Dr. Jabagat's decisions in matters that fall appropriately within the scope of Dr. Jabagat's expertise. Under the above circumstances, although the Court commiserates with the petitioners on their infinitely sorrowful loss, the Court cannot properly declare that respondent failed to exercise the required standard of care as lead surgeon as to hold him liable for damages for Allen's death. In civil cases, the burden of proof to be established by preponderance of evidence is on the plaintiff who is asserting the affirmative of an issue. Unless the party asserting the affirmative of an issue sustains the burden of proof, his or her cause will not succeed.

APPEARANCES OF COUNSEL

Sinajon Esparagoza Padilla for petitioners.
Joselito Alo for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the June 28, 2006 Decision[2] and January 19, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 00201. The CA had reversed the March 23, 2004 Decision[4] of the Regional

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[1] *Rollo*, pp. 46-69.

[2] *Id.* at 7-21. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Agustin S. Dizon. The dispositive portion of the Decision reads as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the appeal filed in this case. The complaint in Civil Case No. CEB-17822 as to the defendant-appellant is hereby DISMISSED for lack of merit.

SO ORDERED.

[3] *Id.* at 40-41.

[4] Records, Vol. II, pp. 1038-1048. Penned by Judge Anacleto L. Caminade. The dispositive portion of the Decision reads as follows:

Trial Court (RTC) of Cebu City, Branch 6 and dismissed petitioners' complaint in Civil Case No. CEB-17822.

The facts are as follows:

On December 28, 1991, respondent Dr. Carlos Gerona, an orthopedic surgeon at the Vicente Gullas Memorial Hospital, treated petitioners' son, eight (8)-year-old Allen Key Bontilao (Allen), for a fractured right wrist. Respondent administered a "U-splint" and immobilized Allen's wrist with a cast, then sent Allen home. On June 4, 1992, Allen re-fractured the same wrist and was brought back to the hospital. The x-ray examination showed a complete fracture and displacement of the bone, with the fragments overlapping each other. Respondent performed a closed reduction procedure, with Dr. Vicente Jabagat (Dr. Jabagat) as the anesthesiologist. Then he placed Allen's arm in a plaster cast to immobilize it. He allowed Allen to go home after the post reduction x-ray showed that the bones were properly aligned, but advised Allen's mother, petitioner Sherlina Bontilao (Sherlina), to bring Allen back for re-tightening of the cast not later than June 15, 1992.

Allen, however, was brought back to the hospital only on June 22, 1992. By then, because the cast had not been re-tightened, a rotational deformity had developed in Allen's arm. The x-ray examination showed that the deformity was caused by a re-displacement of the bone fragments, so it was agreed that an open reduction surgery will be conducted on June 24, 1992 by respondent, again with Dr. Jabagat as the anesthesiologist.

On the said date, Sherlina was allowed to observe the operation behind a glass panel. Dr. Jabagat failed to intubate the patient after five (5) attempts so anesthesia was administered through

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WHEREFORE, this Court hereby orders the defendants to pay plaintiffs, jointly and severally, as follows: (a) ₱50,000.00 for the life of Allen, (b) ₱10,000.00 for the burial expenses, (c) ₱750,000.00 as moral damages, (d) ₱250,000.00 as exemplary damages, (e) attorney's fees equivalent to 25% of the total of the foregoing amounts, and (f) ₱50,000.00 as litigation expenses. Costs against defendants.

It is so ordered.

a gas mask. Respondent asked Dr. Jabagat if the operation should be postponed given the failure to intubate, but Dr. Jabagat said that it was alright to proceed. Respondent verified that Allen was breathing properly before proceeding with the surgery.[5] As respondent was about to finish the suturing, Sherlina decided to go out of the operating room to make a telephone call and wait for her son. Later, she was informed that her son had died on the operating table. The cause of death was "asphyxia due to congestion and edema of the epiglottis."[6]

Aside from criminal and administrative cases, petitioners filed a complaint for damages against both respondent and Dr. Jabagat in the RTC of Cebu City alleging negligence and incompetence on the part of the doctors. The documentary evidence and testimonies of several witnesses presented in the criminal proceedings were offered and admitted in evidence at the RTC.

On March 23, 2004, the RTC decided in favor of the petitioners. It held that the doctrine of *res ipsa loquitur* was applicable in establishing respondent's liability. According to the RTC, asphyxia or cardiac arrest does not normally occur in an operation on a fractured bone in the absence of negligence in the administration of anesthesia and the use of an endotracheal tube. Also, the instruments used in the administration of anesthesia were all under the exclusive control of respondent and Dr. Jabagat, and neither Allen nor his mother could be said to be guilty of contributory negligence. Thus, the trial court held that respondent and Dr. Jabagat were solidarily liable for they failed to prove that they were not negligent. The trial court likewise said that respondent cannot shift the blame solely to Dr. Jabagat as the fault of the latter is also the fault of the former, respondent being the attending physician and being equally in care, custody and control of Allen.[7]

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[5] TSN, December 4, 2002, p. 29.

[6] Records, Vol. II, pp. 1039-1040.

[7] *Id.* at 1044-1047.

Aggrieved, respondent appealed the trial court's decision to the CA. Dr. Jabagat, for his part, no longer appealed the decision.

On June 28, 2006, the CA reversed the RTC's ruling. It held that the doctrine of *res ipsa loquitur* does not apply for it must be satisfactorily shown that (1) the accident is of a kind which ordinarily does not occur in the absence of someone's negligence; (2) the plaintiff was not guilty of contributory conduct; and (3) the instrumentality which caused the accident was within the control of the defendant.

The CA held that while it may be true that an Open Reduction and Internal Fixation or ORIF could not possibly lead to a patient's death unless somebody was negligent, still what was involved in this case was a surgical procedure with all risks attendant, including death. As explained by the expert testimony, unexplained death and mal-occurrence is a possibility in surgical procedures especially those involving the administration of general anesthesia. It had also been established in both the criminal and administrative cases against respondent that Allen's death was the result of the anesthesiologist's negligence and not his.[8]

The CA added that the trial court erred in applying the "captain of the ship" doctrine to make respondent liable even though he was the lead surgeon. The CA noted that unlike in *Ramos v. Court of Appeals*,[9] relied upon by the trial court, the anesthesiologist was chosen by petitioners and no specific act of negligence was attributable to respondent. The alleged failure to perform a skin test and a tracheotomy does not constitute negligence. Tracheotomy is an emergency procedure, and its performance is a judgment call of the attending physician as it is another surgical procedure done during instances of failure of intubation. On the other hand, a skin test for a patient's possible adverse reaction to the anesthesia to be administered is the anesthesiologist's decision. The CA also noted that the

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[8] *Rollo*, pp. 14-16.

[9] G.R. No. 124354, December 29, 1999, 321 SCRA 584.

same anesthesia was previously administered to Allen and he did not manifest any allergic reaction to it. Finally, unlike in the *Ramos* case, respondent arrived only a few minutes late for the surgery and he was able to complete the procedure within the estimated time frame of less than an hour.

Petitioners filed the present petition on the following grounds:

[1] THE COURT OF APPEALS ERRED IN REVERSING THE DECISION OF THE REGIONAL TRIAL COURT BY DISMISSING THE COMPLAINT IN SO FAR AS THE SURGEON, DR. CARLOS GERONA IS CONCERNED [AFTER] CONCLUDING THAT HE IS NOT SOLIDARILY LIABLE WITH HIS CO-DEFENDANT, DR. VICENTE JABAGAT, THE ANESTHESIOLOGIST, IN THE ABSENCE OF ANY NEGLIGENT ACT ON HIS PART.

[2] THE COURT OF APPEALS ERRED WHEN IT MISAPPRECIATED ESSENTIAL FACTS OF THE CASE THAT LED TO ITS FINDINGS THAT DOCTRINE OF *RES IPSA LOQUIT[U]R* AS APPLIED IN THE RAMOS CASE IS NOT APPLICABLE IN THE INSTANT CASE.[10]

Essentially, the issue before us is whether respondent is liable for damages for Allen's death.

Petitioners argued that the doctrine of *res ipsa loquitur* applies to the present case because Allen was healthy, fully conscious, coherent, and ambulant when he went to the hospital to correct a deformed arm. Yet, he did not survive the operation, which was not even an emergency surgery but a corrective one. They contend that respondent, being the lead surgeon, should be held liable for the negligence of the physicians and nurses working with him during the operation.

On the other hand, respondent posited that he should not be held solidarily liable with Dr. Jabagat as they were employed independently from each other and their services were divided as their best judgment dictated. He insisted that the captain-of-the-ship doctrine had long been abandoned especially in this

[10] *Rollo*, p. 55.

age of specialization. An anesthesiologist and a surgeon are specialists in their own field and neither one (1) could dictate upon the other. The CA was correct in finding that the *Ramos* case does not apply to respondent. Dr. Jabagat was contracted separately from respondent and was chosen by petitioner Sherlina. Respondent was only a few minutes late from the operation and he waited for the signal of the anesthesiologist to start the procedure. He also determined the condition of Allen before and after the operation.

We affirm the assailed CA decision.

The trial court erred in applying the doctrine of *res ipsa loquitur* to pin liability on respondent for Allen's death. *Res ipsa loquitur* is a rebuttable presumption or inference that the defendant was negligent. The presumption only arises upon proof that the instrumentality causing injury was in the defendant's exclusive control, and that the accident was one (1) which ordinarily does not happen in the absence of negligence. It is a rule of evidence whereby negligence of the alleged wrongdoer may be inferred from the mere fact that the accident happened, provided that the character of the accident and circumstances attending it lead reasonably to the belief that in the absence of negligence it would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrongdoer.[11]

Under this doctrine, the happening of an injury permits an inference of negligence where the plaintiff produces substantial evidence that the injury was caused by an agency or instrumentality under the exclusive control and management of the defendant, and that the injury was such that in the ordinary course of things would not happen if reasonable care had been used.[12]

However, *res ipsa loquitur* is not a rigid or ordinary doctrine to be perfunctorily used but a rule to be cautiously applied,

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[11] *Batiquin v. Court of Appeals*, G.R. No. 118231, July 5, 1996, 258 SCRA 334, 344-345.

[12] *Id.* at 345.

depending upon the circumstances of each case.[13] In malpractice cases, the doctrine is generally restricted to situations where a layman is able to say, *as a matter of common knowledge and observation*, that the consequences of professional care were not as such as would ordinarily have followed if due care had been exercised. In other words, as held in *Ramos v. Court of Appeals*,[14] the real question is whether or not in the process of the operation, any extraordinary incident or unusual event outside of the routine performance occurred which is beyond the regular scope of professional activity in such operations, and which, if unexplained, would themselves *reasonably speak to the average man* as the negligent cause or causes of the untoward consequence.

Here, we find that the CA correctly found that petitioners failed to present substantial evidence of any specific act of negligence on respondent's part or of the surrounding facts and circumstances which would lead to the reasonable inference that the untoward consequence was caused by respondent's negligence. In fact, under the established facts, respondent appears to have observed the proper amount of care required under the circumstances. Having seen that Dr. Jabagat failed in the intubation, respondent inquired from the latter, who was the expert on the matter of administering anesthesia, whether the surgery should be postponed considering the failure to intubate. Respondent testified,

WITNESS:

A - Actually sir, if I may cut short, I'm sorry. I don't know what is the term of this sir. But what actually, what we had was that Dr. Jabagat failed in the intubation. He was not able to insert the tube.

ATTY. PADILLA:

Q - And you noticed that he failed?

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[13] *Reyes v. Sisters of Mercy Hospital*, G.R. No. 130547, October 3, 2000, 341 SCRA 760, 772.

[14] *Supra* note 9, at 603.

A - Yes, sir.

x x x x x x x x x

ATTY. PADILLA:

Q - And you noticed that he failed and still you continued the surgery, Dr. Gerona?

A - Yes, I continued the surgery.

x x x x x x x x x

COURT:

Q - Did not Dr. Jabagat advise you not to proceed with the operation because the tube cannot be inserted?

A - No, sir. In fact, I was the one who asked him, sir, the tube is not inserted, shall we postpone this for another date? He said, it's alright.[15]

Respondent further verified that Allen was still breathing by looking at his chest to check that there was excursion before proceeding with the surgery.[16] That respondent decided to continue with the surgery even though there was a failure to intubate also does not tend to establish liability, contrary to the trial court's ruling. Petitioners failed to present substantial proof that intubation was an indispensable prerequisite for the operation and that it would be grave error for any surgeon to continue with the operation under such circumstances. In fact, the testimony of the expert witness presented by the prosecution in the criminal proceedings and admitted into evidence at the RTC, was even to the effect that the anesthesia could be administered by alternative means such as a mask and that the operation could proceed even without intubation.[17]

There was also no indication in the records that respondent saw or should have seen that something was wrong as to prompt him to act differently than he did in this case. The anesthesia used

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[15] TSN, December 4, 2002, pp. 27-30.

[16] *Id.* at 29.

[17] Records, Vol. II, pp. 724-725.

in the operation was the same anesthesia used in the previous closed reduction procedure, and Allen did not register any adverse reaction to it. In fact, respondent knows the anesthesia Ketalar to be safe for children. Dr. Jabagat was also a specialist and more competent than respondent to determine whether the patient has been properly anesthetized for the operation, all things considered. Lastly, it appears that Allen started experiencing difficulty in breathing only after the operation, when respondent was already about to jot down his post-operation notes in the adjacent room. Respondent was called back to the operating room after Dr. Jabagat failed to appreciate a heartbeat on the patient.[18] He acted promptly and called for other doctors to assist and revive Allen, but to no avail.

Moreover, we note that in the instant case, the instrument which caused the damage or injury was not even within respondent's exclusive management and control as Dr. Jabagat was exclusively in control and management of the anesthesia and the endotracheal tube. The doctrine of *res ipsa loquitur* allows the mere existence of an injury to justify a presumption of negligence on the part of the person who controls the instrument causing the injury, provided that the following requisites concur:

1. The accident is of a kind which ordinarily does not occur in the absence of someone's negligence;

2. It is caused by an instrumentality within the exclusive control of the defendant or defendants; and

3. The possibility of contributing conduct which would make the plaintiff responsible is eliminated.[19]

Here, the respondent could only supervise Dr. Jabagat to make sure that he was performing his duties. But respondent could not dictate upon Dr. Jabagat the particular anesthesia to administer, the dosage thereof, or that it be administered in

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[18] *Rollo*, p. 78; TSN, August 29, 2002, pp. 33-34.

[19] *Cantre v. Go*, G.R. No. 160889, April 27, 2007, 522 SCRA 547, 556.

any particular way not deemed appropriate by Dr. Jabagat. Respondent's specialization not being in the field of anesthesiology, it would be dangerous for him to substitute his judgment for Dr. Jabagat's decisions in matters that fall appropriately within the scope of Dr. Jabagat's expertise.

Under the above circumstances, although the Court commiserates with the petitioners on their infinitely sorrowful loss, the Court cannot properly declare that respondent failed to exercise the required standard of care as lead surgeon as to hold him liable for damages for Allen's death.

In civil cases, the burden of proof to be established by preponderance of evidence is on the plaintiff who is asserting the affirmative of an issue.[20] Unless the party asserting the affirmative of an issue sustains the burden of proof, his or her cause will not succeed.

WHEREFORE, the petition is *DENIED*. The Decision dated June 28, 2006 and Resolution dated January 19, 2007 of the Court of Appeals in CA-G.R. CV No. 00201 are *AFFIRMED.*

No pronouncement as to costs.

SO ORDERED.

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

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[20] *Alonso v. Cebu Country Club, Inc.*, G.R. No. 130876, December 5, 2003, 417 SCRA 115, 123.

[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 176858. September 15, 2010]

HEIRS OF JUANITA PADILLA, represented by CLAUDIO PADILLA, *petitioners, vs.* **DOMINADOR MAGDUA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS ARE FINAL AND CONCLUSIVE AND MAY NOT BE REVIEWED ON APPEAL; EXCEPTIONS; PRESENT.— At the outset, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The factual findings of the lower courts are final and conclusive and may not be reviewed on appeal except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. We find that the conclusion of the RTC in dismissing the case on the ground of prescription based solely on the Affidavit executed by Juanita in favor of Ricardo, the alleged seller of the property from whom Dominador asserts his ownership, is speculative. Thus, a review of the case is necessary.

2. ID.; ACTIONS; RECOVERY OF OWNERSHIP, POSSESSION, PARTITION AND DAMAGES; TAX DECLARATION DOES NOT PROVE OWNERSHIP, BUT THE SAME IS EVIDENCE OF CLAIM TO POSSESSION OF THE

LAND.— [A]side from the Affidavit, Dominador did not present any proof to show that Ricardo's possession of the land had been open, continuous and exclusive for more than 30 years in order to establish extraordinary acquisitive prescription. Dominador merely assumed that Ricardo had been in possession of the land for 30 years based on the Affidavit submitted to the RTC. The petitioners, on the other hand, in their pleading filed with the RTC for recovery of ownership, possession, partition and damages, alleged that Ricardo left the land after he separated from his wife sometime after 1966 and moved to another place. The records do not mention, however, whether Ricardo had any intention to go back to the land or whether Ricardo's family ever lived there. Further, Dominador failed to show that Ricardo had the land declared in his name for taxation purposes from 1966 after the Affidavit was executed until 2001 when the case was filed. Although a tax declaration does not prove ownership, it is evidence of claim to possession of the land.

3. CIVIL LAW; PROPERTY; CO-OWNERSHIP; CO-OWNERS CANNOT ACQUIRE BY ACQUISITIVE PRESCRIPTION THE SHARE OF THE OTHER CO-OWNERS ABSENT A CLEAR REPUDIATION OF THE CO-OWNERSHIP.— Moreover, Ricardo and petitioners are co-heirs or co-owners of the land. Co-heirs or co-owners cannot acquire by acquisitive prescription the share of the other co-heirs or co-owners absent a clear repudiation of the co-ownership, as expressed in Article 494 of the Civil Code.

4. ID.; ID.; ID.; REQUISITES IN ORDER THAT A CO-OWNER'S POSSESSION MAY BE DEEMED ADVERSE TO THE *CESTUI QUE TRUST* OR OTHER CO-OWNERS; PRESENT.— Since possession of co-owners is like that of a trustee, in order that a co-owner's possession may be deemed adverse to the *cestui que trust* or other co-owners, the following requisites must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners, (2) that such positive acts of repudiation have been made known to the *cestui que trust* or other co-owners, and (3) that the evidence thereon must be clear and convincing. In the present case, all three requisites have been met. After Juanita's death in 1989, petitioners sought for the partition of

their mother's land. The heirs, including Ricardo, were notified about the plan. Ricardo, through a letter dated 5 June 1998, notified petitioners, as his co-heirs, that he adjudicated the land solely for himself. Accordingly, Ricardo's interest in the land had now become adverse to the claim of his co-heirs after repudiating their claim of entitlement to the land.

5. ID.; ID.; ID.; IN ORDER THAT TITLE MAY PRESCRIBE IN FAVOR OF ONE OF THE CO-OWNERS, IT MUST BE CLEARLY SHOWN THAT HE HAD REPUDIATED THE CLAIMS OF THE OTHERS AND THAT THEY WERE APPRISED OF HIS CLAIM OF ADVERSE AND EXCLUSIVE OWNERSHIP BEFORE THE PRESCRIPTIVE PERIOD BEGINS TO RUN; PRESCRIPTIVE PERIOD, WHEN IT COMMENCES TO RUN; REQUIRED ACQUISITIVE PRESCRIPTION PERIOD, NOT MET.— In *Generosa v. Prangan-Valera*, we held that in order that title may prescribe in favor of one of the co-owners, it must be clearly shown that he had repudiated the claims of the others, and that they were apprised of his claim of adverse and exclusive ownership, before the prescriptive period begins to run. However, in the present case, the prescriptive period began to run only from 5 June 1998, the date petitioners received notice of Ricardo's repudiation of their claims to the land. Since petitioners filed an action for recovery of ownership and possession, partition and damages with the RTC on 26 October 2001, only a mere three years had lapsed. This three-year period falls short of the 10-year or 30-year acquisitive prescription period required by law in order to be entitled to claim legal ownership over the land. Thus, Dominador cannot invoke acquisitive prescription.

6. ID.; ID.; PRESCRIPTION; EVIDENCE RELATIVE TO THE POSSESSION, AS A FACT, UPON WHICH THE ALLEGED PRESCRIPTION IS BASED, MUST BE CLEAR, COMPLETE AND CONCLUSIVE IN ORDER TO ESTABLISH THE PRESCRIPTION; EXTRAORDINARY ACQUISITIVE PRESCRIPTION OVER THE LAND NOT PROVED BY COMPETENT EVIDENCE.— [D]ominador's argument that prescription began to commence in 1966, after the Affidavit was executed, is erroneous. Dominador merely relied on the Affidavit submitted to the RTC that Ricardo had been in

possession of the land for more than 30 years. Dominador did not submit any other corroborative evidence to establish Ricardo's alleged possession since 1966. In *Heirs of Maningding v. Court of Appeals*, we held that the evidence relative to the possession, as a fact, upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish the prescription. Here, Dominador failed to present any other competent evidence to prove the alleged extraordinary acquisitive prescription of Ricardo over the land. Since the property is an unregistered land, Dominador bought the land at his own risk, being aware as buyer that no title had been issued over the land. As a consequence, Dominador is not afforded protection unless he can manifestly prove his legal entitlement to his claim.

7. REMEDIAL LAW; COURTS; JURISDICTION; CASES WHERE THE SUBJECT OF LITIGATION MAY NOT BE ESTIMATED IN TERMS OF MONEY ARE ACTIONS INCAPABLE OF PECUNIARY ESTIMATION, COGNIZABLE BY THE REGIONAL TRIAL COURTS; APPLIED.— With regard to the issue of the jurisdiction of the RTC, we hold that the RTC did not err in taking cognizance of the case. xxx [T]he records show that the assessed value of the land was ₱590.00 according to the Declaration of Property as of 23 March 2000 filed with the RTC. Based on the value alone, being way below ₱20,000.00, the MTC has jurisdiction over the case. However, petitioners argued that the action was not merely for recovery of ownership and possession, partition and damages but also for annulment of deed of sale. Since annulment of contracts are actions incapable of pecuniary estimation, the RTC has jurisdiction over the case. Petitioners are correct. In *Singson v. Isabela Sawmill*, we held that: In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence

of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable by courts of first instance (now Regional Trial Courts).

8. ID.; ID.; ID.; JURISDICTION OVER THE SUBJECT MATTER IS CONFERRED BY LAW AND IS DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT, IRRESPECTIVE OF WHETHER THE PARTY IS ENTITLED TO ALL OR SOME OF THE CLAIMS ASSERTED; WHERE THE PRINCIPAL ACTIONS SOUGHT IS OTHER THAN THE RECOVERY OF A SUM OF MONEY, THE ACTION IS INCAPABLE OF PECUNIARY ESTIMATION, COGNIZABLE BY THE REGIONAL TRIAL COURT.— When petitioners filed the action with the RTC they sought to recover ownership and possession of the land by questioning (1) the due execution and authenticity of the Affidavit executed by Juanita in favor of Ricardo which caused Ricardo to be the sole owner of the land to the exclusion of petitioners who also claim to be legal heirs and entitled to the land, and (2) the validity of the deed of sale executed between Ricardo's daughters and Dominador. Since the principal action sought here is something other than the recovery of a sum of money, the action is incapable of pecuniary estimation and thus cognizable by the RTC. Well-entrenched is the rule that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Samuel C. Lagunzad for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the Orders dated 8 September 2006[2] and 13 February 2007[3] of the Regional Trial Court (RTC) of Tacloban City, Branch 34, in Civil Case No. 2001-10-161.

The Facts

Juanita Padilla (Juanita), the mother of petitioners, owned a piece of land located in San Roque, Tanauan, Leyte. After Juanita's death on 23 March 1989, petitioners, as legal heirs of Juanita, sought to have the land partitioned. Petitioners sent word to their eldest brother Ricardo Bahia (Ricardo) regarding their plans for the partition of the land. In a letter dated 5 June 1998 written by Ricardo addressed to them, petitioners were surprised to find out that Ricardo had declared the land for himself, prejudicing their rights as co-heirs. It was then discovered that Juanita had allegedly executed a notarized Affidavit of Transfer of Real Property[4] (Affidavit) in favor of Ricardo on 4 June 1966 making him the sole owner of the land. The records do not show that the land was registered under the Torrens system.

On 26 October 2001, petitioners filed an action with the RTC of Tacloban City, Branch 34, for recovery of ownership, possession, partition and damages. Petitioners sought to declare void the sale of the land by Ricardo's daughters, Josephine Bahia and Virginia Bahia-Abas, to respondent Dominador Magdua (Dominador). The sale was made during the lifetime of Ricardo.

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

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

[3] *Rollo*, pp. 17-18. Penned by Presiding Judge Frisco T. Lilagan.

[4] *Id.* at 30-31.

Petitioners alleged that Ricardo, through misrepresentation, had the land transferred in his name without the consent and knowledge of his co-heirs. Petitioners also stated that prior to 1966, Ricardo had a house constructed on the land. However, when Ricardo and his wife Zosima separated, Ricardo left for Inasuyan, Kawayan, Biliran and the house was leased to third parties.

Petitioners further alleged that the signature of Juanita in the Affidavit is highly questionable because on 15 May 1978 Juanita executed a written instrument stating that she would be leaving behind to her children the land which she had inherited from her parents.

Dominador filed a motion to dismiss on the ground of lack of jurisdiction since the assessed value of the land was within the jurisdiction of the Municipal Trial Court of Tanauan, Leyte.

In an Order dated 20 February 2006,[5] the RTC dismissed the case for lack of jurisdiction. The RTC explained that the assessed value of the land in the amount of ₱590.00 was less than the amount cognizable by the RTC to acquire jurisdiction over the case.[6]

Petitioners filed a motion for reconsideration. Petitioners argued that the action was not merely for recovery of ownership and possession, partition and damages but also for annulment of deed of sale. Since actions to annul contracts are actions beyond pecuniary estimation, the case was well within the jurisdiction of the RTC.

Dominador filed another motion to dismiss on the ground of prescription.

In an Order dated 8 September 2006, the RTC reconsidered its previous stand and took cognizance of the case. Nonetheless, the RTC denied the motion for reconsideration and dismissed the case on the ground of prescription pursuant to Section 1,

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[5] *Id.* at 42.

[6] See Declaration of Property as of 23 March 2000, *id.* at 28-29.

Rule 9 of the Rules of Court. The RTC ruled that the case was filed only in 2001 or more than 30 years since the Affidavit was executed in 1966. The RTC explained that while the right of an heir to his inheritance is imprescriptible, yet when one of the co-heirs appropriates the property as his own to the exclusion of all other heirs, then prescription can set in. The RTC added that since prescription had set in to question the transfer of the land under the Affidavit, it would seem logical that no action could also be taken against the deed of sale executed by Ricardo's daughters in favor of Dominador. The dispositive portion of the order states:

> WHEREFORE, premises considered, the order of the Court is reconsidered in so far as the pronouncement of the Court that it has no jurisdiction over the nature of the action. The dismissal of the action, however, is maintained not by reason of lack of jurisdiction but by reason of prescription.
>
> SO ORDERED.[7]

Petitioners filed another motion for reconsideration which the RTC denied in an Order dated 13 February 2007 since petitioners raised no new issue.

Hence, this petition.

The Issue

The main issue is whether the present action is already barred by prescription.

The Court's Ruling

Petitioners submit that the RTC erred in dismissing the complaint on the ground of prescription. Petitioners insist that the Affidavit executed in 1966 does not conform with the requirement of sufficient repudiation of co-ownership by Ricardo against his co-heirs in accordance with Article 494 of the Civil Code. Petitioners assert that the Affidavit became part of public records only because it was kept by the Provincial

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[7] *Id.* at 20.

Assessor's office for real property tax declaration purposes. However, such cannot be contemplated by law as a record or registration affecting real properties. Petitioners insist that the Affidavit is not an act of appropriation sufficient to be deemed as constructive notice to an adverse claim of ownership absent a clear showing that petitioners, as co-heirs, were notified or had knowledge of the Affidavit issued by their mother in Ricardo's favor.

Respondent Dominador, on the other hand, maintains that Juanita, during her lifetime, never renounced her signature on the Affidavit or interposed objections to Ricardo's possession of the land, which was open, absolute and in the concept of an owner. Dominador contends that the alleged written instrument dated 15 May 1978 executed by Juanita years before she died was only made known lately and conveys the possibility of being fabricated. Dominador adds that the alleged 'highly questionable signature' of Juanita on the Affidavit was only made an issue after 35 years from the date of the transfer in 1966 until the filing of the case in 2001. As a buyer in good faith, Dominador invokes the defense of acquisitive prescription against petitioners.

At the outset, only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The factual findings of the lower courts are final and conclusive and may not be reviewed on appeal except under any of the following circumstances: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the

case; and (11) such findings are contrary to the admissions of both parties.[8]

We find that the conclusion of the RTC in dismissing the case on the ground of prescription based solely on the Affidavit executed by Juanita in favor of Ricardo, the alleged seller of the property from whom Dominador asserts his ownership, is speculative. Thus, a review of the case is necessary.

Here, the RTC granted the motion to dismiss filed by Dominador based on Section 1, Rule 9 of the Rules of Court which states:

> Section 1. *Defenses and objections not pleaded*. – Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or **that the action is barred** by a prior judgment or **by statute of limitations**, the court shall dismiss the case. (Emphasis supplied)

The RTC explained that prescription had already set in since the Affidavit was executed on 31 May 1966 and petitioners filed the present case only on 26 October 2001, a lapse of more than 30 years. No action could be taken against the deed of sale made in favor of Dominador without assailing the Affidavit, and the action to question the Affidavit had already prescribed.

After a perusal of the records, we find that the RTC incorrectly relied on the Affidavit alone in order to dismiss the case without considering petitioners' evidence. The facts show that the land was sold to Dominador by Ricardo's daughters, namely Josephine Bahia and Virginia Bahia-Abas, during the lifetime of Ricardo. However, the alleged deed of sale was not presented as evidence and neither was it shown that Ricardo's daughters had any authority from Ricardo to dispose of the land. No cogent evidence was ever presented that Ricardo gave his consent to, acquiesced in, or ratified the sale made by his daughters to

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[8] *International Container Terminal Services, Inc. v. FGU Insurance Corporation*, G.R. No. 161539, 27 June 2008, 556 SCRA 194.

Dominador. In its 8 September 2006 Order, the RTC hastily concluded that Ricardo's daughters had legal personality to sell the property:

> On the allegation of the plaintiffs (petitioners) that Josephine Bahia and Virginia Bahia-Abas had no legal personality or right to [sell] the subject property is of no moment in this case. It should be Ricardo Bahia who has a cause of action against [his] daughters and not the herein plaintiffs. After all, Ricardo Bahia might have already consented to or ratified the alleged deed of sale.[9]

Also, aside from the Affidavit, Dominador did not present any proof to show that Ricardo's possession of the land had been open, continuous and exclusive for more than 30 years in order to establish extraordinary acquisitive prescription.[10] Dominador merely assumed that Ricardo had been in possession of the land for 30 years based on the Affidavit submitted to the RTC. The petitioners, on the other hand, in their pleading filed with the RTC for recovery of ownership, possession, partition and damages, alleged that Ricardo left the land after he separated from his wife sometime after 1966 and moved to another place. The records do not mention, however, whether Ricardo had any intention to go back to the land or whether Ricardo's family ever lived there.

Further, Dominador failed to show that Ricardo had the land declared in his name for taxation purposes from 1966 after the Affidavit was executed until 2001 when the case was filed. Although a tax declaration does not prove ownership, it is evidence of claim to possession of the land.

Moreover, Ricardo and petitioners are co-heirs or co-owners of the land. Co-heirs or co-owners cannot acquire by acquisitive prescription the share of the other co-heirs or co-owners absent a clear repudiation of the co-ownership, as expressed in Article 494 of the Civil Code which states:

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[9] *Rollo*, p. 20.

[10] See Article 1137 of the Civil Code.

Art. 494. x x x No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs as long as he expressly or impliedly recognizes the co-ownership.

Since possession of co-owners is like that of a trustee, in order that a co-owner's possession may be deemed adverse to the *cestui que trust* or other co-owners, the following requisites must concur: (1) that he has performed unequivocal acts of repudiation amounting to an ouster of the *cestui que trust* or other co-owners, (2) that such positive acts of repudiation have been made known to the *cestui que trust* or other co-owners, and (3) that the evidence thereon must be clear and convincing.[11]

In the present case, all three requisites have been met. After Juanita's death in 1989, petitioners sought for the partition of their mother's land. The heirs, including Ricardo, were notified about the plan. Ricardo, through a letter dated 5 June 1998, notified petitioners, as his co-heirs, that he adjudicated the land solely for himself. Accordingly, Ricardo's interest in the land had now become adverse to the claim of his co-heirs after repudiating their claim of entitlement to the land. In *Generosa v. Prangan-Valera*,[12] we held that in order that title may prescribe in favor of one of the co-owners, it must be clearly shown that he had repudiated the claims of the others, and that they were apprised of his claim of adverse and exclusive ownership, before the prescriptive period begins to run.

However, in the present case, the prescriptive period began to run only from 5 June 1998, the date petitioners received notice of Ricardo's repudiation of their claims to the land. Since petitioners filed an action for recovery of ownership and possession, partition and damages with the RTC on 26 October 2001, only a mere three years had lapsed. This three-year period falls short of the 10-year or 30-year acquisitive prescription period required by law in order to be entitled to

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[11] *Salvador v. Court of Appeals,* 313 Phil. 36 (1995).

[12] G.R. No. 166521, 31 August 2006, 500 SCRA 620, citing *Pangan v. Court of Appeals,* 248 Phil. 601 (1988); *Jardin v. Hallasgo,* 202 Phil. 858 (1982); *Cortes v. Oliva,* 33 Phil. 480 (1916).

claim legal ownership over the land. Thus, Dominador cannot invoke acquisitive prescription.

Further, Dominador's argument that prescription began to commence in 1966, after the Affidavit was executed, is erroneous. Dominador merely relied on the Affidavit submitted to the RTC that Ricardo had been in possession of the land for more than 30 years. Dominador did not submit any other corroborative evidence to establish Ricardo's alleged possession since 1966. In *Heirs of Maningding v. Court of Appeals*,[13] we held that the evidence relative to the possession, as a fact, upon which the alleged prescription is based, must be clear, complete and conclusive in order to establish the prescription. Here, Dominador failed to present any other competent evidence to prove the alleged extraordinary acquisitive prescription of Ricardo over the land. Since the property is an unregistered land, Dominador bought the land at his own risk, being aware as buyer that no title had been issued over the land. As a consequence, Dominador is not afforded protection unless he can manifestly prove his legal entitlement to his claim.

With regard to the issue of the jurisdiction of the RTC, we hold that the RTC did not err in taking cognizance of the case.

Under Section 1 of Republic Act No. 7691 (RA 7691),[14] amending Batas Pambansa Blg. 129, the RTC shall exercise exclusive jurisdiction on the following actions:

> Section 1. Section 19 of Batas Pambansa Blg. 129, otherwise known as the "Judiciary Reorganization Act of 1980," is hereby amended to read as follows:
>
> "Sec. 19. Jurisdiction in civil cases. – Regional Trial Courts shall exercise exclusive original jurisdiction.

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[13] 342 Phil. 567 (1997).

[14] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts, Amending for the Purpose Batas Pambansa Blg. 129, Otherwise Known as the "Judiciary Reorganization Act of 1980." Approved on 25 March 1994.

"(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

"(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty Thousand Pesos (₱20,000.00) or, for civil actions in Metro Manila, where such value exceeds Fifty Thousand Pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts; x x x

On the other hand, Section 3 of RA 7691 expanded the jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts over all civil actions which involve title to or possession of real property, or any interest, outside Metro Manila where the assessed value does not exceed Twenty thousand pesos (₱20,000.00). The provision states:

Section 3. Section 33 of the same law is hereby amended to read as follows:

"Sec. 33. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases. – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Trial Circuit Trial Courts shall exercise:

x x x x x x x x x

"(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots."

In the present case, the records show that the assessed value of the land was ₱590.00 according to the Declaration of Property as of 23 March 2000 filed with the RTC. Based on the value alone, being way below ₱20,000.00, the MTC has jurisdiction over the case. However, petitioners argued that the action was not merely for recovery of ownership and possession, partition and damages but also for annulment of deed of sale. Since annulment of contracts are actions incapable of pecuniary estimation, the RTC has jurisdiction over the case.[15]

Petitioners are correct. In *Singson v. Isabela Sawmill,*[16] we held that:

> In determining whether an action is one the subject matter of which is not capable of pecuniary estimation this Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, where the money claim is purely incidental to, or a consequence of, the principal relief sought, this Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable by courts of first instance (now Regional Trial Courts).

When petitioners filed the action with the RTC they sought to recover ownership and possession of the land by questioning (1) the due execution and authenticity of the Affidavit executed by Juanita in favor of Ricardo which caused Ricardo to be the sole owner of the land to the exclusion of petitioners who also claim to be legal heirs and entitled to the land, and (2) the validity of the deed of sale executed between Ricardo's daughters and Dominador. Since the principal action sought

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[15] *Spouses de Leon v. Court of Appeals*, 350 Phil. 535 (1998).

[16] 177 Phil. 575 (1979), reiterated in *Russell v. Vestil*, 364 Phil. 392 (1999) and *Social Security System v. Atlantic Gulf and Pacific Company of Manila, Inc.*, G.R. No. 175952, 30 April 2008, 553 SCRA 677.

here is something other than the recovery of a sum of money, the action is incapable of pecuniary estimation and thus cognizable by the RTC. Well-entrenched is the rule that jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations in the complaint and the character of the relief sought, irrespective of whether the party is entitled to all or some of the claims asserted.[17]

In sum, we find that the Affidavit, as the principal evidence relied upon by the RTC to dismiss the case on the ground of prescription, insufficiently established Dominador's rightful claim of ownership to the land. Thus, we direct the RTC to try the case on the merits to determine who among the parties are legally entitled to the land.

WHEREFORE, we *GRANT* the petition. We *REVERSE AND SET ASIDE* the Orders dated 8 September 2006 and 13 February 2007 of the Regional Trial Court of Tacloban City, Branch 34 in Civil Case No. 2001-10-161.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Bersamin,*[**] and *Abad, JJ.,* concur.

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[17] *Radio Communications of the Philippines v. Court of Appeals*, 435 Phil. 62 (2002).

[*] Designated additional member per Special Order No. 883 dated 1 September 2010.

[**] Designated additional member per Special Order No. 886 dated 1 September 2010.

SECOND DIVISION

[G.R. No. 181422. September 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ARNEL BABANGGOL *y* MACAPIA, CESAR NARANJO *y* RIVERA and EDWIN SAN JOSE *y* TABING,** *accused.*

ARNEL BABANGGOL *y* MACAPIA and CESAR NARANJO *y* RIVERA, *appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT 6425 AS AMENDED (THE DANGEROUS DRUGS ACT OF 1972); SALE OF PROHIBITED DRUGS; USE OF FLUORESCENT POWDER IS NOT REQUIRED TO PROVE THE COMMISSION OF THE OFFENSE.— The appellants further claim that the failure of the police to apply fluorescent powder to the boodle money indicates that no buy-bust operation actually took place. But it is settled that the use of fluorescent powder is not required to prove the commission of the offense. Alfonso testified that Babanggol asked for the payment and that the latter got the boodle money. Alfonso later recovered that money from Babanggol after the arrest.

2. ID.; ID.; ID.; PRESENTATION OF THE POLICE INFORMANT IS NOT NECESSARY TO PROVE THE COMMISSION OF THE OFFENSE.— [T]he presentation of the police informant is not necessary to prove the offense charged. The prosecution of criminal actions is under the public prosecutor's direction and control. He determines what evidence to present. In this case, the testimonies of the prosecution witnesses sufficiently covered the facts constituting the offense. Since police officer Alfonso who testified was present during the buy-bust operation, the testimony of the informant would have merely been corroborative.

3. ID.; ID.; ID.; THE BURDEN OF SHOWING THE NECESSITY OF PRESENTING THE INFORMANT RESTS UPON THE ACCUSED.— Further, the prosecution said at the hearing that

there was still a need to conceal the identity of the informant for his personal safety. The accused were detained but sympathetic outsiders could attend the hearing and mark the informant for punishment. The burden of showing the necessity of presenting the informant rests upon the accused.

4. ID.; ID.; ID.; CHAIN OF CUSTODY OF THE SUBSTANCE SEIZED WAS SUFFICIENTLY ESTABLISHED.— [A]ppellants do not properly appreciate the prosecution's evidence. Alfonso testified that he brought the substance to the crime laboratory together with SPO2 De Leon. So it was not merely SPO2 De Leon who delivered the specimen to the laboratory. Alfonso was so situated that his testimony sufficiently established the chain of custody of the substance. Eustaquio's testimony that it was SPO2 De Leon who brought the specimen to her and that she did not know Alfonso does not contradict what she said earlier. Eustaquio was not permanently stationed at Camp Crame. She was there on May 18, 1999 on a mere tour of duty. Consequently it was likely that she did not know all the police officers thereabout. Indeed, when she was asked if SPO2 De Leon alone delivered the substance, she said that she could not recall.

5. ID.; ID.; ID.; A SAMPLE TAKEN FROM A PACKAGE IS LOGICALLY PRESUMED TO BE REPRESENTATIVE OF ITS ENTIRE CONTENTS UNLESS THE ACCUSED PROVES OTHERWISE.— [I]t is not necessary to do a test on the entire contents of the package. Eustaquio testified she subjected the specimen to the standard method of mixing before getting a representative sample. And it has been consistently held that a sample taken from a package is logically presumed to be representative of its entire contents unless the accused proves otherwise.

6. REMEDIAL LAW; EVIDENCE; CONSPIRACY; MERE PRESENCE OF THE PERSON WHEN AN ILLEGAL TRANSACTION HAD TAKEN PLACE DOES NOT MEAN THAT HE WAS INTO THE CONSPIRACY.— The Court agrees with appellant Naranjo, however, that the prosecution in this case failed to prove beyond reasonable doubt that he acted in conspiracy with the other accused. xxx A person's mere presence when an illegal transaction had taken place does not mean that he was into the conspiracy. To be guilty as

a conspirator, the accused needs to have done an overt act in pursuit of the crime. While the testimonies of the three other accused were inconsistent in some material points, they all agreed that Naranjo was a mere hired driver. The prosecution did not bother to contradict this. It presented no proof that Naranjo knew of the criminal intentions of the other accused, much less that he adopted the same. All told, nothing in the circumstances of this case can be used to infer that Naranjo was in conspiracy with the other accused.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for Arnel Babanggol.
Rodriguez & Associates for Cesar Naranjo.

D E C I S I O N

ABAD, *J.*:

This case is about the sufficiency of the evidence of the prosecution to prove beyond reasonable doubt the guilt of persons accused of selling illegal drugs in conspiracy with one another.

The Facts and the Case

The public prosecutor of Parañaque City charged the accused Acas Sumayan, Arnel Babanggol, Cesar Naranjo, and Edwin San Jose before the Regional Trial Court (RTC) of Parañaque for selling 295.8 grams of prohibited drug commonly known as *shabu*.[1] At the trial, the prosecution presented three witnesses: PO2 Windel Alfonso, P/Sr. Insp. Marion D. Balonglong, and P/Sr. Insp. Grace Eustaquio.

The evidence for the prosecution shows that in the morning of May 18, 1999 a police informant showed up at the Service Support Office of the Philippine National Police (PNP) Narcotics Group and spoke to PO2 Alfonso and P/Sr. Insp. Romualdo Iglesia. After their meeting, Iglesia ordered several police officers

[1] In violation of Republic Act 6425; docketed as Criminal Case 99-503.

to conduct a buy-bust operation against accused Sumayan and Babanggol. The police informant would make an order for 300 grams of *shabu* from the two for a price of ₱300,000.00. The purchase was to take place at the Coastal Mall, Parañaque City, between 6:00 and 8:00 p.m. Alfonso then prepared the boodle money by placing three ₱1,000 bills on top of strips of ordinary paper and marking the ₱1,000 bills with his initials "WCA."

The buy-bust team proceeded to Coastal Mall. Alfonso was to serve as *poseur*-buyer, accompanied by the police informant. Right after 6:00 and before 7:00 p.m., a blue Kia Besta Van came into the parking lot. Two persons got off and walked towards Alfonso and the informant. The informant told Alfonso, "*Pare yan na si Arnel*" (referring to accused Babanggol).

The informant introduced Alfonso as "Jeffrey," a big-time buyer from Manila. Babanggol then introduced his companion as Cesar (accused Naranjo). Babanggol asked Alfonso if it was he who ordered the "stocks" and if he brought the money. Alfonso replied by asking to see the stuff. Babanggol told them to wait and he and Naranjo returned to their van. When they came back to the buyer, they brought with them two other persons (accused Sumayan and San Jose), one holding a brown paper bag. Alfonso opened the paper bag after it was handed to him and found in it a sealed transparent plastic bag that contained white crystalline substance. He ascertained that it was *shabu*.

When Babanggol asked for the payment, Alfonso gave him the boodle money and ignited his cigarette lighter as a signal for his team to move in. Alfonso identified himself as a police officer and arrested Babanggol. The other accused fled but were apprehended by the other officers. Alfonso recovered the boodle money from Babanggol.

Alfonso took custody of the suspected *shabu*, the paper bag, and the boodle money and with the other officers brought their captives to the police station. Alfonso prepared a request for a clinical analysis of the substance and marked the plastic container with his initials "WCA." Then, he and a certain SPO2 De Leon brought the substance to the PNP Crime Laboratory for examination.

Forensic chemist P/Sr. Insp. Eustaquio testified that she received the request for laboratory examination of the substance in a plastic bag wrapped in a brown paper bag. A qualitative examination of the same showed that it weighed 295.8 grams and was methamphetamine hydrochloride or *shabu*.

For the defense, Babanggol and Sumayan, childhood friends, uniformly testified that on May 18, 1999 they went to Plaza Lawton to get a ride to Cavite where they would be buying upper column shells for Babanggol's business. They went to Plaza Lawton from Quiapo and hired a van driven by Naranjo, whom they met for the first time. As they chanced upon San Jose, Naranjo's friend, somewhere near Baclaran, Naranjo asked his passengers if they could take San Jose along and the two agreed.

While they were driving down the coastal road to Cavite, a group of armed men stopped their van. When they asked what the matter was, the strangers responded by beating them up and divesting them of their belongings. As it turned out the men were police officers. The accused were taken to Camp Crame, shown a bag of *shabu*, and told that they would be charged in connection with the drugs unless they paid up.

San Jose substantially corroborated the testimonies of Babanggol and Sumayan. San Jose added, however, that the police officers who arrested them along coastal road were not those who testified in court as their arresting officers.

For his part, Naranjo testified that he had known San Jose since February 1999 when the latter first rented his van. On May 17, 1999 San Jose rented his van anew, this time in the company of Sumayan. On the following day, May 18, 1999, Naranjo agreed by prior arrangement to drive for San Jose and Sumayan again. He picked them up in Bacoor, Cavite, and they proceeded to Singalong in Manila where they got Babanggol to join them. They then headed for Cavite. While they were driving along the coastal road, the police stopped and arrested them. Naranjo denied that they were caught in a buy-bust operation.

The RTC found all four accused guilty of the crime charged and sentenced each of them to the penalties of *reclusion perpetua* and a fine of ₱500,000.00.[2] The accused appealed from the decision against them. Meantime, Sumayan passed away.[3]

The Court of Appeals (CA) affirmed the RTC decision with respect to the three remaining accused.[4] Two of them, Naranjo and Babanggol, appealed the CA decision to this Court.

The Issues Presented

In essence, Naranjo and Babanggol question the sufficiency of the prosecution's evidence. Particularly, they contend that:

1. Inconsistencies in the prosecution's evidence negates its theory that the accused were arrested on the occasion of a police buy-bust operation;

2. The prosecution failed to conclusively show that the substance that the police seized was in fact 295.8 grams methamphetamine hydrochloride; and

3. The prosecution failed to prove that Naranjo, the driver of the van, acted in conspiracy with the other accused.

The Court's Rulings

One. Appellants point to indications in the evidence that the buy-bust operation did not take place. For instance, the request for laboratory examination (Exhibit "A") originally referred to "One (1) heat-sealed transparent plastic bag." But the words "heat-sealed" were written over by words "self-sealing." The appellants claim that there was a switching of evidence after the seizure and before the laboratory examination.

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[2] In its Decision dated September 5, 2002.

[3] Records, p. 360; CA *rollo*, pp. 143 and 145.

[4] In a Decision dated November 14, 2006, penned by then Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Ramon R. Garcia; CA *rollo*, pp. 262-275.

But police officer Alfonso testified that what they seized during the operation was a self-sealing bag and that it was this that he marked with his initials. He even illustrated in court how the bag could be opened and re-sealed.[5] Nowhere in the records does it appear that it was a heat-sealed plastic bag that was actually involved.

The writing of the original words "heat-sealed" in Exhibit "A" was apparently inadvertent since someone promptly corrected it by writing over the wrong words. Although it would have been less problematic for the police officers to retype the letter, the open correction shows that they did not try to hide anything.

The appellants further claim that the failure of the police to apply fluorescent powder to the boodle money indicates that no buy-bust operation actually took place. But it is settled that the use of fluorescent powder is not required to prove the commission of the offense.[6] Alfonso testified that Babanggol asked for the payment and that the latter got the boodle money. Alfonso later recovered that money from Babanggol after the arrest.

Also, appellants claim that the prosecution should have presented the police informer in the case. They point out that, since the informant was said to be Sumayan and Babanggol's friend, then the accused had known him beforehand and concealing his identity did not make any sense. The failure to present the informant implies that the supposed buy-bust operation did not take place at all.

But the presentation of the police informant is not necessary to prove the offense charged. The prosecution of criminal actions is under the public prosecutor's direction and control. He determines what evidence to present.[7] In this case, the testimonies of the prosecution witnesses sufficiently covered the facts

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[5] TSN, March 13, 2000, pp. 79-86.

[6] *People of the Philippines v. Macabalang*, G.R. No. 168694, November 27, 2006, 508 SCRA 282, 302.

[7] *Loguinsa, Jr. v. Sandiganbayan (5th Division)*, G.R. No. 146949, February 13, 2009, 579 SCRA 161, 170.

constituting the offense. Since police officer Alfonso who testified was present during the buy-bust operation, the testimony of the informant would have merely been corroborative.

Further, the prosecution said at the hearing that there was still a need to conceal the identity of the informant for his personal safety. The accused were detained but sympathetic outsiders could attend the hearing and mark the informant for punishment. The burden of showing the necessity of presenting the informant rests upon the accused.[8]

Two. The appellants argue that the prosecution failed to prove with certainty the existence of the substance confiscated during the buy-bust operations.

First, they claim that the prosecution failed to establish the chain of custody of the seized drugs. Particularly they allege that as it appears in the dorsal portion of the request for laboratory examination (Exhibit "A-2"), the drugs were actually brought to the crime laboratory by a certain SPO2 De Leon and not by Alfonso as the prosecution made it appear. They claim that this was corroborated by Eustaquio who testified that the drugs were brought to her by a certain SPO2 De Leon and that she did not know Alfonso. Appellants conclude that SPO2 De Leon's testimony was indispensable.

But appellants do not properly appreciate the prosecution's evidence. Alfonso testified that he brought the substance to the crime laboratory together with SPO2 De Leon.[9] So it was not merely SPO2 De Leon who delivered the specimen to the laboratory. Alfonso was so situated that his testimony sufficiently established the chain of custody of the substance.

Eustaquio's testimony that it was SPO2 De Leon who brought the specimen to her and that she did not know Alfonso does not contradict what she said earlier. Eustaquio was not permanently stationed at Camp Crame. She was there on May 18, 1999 on a mere tour of duty. Consequently it was likely that she did not

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[8] *People of the Philippines v. Zheng Bai Hui*, 393 Phil. 68, 130 (2000).

[9] TSN, March 13, 2000, pp. 63 & 67.

know all the police officers thereabout. Indeed, when she was asked if SPO2 De Leon alone delivered the substance, she said that she could not recall.[10]

Secondly, the appellants claim that the prosecution failed to show that the entire package confiscated actually contained 295.8 grams of methamphetamine hydrochloride. They argue that since the forensic chemist merely performed a qualitative test on the specimen and not a quantitative test, there was no way to determine the purity of the substance.

But it is not necessary to do a test on the entire contents of the package. Eustaquio testified she subjected the specimen to the standard method of mixing before getting a representative sample. And it has been consistently held that a sample taken from a package is logically presumed to be representative of its entire contents unless the accused proves otherwise.[11]

Three. The Court agrees with appellant Naranjo, however, that the prosecution in this case failed to prove beyond reasonable doubt that he acted in conspiracy with the other accused. The buy-bust operation was supposedly set-up based on the police informant's report of illegal activities of "Acas and Arnel." But the evidence shows that the informant was not familiar with Naranjo. Indeed, the informant got to identify only Babanggol during the buy-bust operation. And it was Babanggol who introduced Naranjo to Alfonso, the *poseur*-buyer.

According to police officer Alfonso, it was Babanggol who did all the talking during the sale. The evidence does not indicate that Naranjo knew what the transaction was about or that it referred to the sale of illegal drugs. In fact, in their conversation Alfonso and Babanggol referred to the *shabu* merely as "stocks" and "stuff."

After Babanggol and Naranjo returned to their van, Babanggol went back to the *poseur*-buyer already with the two other accused, one of whom carried the bag of *shabu*. The evidence

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[10] TSN, June 1, 2000, p. 42.

[11] *People of the Philippines v. Macabalang*, *supra* note 6, at 307.

does not show that Naranjo had at some point possession of the *shabu* or knew that it existed.

A person's mere presence when an illegal transaction had taken place does not mean that he was into the conspiracy. To be guilty as a conspirator, the accused needs to have done an overt act in pursuit of the crime.[12] While the testimonies of the three other accused were inconsistent in some material points, they all agreed that Naranjo was a mere hired driver. The prosecution did not bother to contradict this. It presented no proof that Naranjo knew of the criminal intentions of the other accused, much less that he adopted the same. All told, nothing in the circumstances of this case can be used to infer that Naranjo was in conspiracy with the other accused.

WHEREFORE, in view of the foregoing, the Court *MODIFIES* the decision of the Court of Appeals in CA-G.R. CR-H.C. 02428 dated November 14, 2006 as follows:

The Court *ACQUITS* accused-appellant Cesar R. Naranjo of the charge for failure of the prosecution to prove his guilt beyond reasonable doubt and *ORDERS* his immediate release from detention. The Court also orders the release of the KIA Besta Van with plate number UUA 480, which the police confiscated as a result of this case, to its registered owner, Cecilia L. Naranjo.

Finally, the Court *AFFIRMS in toto* the judgment of conviction against accused-appellant Arnel Babanggol.

SO ORDERED.

Carpio, Velasco, Jr.,[*] *Peralta,* and *Bersamin,*[**] *JJ.,* concur.

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[12] *Aquino v. Paiste*, G.R. No. 147782, June 25, 2008, 555 SCRA 255, 272; *Cajigas v. People of the Philippines*, G.R. No. 156541, February 23, 2009, 580 SCRA 54, 67.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 883 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 886 dated September 1, 2010.

FIRST DIVISION

[G.R. No. 182075. September 15, 2010]

THE PHILIPPINE AMERICAN LIFE & GENERAL INSURANCE COMPANY, *petitioner, vs.* **JOSEPH ENARIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; FAILURE OF THE DEFENDANT TO APPEAR FOR PRE-TRIAL, EFFECT THEREOF; APPLICATION TO CASE AT BAR.— As the rule now stands, if the defendant fails to appear for pre-trial, a default order is no longer issued. Instead, the trial court may allow the plaintiff to proceed with his evidence *ex parte* and the court can decide the case based on the evidence presented by plaintiff. The position of Philamlife is in accord with the Rule. Indeed, the amendment did not change the essence of the original provision. The legal ramification of defendant's failure to appear for pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence. Therefore, the June Order cannot be completely vacated because semantics aside, the order substantially complied with Section 5 in relation to Section 4, Rule 18 of the Rules of Court.

2. ID.; ID.; ID.; SIGNIFICANCE THEREOF.— The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*, the Court, citing *Tiu v. Middleton*, delved on the significance of pre-trial, thus: Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following: (a) The possibility of an amicable settlement or of a submission to alternative modes

of dispute resolution; (b) The simplification of the issues; (c) The necessity or desirability of amendments to the pleadings; (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof; (e) The limitation of the number of witnesses; (f) The advisability of a preliminary reference of issues to a commissioner; (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist; (h) The advisability or necessity of suspending the proceedings; and (i) Such other matters as may aid in the prompt disposition of the action.

3. ID.; ID.; ID.; NOT A MERE TECHNICALITY IN COURT PROCEEDINGS; NON-APPEARANCE OF A PARTY MAY ONLY BE EXCUSED FOR A VALID CAUSE; NOT PRESENT.— Therefore, "pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of the trial, if not indeed its dispensation." This considered, it is required in Section 4 of Rule 20 of the Rules of Court that: **Section 4.** *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. **The non-appearance of a party may be excused only if a valid cause is shown therefor** or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. Definitely, non-appearance of a party may only be excused for a valid cause. We see none in this case even if the positions of the parties are given a second consideration.

4. ID.; ID.; MOTIONS; MOTION FOR POSTPONEMENT; GRANT OR DENIAL THEREOF IS ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT; FACTORS TO CONSIDER.— A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for postponement is a matter that is addressed to the sound discretion of the trial court. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal

to proceed on the part of one party. In deciding whether to grant or deny a motion for postponement of pre-trial, the court must take into account the following factors: (a) the reason for the postponement, and (b) the merits of the case of movant. The trial court correctly saw the reason proffered by respondent as insufficient to excuse his non-appearance.

5. POLITICAL LAW; DUE PROCESS; ESSENCE OF; NO DENIAL THEREOF WHERE THE PARTY WAS GIVEN MORE THAN ENOUGH TIME TO PRESENT HIS EVIDENCE.— "The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process." Respondent had been given more than enough time to present his evidence. The pre-trial date was reset four (4) times for a total period of 6 months before the trial court allowed Philamlife to present its evidence *ex parte* when respondent failed to appear on the scheduled date.

6. ID.; ID.; NON-APPEARANCE OF THE PARTY DEEMED A WAIVER OF HIS RIGHT TO PRESENT HIS OWN EVIDENCE.— With respect to the trial court's order for respondent to pay ₱1,122,781.66 representing the amount of his outstanding debit balance, we affirm its findings which were based on records presented by Philamlife. As a consequence of respondent's non-appearance, he was deemed to have waived his right to present his own evidence, if there was any.

APPEARANCES OF COUNSEL

Cruz and Ebbah Law Office for petitioner.
Casiano C. Vailoces for respondent.

D E C I S I O N

PEREZ, *J.*:

The consequences of the failure of defendant to attend the pre-trial is the central issue in this case.

Assailed in this petition is the Decision[1] dated 28 September 2007, as well as the Resolution[2] dated 6 March 2008 of the Court of Appeals in CA-G.R. CV No. 82353, vacating and setting aside the orders dated 3 June 2003[3] (June Order) and 24 November 2003,[4] and the decision dated 24 February 2004[5] of the Regional Trial Court of Manila[6] declaring respondent Joseph Enario in default and ordering him to pay Philamlife ₱1,122,781.66.

Respondent was appointed as agent of Philamlife on 12 November 1991.[7] Aside from being an active agent of Philamlife, respondent was appointed unit manager where he also regularly received his override commissions. He was afforded the privilege of receiving cash advances from Philamlife, which the latter charges or debits against future commissions due respondent, and the arrangement continued until his resignation in February 2000.[8]

At the time of respondent's resignation, Philamlife allegedly discovered that respondent had an outstanding debit balance of ₱1,237,336.20, which he was obligated to settle and liquidate pursuant to the Revised Agency Contract he signed at the time of his employment, the pertinent portion of which provides:

35. The Agent shall immediately at any time upon demand or without necessity of demand upon termination of this Contract, return to the Company and all documents, agency materials, paraphernalia,

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[1] Penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring. *Rollo*, pp. 23-29.

[2] *Id.* at 30.

[3] Records, p. 113.

[4] *Id.* at 204-206.

[5] *Id.* at 241-243.

[6] Presided by Judge Felixberto T. Olalia, Jr.

[7] Records, p. 5.

[8] *Id.* at 16.

and such other properties which he may have received therefrom to effectively discharge and perform his duties and obligations.[9]

Philamlife sent three (3) successive demand letters to respondent for the settlement of his outstanding debit account.[10] On 31 October 2000, respondent requested that he be given time to review and settle his accountabilities as he was still trying to reconcile his records.[11]

When the parties failed to reach an agreement regarding the settlement of the outstanding debit balance, Philamlife filed a complaint for collection of a sum of money against respondent before the Regional Trial Court (RTC) of Manila on 22 June 2001.

In his Answer, respondent denied the allegations that he had an outstanding debit balance of ₱1,237,336.20 considering that he and Philamlife had yet to reconcile the records of remittances with his compensation, as well as overriding commissions. Respondent prayed for the dismissal of the complaint and counterclaimed for damages.[12]

On 30 October 2002, the RTC set the pre-trial conference on 3 and 17 December 2002. The parties were directed to file their respective pre-trial briefs before the date of the pre-trial conference.[13] Respondent moved for the postponement of the pre-trial to 14 January 2003 due to conflict of schedule,[14] which motion the RTC received on 2 December 2002.[15]

On 14 January 2003, the opposing counsels agreed to amicably settle the case, prompting the RTC to reset the pre-trial to 8 May, 3 June and 1 July 2003.[16]

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[9] *Id.* at 85.

[10] *Id.* at 90-92.

[11] *Id.* at 93.

[12] *Id.* at 45-47.

[13] *Id.* at 58.

[14] *Id.* at 60.

[15] *Id.* at 59.

[16] *Id.* at 106.

On 7 May 2003, respondent sent a telegram requesting for another postponement of the pre-trial scheduled on the following day due to medical reasons.

On 3 June 2003, respondent failed to appear. Consequently, Philamlife manifested that respondent be declared in default for failure to appear at the pre-trial. The RTC granted the manifestation and allowed Philamlife to present its evidence on 1 July 2003.[17] The June Order reads:

> Appearance by Atty. Marivel A. Bautista Deodores, for the plaintiff. No appearance by Atty. Casiano C. Vailoces, for the defendant.
>
> Atty. Bautista-Deodores manifested that defendant be declared in default for failure to appear four (4) times and that she be given 15 days from today to file a memorandum.
>
> All manifestations, GRANTED. Plaintiff is allowed to present their evidence on July 1, 2003 at 8:30 in the morning as previously scheduled.
>
> SO ORDERED.[18]

It was only on the following day, 4 June, that the RTC received respondent's motion for postponement of the 3 June 2003 hearing, which was mailed on 30 May 2003.[19]

The 1 July 2003 hearing was reset to 28 August 2003 and Philamlife was ordered to present its evidence *ex parte*.[20]

Respondent filed a motion for reconsideration of the June Order.

Despite notice, respondent still failed to appear on the 28 August 2003 pre-trial. Philamlife was then allowed to present its evidence *ex parte*, which it did on that same hearing. Meanwhile, Philamlife was also ordered to comment on the

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[17] *Id.* at 113.

[18] *Id.* at 113.

[19] *Id.* at 114-115.

[20] *Id.* at 121.

motion for reconsideration of the order of default filed by respondent.[21] Respondent denied receiving a notice of hearing for 28 August 2003.[22]

In its Formal Offer of Evidence, Philamlife submitted statements of account to prove that respondent has an outstanding debit account balance amounting to ₱1,237,390.26; and a summary of sale underwriter vouchers (SUV) as evidence of cash advances, among others.[23]

On 24 November 2003, the trial court issued an Order denying the motion for reconsideration of the order of default and admitted Philamlife's Formal Offer of Evidence.[24]

On 24 February 2004, the trial court rendered judgment ordering respondent to pay the following amount to Philamlife:

1. One Million One Hundred Twenty-two Thousand Seven Hundred Eighty-One and 66/100 (₱1,122,781.66);
2. ₱10,000 as attorney's fees;
3. Costs of Suit.[25]

Respondent elevated the case to the Court of Appeals via petition for *certiorari* under Rule 65 of the Rules of Court. On 28 September 2007, the Court of Appeals reversed the trial court's decision and ruled, thus:

> WHEREFORE, the orders dated June 3, 2003 and November 24, 2003 and the decision dated February 24, 2004 of the Regional Trial Court of Manila (Branch 8) are VACATED and SET ASIDE and the case REMANDED to that court for pre-trial and other proceedings.
>
> SO ORDERED.[26]

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[21] *Id.* at 133.

[22] *Id.* at 199.

[23] *Id.* at 138-142.

[24] *Id.* at 206.

[25] *Id.* at 243.

[26] *Rollo*, p. 29.

The appellate court found that "respondent's failure to appear for pre-trial on 3 June 2003 does not constitute obstinate refusal to comply with the lower court's order."[27] Further, the appellate court held that the trial court erred in issuing an Order of Default since Section 5, Rule 18 of the Rules of Court explicitly provides that failure to appear for pre-trial on the part of the defendant shall be cause to allow the plaintiff to present evidence *ex parte* and the court to render judgment on the basis thereof.[28]

Philamlife filed a motion for reconsideration, which was denied by the Court of Appeals in its Resolution dated 6 March 2008.

Hence, this petition for *certiorari* was filed by Philamlife which attributes error on the part of the Court of Appeals in vacating and setting aside the RTC's default order as a consequence of respondent's failure to appear during pre-trial. Philamlife concedes that the Court of Appeals correctly relied on Justice Florenz Regalado's annotation in his book, REMEDIAL LAW COMPENDIUM, that instead of defendant being declared in default by reason of his non-appearance, Section 5 Rule 18 of the Rules of Court spells out that the procedure will be to allow the *ex parte* presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. Likewise from Justice Regalado, Philamlife argues that the reference to the word "default" which had been deleted in the present rules solely for semantical propriety and terminological accuracy, is not an error as the standing procedure was followed by the trial court in allowing the *ex parte* presentation of Philamlife's evidence. Philamlife insists that since pre-trial is mandatory in any action, when a party fails to appear therein, he may be non-suited or declared in default.[29]

On the other hand, respondent maintains that the RTC committed an egregious error when it issued an order of default against him for failure to appear for pre-trial on 3 June 2003.

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[27] *Id.* at 27.

[28] *Id.* at 26.

[29] *Id.* at 14.

The fundamental issue is whether or not the RTC erred in declaring respondent in default and allowing Philamlife to present its evidence *ex parte*.

The resolution of this issue hinges on the interpretation and application of Section 5, Rule 18 of the Rules of Court, which states:

> Section 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The "next preceding" section mandates that:

> Section 4. *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

Note that nowhere in the first aforementioned provision was the word "default" mentioned. Prior to the 1997 Revised Rules of Civil Procedure, the phrase "as in default" was initially included in Rule 20 of the old rules, and which read as follows:

> Sec. 2. A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.

It was however amended in the 1997 Revised Rules of Civil Procedure. Justice Regalado, in his book REMEDIAL LAW COMPENDIUM, explained the rationale for the deletion of the phrase "as in default" in the amended provision, to wit:

> 1. This is a substantial reproduction of Section 2 of the former Rule 20 with the change that, instead of defendant being declared "as in default" by reason of his non-appearance, this section now spells out that the procedure will be to allow the *ex parte*

> presentation of plaintiff's evidence and the rendition of judgment on the basis thereof. While actually the procedure remains the same, the purpose is one of semantical propriety or terminological accuracy as there were criticisms on the use of the word "default" in the former provision since that term is identified with the failure to file a required answer, not appearance in court.[30]

Still, in the same book, Justice Regalado clarified that while the order of default no longer obtains, its effects were retained, thus:

> Failure to file a responsive pleading within the reglementary period, and not failure to appear at the hearing, is the sole ground for an order of default, except the failure to appear at a pre-trial conference wherein the effects of a default on the part of the defendant are followed, that is, the plaintiff shall be allowed to present evidence *ex parte* and a judgment based thereon may be rendered against defendant.[31]

As the rule now stands, if the defendant fails to appear for pre-trial, a default order is no longer issued. Instead, the trial court may allow the plaintiff to proceed with his evidence *ex parte* and the court can decide the case based on the evidence presented by plaintiff.

The position of Philamlife is in accord with the Rule. Indeed, the amendment did not change the essence of the original provision. The legal ramification of defendant's failure to appear for pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence.

Therefore, the June Order cannot be completely vacated because semantics aside, the order substantially complied with Section 5 in relation to Section 4, Rule 18 of the Rules of Court.

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[30] Regalado, *Remedial Law Compendium*, Vol. I, Ninth Revised Edition, p. 309.

[31] *Id.* at 188.

The importance of pre-trial in civil actions cannot be overemphasized. In *Balatico v. Rodriguez*,[32] the Court, citing *Tiu v. Middleton*,[33] delved on the significance of pre-trial, thus:

> Pre-trial is an answer to the clarion call for the speedy disposition of cases. Although it was discretionary under the 1940 Rules of Court, it was made mandatory under the 1964 Rules and the subsequent amendments in 1997. Hailed as "the most important procedural innovation in Anglo-Saxon justice in the nineteenth century," pre-trial seeks to achieve the following:
>
> (a) The possibility of an amicable settlement or of a submission to alternative modes of dispute resolution;
>
> (b) The simplification of the issues;
>
> (c) The necessity or desirability of amendments to the pleadings;
>
> (d) The possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof;
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> (e) The limitation of the number of witnesses;
>
> (f) The advisability of a preliminary reference of issues to a commissioner;
>
> (g) The propriety of rendering judgment on the pleadings, or summary judgment, or of dismissing the action should a valid ground therefor be found to exist;
>
> (h) The advisability or necessity of suspending the proceedings; and
>
> (i) Such other matters as may aid in the prompt disposition of the action.[34]

Therefore, "pre-trial cannot be taken for granted. It is not a mere technicality in court proceedings for it serves a vital objective: the simplification, abbreviation and expedition of

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[32] G.R. No. 170540, 28 October 2009, 604 SCRA 634.

[33] 369 Phil. 829 (1999).

[34] *Tiu v. Middleton*, *supra*, at 835.

the trial, if not indeed its dispensation."[35] This considered, it is required in Section 4 of Rule 20 of the Rules of Court that:

> **Section 4.** *Appearance of parties*. – It shall be the duty of the parties and their counsel to appear at the pre-trial. **The non-appearance of a party may be excused only if a valid cause is shown therefor** or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. [Emphasis supplied]

Definitely, non-appearance of a party may only be excused for a valid cause. We see none in this case even if the positions of the parties are given a second consideration.

Philamlife claims that respondent was absent the four (4) times that the case was called for pre-trial on 3 and 17 December 2002, 8 May 2003 and 3 June 2003. Philamlife underlines the belated filing of respondent of his motions for postponement. The motion for the postponement of the 3 and 17 December 2002 pre-trial was received by the trial court on 3 December 2002 while that for 8 May and 3 June 2003 pre-trial was received on 4 June 2003 or the day after the pre-trial, where and when respondent was declared in default. Philamlife considers the manner by which respondent moved for postponements, as well as his claim that he was not notified of the 28 August 2003 when records show that he was in fact notified, as clear demonstration of negligence, irresponsibility and contumacy.

Respondent counters that he moved for the postponement of the 3 and 17 December 2002 pre-trial due to a conflict of schedule while the 14 January 2003 pre-trial was reset on account of the parties' agreement to settle the case amicably. The 8 May 2003 pre-trial was also postponed due to medical reasons. While he did not appear on the pre-trial of 3 June 2003, he filed on 30 May 2003 a motion for postponement,

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[35] *United Coconut Planters Bank v. Magpayo*, G.R. No. 149908, 27 May 2004, 429 SCRA 669, 675, citing *Development Bank of the Philippines v. Court of Appeals*, G.R. No. L-49410, 26 January1989, 169 SCRA 409, 411.

although received by the trial court only on 4 June 2003. Respondent added that on 3 June and 1 July 2003 pre-trial days, petitioner was not even ready to present its evidence. It was only on 28 August 2003 that Philamlife presented its evidence *ex parte*, despite the unresolved motion for reconsideration of the 3 June 2003 order.

The Court of Appeals dismissed Philamlife's contention and declared that "respondent's failure to appear for pre-trial on 3 June 2003 does not constitute obstinate refusal to comply with the lower court's order and that only on that date was respondent absent when the case was actually called for pre-trial."[36]

Respondent undeniably sought for postponement of the pre-trial at least three (3) times. First, he cited conflict in schedule as reason to seek postponement of the 3 and 17 December 2002 pre-trial. Second, the 8 May 2003 pre-trial was reset upon motion of respondent through a telegram due to medical reasons. Third, respondent also filed a motion to postpone the pre-trial for 3 June 2003 and he explained that "defendant and plaintiff's Cebu Office are still negotiating the ways for the projected settlement on possible monthly basis with property as guarantee to be embodied in their Compromise Agreement, and since plaintiff's Cebu Officer could not always be available they have not yet wind-up to bring matters to plaintiff's Manila Office through their counsel."[37]

The first two (2) motions for postponement were granted by the trial court. Only the 3 June 2003 pre-trial proceeded in the absence of respondent during which the trial court issued the default order. The trial court's denial of the motion for reconsideration of the June Order amounted to a denial of his motion for postponement of the 3 June 2003 pre-trial date.

A motion for postponement is a privilege and not a right. A movant for postponement should not assume beforehand that his motion will be granted. The grant or denial of a motion for

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[36] *Rollo,* p. 27.

[37] Records, p. 114.

postponement is a matter that is addressed to the sound discretion of the trial court. Indeed, an order declaring a party to have waived the right to present evidence for performing dilatory actions upholds the trial court's duty to ensure that trial proceeds despite the deliberate delay and refusal to proceed on the part of one party.[38]

In deciding whether to grant or deny a motion for postponement of pre-trial, the court must take into account the following factors: (a) the reason for the postponement, and (b) the merits of the case of movant.[39]

The trial court correctly saw the reason proffered by respondent as insufficient to excuse his non-appearance. Indeed, when the 14 January 2003 pre-trial was postponed to 8 May 2003, the parties were in fact given the opportunity to settle the case amicably, as there was ample time for both parties to reconcile their records and agree on compromise figures. We cannot see how, inspite of the length of time given to him, respondent can still use as reason a possible settlement, about which Philamlife even denies having any knowledge.

Notably, the trial court could not have acted timely in his favor because the trial court received the motion one day after the pre-trial schedule. About this, we note further the practice of respondent in filing his motions for postponement close to the scheduled pre-trial date. In his motion to reset the 8 May 2003 pre-trial, his motion was mailed on 7 May 2003. Likewise, his motion for postponement for the 3 June 2003 pre-trial was mailed on 30 May 2003. In those occasions, the trial court either received his motions on the day of pre-trial or a day after the pre-trial date. The trial court, which at the day of the 3 June

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[38] *Memita v. Masongsong*, G.R. No. 150912, 28 May 2007, 523 SCRA 244, 254, citing *China Banking Corp. v. Court of Appeals, et al.*, 162 Phil. 505 (1976) and *Gohu v. Spouses Gohu*, 397 Phil. 126 (2000).

[39] *Philippine Transmarine Carriers, Inc. v. Court of Appeals*, G.R. No. 122346, 18 February 2000, 326 SCRA 18, 27, citing *Aguilar v. Court of Appeals*, 227 SCRA 472 (1993).

2003 pre-trial has not received any word from the respondent would logically, as it did, proceed with the hearing.

Respondent tries in vain to reason out that by allowing Philamlife to present its evidence *ex parte*, his right to due process was denied.

"The essence of due process is to be found in the reasonable opportunity to be heard and submit any evidence one may have in support of one's defense. Where the opportunity to be heard, either through verbal arguments or pleadings, is accorded, and the party can present its side or defend its interest in due course, there is no denial of procedural due process."[40]

Respondent had been given more than enough time to present his evidence. The pre-trial date was reset four (4) times for a total period of 6 months before the trial court allowed Philamlife to present its evidence *ex parte* when respondent failed to appear on the scheduled date.

With respect to the trial court's order for respondent to pay ₱1,122,781.66 representing the amount of his outstanding debit balance, we affirm its findings which were based on records presented by Philamlife. As a consequence of respondent's non-appearance, he was deemed to have waived his right to present his own evidence, if there was any.

We overturn the ruling of the Court of Appeals on the foregoing basis.

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[40] *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*, G.R. No. 151963, 9 September 2004, 438 SCRA 51, 66-67, citing *Ramoran v. Jardine CMG Life Insurance Co., Inc.*, 383 Phil. 83, 99, February 22, 2000, per De Leon Jr., *J.* (citing *Oil and Natural Gas Commission v. CA*, 354 Phil. 830, 848, July 23, 1998, per Martinez, *J.*). See *Salonga v. CA, supra*, p. 528, per Panganiban, *J.*; *Villa Rhecar Bus v. De la Cruz*, 157 SCRA 13, 16, January 7, 1988, per Gancayco, *J.*; *Producers Bank of the Philippines v. CA, supra*, p. 826, per Carpio, *J.*; *Salonga v. CA, supra*, p. 528, per Panganiban, *J.* See *Mutuc v. CA*, 190 SCRA 43, 49, September 26, 1990, per Paras, *J.* (citing *Juanita Yap Say v. IAC*, 159 SCRA 325, 327, March 28, 1988, per Sarmiento, *J.*; *Richards v. Asoy*, 152 SCRA 45, 49, July 9, 1987; and *Tajonera v. Lamaroza*, 110 SCRA 438, 448, December 19, 1981.

WHEREFORE, the Decision dated 28 September 2007, as well as the Resolution dated 6 March 2008 of the Court of Appeals in CA-G.R. CV No. 82353 are *REVERSED* and *SET ASIDE*. The Orders dated 3 June 2003 and 24 November 2003 and the Decision dated 24 February 2004 of the Regional Trial Court of Manila ordering respondent Joseph Enario to pay Philamlife ₱1,122,781.66 are *REINSTATED*.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Del Castillo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 186494. September 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROY ALCAZAR *y* MIRANDA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; REVIEW OF RAPE CASES; THE COURT IS GUIDED BY WELL-ESTABLISHED PRINCIPLES.— In the disposition and review of rape cases, therefore, this Court is guided by these well-established principles laid down in a *catena* of cases: (1) the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction; (2) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense; (3) unless there are special reasons, the findings of trial courts, especially

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[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal; (4) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and (5) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; EVALUATION THEREOF BEST ADDRESSED TO TRIAL JUDGE.— Time and again, this Court has consistently held that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. Generally, appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value, or gravely abused its discretion, which certainly is not the case here.

3. ID.; ID.; ID.; ID.; RAPE VICTIM'S TESTIMONY GIVEN IN A CANDID AND STRAIGHTFORWARD MANNER FOUND CREDIBLE; CASE AT BAR.— The transcribed notes reveal that AAA's testimony was given in a candid, categorical and straightforward manner and despite the grueling cross-examination, she never faltered in her testimony. With tears in her eyes, AAA recounted the details of her harrowing experience in the hands of appellant. She categorically described before the court *a quo* how the appellant got closer to her in the attic followed by appellant's act of removing her clothes and his own clothes and the successful penetration of appellant's penis into her vagina. AAA went further by stating that while appellant was making a push and pull movement, her cousin, CCC, suddenly arrived and called out for her, but appellant denied that she was there in the attic. Once her cousin left, appellant again removed her clothes, inserted his penis into her vagina and made a push and pull movement until something sticky came out from his penis. Worthy to note were the tears shed by AAA while giving an account of her awful experience in the hands of her ravisher before the court *a quo*. To the

mind of this Court, such tears were a clear indication that she was telling the truth. AAA, young as she is, would not endure the pain and the difficulty of a public trial wherein she had to narrate over and over again how her person was violated if she has not in truth been raped and impelled to seek justice for what the appellant had done to her.

4. ID.; ID.; ID.; UNNATURAL FOR A MOTHER TO USE HER DAUGHTER AS AN ENGINE OF MALICE; CASE AT BAR.— It must be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, especially in this case where the victim and the offender are relatives. It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma.

5. ID.; ID.; ID.; FAILURE TO SHOUT FOR HELP; PEOPLE REACT DIFFERENTLY IN STARTLING SITUATIONS; CASE AT BAR.— In the same breath, AAA's failure to shout for help or make an outcry at the time appellant is raping her does not in anyway cast doubt on her credibility and on the truthfulness of her testimony. Also, such failure of AAA does not negate rape. The workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations. It is also borne by the records that AAA failed to shout or make an outcry because of appellant's threat that she would be punched if she would so shout. Notably, AAA was just 10 years old at the time appellant raped her while appellant was already a full-grown 30-year old adult male. As described by the trial court, AAA has a "fragile-looking physical built (sic)" while appellant has a "robust physique." Such physical disparity alone between appellant and AAA was enough reason for the latter to easily succumb to the former's vile desires. And, much more, there was threat of harm upon her.

6. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ABSENCE OF STRUGGLE OR AN OUTCRY FROM THE VICTIM IS IMMATERIAL TO THE RAPE OF A CHILD BELOW 12 YEARS OF AGE; CASE AT BAR.— Besides, the absence of struggle or an outcry from the victim is immaterial to the rape of a child below 12 years of age

because the law presumes that such a victim, on account of her tender age, does not and cannot have a will of her own.

7. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; RAPE; CREDIBLE TESTIMONY OF VICTIM CORROBORATED BY MEDICAL EXAMINATION FINDINGS; CASE AT BAR.— With the foregoing, this Court is well convinced and is in full conformity with the findings of both lower courts that AAA's testimony, standing alone, passed the test of credibility. Even more, when such testimony is corroborated by medical findings of penile invasion. Thus, as explained by the Court of Appeals, even if CCC's testimony failed to clearly establish the presence of AAA at the attic at the time she saw appellant there, the latter's conviction still stands on account of AAA's credible testimony corroborated by the physical findings of penetration.

8. ID.; EVIDENCE; DOCUMENTARY EVIDENCE; AFFIDAVITS OF DESISTANCE; LOOKED UPON BY COURT WITH DISFAVOR; CASE AT BAR.— It has been repeatedly held by this Court that it looks with disfavor on affidavits of desistance. The rationale for this was extensively discussed in *People v. Junio*, cited in *People v. Alicante.* x x x In the instant case, records disclose that AAA, who was then 10 years old, and her mother, who has only reached Grade VI, signed the Affidavit of Desistance without understanding its contents as nobody explained it to them. Such lack of knowledge as regards the contents of the affidavit was clearly manifested in the statement of AAA's mother that she signed the said affidavit because appellant raped her daughter. Even AAA repeatedly declared that she filed the case against appellant because he raped her and that she really wanted to pursue her case against him. AAA also divulged that she signed the affidavit because somebody asked her to sign it despite the fact that she did not understand its contents. She likewise signed it in the presence of appellant's mother who even asked her to stop the case against her son. Given these circumstances, the affidavit of desistance is clearly worthless.

9. ID.; ID.; DENIAL AND ALIBI; INHERENTLY WEAK; CANNOT PREVAIL OVER POSITIVE TESTIMONY; CASE AT BAR.— In comparison to the overwhelming evidence of the prosecution, appellant could only muster the defense of denial and *alibi*.

As this Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the appellant was the author of the crime charged.

10. ID.; CRIMINAL PROCEDURE; RELATIONSHIP; MUST BE ALLEGED IN INFORMATION; CASE AT BAR.— The appellate court is correct in not appreciating the special qualifying circumstance of relationship that would make the crime qualified statutory rape. The allegation that AAA is appellant's sister-in-law is not specific enough to satisfy the special qualifying circumstance of relationship. It bears stressing that if the offender is merely a relation – not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim – it must be alleged in the information that he is a **relative by consanguinity or affinity, as the case may be, within the third civil degree**. In the Information in this case that relationship by consanguinity or affinity within the third civil degree was not alleged. As a consequence thereof, appellant can only be held liable for simple statutory rape, which is punishable by *reclusion perpetua*.

11. CRIMINAL LAW; REVISED PENAL CODE; RAPE; PENALTIES; CIVIL INDEMNITY; MANDATORY UPON FINDING OF THE FACT OF RAPE.— Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.

12. ID.; ID.; ID.; ID.; ID.; MORAL DAMAGES; SHOULD BE AWARDED WITHOUT NEED OF SHOWING THAT THE VICTIM SUFFERED TRAUMA OF RAPE.— In the same way, moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.

13. ID.; ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; WHEN AWARDED; CASE AT BAR.— The appellate court properly deleted the award of exemplary damages to AAA. Under Article 2230 of the Civil Code, exemplary damages may also be imposed when the crime was committed with one or

more aggravating circumstances. In this case, no aggravating circumstance can be appreciated to warrant the award of exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

For review is the Decision[1] dated 14 March 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02236, which modified the Decision[2] dated 8 November 2005 of the Regional Trial Court (RTC) of Legazpi City, 5th Judicial Region, Branch 9, in Criminal Case No. FC-00-319, finding herein appellant Roy Alcazar *y* Miranda guilty beyond reasonable doubt of qualified statutory rape under Article 266-A of the Revised Penal Code, as amended, in relation to Article 266-B of the same Code, committed against AAA[3] and imposing upon him the supreme penalty of death. The appellate court instead found appellant guilty of simple statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended, and sentenced

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[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Lucenito N. Tagle and Ricardo R. Rosario, concurring. *Rollo*, pp. 3-20.

[2] Penned by Presiding Judge Ruben B. Carretas. CA *rollo*, pp. 26-36.

[3] This is pursuant to the ruling of this Court in *People v. Cabalquinto* [G.R. No. 167693, 19 September 2006, 502 SCRA 419], wherein this Court resolved to withhold the real name of the victim-survivor and to use fictitious initials instead to represent her in its decisions. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. The names of such victims, and of their immediate family members other than the accused, shall appear as "AAA," "BBB," "CCC," and so on. Addresses shall appear as "XXX" as in "No. XXX Street, XXX District, City of XXX."

him to suffer the penalty of *reclusion perpetua*. The appellate court further deleted the award of exemplary damages awarded by the trial court to AAA. The appellate court, however, affirmed the trial court's award of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to AAA.

Appellant Roy Alcazar *y* Miranda was charged with raping AAA in an Information[4] dated 27 June 2001, which reads:

> That on about the 25th day of June, 2001, in the City of x x x, Philippines, and within the jurisdiction of this Honorable Court, the above-named [appellant], did then and there wilfully *(sic)*, unlawfully and feloniously have carnal knowledge of his 10-year old sister-in-law, AAA against her will, which act debase, degrade and demean the intrinsic worth and dignity of the said minor as a human being, to her damage and prejudice.[5]

Upon arraignment, appellant, assisted by counsel *de oficio*, pleaded NOT GUILTY to the crime charged. Trial ensued thereafter.

The prosecution presented the following witnesses, namely: AAA, the private offended party; BBB, the mother of AAA; CCC, the cousin of AAA; and Dr. Sarah Bongao Vasquez (Dr. Vasquez), the examining physician who conducted a medical examination on AAA. AAA, BBB and CCC were likewise presented as rebuttal witnesses.

As culled from the records and testimonies of aforesaid prosecution witnesses, the factual antecedents of this case are as follows:

The Supreme Court took note of the legal mandate on the utmost confidentiality of proceedings involving violence against women and children set forth in Sec. 29 of Republic Act No. 7610, otherwise known as *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*; Sec. 44 of Republic Act No. 9262, otherwise known as *Anti-Violence Against Women and Their Children Act of 2004*; and Sec. 40 of A.M. No. 04-10-11-SC, known as *Rule on Violence Against Women and Their Children* effective 15 November 2004.

[4] CA *rollo*, pp. 13-14.

[5] *Id.*

Sometime in the afternoon of 25 June 2001, while AAA, who was then 10 years old,[6] was sweeping the floor of their house located in XXX, XXX City, when appellant arrived. AAA immediately climbed to the attic of their house to escape from appellant for fear that the latter would again do something wrong to her. Unfortunately, appellant was able to get closer to her in the attic. Appellant then removed AAA's clothes and subsequently took off his own clothes. At once, appellant licked AAA's vagina. He thereafter inserted his penis into AAA's vagina and made a push and pull movement. AAA did not shout as the appellant threatened to punch her if she does.[7]

At this juncture, CCC suddenly came into the house of AAA. CCC called out for AAA believing that the latter was just in the attic. Upon hearing CCC, appellant, instantly responded that AAA was not there as he had sent her for some errands. CCC noticed from the voice of appellant that he was gasping and seemed tired. While appellant was busy answering CCC's queries, AAA began putting on her clothes. CCC then observed from the opening in the attic that somebody was struggling. She subsequently saw a portion of the dress AAA was wearing on that particular day. With that, CCC hesitantly left the house.[8]

Right away, appellant, once again, removed AAA's clothes. He then inserted his penis into AAA's vagina and made a push and pull movement. Afterwards, appellant ejaculated. Satisfied, appellant put on his clothes. AAA likewise put on her clothes. AAA did not tell anyone about her ordeal.[9]

The following day, BBB was awakened by her sister, DDD, who is CCC's mother and to whom CCC revealed what she had observed in the house of AAA. DDD went to BBB to tell the latter that AAA was raped by appellant. AAA was also awakened by DDD and the former then narrated to her mother, BBB, and to her aunt, DDD, what the appellant did to her.

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[6] As evidenced by her Certificate of Live Birth. Records, p. 129.

[7] TSN, 4 January 2002, pp. 6-10.

[8] TSN, 11 September 2001, pp. 7-10; TSN, 4 January, pp. 9-10.

[9] TSN, 4 January 2002, pp. 11-12.

They subsequently went to the police station to file a complaint against appellant.[10]

AAA was also subjected to medical examination[11] by Dr. Vasquez, one of the Officers of the city health office of Legazpi City. Her examination on AAA revealed healed hymenal lacerations at 6 o'clock and 12 o'clock positions.[12] These findings were reduced into writing as evidenced by a Medico-Legal Report[13] dated 27 June 2001.

Appellant was the lone witness for the defense. He denied having raped AAA and offered a different version of the case.

According to appellant, in the afternoon of 25 June 2001, he was at the old market place in Legazpi City, when his wife, the sister of AAA, arrived and requested him to fetch their daughter, who was then at AAA's residence in XXX, XXX City. At first, appellant refused as he still had things to sell and pay but he later on acceded because of his wife's incessant request. Appellant then proceeded to AAA's residence and fetched his daughter. Thereafter, he left the house, together with his daughter, and they went to Albay Park.[14]

Appellant claimed that the possible reason why he was charged with rape was the misunderstanding between him and AAA's uncle, EEE. Appellant averred that on 25 June 2000, he caught his wife inside a theater with another man. He then went to the house of his in-laws to tell them about what he saw and it so happened that EEE was there. He told EEE about it but the latter told him not to lay hands on his wife, otherwise, something wrong will happen to him. After the incident, he did not frequent his in-laws' place anymore.[15]

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[10] TSN, 11 September 2001, p. 10; TSN, 2 October 2001, pp. 10-13; TSN, 4 January 2002, pp. 12-13.

[11] TSN, 2 October 2001, p. 16; TSN, 4 January 2002, p. 16.

[12] TSN, 9 July 2002, pp. 3-6.

[13] Records, p. 131.

[14] TSN, 9 July 2004, pp. 4-6.

[15] *Id.* at 6-7.

After trial, the RTC rendered a Decision dated 8 November 2005 giving credence to the testimonies of the prosecution witnesses and rejecting the defense of denial adduced by appellant. The trial court thus decreed:

> WHEREFORE, judgment is hereby rendered in this case finding [appellant] **ROY ALCAZAR guilty beyond reasonable doubt of the crime of Statutory Rape aggravated by the presence of qualifying circumstances of minority and relationship by affinity within the third civil degree**, without any mitigating circumstance, pursuant to Article 266-A in relation to Article 266-B of the Revised Penal Code. Accordingly, said [appellant] is hereby sentenced to suffer the supreme penalty of **DEATH** including all the accessory penalties provided by law and to pay the cost.
>
> [Appellant] Alcazar is further sentenced to pay the victim the sum of ₱50,000.00 as civil indemnity, moral damages in the amount of ₱50,000.00 and exemplary damages in the amount of ₱25,000.00 to deter commission of similar offense and for public good and welfare.[16] [Emphasis supplied].

The records of this case were originally transmitted to this Court on appeal. In view, however, of this Court's ruling in *People v. Mateo*,[17] the records were transferred to the Court of Appeals for intermediate review.

In his brief, appellant's lone assignment of error was: *the trial court gravely erred in convicting the [appellant] of the crime charged notwithstanding the fact that his guilt was not proven beyond reasonable doubt.*[18]

On 14 March 2008, the Court of Appeals rendered the assailed Decision modifying the Decision of the trial court and finding appellant guilty beyond reasonable doubt of simple statutory rape. The Court of Appeals disposed of the case as follows:

> WHEREFORE, with the **MODIFICATION** finding appellant guilty of simple statutory rape under Article 266-A, paragraph 1(d) of

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[16] *Id.* at 36.

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

[18] CA *rollo*, p. 45.

the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua*, and further **DELETING** the award of exemplary damages, the appealed Decision in Criminal Case No. FC-00-319 is **AFFIRMED** in all other respects. Costs against appellant.[19] [Emphasis supplied].

Aggrieved, appellant appealed to this Court the aforesaid appellate court's Decision.

In a Resolution[20] dated 15 April 2009, this Court required the parties to simultaneously submit their respective supplemental briefs if they so desire. Instead of filing their supplemental briefs, the Office of the Solicitor General and the appellant manifested that they were adopting their respective briefs filed with the Court of Appeals as their supplemental briefs.

After a careful perusal of the records, this Court affirms appellant's conviction for simple statutory rape.

It is well-entrenched that a rape charge is a serious matter with pernicious consequences both for appellant and complainant; hence, utmost care must be taken in the review of a decision involving conviction of rape.[21] In the disposition and review of rape cases, therefore, this Court is guided by these well-established principles laid down in a *catena* of cases: (1) the prosecution has to show the guilt of the accused by proof beyond reasonable doubt or that degree of proof that, to an unprejudiced mind, produces conviction; (2) the evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the evidence of the defense; (3) unless there are special reasons, the findings of trial courts, especially regarding the credibility of witnesses, are entitled to great respect and will not be disturbed on appeal; (4) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; and (5) in view of the intrinsic nature of the crime of rape where only

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[19] *Rollo,* p. 19.

[20] *Id.* at 26-27.

[21] *People v. Somodio*, 427 Phil. 363, 373 (2002).

two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution.[22]

In this case, appellant vehemently contends that reasonable doubt exists as to his guilt because CCC, one of prosecution witnesses, never actually saw him with AAA at the attic at the time the alleged rape incident happened. Moreover, AAA's testimony was neither credible nor consistent with human nature as she could easily shout and ask for help had she wanted to, but she failed to do so.

Time and again, this Court has consistently held that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not.[23] Generally, appellate courts will not interfere with the trial court's assessment in this regard, absent any indication or showing that the trial court has overlooked some material facts of substance or value, or gravely abused its discretion,[24] which certainly is not the case here.

The transcribed notes reveal that AAA's testimony was given in a candid, categorical and straightforward manner and despite the grueling cross-examination, she never faltered in her testimony. With tears in her eyes,[25] AAA recounted the details of her harrowing experience in the hands of appellant. She categorically described before the court *a quo* how the appellant got closer to her in the attic followed by appellant's act of removing her clothes and his own clothes and the successful penetration of appellant's penis into her vagina. AAA went further by stating that while appellant was making a push and pull

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[22] *People v. San Antonio, Jr.*, G.R No. 176633, 5 September 2007, 532 SCRA 411, 424-425.

[23] *People v. Pascual*, 433 Phil. 49, 61 (2002).

[24] *People v. Sabiyon*, 437 Phil. 594, 615 (2002).

[25] TSN, 4 January 2002, p. 7.

movement, her cousin, CCC, suddenly arrived and called out for her, but appellant denied that she was there in the attic. Once her cousin left, appellant again removed her clothes, inserted his penis into her vagina and made a push and pull movement until something sticky came out from his penis.

Worthy to note were the tears shed by AAA while giving an account of her awful experience in the hands of her ravisher before the court *a quo*. To the mind of this Court, such tears were a clear indication that she was telling the truth. AAA, young as she is, would not endure the pain and the difficulty of a public trial wherein she had to narrate over and over again how her person was violated if she has not in truth been raped and impelled to seek justice for what the appellant had done to her. As it has been repeatedly held, no woman would want to go through the process, the trouble and the humiliation of trial for such a debasing offense unless she actually has been a victim of abuse and her motive is but a response to the compelling need to seek and obtain justice.[26]

In the same breath, AAA's failure to shout for help or make an outcry at the time appellant is raping her does not in anyway cast doubt on her credibility and on the truthfulness of her testimony. Also, such failure of AAA does not negate rape. The workings of the human mind under emotional stress are unpredictable, such that people react differently to startling situations.[27] It is also borne by the records that AAA failed to shout or make an outcry because of appellant's threat that she would be punched if she would so shout. Notably, AAA was just 10 years old at the time appellant raped her while appellant was already a full-grown 30-year old adult male. As described by the trial court, AAA has a "fragile-looking physical built (sic)" while appellant has a "robust physique."[28] Such physical disparity alone between appellant and AAA was enough reason for the latter to easily succumb to the former's vile desires.

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[26] *People v. Laboa*, G.R. No. 185711, 24 August 2009, 596 SCRA 733, 742.

[27] *People v. Madronio*, 455 Phil. 39, 59 (2003).

[28] CA *rollo*, p. 32.

And, much more, there was threat of harm upon her. Besides, the absence of struggle or an outcry from the victim is immaterial to the rape of a child below 12 years of age because the law presumes that such a victim, on account of her tender age, does not and cannot have a will of her own.[29]

The result of AAA's medical examination corroborated her testimony of defilement. The medical findings of Dr. Vasquez revealed two healed hymenal lacerations on AAA's private part, which findings are consistent with AAA's testimony that appellant twice inserted his penis into her vagina. Where a victim's testimony is corroborated by the physical findings of penetration, there is sufficient basis for concluding that sexual intercourse did take place.[30]

With the foregoing, this Court is well convinced and is in full conformity with the findings of both lower courts that AAA's testimony, standing alone, passed the test of credibility. Even more, when such testimony is corroborated by medical findings of penile invasion. Thus, as explained by the Court of Appeals, even if CCC's testimony failed to clearly establish the presence of AAA at the attic at the time she saw appellant there, the latter's conviction still stands on account of AAA's credible testimony corroborated by the physical findings of penetration.

This Court finds unmeritorious appellant's argument that if he really raped AAA, the latter and her mother would not have executed and signed an Affidavit of Desistance.[31]

It has been repeatedly held by this Court that it looks with disfavor on affidavits of desistance. The rationale for this was extensively discussed in *People v. Junio*,[32] cited in *People v. Alicante*.[33]

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[29] *People v. Malones*, 469 Phil. 301, 325-326 (2004).

[30] *People v. Corpuz*, G.R. No. 168101, 13 February 2006, 482 SCRA 435, 448.

[31] Records, p. 179.

[32] G.R. No. 110990, 23 October 1994, 237 SCRA 826, 834.

[33] 388 Phil. 233 (2000).

x x x We have said in so many cases that **retractions are generally unreliable** and are looked upon with disfavor by the courts. The unreliable character of this document is shown by the fact that it is quite incredible that after going through the process of having the [appellant] arrested by the police, positively identifying him as the person who raped her, enduring the humiliation of a physical examination of her private parts, and then repeating her accusations in open court by recounting her anguish, [the rape victim] would suddenly turn around and declare that [a]fter a careful deliberation over the case, (she) find(s) that the same does not merit or warrant criminal prosecution.

Thus, we have declared that at most the **retraction is an afterthought which should not be given probative value**. It would be a dangerous rule to reject the testimony taken before the court of justice simply because the witness who gave it later on changed his mind for one reason or another. Such a rule would make a solemn trial a mockery and place the investigation at the mercy of unscrupulous witnesses. Because **affidavits of retraction can easily be secured from poor and ignorant witnesses, usually for monetary consideration, the Court has invariably regarded such affidavits as exceedingly unreliable**.[34] [Emphasis supplied].

In the instant case, records disclose that AAA, who was then 10 years old, and her mother, who has only reached Grade VI, signed the Affidavit of Desistance without understanding its contents as nobody explained it to them. Such lack of knowledge as regards the contents of the affidavit was clearly manifested in the statement of AAA's mother that she signed the said affidavit because appellant raped her daughter.[35] Even AAA repeatedly declared that she filed the case against appellant because he raped her and that she really wanted to pursue her case against him. AAA also divulged that she signed the affidavit because somebody asked her to sign it despite the fact that she did not understand its contents. She likewise signed it in the presence of appellant's mother who even asked her to stop the case against her son.[36] Given these circumstances, the affidavit of desistance is clearly worthless.

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[34] *Id.* at 255.

[35] TSN, 15 February 2005, pp. 13-16.

[36] *Id.* at 20-29.

As a last effort, appellant maintains that the charge of rape against him was the result of a misunderstanding between him and AAA's uncle.

This is far removed from reality.

It must be emphasized that no member of a rape victim's family would dare encourage the victim to publicly expose the dishonor to the family unless the crime was in fact committed, especially in this case where the victim and the offender are relatives.[37] It is unnatural for a mother to use her daughter as an engine of malice, especially if it will subject her child to embarrassment and lifelong stigma.[38]

In comparison to the overwhelming evidence of the prosecution, appellant could only muster the defense of denial and *alibi*. As this Court has oft pronounced, both denial and *alibi* are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the appellant was the author of the crime charged.[39]

With all the foregoing, this Court is convinced that the appellate court properly convicted appellant for the crime of simple statutory rape[40] and correctly imposed upon him the penalty of *reclusion perpetua*.[41]

The appellate court is correct in not appreciating the special qualifying circumstance of relationship that would make the

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[37] *People v. Flores*, 448 Phil. 840, 855-856 (2003).

[38] *People v. Ibarrientos*, 476 Phil. 493, 512 (2004).

[39] *People v. Veloso*, 386 Phil. 815, 825 (2000).

[40] ART. 266-A. *Rape: When and How Committed*. – Rape is committed:

1) By a man who have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

d) When the offended party is under twelve (12) years of age x x x (Revised Penal Code).

[41] ART. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. (Revised Penal Code).

crime qualified statutory rape. The allegation that AAA is appellant's sister-in-law is not specific enough to satisfy the special qualifying circumstance of relationship. It bears stressing that if the offender is merely a relation – not a parent, ascendant, step-parent, or guardian or common law spouse of the mother of the victim – it must be alleged in the information that he is a **relative by consanguinity or affinity, as the case may be, within the third civil degree**. In the Information in this case that relationship by consanguinity or affinity within the third civil degree was not alleged.[42] As a consequence thereof, appellant can only be held liable for simple statutory rape, which is punishable by *reclusion perpetua*.

The awards of the appellate court to AAA of civil indemnity in the amount of ₱50,000.00 and of moral damages in the same amount were also proper. Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[43] In the same way, moral damages in rape cases should be awarded without need of showing that the victim suffered trauma of mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital at the trial by the victim, since we even assume and acknowledge such agony as a gauge of her credibility.[44]

The appellate court properly deleted the award of exemplary damages to AAA. Under Article 2230 of the Civil Code, exemplary damages may also be imposed when the crime was committed with one or more aggravating circumstances.[45] In this case, no aggravating circumstance can be appreciated to warrant the award of exemplary damages.

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[42] *People v. Ferolino*, 386 Phil. 161, 179 (2000).

[43] *People v. Callos*, 424 Phil. 506, 516 (2002).

[44] *People v. Laboa*, *supra* note 26 at 744-745 citing *People v. Docena*, 379 Phil. 903, 918 (2000).

[45] *Nueva España v. People*, 499 Phil. 547, 559 (2005).

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02236 dated 14 March 2008, finding herein appellant guilty beyond reasonable doubt of the crime of simple statutory rape is hereby *AFFIRMED in toto*.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 191000. September 15, 2010]

JAREN TIBONG *y* CULLA-AG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; GENERAL PROVISIONS; ATTEMPTED FELONIES; NOT ALL ACTS OF EXECUTION WERE PERFORMED.— Under Article 6 of the Revised Penal Code, there is an *attempt* to commit a felony when the offender commences its commission directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

2. ID.; ID.; RAPE *VIS-À-VIS* ACTS OF LASCIVIOUSNESS.— While rape and acts of lasciviousness have the same nature, they are fundamentally different. For in rape, there is the intent

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[*] Per Special Order No. 884, Associate Justice Conchita Carpio Morales is designated as an additional member of the First Division in place of Associate Justice Teresita J. Leonardo-De Castro, who is on Official Leave.

to lie with a woman, whereas in acts of lasciviousness, this element is absent.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; PETITIONER TIBONG'S OVERT ACTS SHOWING HIS INTENT TO LIE WITH THE OFFENDED PARTY WAS PUT TO LIGHT; CASE AT BAR.— Ironically, during the defense's cross examination of AAA, the existence of petitioner's overt acts showing his intent to lie with her was put to light. x x x Petitioner's acts, as narrated by AAA, far from being mere obscene or lewd, indisputably show that he intended to have, and was bent on consummating, carnal knowledge of AAA.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Jaren Tibong *y* Culla-ag (petitioner) was indicted for attempted rape allegedly committed as follows:

That on or about the 14th [*sic*][1] day of April 2006, at Betag, Municipality of La Trinidad, Province of Benguet, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, did then and there willfully, unlawfully and feloniously try and attempt to rape [AAA[2]] while the latter was sleeping and therefore unconscious, by removing the latter's pajama and panty, and thereafter holding her vagina and fondling her breasts,

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[1] Should be 17th.

[2] The real name of the private complainant is withheld per Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*); R.A. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and A.M. No. 04-10-11-SC effective November 15, 2004 (*Rule on Violence Against Women and Their Children*). *Vide*: *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-423.

and endeavor to have sexual intercourse with her against her will and consent, thereby commencing in the execution of the crime of rape but did not perform all the acts of execution which should have produced the felony as a consequence by reason that the offended party was awakened, defended herself and escaped from him, which cause is not his spontaneous desistance, to the damage and prejudice of the said [AAA].

That the accused and [AAA] are relatives within the 3rd civil degree.[3] (Underscoring supplied)

On April 17, 2006, then 18-year-old AAA, a college student at the Benguet State University, was at the house owned by petitioner's parents at Betag, La Trinidad, Benguet where she was boarding. She occupied a room at the 3-bedroom basement.[4] One of the rooms was occupied by petitioner and his wife. The third room was unoccupied.

From the account of AAA, the following transpired:

Days before the incident, petitioner's wife left the house after a misunderstanding with him. Before midnight of April 17,[5] 2006, petitioner arrived and repaired to the sofa at the basement's living room. AAA thereafter fell asleep but was awakened at about midnight as she "felt someone was undressing [her]."[6] She saw petitioner, her first cousin (her father and his mother being siblings), wearing only "briefs" and "crouching over [her]," "on top of [her] bed," and pulling down her pajamas and panties.[7]

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[3] Information, records, pp. 1-2.

[4] TSN, January 17, 2007, pp. 2-3, 5.

[5] The trial court noted in its decision that the Information wrongly alleged the date of the incident complained of as April 14, 2006, when the sworn complaint of private complainant AAA and her testimony in court indicate that the incident happened about 12:00 midnight of April 17, 2006. It ruled that such defect is not fatal as "the date of commission is not an essential element of the crime of rape, what is material being the occurrence of the rape," citing ***People v. Lozano*** (G.R. No. 127122, July 20, 1999, 310 SCRA 707, 716-717). Besides, the defense never objected to such error.

[6] TSN, March 20, 2007, p. 6.

[7] *Id.* at 6-7, 12.

She asked appellant why he was doing that, to which he replied that "[they] will have sexual intercourse" and keep it a secret. She retorted if he was not sickened about it, to which he replied that she need not be bothered about their being cousins.[8]

Continuing, AAA narrated:

She resisted and pulled up her pajamas and panties, but appellant pulled them down to her knees and mashed her breasts. He soon told her that they would watch a "bold" movie and apply what they watched.[9] She struggled to free herself, but he forced her to lie down. She tried to shout for help, but he covered her mouth.

AAA further recounted:

Petitioner thereafter went towards the compact disc (CD) player which was "in front of the door of [her] room" to insert/play a CD. Finding the opportunity to escape, she grabbed her cell phone and bag which were placed on top of a table at her bedside, ran out of the house after appellant failed to restrain her, headed towards the highway, took a taxicab and proceeded to the house of her elder brother BBB[10] in Bahong, La Trinidad where she sought refuge.

The following morning (April 18), AAA, accompanied by BBB and an uncle, reported the incident to the La Trinidad Police Station where PO3 Chona P. Bugnay took down her sworn complaint.[11]

The presentation of prosecution witnesses BBB and PO3 Chona Bugnay was dispensed with, the defense having admitted the corroborative nature of their respective testimonies.

Upon the other hand, petitioner whose wife, as earlier reflected, left the house days before the incident after a quarrel

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[8] *Id.* at 7.

[9] *Id.* at 7-8.

[10] His real name is withheld per note 2.

[11] Exhibits "A" and "A-1", records, p. 5.

with him, denied the accusation. He claimed that in the afternoon of April 17, 2006 until past 1:00 A.M. of the following day (April 18), he was drinking liquor with his friend Benny Malao (Malao) in three places – first at his (petitioner's) father's house, then at Maryland, and finally at Malao's boarding house, all located at La Trinidad; and on returning home drunk early morning of April 18, he immediately went to sleep at the living room adjacent to AAA's room.[12]

Branch 62 of the Regional Trial Court (RTC) of La Trinidad, Benguet found petitioner guilty of attempted rape, as charged, disposing as follows:

> WHEREFORE, the accused must be, as he is hereby found guilty beyond reasonable doubt of the crime of attempted rape.
>
> Applying the Indeterminate Sentence Law, there being no modifying circumstance established, he is hereby imposed a penalty of imprisonment ranging from three (3) years and four (4) months of *prision correccional* medium, as minimum, to eight (8) years and six (6) months of *prision mayor* medium, as maximum.
>
> The accused is hereby ordered to pay the private complainant moral damages in the amount of Twenty Five Thousand Pesos (₱25,000.00) and to pay the costs.
>
> SO ORDERED.[13]

The Court of Appeals *affirmed* petitioner's conviction, hence, the present petition for review on *certiorari*, contending that the prosecution failed to prove petitioner's guilt beyond reasonable doubt.

Petitioner cites *Perez v. Court of Appeals*[14] which held:

> Petitioner's acts of lying on top of the complainant, embracing and kissing her, mashing her breasts, inserting his hand inside her panty and touching her sexual organ, while admittedly obscene and

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[12] TSN, July 25, 2007, pp. 4-8, 14-15, 19.

[13] Decision dated April 4, 2008, records, p. 173.

[14] G.R. No. 143838, May 9, 2002, 382 SCRA 182.

detestable acts, **do not constitute attempted rape absent any showing that petitioner actually commenced to force his penis into the complainant's sexual organ.** Rather, these acts constitute acts of lasciviousness. x x x.[15] (Emphasis and underscoring supplied)

Insisting that there was no attempted rape, petitioner argues that AAA merely testified that he told her that they would have sexual intercourse; and that "this is not equivalent to carnal knowledge, or even an attempt to have carnal knowledge," since there is no showing that he had commenced or attempted to insert his penis into her sexual organ before she fled.[16]

Under Article 6 of the Revised Penal Code, there is an *attempt* to commit a felony when the offender commences its commission directly by overt acts but does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

Article 336 of the Revised Penal Code provides:

> Any person who shall commit any act of lasciviousness upon the other person of either sex, under any of the circumstances mentioned in the preceding article [referring to Article 335 on rape], shall be punished by *prision correccional*.

While rape and acts of lasciviousness have the same nature, they are fundamentally different. For in rape, there is the intent to lie with a woman, whereas in acts of lasciviousness, this element is absent.[17]

Ironically, during the defense's cross examination of AAA, the existence of petitioner's overt acts showing his intent to lie with her was put to light. Consider the following testimony of AAA on cross examination:

Atty. Santos [defense counsel, to witness AAA]:

x x x x x x x x x

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[15] *Id.* at 190.

[16] Petition, *rollo*, p. 19.

[17] Aquino, *THE REVISED PENAL CODE*, Vol. III, 1997 ed., p. 430.

Q **He did not try to insert his penis into your vagina, Madam Witness?**
A **He was trying to force it on me but I covered my vagina.**

Q Is it not a fact that when he put down your pajama and underwear down to your knee, he was still wearing his brief?
A Sir, **his brief was already lowered down to the middle of his upper leg** (witness was illustrating by touching the middle of her upper legs).

Q **When he tried to lie on top of you, you wrestled and you tried to run out from your room. Is that correct?**
A **Yes, sir.**

x x x x x x x x x

Q And that was the time that when he opened the CD player, you took your cell phone and ran out from your room?
A Yes, sir.

Q **So in other words, Mr. Jaren Tibong had no chance of inserting his penis in your vagina because you ran out of your room already. Correct?**
A **Yes, sir.**[18] (Emphasis and underscoring supplied)

Petitioner's acts, as narrated by AAA, far from being mere obscene or lewd, indisputably show that he intended to have, and was bent on consummating, carnal knowledge of AAA.

WHEREFORE, the petition is *DENIED*. The assailed Court of Appeals Decision[19] of October 12, 2009 in CA-G.R. CR No. 31644 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Bersamin, Del Castillo,[*] *Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[18] TSN, May 16, 2007, pp. 3-4.

[19] Penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Fernanda Lampas Peralta and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 30-50.

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

SECOND DIVISION

[G.R. No. 181672. September 20, 2010]

SPS. ANTONIO & LETICIA VEGA, *petitioners, vs.* **SOCIAL SECURITY SYSTEM (SSS) & PILAR DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; RULE REQUIRING THAT THE ORIGINAL DOCUMENT MUST BE PRODUCED; EXCEPTIONS; CASE AT BAR.— The CA ruled that the Vegas were unable to prove that Reyes assigned the subject property to them, given that they failed to present the deed of assignment in their favor upon a claim that they lost it. But the rule requiring the presentation of the original of that deed of assignment is not absolute. Secondary evidence of the contents of the original can be adduced, as in this case, when the original has been lost without bad faith on the part of the party offering it. Here, not only did the Vegas prove the loss of the deed of assignment in their favor and what the same contained, they offered strong corroboration of the fact of Reyes' sale of the property to them. They took possession of the house and lot after they bought it. Indeed, they lived on it and held it in the concept of an owner for 13 years before PDC came into the picture. They also paid all the amortizations to the SSS with Antonio Vega's personal check, even those that Reyes promised to settle but did not. And when the SSS wanted to foreclose the property, the Vegas sent a manager's check to it for the balance of the loan. Neither Reyes nor any of her relatives came forward to claim the property. The Vegas amply proved the sale to them.

2. CIVIL LAW; CIVIL CODE; MORTGAGES; EFFECTS OF SALE OF MORTGAGED PROPERTY TO A THIRD PERSON DESPITE STIPULATION FORBIDDING MORTGAGOR TO SELL PROPERTY WITHOUT MORTGAGEE'S CONSENT, WHILE LOAN IS SUBSISTING; CASE AT BAR.— The CA ruled that, under Article 1237 of the Civil Code, the Vegas who paid the SSS

amortizations except the last on behalf of Reyes, without the latter's knowledge or against her consent, cannot compel the SSS to subrogate them in her rights arising from the mortgage. Further, said the CA, the Vegas' claim of subrogation was invalid because it was done without the knowledge and consent of the SSS as required under the mortgage agreement. But Article 1237 cannot apply in this case since Reyes consented to the transfer of ownership of the mortgaged property to the Vegas. Reyes also agreed for the Vegas to assume the mortgage and pay the balance of her obligation to SSS. Of course, paragraph 4 of the mortgage contract covering the property required Reyes to secure SSS' consent before selling the property. But, although such a stipulation is valid and binding, in the sense that the SSS cannot be compelled while the loan was unpaid to recognize the sale, it cannot be interpreted as absolutely forbidding her, as owner of the mortgaged property, from selling the same while her loan remained unpaid. Such stipulation contravenes public policy, being an undue impediment or interference on the transmission of property.

3. ID.; ID.; ID.; ID.; MORTGAGE CREDIT FOLLOWS THE PROPERTY WHEREVER IT GOES, EVEN IF ITS OWNERSHIP CHANGES; CASE AT BAR.— Besides, when a mortgagor sells the mortgaged property to a third person, the creditor may demand from such third person the payment of the principal obligation. The reason for this is that the mortgage credit is a real right, which follows the property wherever it goes, even if its ownership changes. Article 2129 of the Civil Code gives the mortgagee, here the SSS, the option of collecting from the third person in possession of the mortgaged property in the concept of owner.

4. ID.; ID.; ID.; ID.; ID.; FORECLOSURE; THIRD PARTY BUYER OF MORTGAGED PROPERTY BOUND BY REGISTERED MORTGAGE.— More, the mortgagor-owner's sale of the property does not affect the right of the registered mortgagee to foreclose on the same even if its ownership had been transferred to another person. The latter is bound by the registered mortgage on the title he acquired.

5. ID.; ID.; OBLIGATIONS; EXTINGUISHMENT OF; PAYMENT ENTITLES THE SPOUSES VEGAS TO BE VALIDLY SUBROGATED TO REYES' RIGHTS; CASE AT

BAR.— After the mortgage debt to SSS had been paid, however, the latter had no further justification for withholding the release of the collateral and the registered title to the party to whom Reyes had transferred her right as owner. Under the circumstance, the Vegas had the right to sue for the conveyance to them of that title, having been validly subrogated to Reyes' rights.

6. ID.; ID.; ID.; SALES; ASSIGNMENT OF CREDITS AND OTHER INCORPOREAL RIGHTS; ARTICLE 1625 IS INAPPLICABLE AS REYES SOLD TO THE SPOUSES VEGAS HER HOUSE AND LOT; CASE AT BAR.— The CA ruled that Reyes' assignment of the property to the Vegas did not bind PDC, which had a judgment credit against Reyes, since such assignment neither appeared in a public document nor was registered with the register of deeds as Article 1625 of the Civil Code required. Article 1625 reads: **Art. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property. (1526)** But Article 1625 referred to assignment of credits and other incorporeal rights. Reyes did not assign any credit or incorporeal right to the Vegas. She sold to the Vegas her house and lot. They became owner of the property from the time she executed the deed of assignment covering the same in their favor.

7. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION; ENFORCEMENT OF JUDGMENT APPLIES ONLY TO PROPERTIES OWNED BY JUDGMENT OBLIGOR.—PDC had a judgment for money against Reyes only. A court's power to enforce its judgment applies only to the properties that are indisputably owned by the judgment obligor. Here, the property had long ceased to belong to Reyes when she sold it to the Vegas in 1981.

8. CIVIL LAW; CIVIL CODE; SALES; REAL PROPERTY; OBLIGATIONS OF THE VENDEE; NOT A BUYER IN GOOD FAITH; CASE AT BAR.— Reyes acquired the property in this case through a loan from the SSS in whose favor she executed a mortgage as collateral for the loan. Although the loan was still unpaid, she assigned the property to the Vegas

without notice to or the consent of the SSS. The Vegas continued to pay the amortizations apparently in Reyes' name. Meantime, Reyes apparently got a cash loan from Apex, which assigned the credit to PDC. This loan was not secured by a mortgage on the property but PDC succeeded in getting a money judgment against Reyes and had it executed on the property. Such property was still in Reyes' name but, as pointed out above, the latter had disposed of it in favor of the Vegas more than 10 years before PDC executed on it. x x x The PDC cannot take comfort in the fact that the property remained in Reyes' name when it bought the same at the sheriff sale. The PDC cannot assert that it was a buyer in good faith since it had notice of the Vegas' claim on the property prior to such sale. Under the circumstances, the PDC must reconvey the subject property to the Vegas or, if this is no longer possible, pay them its current market value as the trial court may determine with interest of 12 percent per annum from the date of the determination of such value until it is fully paid.

9. ID.; ID.; ID.; ID.;ID.; THE TRIAL COURT WAS CORRECT IN AWARDING THE SPOUSES VEGAS DAMAGES AND ATTORNEY'S FEES; CASE AT BAR.—Further, considering the distress to which the Vegas were subjected after the unlawful levy on their property, aggravated by their subsequent ouster from it through a writ of possession secured by PDC, the RTC was correct in awarding the Vegas moral damages of ₱300,000.00, exemplary damages of ₱30,000.00 and attorney's fees of ₱50,000.00 plus costs of the suit. But these are to be borne solely by PDC considering that the SSS had nothing to do with the sheriff's levy on the property. It released the title to the PDC simply because it had a sheriff's sale in its favor. The PDC is, however, entitled to reimbursement from the Vegas of the sum of ₱37,820.15 that it paid to the SSS for the release of the mortgaged title.

APPEARANCES OF COUNSEL

Cacho & Chua Law Offices for petitioners.
Legal Department (SSS) for SSS.
Ma. Luwalhati C. Cruz for Pilar Development Corporation.

D E C I S I O N

ABAD, *J.*:

This case is about the lack of authority of a sheriff to execute upon a property that the judgment obligor had long sold to another although the registered title to the property remained in the name of the former.

The Facts and the Case

Magdalena V. Reyes (Reyes) owned a piece of titled land[1] in Pilar Village, Las Piñas City. On August 17, 1979 she got a housing loan from respondent Social Security System (SSS) for which she mortgaged her land.[2] In late 1979, however, she asked the petitioner spouses Antonio and Leticia Vega (the Vegas) to assume the loan and buy her house and lot since she wanted to emigrate.[3]

Upon inquiry with the SSS, an employee there told the Vegas that the SSS did not approve of members transferring their mortgaged homes. The Vegas could, however, simply make a private arrangement with Reyes provided they paid the monthly amortizations on time. This practice, said the SSS employee, was commonplace.[4] Armed with this information, the Vegas agreed for Reyes to execute in their favor a deed of assignment of real property with assumption of mortgage and paid Reyes ₱20,000.00 after she undertook to update the amortizations before leaving the country. The Vegas then took possession of the house in January 1981.[5]

But Reyes did not readily execute the deed of assignment. She left the country and gave her sister, Julieta Reyes Ofilada

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[1] Transfer Certificate of Title (TCT) 81689 (later S-91678).

[2] *Rollo*, p. 59; records, pp. 475-476.

[3] TSN, May 23, 2000, pp. 7-8.

[4] TSN, May 21, 1998, p. 11.

[5] TSN, February 1, 1999, p. 20.

(Ofilada), a special power of attorney to convey ownership of the property. Sometime between 1983 and 1984, Ofilada finally executed the deed promised by her sister to the Vegas. Ofilada kept the original and gave the Vegas two copies. The latter gave one copy to the Home Development Mortgage Fund and kept the other.[6] Unfortunately, a storm in 1984 resulted in a flood that destroyed the copy left with them.[7]

In 1992, the Vegas learned that Reyes did not update the amortizations for they received a notice to Reyes from the SSS concerning it.[8] They told the SSS that they already gave the payment to Reyes but, since it appeared indifferent, on January 6, 1992 the Vegas updated the amortization themselves and paid ₱115,738.48 to the SSS, through Antonio Vega's personal check.[9] They negotiated seven additional remittances and the SSS accepted ₱8,681.00 more from the Vegas.[10]

Meanwhile, on April 16, 1993 respondent Pilar Development Corporation (PDC) filed an action for sum of money against Reyes before the Regional Trial Court (RTC) of Manila in Civil Case 93-6551. PDC claimed that Reyes borrowed from Apex Mortgage and Loans Corporation (Apex) ₱46,500.00 to buy the lot and construct a house on it.[11] Apex then assigned Reyes' credit to the PDC on December 29, 1992,[12] hence, the suit by PDC for the recovery of the unpaid debt. On August 26, 1993 the RTC rendered judgment, ordering Reyes to pay the PDC the loan of ₱46,398.00 plus interest and penalties beginning April 11, 1979 as well as attorney's fees and the costs.[13] Unable

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[6] TSN, November 10, 1999, pp. 7-8, 31.

[7] TSN, May 23, 2000, p. 13.

[8] Records, p. 432.

[9] As documented by SSS Special Bank Receipt 733963R.

[10] Records, pp. 23-30.

[11] Payable in 20 years in monthly amortizations and evidenced by a Promissory Note with Authority to Assign Credit dated March 10, 1979; *id.* at 37-39.

[12] *Id.* at 38.

[13] See Complaint, *id.* at 10.

to do so, on January 5, 1994 the RTC issued a writ of execution against Reyes and its Sheriff levied on the property in Pilar Village.[14]

On February 16, 1994 the Vegas requested the SSS to acknowledge their status as subrogees and to give them an update of the account so they could settle it in full. The SSS did not reply. Meantime, the RTC sheriff published a notice for the auction sale of the property on February 24, March 3 and 10, 1994.[15] He also served on the Vegas notice of that sale on or about March 20, 1994.[16] On April 5, 1994, the Vegas filed an affidavit of third party claimant and a motion for leave to admit a motion in intervention to quash the levy on the property.[17]

Still, stating that Vegas' remedy lay elsewhere, the RTC directed the sheriff to proceed with the execution.[18] Meantime, the Vegas got a telegram dated August 29, 1994, informing them that the SSS intended to foreclose on the property to satisfy the unpaid housing debt of ₱38,789.58.[19] On October 19, 1994 the Vegas requested the SSS in writing for the exact computation of the indebtedness and for assurance that they would be entitled to the discharge of the mortgage and delivery of the proper subrogation documents upon payment. They also sent a ₱37,521.95 manager's check that the SSS refused to accept.[20]

On November 8, 1994 the Vegas filed an action for consignation, damages, and injunction with application for preliminary injunction and temporary restraining order against

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[14] *Id.* at 468.

[15] *Id.* at 471.

[16] *Id.* at 56.

[17] *Id.* at 56-57.

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

[19] *Id.* at 432.

[20] *Id.* at 34-36.

the SSS, the PDC, the sheriff of RTC Branch 19, and the Register of Deeds before the RTC of Las Piñas in Civil Case 94-2943. Still, while the case was pending, on December 27, 1994 the SSS released the mortgage to the PDC.[21] And on August 22, 1996 the Register of Deeds issued TCT T-56657 to the PDC.[22] A writ of possession subsequently evicted the Vegas from the property.

On May 8, 2002 the RTC decided Civil Case 94-2943 in favor of the Vegas. It ruled that the SSS was barred from rejecting the Vegas' final payment of ₱37,521.95 and denying their assumption of Reyes' debt, given the SSS' previous acceptance of payments directly from them. The Vegas were subrogated to the rights of Reyes and substituted her in the SSS housing loan and mortgage contract. That the Vegas had the receipts show that they were the ones who made those payments. The RTC ordered the PDC to deliver to the Vegas the certificate of title covering the property. It also held the SSS and PDC solidarily liable to the Vegas for ₱300,000.00 in moral damages, ₱30,000.00 in exemplary damages, and ₱50,000.00 in attorney's fees and for costs of the suit.[23]

The SSS appealed to the Court of Appeals (CA) in CA G.R. CV 77582. On August 30, 2007 the latter court reversed the RTC decision[24] for the reasons that the Vegas were unable to produce the deed of assignment of the property in their favor and that such assignment was not valid as to PDC. Their motion for reconsideration having been denied, the Vegas filed this petition for review on *certiorari* under Rule 45.[25]

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[21] *Id.* at 478.

[22] *Id.* at 229.

[23] *Id.* at 546-553; penned by Judge Bonifacio Sanz Maceda.

[24] *Rollo*, pp. 32-42. Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[25] *Id.* at 3-30.

The Issues Presented

The issues in this case are:

1. Whether or not the Vegas presented adequate proof of Reyes' sale of the subject property to them;

2. In the affirmative, whether or not Reyes validly sold her SSS-mortgaged property to the Vegas; and

3. In the affirmative, whether or not the sheriff validly sold the same at public auction to satisfy Reyes' debt to PDC.

The Rulings of the Court

One. The CA ruled that the Vegas were unable to prove that Reyes assigned the subject property to them, given that they failed to present the deed of assignment in their favor upon a claim that they lost it.[26] But the rule requiring the presentation of the original of that deed of assignment is not absolute. Secondary evidence of the contents of the original can be adduced, as in this case, when the original has been lost without bad faith on the part of the party offering it.[27]

Here, not only did the Vegas prove the loss of the deed of assignment in their favor and what the same contained, they offered strong corroboration of the fact of Reyes' sale of the property to them. They took possession of the house and lot after they bought it. Indeed, they lived on it and held it in the concept of an owner for 13 years before PDC came into the picture. They also paid all the amortizations to the SSS with Antonio Vega's personal check, even those that Reyes promised to settle but did not. And when the SSS wanted to foreclose the property, the Vegas sent a manager's check to it for the balance of the loan. Neither Reyes nor any of her relatives came forward to claim the property. The Vegas amply proved the sale to them.

Two. Reyes acquired the property in this case through a loan from the SSS in whose favor she executed a mortgage as collateral for the loan. Although the loan was still unpaid, she assigned the

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[26] *Id.* at 39.

[27] RULES OF COURT, Rule 130, Sec. 3.

property to the Vegas without notice to or the consent of the SSS. The Vegas continued to pay the amortizations apparently in Reyes' name. Meantime, Reyes apparently got a cash loan from Apex, which assigned the credit to PDC. This loan was not secured by a mortgage on the property but PDC succeeded in getting a money judgment against Reyes and had it executed on the property. Such property was still in Reyes' name but, as pointed out above, the latter had disposed of it in favor of the Vegas more than 10 years before PDC executed on it.

The question is: was Reyes' disposal of the property in favor of the Vegas valid given a provision in the mortgage agreement that she could not do so without the written consent of the SSS?

The CA ruled that, under Article 1237[28] of the Civil Code, the Vegas who paid the SSS amortizations except the last on behalf of Reyes, without the latter's knowledge or against her consent, cannot compel the SSS to subrogate them in her rights arising from the mortgage. Further, said the CA, the Vegas' claim of subrogation was invalid because it was done without the knowledge and consent of the SSS as required under the mortgage agreement.[29]

But Article 1237 cannot apply in this case since Reyes consented to the transfer of ownership of the mortgaged property to the Vegas. Reyes also agreed for the Vegas to assume the mortgage and pay the balance of her obligation to SSS. Of course, paragraph 4 of the mortgage contract covering the property required Reyes to secure SSS' consent before selling the property. But, although such a stipulation is valid and binding, in the sense that the SSS cannot be compelled while the loan was unpaid to recognize the sale, it cannot be interpreted as absolutely forbidding her, as owner of the mortgaged property, from selling the same while her loan remained unpaid.

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[28] Art. 1237. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty.

[29] *Rollo*, p. 41.

Such stipulation contravenes public policy, being an undue impediment or interference on the transmission of property.[30]

Besides, when a mortgagor sells the mortgaged property to a third person, the creditor may demand from such third person the payment of the principal obligation. The reason for this is that the mortgage credit is a real right, which follows the property wherever it goes, even if its ownership changes. Article 2129[31] of the Civil Code gives the mortgagee, here the SSS, the option of collecting from the third person in possession of the mortgaged property in the concept of owner.[32] More, the mortgagor-owner's sale of the property does not affect the right of the registered mortgagee to foreclose on the same even if its ownership had been transferred to another person. The latter is bound by the registered mortgage on the title he acquired.

After the mortgage debt to SSS had been paid, however, the latter had no further justification for withholding the release of the collateral and the registered title to the party to whom Reyes had transferred her right as owner. Under the circumstance, the Vegas had the right to sue for the conveyance to them of that title, having been validly subrogated to Reyes' rights.

Three. The next question is: was Reyes' sale of the property to the Vegas binding on PDC which tried to enforce the judgment credit in its favor on the property that was then still mortgaged to the SSS?

The CA ruled that Reyes' assignment of the property to the Vegas did not bind PDC, which had a judgment credit against Reyes, since such assignment neither appeared in a public

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[30] *Cinco v. Court of Appeals*, G.R. No. 151903, October 9, 2009, 603 SCRA 108, 118.

[31] Art. 2129. The creditor may claim from a third person in possession of the mortgaged property, the payment of the part of the credit secured by the property which said third person possesses, in the terms and with the formalities which the law establishes.

[32] *Teoco v. Metropolitan Bank and Trust Company*, G.R. No. 162333, December 23, 2008, 575 SCRA 82, 93.

document nor was registered with the register of deeds as Article 1625 of the Civil Code required. Article 1625 reads:

Art. 1625. An assignment of a credit, right or action shall produce no effect as against third persons, unless it appears in a public instrument, or the instrument is recorded in the Registry of Property in case the assignment involves real property. (1526)

But Article 1625 referred to assignment of credits and other incorporeal rights. Reyes did not assign any credit or incorporeal right to the Vegas. She sold to the Vegas her house and lot. They became owner of the property from the time she executed the deed of assignment covering the same in their favor. PDC had a judgment for money against Reyes only. A court's power to enforce its judgment applies only to the properties that are indisputably owned by the judgment obligor.[33] Here, the property had long ceased to belong to Reyes when she sold it to the Vegas in 1981.

The PDC cannot take comfort in the fact that the property remained in Reyes' name when it bought the same at the sheriff sale. The PDC cannot assert that it was a buyer in good faith since it had notice of the Vegas' claim on the property prior to such sale.

Under the circumstances, the PDC must reconvey the subject property to the Vegas or, if this is no longer possible, pay them its current market value as the trial court may determine with interest of 12 percent per annum from the date of the determination of such value until it is fully paid. Further, considering the distress to which the Vegas were subjected after the unlawful levy on their property, aggravated by their subsequent ouster from it through a writ of possession secured by PDC, the RTC was correct in awarding the Vegas moral damages of ₱300,000.00, exemplary damages of ₱30,000.00 and attorney's fees of ₱50,000.00 plus costs of the suit. But

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[33] *Special Services Corporation v. Centro La Paz*, 206 Phil. 643, 651 (1983).

these are to be borne solely by PDC considering that the SSS had nothing to do with the sheriff's levy on the property. It released the title to the PDC simply because it had a sheriff's sale in its favor.

The PDC is, however, entitled to reimbursement from the Vegas of the sum of ₱37,820.15 that it paid to the SSS for the release of the mortgaged title.

WHEREFORE, the Court *GRANTS* the petition, *REVERSES* the assailed decision of the Court of Appeals in CA-G.R. CV 77582 dated August 30, 2007, and in its place *DIRECTS* respondent Pilar Development Corporation:

1. To convey to petitioner spouses Antonio and Leticia Vega the title to and possession of the property subject of this case, covered by Transfer Certificate of Title 56657 of the Register of Deeds of Las Piñas City, for the issuance of a new title in their names; and

2. To pay the same petitioner spouses moral damages of ₱300,000.00, exemplary damages of ₱30,000.00, and attorney's fees of ₱50,000.00.

On the other hand, the Court *DIRECTS* petitioner spouses to reimburse respondent Pilar Development Corp. the sum of ₱37,820.15, representing what it paid the respondent SSS for the release of the mortgaged certificate of title.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin,[*] and *Perez,*[**] *JJ.*, concur.

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[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 894 dated September 20, 2010.

THIRD DIVISION

[G.R. No. 183975. September 20, 2010]

GREGORIO DIMARUCOT *y* GARCIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROCEDURE IN COURT OF APPEALS; DISMISSAL OF APPEAL FOR ABANDONMENT OR FAILURE TO PROSECUTE IF APPELLANT FAILS TO FILE HIS BRIEF.— Section 8, paragraph 1, Rule 124 of the Revised Rules of Criminal Procedure, as amended, provides: SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.*—The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*.

2. ID.; ID.; ID.; ID.; APPELLANT MUST FIRST BE SERVED WITH A NOTICE TO SHOW CAUSE WHY HIS APPEAL SHOULD NOT BE DISMISSED,FOR FAILURE TO FILE APPELLANT'S BRIEF; CASE AT BAR.— It is clear under the foregoing provision that a criminal case may be dismissed by the CA *motu proprio* and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed. In the case at bar, there is no showing that petitioner was served with a notice requiring him to show cause why his appeal should not be dismissed for failure to file appellant's brief. The purpose of such a notice is to give an appellant the opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the appellate court may determine whether or not the reasons, if given, are satisfactory.

3. ID.; ID.; ID.; ID.; ID.; CA'S *MOTU PROPRIO* DISMISSAL OF APPEAL WHICH WAS CONSIDERED ABANDONED WITH

THE NON-FILING OF APPEAL BRIEF, UPHELD; CASE AT BAR.— Notwithstanding such absence of notice to the appellant, no grave abuse of discretion was committed by the CA in considering the appeal abandoned with the failure of petitioner to file his appeal brief despite four (4) extensions granted to him and non-compliance to date. x x x Petitioner never filed nor attached in the motion for reconsideration of the August 29, 2007 Resolution dismissing the appeal. The last extension given expired on June 6, 2007, without any brief submitted by petitioner or his counsel. And even when he filed the Omnibus Motion on May 8, 2008, still no appellant's brief was attached by petitioner. Neither did petitioner file any petition before this Court questioning the validity of the August 29, 2007 resolution and the November 27, 2007 denial of his motion for reconsideration. The dismissal of his appeal having become final, it was indeed too late in the day for petitioner to file the Omnibus Motion on May 8, 2008, which was **four (4) months** after the finality of the resolution dismissing the appeal. Having been afforded the opportunity to seek reconsideration and setting aside of the *motu proprio* dismissal by the CA of his appeal for non-filing of the appeal brief, and with his subsequent inaction to have his appeal reinstated after the denial of his motion for reconsideration, petitioner cannot impute error or grave abuse on the CA in upholding the finality of its dismissal order. Non-compliance with the requirement of notice or show cause order before the *motu proprio* dismissal under Section 8, paragraph 1 of Rule 124 had thereby been cured. Under the circumstances, the petitioner was properly declared to have abandoned his appeal for failing to diligently prosecute the same.

4. **ID.; ID.; ID.; ID.; ID.; ID.; APPELLANT'S INDIFFERENCE AND INACTION TO HAVE APPEAL REINSTATED AMOUNTS TO ABANDONMENT OF HIS RIGHT TO PROSECUTE APPEAL; CASE AT BAR.—** Thus, although it does not appear that the appellate court has given the appellant such notice before dismissing the appeal, if the appellant has filed a motion for reconsideration of, or to set aside, the order dismissing the appeal, in which he stated the reasons why he failed to file his brief on time and the appellate court denied the motion after considering said reasons, the dismissal was held proper. Likewise, where the appeal was dismissed without

prior notice, but the appellant took no steps either by himself or through counsel to have the appeal reinstated, such an attitude of indifference and inaction amounts to his abandonment and renunciation of the right granted to him by law to prosecute his appeal.

5. LEGAL ETHICS; ATTORNEYS; NEGLIGENCE AND MISTAKES OF COUNSEL BINDING ON CLIENT; EXCEPTIONS.— "The negligence and mistakes of counsel are binding on the client. There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property or liberty through a technicality."

6. ID.; ID.; ID.; ID.; DILIGENCE IN PROSECUTING APPEAL REQUIRED NOT ONLY FROM LAWYERS BUT ALSO FROM CLIENTS; CASE AT BAR.— "Petitioner cannot simply harp on the mistakes and negligence of his lawyer allegedly beset with personal problems and emotional depression. x x x However, in this case, we find no reason to exempt petitioner from the general rule. The admitted inability of his counsel to attend fully and ably to the prosecution of his appeal and other sorts of excuses should have prompted petitioner to be more vigilant in protecting his rights and replace said counsel with a more competent lawyer. Instead, petitioner continued to allow his counsel to represent him on appeal and even up to this Court, apparently in the hope of moving this Court with a fervent plea for relaxation of the rules for reason of petitioner's age and medical condition. Verily, diligence is required not only from lawyers but also from their clients."

7. REMEDIAL LAW; CRIMINAL PROCEDURE; PROCEDURE IN COURT OF APPEALS; GROSS NEGLIGENCE OF COUNSEL JUSTIFIES ANNULMENT OF PROCEEDINGS BELOW; COUNSEL'S FAILURE TO FILE APPELLANT'S BRIEF, NOT A CASE OF.— Negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period. Thus, we explained in *Redeña v. Court of Appeals*: In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous

counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He thus prays the Court reverse the CA and remand the main case to the court of origin for new trial. Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here. **For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below.**

8. ID.; ID.; ID.; RIGHT TO APPEAL; MERELY STATUTORY PRIVILEGE AND MAY BE EXERCISED ONLY IN ACCORDANCE WITH THE LAW.— The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.

9. ID.; RULES OF COURT; STRICT COMPLIANCE THEREWITH IS INDISPENSABLE FOR THE ORDERLY AND SPEEDY DISPOSITION OF JUSTICE.— Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

For resolution in this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Resolution[1] dated July 23, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 30466 denying petitioner's omnibus motion to reconsider the August 29, 2007 Resolution dismissing his appeal, to expunge the same from the Book of Entries of Judgment, and to give petitioner a period of thirty (30) days within which to file the appellant's brief.

The antecedents:

Petitioner is the accused in Criminal Case No. 98-M-98 for Frustrated Murder in the Regional Trial Court (RTC) of Malolos, Bulacan, under the following Information:

> That on or about the 18th day of August, 1997, in the municipality of Malolos, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with an iron pipe and with intent to kill one Angelito Rosini *y* Go, did then and there wilfully, unlawfully and feloniously, with treachery and evident premeditation, attack, assault and hit with the said iron pipe the said Angelito Rosini *y* Go, hitting him on his head, thereby inflicting upon him physical injuries, which ordinarily would have caused the death of the said Angelito Rosini *y* Go, thus performing all acts of execution which should have produced the crime of murder as a consequence, but nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical assistance rendered to the said Angelito Rosini *y* Go which prevented his death.
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> Contrary to law.[2]

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[1] *Rollo*, pp. 19-22. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] Records, p. 2.

After trial, on September 11, 2006, the RTC promulgated its Decision[3] convicting petitioner of frustrated homicide, and sentencing him as follows:

> WHEREFORE, finding accused GREGORIO a.k.a. GEORGE DIMARUCOT *y* GARCIA liable of *(sic)* the lesser offense of Frustrated Homicide, this Court hereby sentences him to an indeterminate penalty of four (4) years and two (2) months and one (1) day, as minimum, to eight (8) years and one (1) day, as maximum, of imprisonment.
>
> Accused is further directed to pay complainant Angelito Rosini *y* Go, actual damages broken down as follows: the amount of Nineteen Thousand One Hundred Ten Pesos and Sixty Five Centavos (₱19,110.65) for the hospitalization/medical bills and the amount of Thirty Six Thousand Pesos (₱36,000.00) as loss of income.
>
> With costs against the accused.
>
> SO ORDERED.[4]

Upon receiving the notice to file appellant's brief, petitioner thru his counsel *de parte* requested and was granted additional period of twenty (20) days within which to file said brief.[5] This was followed by three (3) successive motions for extension which were all granted by the CA.[6] On August 29, 2007, the CA issued a Resolution dismissing the appeal, as follows:

> Considering the JRD verification report dated July 24, 2007 that the accused-appellant failed to file his appellant's brief within the reglementary period which expired on June 6, 2007, his appeal is considered ABANDONED and thus DISMISSED, pursuant to Sec. 1 (e), Rule 50, 1997 Revised Rules of Civil Procedure.
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> SO ORDERED.[7]

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[3] *Id.* at 530-536. Penned by Judge Herminia V. Pasamba.

[4] *Id.* at 536.

[5] CA *rollo*, pp. 46-51.

[6] *Id.* at 52-66.

[7] *Id.* at 68.

Petitioner filed a motion for reconsideration,[8] his counsel admitting that he was at fault in failing to file the appellant's brief due to "personal problems emanating from his [counsel's] wife's recent surgical operation." It was thus prayed that the CA allow petitioner to file his appellant's brief which counsel undertook to submit within seven (7) days or until October 4, 2007. By Resolution[9] dated November 27, 2007, the CA, finding the allegations of petitioner unpersuasive and considering that the intended appellant's brief was not at all filed on October 4, 2007, denied the motion for reconsideration. As per Entry of Judgment, the Resolution of August 29, 2007 became final and executory on January 4, 2008.[10]

On May 8, 2008, petitioner filed an Omnibus Motion (1) To Reconsider August 29, 2007 Resolution, (2) To Expunge The Same From Book Of Entries Of Judgment, and (3) To Give Accused-Appellant A Final Period Of Thirty Days To File Appellant's Brief. Petitioner reiterated that his failure to file the appeal brief was solely the fault of his lawyer who is reportedly suffering from personal problems and depression. He also cited his advanced age (he will turn 76 on May 30, 2008) and medical condition (hypertension with cardiovascular disease and pulmonary emphysema), attaching copies of his birth certificate, medical certificate and certifications from the *barangay* and church minister.[11]

In the assailed Resolution dated July 23, 2008, the CA denied the omnibus motion holding that petitioner is bound by the mistakes and negligence of his counsel, such personal problems of a counsel emanating from his wife's surgical operation are not considered mistake and/or negligence contemplated under the law as to warrant reconsideration of the dismissal of petitioner's appeal for failure to file appellant's brief. Thus, when appellant

[8] *Id*. at 69-72.

[9] *Id*. at 75-76.

[10] *Id*. at 78.

[11] *Id*. at 79-88.

did not file a petition before this Court to assail the validity of the August 29, 2007 and November 27, 2007 resolutions, the August 29, 2007 resolution attained finality and entry of judgment thereof is in order.[12]

The petition has no merit.

Section 8, paragraph 1, Rule 124 of the Revised Rules of Criminal Procedure, as amended, provides:

> SEC. 8. *Dismissal of appeal for abandonment or failure to prosecute.* – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*.
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> x x x x x x x x x

It is clear under the foregoing provision that a criminal case may be dismissed by the CA *motu proprio* and with notice to the appellant if the latter fails to file his brief within the prescribed time. The phrase "with notice to the appellant" means that a notice must first be furnished the appellant to show cause why his appeal should not be dismissed.[13]

In the case at bar, there is no showing that petitioner was served with a notice requiring him to show cause why his appeal should not be dismissed for failure to file appellant's brief. The purpose of such a notice is to give an appellant the opportunity to state the reasons, if any, why the appeal should not be dismissed because of such failure, in order that the appellate court may determine whether or not the reasons, if given, are satisfactory.[14]

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[12] *Rollo*, p. 20.

[13] *Masas v. People*, G.R. No. 177313, December 19, 2007, 541 SCRA 280, 285, citing *Foralan v. CA*, 311 Phil. 182, 185-186 (1995).

[14] M.R. Pamaran, *REVISED RULES OF CRIMINAL PROCEDURE ANNOTATED* (2007 ed.) p. 666, citing *Baradi v. People*, 82 Phil. 297, 298 (1948).

Notwithstanding such absence of notice to the appellant, no grave abuse of discretion was committed by the CA in considering the appeal abandoned with the failure of petitioner to file his appeal brief despite four (4) extensions granted to him and non-compliance to date. Dismissal of appeal by the appellate court *sans* notice to the accused for failure to prosecute by itself is not an indication of grave abuse. Thus, although it does not appear that the appellate court has given the appellant such notice before dismissing the appeal, if the appellant has filed a motion for reconsideration of, or to set aside, the order dismissing the appeal, in which he stated the reasons why he failed to file his brief on time and the appellate court denied the motion after considering said reasons, the dismissal was held proper. Likewise, where the appeal was dismissed without prior notice, but the appellant took no steps either by himself or through counsel to have the appeal reinstated, such an attitude of indifference and inaction amounts to his abandonment and renunciation of the right granted to him by law to prosecute his appeal.[15]

Here, the Court notes the repeated non-observance by petitioner and his counsel of the reglementary periods for filing motions and perfecting appeal. While still at the trial stage, petitioner's motion to admit and demurrer to evidence was denied as it was not seasonably filed (petitioner was granted fifteen (15) days from August 8, 2001 within which to file demurrer to evidence but filed his motion to dismiss only on September 4, 2001), in accordance with Section 23, Rule 119 of the Revised Rules of Criminal Procedure, as amended.[16] Before the CA, petitioner and his counsel filed no less than four (4) motions for extension to file brief, which was never filed nor attached in the motion for reconsideration of the August 29, 2007 Resolution dismissing the appeal. The last extension given expired on June 6, 2007, without any brief submitted by petitioner or his counsel. And even when he filed the Omnibus Motion on May 8, 2008, still

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[15] *Id.*; *Salvador v. Reyes*, 85 Phil. 12, 17 (1949).

[16] Records, pp. 215, 219-225, 254-255.

no appellant's brief was attached by petitioner. Neither did petitioner file any petition before this Court questioning the validity of the August 29, 2007 resolution and the November 27, 2007 denial of his motion for reconsideration. The dismissal of his appeal having become final, it was indeed too late in the day for petitioner to file the Omnibus Motion on May 8, 2008, which was **four (4) months** after the finality of the resolution dismissing the appeal.

Having been afforded the opportunity to seek reconsideration and setting aside of the *motu proprio* dismissal by the CA of his appeal for non-filing of the appeal brief, and with his subsequent inaction to have his appeal reinstated after the denial of his motion for reconsideration, petitioner cannot impute error or grave abuse on the CA in upholding the finality of its dismissal order. Non-compliance with the requirement of notice or show cause order before the *motu proprio* dismissal under Section 8, paragraph 1 of Rule 124 had thereby been cured.[17] Under the circumstances, the petitioner was properly declared to have abandoned his appeal for failing to diligently prosecute the same.

Petitioner cannot simply harp on the mistakes and negligence of his lawyer allegedly beset with personal problems and emotional depression. The negligence and mistakes of counsel are binding on the client.[18] There are exceptions to this rule, such as when the reckless or gross negligence of counsel deprives the client of due process of law, or when the application of the general rule results in the outright deprivation of one's property or liberty through a technicality. However, in this case, we find no reason to exempt petitioner from the general rule.[19] The admitted inability of his counsel to attend fully and ably to the

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[17] See *Salvador v. Reyes*, *supra* note 15, at 16-17.

[18] *Polintan v. People,* G.R. No. 161827, April 21, 2009, 586 SCRA 111, 116, citing *Sapad v. Court of Appeals*, G.R. No. 132153, December 15, 2000, 348 SCRA 304, 308.

[19] *Cariño v. Espinoza,* G.R. No. 166036, June 19, 2009, 590 SCRA 43, 47, citing *Estate of Felomina G. Macadangdang v. Gaviola,* G.R. No. 156809, March 4, 2009, 580 SCRA 565, 572-573.

prosecution of his appeal and other sorts of excuses should have prompted petitioner to be more vigilant in protecting his rights and replace said counsel with a more competent lawyer. Instead, petitioner continued to allow his counsel to represent him on appeal and even up to this Court, apparently in the hope of moving this Court with a fervent plea for relaxation of the rules for reason of petitioner's age and medical condition. Verily, diligence is required not only from lawyers but also from their clients.[20]

Negligence of counsel is not a defense for the failure to file the appellant's brief within the reglementary period. Thus, we explained in *Redeña v. Court of Appeals*:[21]

> In seeking exemption from the above rule, petitioner claims that he will suffer deprivation of property without due process of law on account of the gross negligence of his previous counsel. To him, the negligence of his former counsel was so gross that it practically resulted to fraud because he was allegedly placed under the impression that the counsel had prepared and filed his appellant's brief. He thus prays the Court reverse the CA and remand the main case to the court of origin for new trial.
>
> Admittedly, this Court has relaxed the rule on the binding effect of counsel's negligence and allowed a litigant another chance to present his case (1) where the reckless or gross negligence of counsel deprives the client of due process of law; (2) when application of the rule will result in outright deprivation of the client's liberty or property; or (3) where the interests of justice so require. None of these exceptions obtains here.
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> **For a claim of counsel's gross negligence to prosper, nothing short of clear abandonment of the client's cause must be shown. Here, petitioner's counsel failed to file the appellant's brief. While this omission can plausibly qualify as simple negligence, it does not amount to gross negligence to justify the annulment of the proceeding below**. (Emphasis supplied.)

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[20] *Lumbre v. Court of Appeals,* G.R. No. 160717, July 23, 2008, 559 SCRA 419, 432, citing *Delos Santos v. Elizalde,* G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 17.

[21] G.R. No. 146611, February 6, 2007, 514 SCRA 389, 402.

The right to appeal is not a natural right and is not part of due process. It is merely a statutory privilege, and may be exercised only in accordance with the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.[22]

Strict compliance with the Rules of Court is indispensable for the orderly and speedy disposition of justice. The Rules must be followed, otherwise, they will become meaningless and useless.[23]

WHEREFORE, the petition is *DENIED* for lack of merit. The Resolution dated July 23, 2008 of the Court of Appeals in CA-G.R. CR No. 30466 is *AFFIRMED.*

SO ORDERED.

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

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[22] *Polintan v. People*, *supra* note 18, citing *Spouses Ortiz v. Court of Appeals*, 360 Phil. 95, 100-101 (1998).

[23] *Id*. at 117, citing *Trans International v. Court of Appeals*, G.R. No. 128421, January 26, 1998, 285 SCRA 49, 54-55.

[*] Designated additional member per Special Order No. 893 dated September 20, 2010.

[**] Designated additional member per Special Order No. 885 dated September 1, 2010.

THIRD DIVISION

[G.R. Nos. 186184 & 186988.[1] September 20, 2010]

CELESTINO SANTIAGO substituted by LAURO SANTIAGO and ISIDRO GUTIERREZ substituted by ROGELIO GUTIERREZ, *petitioners, vs.* **AMADA R. ORTIZ-LUIS substituted by JUAN ORTIZ-LUIS, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM LAW; RIGHT OF RETENTION; BALANCES THE EFFECT OF COMPULSORY LAND ACQUISITION.— The right of retention, as protected and enshrined in the Constitution, balances the effect of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.

2. ID.; ID.; ID.; ID.; RETENTION AREA; ADMINISTRATIVE RULE.— The relevant provision of AO No. 05, Series of 2000 reads: SEC. 9. Retention Area — The area allowed to be retained by the landowner shall be as follows: (a) Landowners covered by PD 27 are entitled to retain seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under OLT. An owner of tenanted rice and corn lands may not retain those lands under the following cases: 1. If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or 2. By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1972, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following: i. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or ii.

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[1] This petition only pertains to G.R. No. 186184. As per inquiry with the Court's Docket Section, G.R. No. 186988 was inadvertently assigned since the challenged decision of the Court of Appeals stemmed from consolidated cases.

lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family. x x x (d) Landowners who filed their applications after the 27 August 1985 deadline and did not comply with LOI No. 41, 45 and 52 shall only be entitled to a maximum of five (5) hectares as retention area. Landowners who failed to qualify to retain under paragraph (a) of this Section shall also be allowed to retain a maximum of five (5) hectares in accordance with RA 6657.

3. ID.; ID.; ID.; ID.; ID.; LEGISLATIVE STANDARDS; SECTION 6 OF R.A. NO. 6657.— The legislative standards are set forth in Section 6 of R.A. 6657, thus: Section 6. Retention Limits.– Except as otherwise provided in this Act, no person may own, or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm; *Provided*, That landowners whose land have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, *Provided further,* That the original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead. The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner. Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a lease-holder to the land retained by the landowner. The tenant must exercise this option within a period

of one (1) year from the time the landowner manifests his choice of the area for retention.

4. ID.; ID.; ID.; ID.; ID.; RESTRICTED BY THE CONDITIONS SET FORTH IN LETTER OF INSTRUCTION (LOI) NO. 474 ISSUED ON OCTOBER 21, 1976.— Section 6 implies that the sole requirement in the exercise of retention rights is that the area chosen by the landowner must be compact or contiguous. In the recent case of *Heirs of Aurelio Reyes v. Garilao*, however, the Court held that a landowner's retention rights under R.A. 6657 are restricted by the conditions set forth in Letter of Instruction (LOI) No. 474 issued on October 21, 1976 which reads: To: The Secretary of Agrarian Reform. WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families; WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families; WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein. NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following: "1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families."

5. ID.; ID.; ID.; ID.; ID.; ID.; IMPLEMENTING GUIDELINES.— DAR Memorandum Circular No. 11, Series of 1978 provided for the implementing guidelines of LOI No. 474: Tenanted rice/corn lands with areas of seven hectares or less shall be covered by Operation Land Transfer if those lands belong to the following landowners: a.) Landowners who own other agricultural lands of more than seven hectares in aggregate areas, whether tenanted or not, cultivated or not, and regardless of the income derived therefrom; b.) Landowners who own lands used for residential, commercial, industrial or other urban purposes from which they derive an annual gross income of at least five thousand (₱5,000.00) pesos. x x x Letter of Instruction (LOI) No. 474 amended P.D. No. 27 by removing "any right of retention from persons who own other agricultural lands of more than 7 hectares, or lands used for residential, commercial, industrial or other purpose from which they derive adequate income to support themselves and their families."

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT AMADA IS THUS *NOT* ENTITLED TO RETENTION RIGHTS.— In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the Court held that landowners who have not yet exercised their retention rights under P.D. No. 27 are entitled to **"new retention rights provided for by R.A. No. 6657** . . ." In *Heirs of Aurelio Reyes v. Garilao*, however, the Court held that **the limitations under LOI No. 474 still apply to a landowner who filed an application under R.A. 6657.** Amada is thus *not* entitled to retention rights. As noted by the PARO in recommending denial of her application which was eventually heeded in the Pangandaman Order, while Spouses Ortiz Luis owned aggregate landholdings equivalent to 178.8092 hectares, only a portion thereof — 88.5413 hectares — were placed under OLT. A Certification dated May 7, 2001 issued by the Municipal Agrarian Reform Office (MARO) affirms that as of even date, Spouses Ortiz Luis still owned 162.1584 hectares of land in Cabiao, Nueva Ecija.

7. POLITICAL LAW; ADMINISTRATIVE LAW; STATUTES; ADMINISTRATIVE RULES AND REGULATIONS; CANNOT GO BEYOND WHAT IS PROVIDED IN THE STATUTES.— It is well-settled that administrative officials

are empowered to promulgate rules and regulations in order to implement a statute. The power, however, is restricted such that an administrative regulation cannot go beyond what is provided in the legislative enactment. It must always be in harmony with the provisions of the law, hence, any resulting discrepancy between the two will always be resolved in favor of the statute.

8. ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, SECTION 9(D) OF DAR ADMINISTRATIVE ORDER NO. 05 IS INCONSISTENT WITH P.D. NO. 27, AS AMENDED BY LOI NO. 474.— Section 9 (d) of DAR Administrative Order No. 05, on which the Court of Appeals in part anchored its ruling, is inconsistent with P.D. No. 27, as amended by LOI No. 474, insofar as it removed the limitations to a landowner's retention rights.

APPEARANCES OF COUNSEL

Carlitos N. Encarnacion II for petitioners.
Yambao Law Office for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners Lauro Santiago and Rogelio Gutierrez, in substitution of their now deceased respective fathers Celestino Santiago and Isidro Gutierrez, challenge the August 22, 2008 Decision of the Court of Appeals[2] respecting the retention rights under Republic Act No. 6657[3] (R.A. 6657) of Amada R. Ortiz-Luis (Amada), substituted by her son-herein respondent Juan, Jr.

Juan and Amada Ortiz-Luis (Spouses Ortiz-Luis) were the owners of 7.1359 hectares of tenanted riceland situated in

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[2] Penned by Associate Justice Portia Aliño-Hormachuelos with the concurrence of Associate Justices Hakim S. Abdulwahid and Teresita Dy-Liacco Flores, *rollo*, pp. 17-41.

[3] Otherwise known as *"Comprehensive Agrarian Reform Law."*

Barangay San Fernando Sur, Cabiao, Nueva Ecija and covered by TCT No. NT-10798 (the property).

Pursuant to Presidential Decree No. 27 (P.D. No. 27), "*Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to them the Ownership of the Land they Till and Providing the Instruments and Mechanism Therefor,*" which took effect on October 21, 1972, the property was placed under Operation Land Transfer (OLT).

Despite the inclusion of the property under the OLT, the Spouses Ortiz-Luis, by Deed of Absolute Sale dated June 16, 1979, transferred it to their children Rosario, Teresita, Simplicio and Antonio, all surnamed Ortiz-Luis. The children were able to have the property transferred under their names on June 25, 1992.

The children later filed an Application for Retention under P.D. No. 27 before the Department of Agrarian Reform Regional Office (DARRO) which was denied by Order dated February 28, 1997 in this wise:

> It bears stressing that the Transfer Certificate of Title evidencing the conveyance in favor of herein petitioners-appellants was registered only on 25 June 1992, hence the subject land is still considered under the ownership of Spouses Ortiz Luis (pursuant to Memorandum dated January 9, 1973 and Department Memorandum Circular No. 8, Series of 1974) insofar as coverage under OLT is concerned.
>
> x x x x x x x x x
>
> Upon conducting a careful investigation of the records presented, this Office concludes beyond any iota of doubt that the landholding in issue was indeed conveyed to petitioners-appellants after October 21, 1972 which is a clear violation of agrarian laws, rules and regulations.[4] (underscoring supplied)

In light of the denial of her children's application for retention, Amada filed on July 14, 1999 an Application for Retention over the property under R.A. 6657 before the DARRO.

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[4] CA *rollo* (CA-G.R. SP No. 100439), pp. 54-55.

By Decision of November 24, 1999, the Provincial Agrarian Reform Adjudicator (PARAD), to which the application was referred for determination of the validity of TCT No. NT-189843 issued to the children, ordered the cancellation of said title and reinstated the spouses' Ortiz-Luis' title. Amada's application for retention was thus given due course by DARRO.

Provincial Agrarian Reform Officer (PARO) Rogelio M. Chavez recommended the denial of Amada's application upon the ground that "an owner of tenanted rice and corn lands may not retain those lands if he, as of October 21, 1972, owned more than 24 hectares of tenanted rice or corn lands."[5] It appears that Spouses Ortiz-Luis owned 178.8092 hectares, only 88.4513 of which were placed under OLT.

The PARO's recommendation notwithstanding, DARRO, by Order of May 23, 2000,[6] **granted** Amada's application for retention, it holding that her failure to exercise her retention rights under P.D. No. 27 entitled her to the benefit of retention under R.A. 6657.

Farmer-beneficiaries Celestino (petitioner Lauro's father) and Isidro (petitioner Rogelio's father), having been granted on May 20, 1994 emancipation patents covering 2.9424 hectares and 2.0238 hectares of the property, respectively, moved for reconsideration of the DARRO May 23, 2000 Order. DARRO denied the motion by Order of October 4, 2000. On the assumption that no appeal was filed, DARRO issued a Memorandum dated October 24, 2000 to implement its Orders.

Amada subsequently filed on March 2, 2001 a petition for cancellation of Celestino and Isidro's emancipation patents before the PARAD. The farmer-beneficiaries did not file their Answer, despite notice, and failed to appear during the hearings of the petition. After the *ex-parte* presentation of Amada's evidence, Adjudicator Napoleon Baguilat, by Decision of April 11, 2001,[7]

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[5] CA *rollo* (CA-G.R. SP No. 100439), p. 58.

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

[7] CA *rollo* (C.A.-G.R. SP No. 97071), pp. 46-50.

ordered the cancellation of Celestino and Isidro's Emancipation Patents:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring the private respondents[-herein petitioners] as lessees over the retained area of the petitioner;
> 2. Declaring [herein petitioners'] TCT Nos. EP 74278 and 74276 to have lost its force and effect upon the rendition of this decision;
> 3. Declaring the Municipal Agrarian Reform Office of Cabiao, Nueva Ecija to cause the execution of leasehold contract between the petitioner and the private respondents[-herein petitioners];
> 4. Directing the Register of Deeds for the Province of Nueva Ecija to cancel the TCT Nos. EP 74278 and 74276 registered in the names of Celestino Santiago and Isidro Gutierrez."[8]

Two (2) days after the issuance of the PARAD April 11, 2001 Decision or on April 14, 2001, Celestino and Isidro filed their Answer/Motion for Reconsideration which was denied by Order of June 21, 2001.

On appeal, the Department of Agrarian Reform Adjudication Board (DARAB), by Decision of April 5, 2005, ruled in favor of petitioners:

> Under Administrative Order No. 4, Series of 1991, the authority to issue a certificate of retention on landholdings covered under R.A. 6657 lies exclusively with the Regional Director. It likewise provides that "the Order of the Regional Director approving or denying the application for retention shall become final fifteen (15) days from receipt of the same, unless appeal is made to the DAR Secretary." In the case at bar, Private Respondents (petitioners) were able to appeal the Order of Retention issued by Regional Director Atty. Acosta to the DAR Secretary. The appeal is still pending before the Office of the Director of the Bureau of Agrarian Legal Assistance (BALA), Department of Agrarian Reform, Diliman, Quezon City, as per certification dated February 21, 2005.

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[8] *Id.* at 49.

In view thereof, the **cancellation of subject EPs is not warranted** on the ground that the Order of Retention has not attained finality.[9] (emphasis and underscoring supplied)

Juan Ortiz-Luis, Jr. (respondent), who substituted for Amada after she passed away on December 8, 2001, filed a petition for review before the Court of Appeals following the denial by the DARAB of his motion for reconsideration of its April 5, 2005 Decision. The petition was docketed as **CA-G.R. SP No. 97071**.

In time, Celestino and Isidro's appeal to the DAR Secretary respecting the DARRO Orders which granted retention rights to Amada was denied by DAR Secretary Roberto Pagdanganan by Order of October 24, 2003 (Pagdanganan Order).[10] Celestino and Isidro filed a motion for reconsideration. Pending resolution of the motion, Celestino died[11] and was thereupon substituted by petitioner Lauro.

Secretary Pagdanganan's successor-in-interest, Secretary Nasser Pangandaman, granted Celestino and Isidro's Motion for Reconsideration and accordingly reversed the Pagdanganan Order by Order of October 24, 2005 (Pangandaman Order) in this wise:[12]

It must be stressed that when spouses Juan and Amada Ortiz-Luis filed an Application for Retention on 14 July 1999, PARO Rogelio M. Chavez of South Nueva Ecija recommended for the denial of the said Application for Retention pursuant to M.C. No. 18-81 and A.O. No. 4, Series of 1991, considering the fact also that the spouses owned an aggregate landholding of 178.8092 hectares where the 7.1358 hectare subject landholdings from the aggregate 88. 5413 hectares of which are rice and corn land were already covered under OLT pursuant to P.D. No. 27 and E.O. No. 228.

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[9] DARAB records, p. 196.

[10] CA *rollo* (CA-G.R. SP No. 100439), pp. 62-67.

[11] *Id.* at 15.

[12] *Id.* at 74-81.

L.O.I. No. 474 clearly finds application to the present case, and, having established that applicants-appellees own other agricultural lands seven (7) hectares or more, there can be no question that they are not entitled to retention under P.D. No. 27.[13]

His motion for reconsideration having been denied, respondent appealed to the Office of the President (OP) which, by Decision of May 9, 2007, reversed and set aside the Pangandaman Order and *reinstated* the Pagdanganan Order upholding the grant to Amada of her retention rights.

Petitioners thereupon elevated the matter to the Court of Appeals via petition for review, docketed as **CA-G.R. SP No. 100439**. This petition was consolidated with respondent's above-mentioned petition in **CA-G.R. SP No. 97071** (assailing the DARAB Resolution setting aside the cancellation of petitioners' E[mancipation] P[atents].

By the assailed Decision of August 22, 2008, the Court of Appeals, in CA-G.R. SP No. 100439, upheld the Decision of the OP, clarifying, however, that:

> x x x in the implementation of this Decision, the Department of Agrarian Reform through the Municipal Agrarian Reform Office (MARO) is hereby **ORDERED** to fully accord ARBs Celestino Santiago and Isidro Gutierrez as substituted by Lauro Santiago and Rogelio Gutierrez, respectively, their rights under Section 6 of Republic Act No. 6657 and DAR Administrative Order No. 05-00 as already discussed.[14] (underscoring supplied)

The appellate court dismissed **CA-G.R. No. 97071** which respondent did not challenge.

In the present petition, petitioners assail the appellate court's upholding of Amada's right of retention in **CA-G.R. SP No. 100439** and citing DAR Administrative Order (AO) No. 05, Series of 2000.[15]

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[13] *Id.* at 78-79.

[14] *Rollo*, p. 40.

[15] REVISED RULES AND PROCEDURES FOR THE EXERCISE OF RETENTION RIGHT BY LANDOWNERS.

The petition is impressed with merit.

The relevant provision of AO No. 05, Series of 2000 reads:

SEC. 9. Retention Area – The area allowed to be retained by the landowner shall be as follows:

(a) Landowners covered by PD 27 are entitled to retain seven (7) hectares, except those whose entire tenanted rice and corn lands are subject of acquisition and distribution under OLT. An owner of tenanted rice and corn lands may not retain those lands under the following cases:

1. If he, as of 21 October 1972, owned more than twenty-four (24) hectares of tenanted rice and corn lands; or
2. By virtue of Letter of Instruction (LOI) No. 474, if he, as of 21 October 1972, owned less than twenty-four (24) hectares of tenanted rice and corn lands but additionally owned the following:

   i. other agricultural lands of more than seven (7) hectares, whether tenanted or not, whether cultivated or not, and regardless of the income derived therefrom; or

   ii. lands used for residential, commercial, industrial or other urban purposes from which he derives adequate income to support himself and his family.

x x x x x x x x x

(d) Landowners who filed their applications after the 27 August 1985 deadline and did not comply with LOI No. 41, 45 and 52 shall only be entitled to a maximum of five (5) hectares as retention area. Landowners who failed to qualify to retain under paragraph (a) of this Section shall also be allowed to retain a maximum of five (5) hectares in accordance with RA 6657. (underscoring supplied)

The right of retention, as protected and enshrined in the Constitution, balances the effect of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards.[16]

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[16] Article XIII, Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers,

The legislative standards are set forth in Section 6 of R.A. 6657, thus:

Section 6. Retention Limits. – Except as otherwise provided in this Act, no person may own, or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm; *Provided*, That landowners whose land have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder, *Provided further*, That the original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner. Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a lease-holder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention. (underscoring supplied)

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who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental or equity considerations and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

Section 6 implies that the sole requirement in the exercise of retention rights is that the area chosen by the landowner must be compact or contiguous. In the recent case of *Heirs of Aurelio Reyes v. Garilao*,[17] however, the Court held that a landowner's retention rights under R.A. 6657 are restricted by the conditions set forth in Letter of Instruction (LOI) No. 474 issued on October 21, 1976 which reads:

To: The Secretary of Agrarian Reform.

WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, PRESIDENT FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

"1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families." (underscoring supplied)

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[17] G.R. No. 136466, November 25, 2009, 605 SCRA 294.

DAR Memorandum Circular No. 11, Series of 1978[18] provided for the implementing guidelines of LOI No. 474:

> Tenanted rice/corn lands with areas of seven hectares or less shall be covered by Operation Land Transfer if those lands belong to the following landowners:
>
> a.) Landowners who own other agricultural lands of more than seven hectares in aggregate areas, whether tenanted or not, cultivated or not, and regardless of the income derived therefrom;
>
> b.) Landowners who own lands used for residential, commercial, industrial or other urban purposes from which they derive an annual gross income of at least five thousand (₱5,000.00) pesos. (underscoring supplied)

In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*,[19] the Court held that landowners who have not yet exercised their retention rights under P.D. No. 27 are entitled to **"new retention rights provided for by R.A. No. 6657** . . ."[20] In *Heirs of Aurelio Reyes v. Garilao*, however, the Court held that **the limitations under LOI No. 474 still apply to a landowner who filed an application under R.A. 6657.**

Amada is thus *not* entitled to retention rights. As noted by the PARO in recommending denial of her application which was eventually heeded in the Pangandaman Order, while Spouses Ortiz-Luis owned aggregate landholdings equivalent to 178.8092 hectares, only a portion thereof — 88.5413 hectares — were placed under OLT. A Certification dated May 7, 2001[21] issued by the Municipal Agrarian Reform Office (MARO) affirms that as of even date, Spouses Ortiz-Luis still owned 162.1584 hectares of land in Cabiao, Nueva Ecija.

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[18] Issued on April 21, 1978.

[19] G.R. Nos. 78742, 79310, 79744 and 79777, July 14, 1989, 175 SCRA 343.

[20] *Id.* at 392.

[21] CA *rollo*, (CA-G.R. SP No. 100439), p. 73.

Letter of Instruction (LOI) No. 474 amended P.D. No. 27 by removing "any right of retention from persons who own other agricultural lands of more than 7 hectares, or lands used for residential, commercial, industrial or other purpose from which they derive adequate income to support themselves and their families."[22]

Section 9 (d) of DAR Administrative Order No. 05, on which the Court of Appeals in part anchored its ruling, is inconsistent with P.D. No. 27, as amended by LOI No. 474, insofar as it removed the limitations to a landowner's retention rights.

It is well-settled that administrative officials are empowered to promulgate rules and regulations in order to implement a statute. The power, however, is restricted such that an administrative regulation cannot go beyond what is provided in the legislative enactment. It must always be in harmony with the provisions of the law, hence, any resulting discrepancy between the two will always be resolved in favor of the statute.[23]

WHEREFORE, the challenged Court of Appeals Decision dated August 22, 2008 in C.A.-G.R. S.P. No. 100439 is *REVERSED* and *SET ASIDE*. The Order dated October 24, 2005 of Agrarian Reform Secretary Nasser Pangandaman is *REINSTATED.*

SO ORDERED.

Peralta,[*] *Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[22] *Vide* note 17, at 305, citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* G.R. No. 78742, July 14, 1989, 175 SCRA 343, 362.

[23] *Commissioner of Internal Revenue v. Fortune Tobacco Corporation,* G.R. Nos. 167274-75, July 21, 2008, 559 SCRA 160.

[*] Additional member per Special Order No. 885 dated September 1, 2010 in lieu of Associate Justice Arturo D. Brion.

SECOND DIVISION

[G.R. No. 187056. September 20, 2010]

JARABINI G. DEL ROSARIO, *petitioner, vs.* **ASUNCION G. FERRER, substituted by her heirs, VICENTE, PILAR, ANGELITO, FELIXBERTO, JR., all surnamed G. FERRER, and MIGUELA FERRER ALTEZA,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; DIFFERENT MODES OF ACQUIRING OWNERSHIP; DONATIONS; *MORTIS CAUSA*; CHARACTERISTICS.— A donation *mortis causa* has the following characteristics: **1. It conveys no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive; 2. That before his death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed; and 3. That the transfer should be void if the transferor should survive the transferee.**

2. ID.; ID.; ID.; ID.; *INTER VIVOS*; IDENTIFIED BY "IRREVOCABILITY."— In *Austria-Magat v. Court of Appeals*, the Court held that "irrevocability" is a quality absolutely incompatible with the idea of conveyances *mortis causa*, where "revocability" is precisely the essence of the act. x x x The Court thus said in *Austria-Magat* that the express "irrevocability" of the donation is the "distinctive standard that identifies the document as a donation *inter vivos.*"

3. ID.; ID.; ID.; ID.; ID.; ID.; DOCUMENT CAPTIONED "DONATION *MORTIS CAUSA*" NOT CONTROLLING IF THERE IS CLEAR INTENT TO MAKE DONATION IRREVOCABLE; CASE AT BAR.— Here, the donors plainly said that it is "our will that this Donation *Mortis Causa* shall be irrevocable and shall be respected by the surviving spouse."

The intent to make the donation irrevocable becomes even clearer by the proviso that a surviving donor shall respect the irrevocability of the donation. Consequently, the donation was in reality a donation *inter vivos*. x x x That the document in question in this case was captioned "Donation *Mortis Causa*" is not controlling. This Court has held that, if a donation by its terms is *inter vivos*, this character is not altered by the fact that the donor styles it *mortis causa*.

4. ID.; ID.; ID.; ID.; ID.; DONEES; ACCEPTANCE; ACCEPTANCE INDICATED THAT THE DONATION WAS *INTER VIVOS;* CASE AT BAR.— Notably, the three donees signed their acceptance of the donation, which acceptance the deed required. This Court has held that an acceptance clause indicates that the donation is *inter vivos*, since acceptance is a requirement only for such kind of donations. Donations *mortis causa*, being in the form of a will, need not be accepted by the donee during the donor's lifetime.

5. ID.; ID.; ID.; ID.; ID.; RESERVATION IN THE CONTEXT OF AN IRREVOCABLE DONATION; CASE AT BAR.— The donors in this case of course reserved the "right, ownership, possession, and administration of the property" and made the donation operative upon their death. But this Court has consistently held that such reservation (*reddendum*) in the context of an irrevocable donation simply means that the donors parted with their naked title, maintaining only **beneficial** ownership of the donated property while they lived.

6. ID.; ID.; ID.; ID.; ID.; IN CASE OF DOUBT, CONVEYANCE SHOULD BE DEEMED DONATION *INTER VIVOS*.— Finally, as Justice J. B. L. Reyes said in *Puig v. Peñaflorida*, in case of doubt, the conveyance should be deemed a donation *inter vivos* rather than *mortis causa*, in order to avoid uncertainty as to the ownership of the property subject of the deed.

7. ID.; ID.; ID.; ID.; ID.; ACCEPTANCE MADE THE DONEE THE ABSOLUTE OWNER OF THE PROPERTY.— Since the donation in this case was one made *inter vivos*, it was immediately operative and final. The reason is that such kind of donation is deemed perfected from the moment the donor learned of the donee's acceptance of the donation. The acceptance makes the donee the absolute owner of the property donated.

8. ID.; ID.; ID.; ID.; ID.; ID.; THE SUBSEQUENT ASSIGNMENT OF THE DONOR'S RIGHTS WAS VOID; CASE AT BAR.— Given that the donation in this case was irrevocable or one given *inter vivos*, Leopoldo's subsequent assignment of his rights and interests in the property to Asuncion should be regarded as void for, by then, he had no more rights to assign. He could not give what he no longer had. *Nemo dat quod non habet*.

9. REMEDIAL LAW; SPECIAL PROCEEDINGS; PROBATE; RULE ON PROBATE NOT INFLEXIBLE AND ABSOLUTE; CASE AT BAR.— The trial court cannot be faulted for passing upon, in a petition for probate of what was initially supposed to be a donation *mortis causa*, the validity of the document as a donation *inter vivos* and the nullity of one of the donor's subsequent assignment of his rights and interests in the property. The Court has held before that the rule on probate is not inflexible and absolute. Moreover, in opposing the petition for probate and in putting the validity of the deed of assignment squarely in issue, Asuncion or those who substituted her may not now claim that the trial court improperly allowed a collateral attack on such assignment.

APPEARANCES OF COUNSEL

Margarita P. Tamunda for petitioner.
Legaspi Legaspi & Associates Law Offices for respondents.

D E C I S I O N

ABAD, *J.*:

This case pertains to a gift, otherwise denominated as a donation *mortis causa*, which in reality is a donation *inter vivos* made effective upon its execution by the donors and acceptance thereof by the donees, and immediately transmitting ownership of the donated property to the latter, thus precluding a subsequent assignment thereof by one of the donors.

The Facts and the Case

On August 27, 1968 the spouses Leopoldo and Guadalupe Gonzales executed a document entitled "Donation *Mortis Causa*"[1] in favor of their two children, Asuncion and Emiliano, and their granddaughter, Jarabini (daughter of their predeceased son, Zoilo) covering the spouses' 126-square meter lot and the house on it in Pandacan, Manila[2] in equal shares. The deed of donation reads:

It is our will that this Donation *Mortis Causa* shall be irrevocable and shall be respected by the surviving spouse.

It is our will that Jarabini Gonzales-del Rosario and Emiliano Gonzales will continue to occupy the portions now occupied by them.

It is further our will that this DONATION *MORTIS CAUSA* shall not in any way affect any other distribution of other properties belonging to any of us donors whether testate or intestate and where ever situated.

It is our further will that any one surviving spouse reserves the right, ownership, possession and administration of this property herein donated and accepted and this Disposition and Donation shall be operative and effective upon the death of the DONORS.[3]

Although denominated as a donation *mortis causa*, which in law is the equivalent of a will, the deed had no attestation clause and was witnessed by only two persons. The named donees, however, signified their acceptance of the donation on the face of the document.

Guadalupe, the donor wife, died in September 1968. A few months later or on December 19, 1968, Leopoldo, the donor husband, executed a deed of assignment of his rights and interests in subject property to their daughter Asuncion. Leopoldo died in June 1972.

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[1] *Rollo*, p. 101.

[2] Covered by Transfer Certificate of Title (TCT) 101873.

[3] *Supra* note 1.

In 1998 Jarabini filed a "petition for the probate of the August 27, 1968 deed of donation *mortis causa*" before the Regional Trial Court (RTC) of Manila in Sp. Proc. 98-90589.[4] Asuncion opposed the petition, invoking his father Leopoldo's assignment of his rights and interests in the property to her.

After trial, the RTC rendered a decision dated June 20, 2003,[5] finding that the donation was in fact one made *inter vivos*, the donors' intention being to transfer title over the property to the donees during the donors' lifetime, given its irrevocability. Consequently, said the RTC, Leopoldo's subsequent assignment of his rights and interest in the property was void since he had nothing to assign. The RTC thus directed the registration of the property in the name of the donees in equal shares.[6]

On Asuncion's appeal to the Court of Appeals (CA), the latter rendered a decision on December 23, 2008,[7] reversing that of the RTC. The CA held that Jarabini cannot, through her petition for the probate of the deed of donation *mortis causa*, collaterally attack Leopoldo's deed of assignment in Asuncion's favor. The CA further held that, since no proceeding exists for the allowance of what Jarabini claimed was actually a donation *inter vivos*, the RTC erred in deciding the case the way it did. Finally, the CA held that the donation, being one given *mortis causa*, did not comply with the requirements of a notarial will,[8]

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[4] "*In the Matter of the Petition for the Allowance of the Donation Mortis Causa of Leopoldo Gonzales. Jarabini del Rosario, Petitioner*."

[5] *Rollo*, pp. 125-128.

[6] *Id.* at 128.

[7] *Id.* at 54-64; penned by Associate Justice Apolinario D. Bruselas, Jr. with the concurrence of Associate Justices Bienvenido L. Reyes and Mariflor P. Punzalan Castillo.

[8] Art. 728. Donations which are to take effect upon the death of the donor partake of the nature of testamentary provisions, and shall be governed by the rules established in the Title on Succession.

Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested

rendering the same void. Following the CA's denial of Jarabini's motion for reconsideration,[9] she filed the present petition with this Court.

Issue Presented

The key issue in this case is whether or not the spouses Leopoldo and Guadalupe's donation to Asuncion, Emiliano, and Jarabini was a donation *mortis causa*, as it was denominated, or in fact a donation *inter vivos*.

The Court's Ruling

That the document in question in this case was captioned "Donation *Mortis Causa*" is not controlling. This Court has held that, if a donation by its terms is *inter vivos*, this character is not altered by the fact that the donor styles it *mortis causa*.[10]

In *Austria-Magat v. Court of Appeals*,[11] the Court held that "irrevocability" is a quality absolutely incompatible with the idea of conveyances *mortis causa*, where "revocability" is precisely the essence of the act. A donation *mortis causa* has the following characteristics:

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and subscribed by three or more credible witnesses in the presence of the testator and of one another.

The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.

[9] *Rollo*, p. 66.

[10] *Concepcion v. Concepcion*, 91 Phil. 823, 828 (1952).

[11] 426 Phil. 263 (2002).

1. It conveys no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;

2. That before his death, the transfer should be revocable by the transferor at will, *ad nutum*; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed; and

3. That the transfer should be void if the transferor should survive the transferee.[12] (Underscoring supplied)

The Court thus said in *Austria-Magat* that the express "irrevocability" of the donation is the "distinctive standard that identifies the document as a donation *inter vivos*." Here, the donors plainly said that it is "our will that this Donation *Mortis Causa* shall be irrevocable and shall be respected by the surviving spouse." The intent to make the donation irrevocable becomes even clearer by the proviso that a surviving donor shall respect the irrevocability of the donation. Consequently, the donation was in reality a donation *inter vivos*.

The donors in this case of course reserved the "right, ownership, possession, and administration of the property" and made the donation operative upon their death. But this Court has consistently held that such reservation (*reddendum*) in the context of an irrevocable donation simply means that the donors parted with their naked title, maintaining only **beneficial** ownership of the donated property while they lived.[13]

Notably, the three donees signed their acceptance of the donation, which acceptance the deed required.[14] This Court

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[12] *Aluad v. Aluad*, G.R. No. 176943, October 17, 2008, 569 SCRA 697, 705-706.

[13] *Austria-Magat v. Court of Appeals*, *supra* note 11, at 274; *Spouses Gestopa v. Court of Appeals*, 396 Phil. 262, 271 (2000); *Alejandro v. Judge Geraldez*, 168 Phil. 404, 420-421 (1977); *Cuevas v. Cuevas*, 98 Phil. 68, 71 (1955); *Bonsato v. Court of Appeals*, 95 Phil. 481, 488 (1954).

[14] *Rollo*, p. 101.

has held that an acceptance clause indicates that the donation is *inter vivos*, since acceptance is a requirement only for such kind of donations. Donations *mortis causa*, being in the form of a will, need not be accepted by the donee during the donor's lifetime.[15]

Finally, as Justice J. B. L. Reyes said in *Puig v. Peñaflorida*,[16] in case of doubt, the conveyance should be deemed a donation *inter vivos* rather than *mortis causa*, in order to avoid uncertainty as to the ownership of the property subject of the deed.

Since the donation in this case was one made *inter vivos*, it was immediately operative and final. The reason is that such kind of donation is deemed perfected from the moment the donor learned of the donee's acceptance of the donation. The acceptance makes the donee the absolute owner of the property donated.[17]

Given that the donation in this case was irrevocable or one given *inter vivos*, Leopoldo's subsequent assignment of his rights and interests in the property to Asuncion should be regarded as void for, by then, he had no more rights to assign. He could not give what he no longer had. *Nemo dat quod non habet*.[18]

The trial court cannot be faulted for passing upon, in a petition for probate of what was initially supposed to be a donation *mortis causa*, the validity of the document as a donation *inter vivos* and the nullity of one of the donor's subsequent assignment of his rights and interests in the property. The Court has held before that the rule on probate is not inflexible and absolute.[19] Moreover, in opposing the petition for probate and in putting the validity of the deed of assignment squarely in issue, Asuncion

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[15] *Austria-Magat v. Court of Appeals*, *supra* note 11, at 276-277.

[16] 122 Phil. 665, 672 (1965).

[17] *Heirs of Sevilla v. Sevilla*, 450 Phil. 598, 613 (2003).

[18] *Gochan & Sons Realty Corp. v. Heirs of Raymundo Baba*, 456 Phil. 569, 579 (2003).

[19] *Reyes v. Court of Appeals*, 346 Phil. 266, 273 (1997).

or those who substituted her may not now claim that the trial court improperly allowed a collateral attack on such assignment.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the assailed December 23, 2008 Decision and March 6, 2009 Resolution of the Court of Appeals in CA-G.R. CV 80549, and *REINSTATES in toto* the June 20, 2003 Decision of the Regional Trial Court of Manila, Branch 19, in Sp. Proc. 98-90589.

SO ORDERED.

Carpio (Chairperson), Peralta, Bersamin,[*] and *Perez,*[**] *JJ.*, concur.

EN BANC

[A.M. No. RTJ-08-2136. September 21, 2010]

SUSAN O. REYES, *complainant, vs.* **JUDGE MANUEL N. DUQUE, Regional Trial Court, Branch 197, Las Piñas City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; SUPERVISION OVER LOWER COURTS; JURISDICTION OVER ADMINISTRATIVE CASES FILED AGAINST RETIRED JUDGE BEFORE HE RETIRED; CASE AT BAR.— First, on the question of jurisdiction as Judge Duque is no longer a member of the judiciary having retired from the service on 21 February 2008, the records show that Reyes filed four similar complaints

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[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886 dated September 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 894 dated September 20, 2010.

against Judge Duque. A complaint dated 18 January 2008 addressed to then Chief Justice Reynato S. Puno and subscribed on 19 February 2008 was received by the OCA on 20 February 2008 and by the Office of the Chief Justice also on 20 February 2008, or one day before the date of retirement of Judge Duque. A similar complaint subscribed on 19 February 2008 was received by the OCA on 12 March 2008. An identical complaint addressed to the OCA and subscribed on 23 January 2008 was filed and received by the OCA on 25 January 2008. As pointed out by the OCA, Judge Duque was "inadvertently sent" a copy of the complaint that was filed and received on 12 March 2008. The filing of similar and identical complaints on different dates was due to the directive of the OCA requiring that the complaint be "verified" or that the "original copy of the verified complaint" be filed. Nonetheless, it is clear from the records that Reyes filed her intended complaint before Judge Duque retired. Consequently, the Court no doubt has jurisdiction over this administrative case.

2. JUDICIAL ETHICS; JUDGES; CHARGE OF GRAFT AND CORRUPTION; INSUFFICIENCY OF EVIDENCE; CASE AT BAR.— On the charge of graft and corruption, the Investigating Justice and the OCA found insufficient evidence to sustain Reyes' allegation that Judge Duque demanded and received money from her in consideration of a favorable ruling. Thus, this charge should be dismissed for being unsubstantiated.

3. ID.; ID.; CHARGE OF IMPROPRIETY AND GROSS MISCONDUCT; ESTABLISHED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.— On the charge of impropriety and gross misconduct, and after a thorough investigation conducted by the Investigating Justice, it was established, and Judge Duque admitted, that Reyes went to his house. Substantial evidence also pointed to Judge Duque's liability for impropriety and gross misconduct when he sexually assaulted Reyes. There is no need to detail again the lewd acts of Judge Duque. The Investigating Justice's narration was sufficient and thorough. The Investigating Justice likewise observed that Judge Duque merely attempted to destroy the credibility of Reyes when he insinuated that she could be a "woman of ill repute or a high class prostitute" or one whose "moral value is at its lowest level."

4. ID.; ID.; ID.; JUDGED BY PRIVATE MORALS THAT ARE EXTERNALIZED.— However, no judge has a right to solicit sexual favors from a party litigant even from a woman of loose morals. In *Tan v. Pacuribot*, this Court further stressed: We have repeatedly reminded members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency. We have adhered to and set forth the exacting standards of morality and decency, which every member of the judiciary must observe. A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.

5. ID.; ID.; ID., SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THEIR ACTIVITIES.— Judges should avoid impropriety and the appearance of impropriety in all of their activities. Judges should conduct themselves in a way that is consistent with the dignity of the judicial office. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they should always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

6. ID.; ID.; ID., ID.; JUDGE DUQUE'S CONDUCT INDUBITABLY BORE THE MARKS OF IMPROPRIETY AND IMMORALITY; CASE AT BAR.— The conduct of Judge Duque fell short of the exacting standards for members of the judiciary. He failed to behave in a manner that would promote confidence in the judiciary. Considering that a judge is a visible representation of the law and of justice, he is naturally expected to be the epitome of integrity and should be beyond reproach. Judge Duque's conduct indubitably bore the marks

of impropriety and immorality. He failed to live up to the high moral standards of the judiciary and even transgressed the ordinary norms of decency of society. Had Judge Duque not retired, his misconduct would have merited his dismissal from the service.

D E C I S I O N

CARPIO, *J.*:

The Facts

In her Verified Complaint, Susan O. Reyes (Reyes) charged respondent Judge Manuel N. Duque (Judge Duque) of the Regional Trial Court, Branch 197, Las Piñas City (RTC-Branch 197), with Impropriety, Corruption and Gross Misconduct. Reyes alleged that she was a party-in-intervention in Land Registration Case No. 06-005 entitled "*In re: Petition of Philippine Savings Bank for Issuance of a Writ of Possession under Act No. 3135 over Properties covered by TCT Nos. T-85172 and T-84847*" filed by the Philippine Savings Bank (bank) against the spouses Carolyn Choi and Nak San Choi (spouses Choi). In a Decision dated 6 November 2006, Judge Duque granted the motion for the issuance of a writ of possession in favor of the bank and ordered the spouses Choi and all those claiming rights under them to vacate the properties covered by TCT Nos. T-85172, T-84848, and T-84847 situated in BF Resort Village, Talon 2, Las Piñas. On 13 August 2007, Reyes filed an "Urgent Petition for Lifting and Setting Aside of Writ of Possession and Quashal of Notice to Vacate" claiming that she bought the subject property covered by TCT No. T-85172 from the spouses Choi and that she was in actual possession of the property with full knowledge of the bank.

At the hearing of Reyes' petition, Atty. Herminio Ubana, Sr., (Atty. Ubana) the lawyer of Reyes, introduced her to Judge Duque who allegedly gave Reyes 30 days to settle matters with the bank. Reyes was unable to re-negotiate with the bank. On the first week of December 2007, Reyes allegedly received a phone call from Judge Duque and the latter instructed Reyes to

go "to his house and bring some money in order that he can deny the pending motion to break open." As she did not have the money yet, Reyes allegedly told Judge Duque that she would see him the following day as her allotment might arrive by that time. The following day, when her allotment arrived, Reyes went to the PNB Cubao Branch in Quezon City to withdraw ₱20,000. She, her secretary, and driver went to the house of Judge Duque at No. 9 CRM Corazon, BF Almanza, Las Piñas. The son of Judge Duque opened the gate. At his house, Judge Duque demanded ₱100,000. Reyes gave him ₱20,000 and she asked for time to give him the balance. After a week, Atty. Ubana called Reyes telling her that Judge Duque was asking for her and waiting for the balance he demanded. On 21 December 2007, Reyes went to the house of Judge Duque with ₱18,000 on hand. Judge Duque allegedly scolded her for not bringing the whole amount of ₱80,000. Reyes explained that she had difficulty raising the amount. Judge Duque locked the main door of his house and asked Reyes to step into his office. Judge Duque pointed to a calendar posted on the wall and pointed to December 26 as the date when she should complete the amount. All of a sudden, Judge Duque held the waist of Reyes, embraced and kissed her. Reyes tried to struggle and free herself. Judge Duque raised her skirt, opened her blouse and sucked her breasts. He touched her private parts and attempted to have sexual intercourse with Reyes. Reyes shouted for help but the TV was too loud. As a desperate move, Reyes appealed to Judge Duque saying: "*kung gusto mo, huwag dito. Sa hotel, sasama ako sayo*." Judge Duque suddenly stopped his sexual advances and ordered Reyes to fix her hair.

In his Comment,[1] Judge Duque averred that since the complaint of Reyes was filed after he retired on 21 February 2008, he was no longer under the jurisdiction of the Office of the Court Administrator (OCA). He denied the charges hurled against him and claimed the allegations were "fabricated, false and malicious."

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[1] *Rollo*, pp. 34-36.

In its Report dated 26 June 2008,[2] the OCA found that Reyes actually filed four identical complaints. First, Reyes filed a complaint dated 16 January 2008 duly subscribed on 23 January 2008. Reyes was directed to comply with the requirement of verification and she complied by filing on 20 February 2008 verified complaints with the Office of the Chief Justice and the OCA. On 12 March 2008, Reyes filed for the third time another verified complaint with the OCA which was a mere reiteration of her previous complaints. The OCA opined that the jurisdiction of the Court at the time of the filing of the complaint was not lost by the mere fact that Judge Duque had ceased to be in office during the pendency of the case. Thus, as recommended by the OCA, the case was referred to a Court of Appeals' Justice[3] for investigation, report and recommendation per Resolution dated 6 August 2008.[4]

Report and Recommendation of the Investigating Justice

On the charge of graft and corruption, Reyes presented photocopies of ₱1,000 bills to prove that Judge Duque demanded and received money from her in consideration of a favorable ruling. The Investigating Justice, however, found no compelling evidence to corroborate Reyes' accusation as it was doubtful whether these were the same bills used to pay off Judge Duque.[5]

On the charge of impropriety and gross misconduct, the Investigating Justice opined that the act of Judge Duque in embracing and kissing Reyes, sucking her breasts and touching her most intimate parts were certainly acts of lewdness that were downright obscene, detestable, and unwelcome. These acts were established by substantial evidence. The Investigating Justice, however, stated that Reyes' description of the sexual assault could not be deemed as attempted rape.[6]

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[2] *Id.* at 58-63.

[3] Justice Japar B. Dimaampao.

[4] *Rollo*, p. 64.

[5] *Id.* at 129.

[6] *Id.* at 129-130.

The Investigating Justice found Judge Duque guilty of impropriety and gross misconduct constituting violations of the Code of Judicial Conduct and recommended the imposition of fine of ₱40,000 which should be deducted from the retirement benefits of Judge Duque.

Report of the Court Administrator

In his Memorandum,[7] the Court Administrator[8] confirmed that Judge Duque compulsorily retired from the judiciary on 21 February 2008. He opined that the conduct of Judge Duque bore the marks of impropriety and immorality. The actions of Judge Duque fell short of the exacting standards for members of the judiciary. Judge Duque failed to behave in a manner that would promote confidence in the judiciary. The Court Administrator recommended that a ₱40,000 fine be imposed on Judge Duque which should be deducted from his retirement benefits.

The Court's Ruling

We agree with the recommendation of both the Investigating Justice and the OCA for the imposition of a fine of ₱40,000 on Judge Duque.

First, on the question of jurisdiction as Judge Duque is no longer a member of the judiciary having retired from the service on 21 February 2008, the records show that Reyes filed four similar complaints against Judge Duque. A complaint dated 18 January 2008 addressed to then Chief Justice Reynato S. Puno and subscribed on 19 February 2008 was received by the OCA on 20 February 2008[9] and by the Office of the Chief Justice also on 20 February 2008,[10] or one day before the date of

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[7] *Id.* at 401-412.

[8] Jose P. Perez, now Associate Justice of this Court.

[9] *Rollo*, p. 1.

[10] *Id.* at 25.

retirement of Judge Duque. A similar complaint subscribed on 19 February 2008 was received by the OCA on 12 March 2008.[11] An identical complaint addressed to the OCA and subscribed on 23 January 2008 was filed and received by the OCA on 25 January 2008.[12] As pointed out by the OCA, Judge Duque was "inadvertently sent" a copy of the complaint that was filed and received on 12 March 2008.[13] The filing of similar and identical complaints on different dates was due to the directive of the OCA requiring that the complaint be "verified" or that the "original copy of the verified complaint" be filed.[14] Nonetheless, it is clear from the records that Reyes filed her intended complaint before Judge Duque retired. Consequently, the Court no doubt has jurisdiction over this administrative case.

On the charge of graft and corruption, the Investigating Justice and the OCA found insufficient evidence to sustain Reyes' allegation that Judge Duque demanded and received money from her in consideration of a favorable ruling. Thus, this charge should be dismissed for being unsubstantiated.

On the charge of impropriety and gross misconduct, and after a thorough investigation conducted by the Investigating Justice, it was established, and Judge Duque admitted, that Reyes went to his house.[15] Substantial evidence also pointed to Judge Duque's liability for impropriety and gross misconduct when he sexually assaulted Reyes.[16] There is no need to detail again the lewd acts of Judge Duque. The Investigating Justice's narration was sufficient and thorough. The Investigating Justice likewise observed that Judge Duque merely attempted to destroy the credibility of Reyes when he insinuated that she could be a "woman of ill repute or a high class prostitute" or one whose

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[11] *Id.* at 5.

[12] *Id.* at 12.

[13] *Id.* at 61.

[14] *Id.* at 9 and 22.

[15] *Id.* at 131.

[16] *Id.* at 129.

"moral value is at its lowest level." However, no judge has a right to solicit sexual favors from a party litigant even from a woman of loose morals.[17] In *Tan v. Pacuribot*,[18] this Court further stressed:

> We have repeatedly reminded members of the Judiciary to so conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives. For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency. We have adhered to and set forth the exacting standards of morality and decency, which every member of the judiciary must observe. A magistrate is judged not only by his official acts but also by his private morals, to the extent that such private morals are externalized. He should not only possess proficiency in law but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.

Judges should avoid impropriety and the appearance of impropriety in all of their activities.[19] Judges should conduct themselves in a way that is consistent with the dignity of the judicial office.[20] Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they should always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.[21]

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[17] *Madredijo v. Judge Loyao, Jr.*, 375 Phil. 1, 17 (1999).

[18] A.M. No. RTJ-06-1982 and A.M. No. RTJ-06-1983, 14 December 2007, 540 SCRA 246, 297-298.

[19] Section 1, Canon 4, New Code of Judicial Conduct.

[20] Section 2, *id.* provides:

> SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

[21] Section 6, *id.*

The conduct of Judge Duque fell short of the exacting standards for members of the judiciary. He failed to behave in a manner that would promote confidence in the judiciary. Considering that a judge is a visible representation of the law and of justice,[22] he is naturally expected to be the epitome of integrity and should be beyond reproach. Judge Duque's conduct indubitably bore the marks of impropriety and immorality. He failed to live up to the high moral standards of the judiciary and even transgressed the ordinary norms of decency of society. Had Judge Duque not retired, his misconduct would have merited his dismissal from the service.

WHEREFORE, we find respondent Judge Manuel N. Duque *GUILTY* of *IMPROPRIETY* and *GROSS MISCONDUCT*. We *FINE* him ₱40,000 to be deducted from his retirement benefits.

SO ORDERED.

Corona, C.J., Carpio Morales, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and *Sereno, JJ.,* concur.

Perez, J., no part; acted on the matter as Court Administrator.

Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.,* on official leave.

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[22] *Geroy v. Calderon*, A.M. No. RTJ-07-2092, 8 December 2008, 573 SCRA 188, 198.

EN BANC

[A.M. No. P-10-2785. September 21, 2010]

LOURDES S. ESCALONA, *complainant, vs.* **CONSOLACION S. PADILLO, Court Stenographer III, Regional Trial Court, Branch 260, Parañaque City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; SUPREME COURT ADMINISTRATIVE SUPERVISION OVER COURT PERSONNEL; RESIGNED PERSONNEL FACING ADMINISTRATIVE SANCTION; COMPLAINT NOT RENDERED MOOT; CASE AT BAR.— We agree with the Court Administrator that this Court could no longer impose the penalty of dismissal from the service because Padillo resigned a month after the filing of the administrative complaint. However, her resignation did not render the complaint against her moot. Resignation is not and should not be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction.

2. ID.; ID.; SOLICITATION, PROHIBITED; DISMISSAL, PROPER PENALTY.— Section 2, Canon 1 of the Code of Conduct of Court Personnel provides that "(C)ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions." Section 52 (A)(11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service also provides that dismissal is the penalty for improper solicitation even if it is the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service.

3. ID.; ID.; ID.; ID.; CASE AT BAR.— There is no doubt that Padillo received from Escalona ₱20,000 purportedly "for fiscal & judge" and "for warrant officer" and this amount was "intended to facilitate" the case against Dalit. This is shown in the receipt signed by Padillo herself.

4. ID.; ID.; AFFIDAVITS OF DESISTANCE; COURT NOT DIVESTED OF ITS JURISDICTION TO INVESTIGATE AND DECIDE COMPLAINTS AGAINST ERRING OFFICIALS AND EMPLOYEES OF THE JUDICIARY; CASE AT BAR.— Escalona submitted an Affidavit of Desistance alleging that the ₱20,000 was "refunded" to her and this she "voluntarily accepted" in the presence of Florante Gaerlan, Interpreter of RTC, Branch 119, Pasay City and Erlinda Dineros, Interpreter of RTC, Branch 260, Parañaque City. However, even Escalona's affidavit of desistance will not absolve Padillo from administrative liability. We have always held that the withdrawal of the complaint or the desistance of a complainant does not warrant the dismissal of an administrative complaint. This Court has an interest in the conduct and behavior of its officials and employees and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VIII of the Constitution to investigate and decide complaints against erring officials and employees of the judiciary. The issue in an administrative case is not whether the complainant has a cause of action against the respondent, but whether the employee has breached the norms and standards of the courts.

5. ID.; ID.; ID.; ID.; DISCIPLINARY POWER NOT DEPENDENT ON A COMPLAINANT'S WHIMS.— Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel. The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses. Administrative actions are not made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. Such unilateral act does not bind this Court on a matter relating to its disciplinary power.

D E C I S I O N

PER CURIAM:

Complainant Lourdes S. Escalona (Escalona) filed on 22 January 2007 a complaint[1] charging respondent Consolacion S. Padillo (Padillo), Court Stenographer III of the Regional Trial Court (RTC) of Branch 260, Parañaque City with Grave Misconduct. Escalona claimed that she approached Jun Limcaco (Limcaco), the president of their homeowners' association, regarding her problem with Loresette Dalit (Dalit). Limcaco referred her to Padillo to help facilitate the filing of a case against Dalit. Padillo allegedly promised to prepare the necessary documents and asked for ₱20,000 purportedly as payment for the prosecutor. Escalona requested that the amount be reduced to ₱15,000. Padillo received the ₱15,000 at the Little Quiapo Branch Better Living Subdivision. Thereafter, Escalona received a text message from Padillo informing her that the prosecutor was not amenable to the reduced amount of ₱15,000. After two weeks, Escalona gave the balance of ₱5,000 to Padillo allegedly for the service of the warrant of arrest. Escalona was also asked to submit a *barangay* clearance and to first take an oath before Prosecutor Antonio Arquiza, Jr. and later before Prosecutor Napoleon Ramolete. However, subsequent verification from the Prosecutor's Office showed no record of a case filed against Dalit. Escalona confronted Padillo who promised to return to her the money. Padillo reneged on her promise. Hence, this complaint.

Meanwhile, Escalona withdrew her complaint against Padillo in a Sworn Affidavit of Desistance dated 10 July 2007[2] alleging that Padillo already returned to her the ₱20,000. This notwithstanding, then Court Administrator Christopher O. Lock sent two notices to Padillo requiring her to submit her comment to the complaint of Escalona. Despite the registry return receipts showing that she received the communications sent to her, Padillo failed to comment on the complaint. On 15 September 2008,

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[1] *Rollo*, pp. 3-4.

[2] *Id*. at 9.

this Court required Padillo to explain why she should not be administratively dealt with for her failure to submit the required comment and reiterated the directive on Padillo to submit her comment to Escalona's complaint. A copy of the resolution sent to Padillo at the RTC, Branch 260, Parañaque City was returned unserved with the notation "no longer connected."

The parties were likewise required to manifest whether they were willing to submit the case for resolution on the basis of the pleadings filed. Copies of the resolution sent to Escalona at B17-L36 Barnabas St., Annex 35, Better Living Subdivision, Parañaque City and to Padillo at 651 San Francisco St., Las Piñas City were returned unserved with the notation "moved, left no address."

The Court Administrator,[3] in his Memorandum dated 8 December 2009, found Padillo guilty of grave misconduct for soliciting money from Escalona in exchange for facilitating the filing of a case against Dalit. Padillo's act of soliciting money from Escalona is an offense which merited the grave penalty of dismissal from the service. However, considering that Padillo tendered her resignation on 18 February 2007, a month after the complaint was filed but did not and has not filed any claim relative to the benefits due her, the Court Administrator recommended that all benefits due her, except accrued leave credits, be forfeited and that she be disqualified from reemployment in any branch of the government or any of its instrumentalities, including government-owned and controlled corporations.

We agree with the Court Administrator that this Court could no longer impose the penalty of dismissal from the service because Padillo resigned a month after the filing of the administrative complaint. However, her resignation did not render the complaint against her moot. Resignation is not and should not be a convenient way or strategy to evade administrative liability when a court employee is facing administrative sanction.[4]

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[3] Jose P. Perez, now Associate Justice of this Court.

[4] *Re: Administrative Case for Falsification of Official Documents and*

There is no doubt that Padillo received from Escalona ₱20,000 purportedly "for fiscal & judge" and "for warrant officer" and this amount was "intended to facilitate" the case against Dalit. This is shown in the receipt[5] signed by Padillo herself.

Section 2, Canon 1 of the Code of Conduct of Court Personnel[6] provides that "(C)ourt personnel shall not solicit or accept any gift, favor or benefit based on any explicit or implicit understanding that such gift, favor or benefit shall influence their official actions." Section 52 (A)(11) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service also provides that dismissal is the penalty for improper solicitation even if it is the first offense. Section 58(a) of the same Rule provides that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in the government service.

Escalona submitted an Affidavit of Desistance alleging that the ₱20,000 was "refunded" to her and this she "voluntarily accepted" in the presence of Florante Gaerlan, Interpreter of RTC, Branch 119, Pasay City and Erlinda Dineros, Interpreter of RTC, Branch 260, Parañaque City. However, even Escalona's affidavit of desistance will not absolve Padillo from administrative liability. We have always held that the withdrawal of the complaint or the desistance of a complainant does not warrant the dismissal of an administrative complaint. This Court has an interest in the conduct and behavior of its officials and employees and in ensuring at all times the proper delivery of justice to the people. No affidavit of desistance can divest this Court of its jurisdiction under Section 6, Article VIII of the Constitution to investigate and decide complaints against erring officials and employees of the judiciary. The issue in an administrative case is not whether

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Dishonesty against Randy S. Villanueva, A.M. No. 2005-24-SC, 10 August 2007, 529 SCRA 679, 685; *Office of the Court Administrator v. Juan*, 478 Phil. 823, 828 (2004).

[5] *Rollo*, p. 5.

[6] A.M. No. 03-06-13-SC, which took effect on 1 June 2004.

the complainant has a cause of action against the respondent, but whether the employee has breached the norms and standards of the courts.[7] Neither can the disciplinary power of this Court be made to depend on a complainant's whims. To rule otherwise would undermine the discipline of court officials and personnel.[8] The people, whose faith and confidence in their government and its instrumentalities need to be maintained, should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses.[9] Administrative actions are not made to depend upon the will of every complainant who may, for one reason or another, condone a detestable act. Such unilateral act does not bind this Court on a matter relating to its disciplinary power.[10]

WHEREFORE, we find respondent Consolacion S. Padillo *GUILTY* of *GRAVE MISCONDUCT*. Accordingly, her retirement benefits, except accrued leave credits, are *FORFEITED*. Her civil service eligibility is *CANCELLED* and she is *PERPETUALLY DISQUALIFIED* for reemployment in any branch of the government or any of its agencies or instrumentalities, including government-owned and controlled corporations. This decision is immediately executory.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., and *Sereno, JJ.,* concur.

Perez, J., no part; acted on the matter as Court Administrator.

Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.,* on official leave.

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[7] *Rosales v. Monesit, Sr.,* A.M. No. P-08-2447, 10 April 2008, 551 SCRA 80, 85, citing *Vilar v. Angeles*, A.M. No. P-06-2276, 5 February 2007, 514 SCRA 147.

[8] *Sy v. Binasing,* A.M. No. P-06-2213, 23 November 2007, 538 SCRA 180, 183, citing *Atty. Pineda v. Judge Pinto*, 483 Phil. 243, 252 (2004).

[9] *Councilor Castelo v. Sheriff Florendo,* 459 Phil. 581, 595 (2003).

[10] *SPO4 Manaois v. Judge Leomo,* 456 Phil. 920, 929-930 (2003).

EN BANC

[G.R. No. 143855. September 21, 2010]

REPRESENTATIVES GERARDO S. ESPINA, ORLANDO FUA, JR., PROSPERO AMATONG, ROBERT ACE S. BARBERS, RAUL M. GONZALES, PROSPERO PICHAY, JUAN MIGUEL ZUBIRI and FRANKLIN BAUTISTA, *petitioners, vs.* **HON. RONALDO ZAMORA, JR. (Executive Secretary), HON. MAR ROXAS (Secretary of Trade and Industry), HON. FELIPE MEDALLA (Secretary of National Economic and Development Authority), GOV. RAFAEL BUENAVENTURA (Bangko Sentral ng Pilipinas) and HON. LILIA BAUTISTA (Chairman, Securities and Exchange Commission),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; CIVIL ACTIONS; PARTIES; LEGAL STANDING.— The long settled rule is that he who challenges the validity of a law must have a standing to do so. Legal standing or *locus standi* refers to the right of a party to come to a court of justice and make such a challenge.

2. ID.; ID.; ID.; ID.; IN PARTICULAR, A PARTY'S PERSONAL AND SUBSTANTIAL INTEREST IN THAT HE HAS SUFFERED OR WILL SUFFER DIRECT INJURY AS A RESULT OF THE PASSAGE OF A LAW.— More particularly, standing refers to his personal and substantial interest in that he has suffered or will suffer direct injury as a result of the passage of that law. To put it another way, he must show that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the law he complains of.

3. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Here, there is no clear showing that the implementation of the Retail Trade Liberalization Act prejudices petitioners or inflicts damages on them, either as taxpayers or as legislators.

4. ID.; ID.; ID.; ID.; ID.; RULE ON STANDING CAN BE RELAXED FOR NONTRADITIONAL PLAINTIFFS WHEN THE MATTER IS OF PARAMOUNT PUBLIC INTEREST.— Still the Court will resolve the question they raise since the rule on standing can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when as in this case the public interest so requires or the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.

5. ID.; ID.; ID.; CAUSE OF ACTION; PROVISIONS OF ARTICLE II OF THE 1987 CONSTITUTION; LEGISLATIVE FAILURE TO PURSUE THE SAME CANNOT GIVE RISE TO A CAUSE OF ACTION IN THE COURTS.— But, as the Court explained in *Tañada v. Angara*, the provisions of Article II of the 1987 Constitution, the declarations of principles and state policies, are not self-executing. Legislative failure to pursue such policies cannot give rise to a cause of action in the courts.

6. POLITICAL LAW; CONSTITUTIONAL LAW; ECONOMIC NATIONALISM; ARTICLE XII OF THE CONSTITUTION LAYS DOWN IDEALS.— The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.

7. ID.; ID.; ECONOMIC ENVIRONMENT; FILIPINO MONOPOLY; NOT IMPOSED BY SECTION 19, ARTICLE II OF THE CONSTITUTION.— In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

8. ID.; ID.; ID.; WHILE THE CONSTITUTION MANDATES A BIAS IN FAVOR OF FILIPINO GOODS, SERVICES, LABOR AND ENTERPRISES, IT ALSO RECOGNIZES THE NEED FOR BUSINESS EXCHANGE WITH THE REST OF THE WORLD.— Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.

9. ID.; ID.; ID.; THE CONSTITUTION STRIKES A BALANCE BETWEEN PROTECTING LOCAL BUSINESSES AND ALLOWING THE ENTRY OF FOREIGN INVESTMENTS AND SERVICES.— In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair. The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

10. ID.; ID.; ID.; SECTION 10, ARTICLE XII OF THE CONSTITUTION GIVES CONGRESS THE DISCRETION TO RESERVE TO FILIPINOS CERTAIN AREAS OF INVESTMENTS UPON THE RECOMMENDATION OF THE NEDA; CASE AT BAR.— More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain

industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.

11. ID.; ID.; STATE; POLICE POWER; COVERS THE CONTROL AND REGULATION OF TRADE IN THE INTEREST OF THE PUBLIC WELFARE; RETAIL TRADE NATIONALIZATION ACT (R.A. NO. 1180), NOT ARBITRARY.— The control and regulation of trade in the interest of the public welfare is of course an exercise of the police power of the State. A person's right to property, whether he is a Filipino citizen or foreign national, cannot be taken from him without due process of law. In 1954, Congress enacted the Retail Trade Nationalization Act or R.A. 1180 that restricts the retail business to Filipino citizens. In denying the petition assailing the validity of such Act for violation of the foreigner's right to substantive due process of law, the Supreme Court held that the law constituted a valid exercise of police power. The State had an interest in preventing alien control of the retail trade and R.A. 1180 was reasonably related to that purpose. That law is not arbitrary.

12. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.— Here, to the extent that R.A. 8762, the Retail Trade Liberalization Act, lessens the restraint on the foreigners' right to property or to engage in an ordinarily lawful business, it cannot be said that the law amounts to a denial of the Filipinos' right to property and to due process of law. Filipinos continue to have the right to engage in the kinds of retail business to which the law in question has permitted the entry of foreign investors.

13. ID.; ID.; THREE BRANCHES OF GOVERNMENT; NOT WITHIN THE PROVINCE OF THE COURT TO INQUIRE INTO THE WISDOM OF R.A. NO. 8762.— Certainly, it is not within the province of the Court to inquire into the wisdom of R.A. 8762 save when it blatantly violates the Constitution. But as the Court has said, there is no showing that the law has contravened any constitutional mandate. The Court is not convinced that the implementation of R.A. 8762 would eventually lead to alien control of the retail trade business. Petitioners have not mustered any concrete and strong argument to support its thesis.

14. ID.; ID.; ID.; ID.; THE LAW ITSELF HAS PROVIDED STRICT SAFEGUARDS ON FOREIGN PARTICIPATION IN THE RETAIL BUSINESS; CASE AT BAR.— The law itself has provided strict safeguards on foreign participation in that business. Thus – *First*, aliens can only engage in retail trade business subject to the categories above-enumerated; *Second*, only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade business; and *Third*, qualified foreign retailers shall not be allowed to engage in certain retailing activities outside their accredited stores through the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and *sari-sari* stores and such other similar retailing activities.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.

Virgilio A. Sevandal for the Secretary of Trade and Industry.

The Solicitor General and *Office of the General Counsel and Legal Services (BSP)* for respondents.

D E C I S I O N

ABAD, *J.*:

This case calls upon the Court to exercise its power of judicial review and determine the constitutionality of the Retail Trade Liberalization Act of 2000, which has been assailed as in breach of the constitutional mandate for the development of a self-reliant and independent national economy effectively controlled by Filipinos.

The Facts and the Case

On March 7, 2000 President Joseph E. Estrada signed into law Republic Act (R.A.) 8762, also known as the Retail Trade Liberalization Act of 2000. It expressly repealed R.A. 1180, which absolutely prohibited foreign nationals from engaging in the retail trade business. R.A. 8762 now allows them to do so under four categories:

Category A	Less than US$2,500,000.00	Exclusively for Filipino citizens and corporations wholly owned by Filipino citizens.
Category B	US$2,500,000.00 up but less than US$7,500,000.00	For the first two years of R.A. 8762's effectivity, foreign ownership is allowed up to 60%. After the two-year period, 100% foreign equity shall be allowed.
Category C	US$7,500,000.00 or more	May be wholly owned by foreigners. Foreign investments for establishing a store in Categories B and C shall not be less than the equivalent in Philippine Pesos of US$830,000.00.
Category D	US$250,000.00 per store of foreign enterprises specializing in high-end or luxury products	May be wholly owned by foreigners.

R.A. 8762 also allows natural-born Filipino citizens, who had lost their citizenship and now reside in the Philippines, to engage in the retail trade business with the same rights as Filipino citizens.

On October 11, 2000 petitioners Magtanggol T. Gunigundo I,[·] Michael T. Defensor,[·] Gerardo S. Espina, Benjamin S. Lim,[·] Orlando Fua, Jr., Prospero Amatong, Sergio Apostol,[·] Robert Ace S. Barbers, Enrique Garcia, Jr.,[·] Raul M. Gonzales, Jaime Jacob,[·] Apolinario Lozada, Jr.,[·] Leonardo Montemayor,[·] Ma. Elena Palma-Gil,[·] Prospero Pichay, Juan Miguel Zubiri and Franklin Bautista, all members of the House of Representatives, filed the present petition, assailing the constitutionality of R.A. 8762 on the following grounds:

[·] Ordered dropped as petitioners per Supreme Court *En Banc* Resolution dated August 2, 2005. *Rollo*, p. 170.

First, the law runs afoul of Sections 9, 19, and 20 of Article II of the Constitution which enjoins the State to place the national economy under the control of Filipinos to achieve equal distribution of opportunities, promote industrialization and full employment, and protect Filipino enterprise against unfair competition and trade policies.

Second, the implementation of R.A. 8762 would lead to alien control of the retail trade, which taken together with alien dominance of other areas of business, would result in the loss of effective Filipino control of the economy.

Third, foreign retailers like Walmart and K-Mart would crush Filipino retailers and *sari-sari* store vendors, destroy self-employment, and bring about more unemployment.

Fourth, the World Bank-International Monetary Fund had improperly imposed the passage of R.A. 8762 on the government as a condition for the release of certain loans.

Fifth, there is a clear and present danger that the law would promote monopolies or combinations in restraint of trade.

Respondents Executive Secretary Ronaldo Zamora, Jr., Trade and Industry Secretary Mar Roxas, National Economic and Development Authority (NEDA) Secretary Felipe Medalla, Bangko Sentral ng Pilipinas Gov. Rafael Buenaventura, and Securities and Exchange Commission Chairman Lilia Bautista countered that:

First, petitioners have no legal standing to file the petition. They cannot invoke the fact that they are taxpayers since R.A. 8762 does not involve the disbursement of public funds. Nor can they invoke the fact that they are members of Congress since they made no claim that the law infringes on their right as legislators.

Second, the petition does not involve any justiciable controversy. Petitioners of course claim that, as members of Congress, they represent the small retail vendors in their respective districts but the petition does not allege that the subject law violates the rights of those vendors.

Third, petitioners have failed to overcome the presumption of constitutionality of R.A. 8762. Indeed, they could not specify how the new law violates the constitutional provisions they cite. Sections 9, 19, and 20 of Article II of the Constitution are not self-executing provisions that are judicially demandable.

Fourth, the Constitution mandates the regulation but not the prohibition of foreign investments. It directs Congress to reserve to Filipino citizens certain areas of investments upon the recommendation of the NEDA and when the national interest so dictates. But the Constitution leaves to the discretion of the Congress whether or not to make such reservation. It does not prohibit Congress from enacting laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens.

The Issues Presented

Simplified, the case presents two issues:

1. Whether or not petitioner lawmakers have the legal standing to challenge the constitutionality of R.A. 8762; and

2. Whether or not R.A. 8762 is unconstitutional.

The Court's Ruling

One. The long settled rule is that he who challenges the validity of a law must have a standing to do so.[1] Legal standing or *locus standi* refers to the right of a party to come to a court of justice and make such a challenge. More particularly, standing refers to his personal and substantial interest in that he has suffered or will suffer direct injury as a result of the passage of that law.[2] To put it another way, he must show that he has been or is about to be denied some right or privilege to which

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[1] *Jumamil v. Cafe*, G.R. No. 144570, September 21, 2005, 470 SCRA 475, 486-487.

[2] *Abaya v. Ebdane, Jr.*, G.R. No. 167919, February 14, 2007, 515 SCRA 720, 756.

he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the law he complains of.[3]

Here, there is no clear showing that the implementation of the Retail Trade Liberalization Act prejudices petitioners or inflicts damages on them, either as taxpayers[4] or as legislators.[5] Still the Court will resolve the question they raise since the rule on standing can be relaxed for nontraditional plaintiffs like ordinary citizens, taxpayers, and legislators when as in this case the public interest so requires or the matter is of transcendental importance, of overarching significance to society, or of paramount public interest.[6]

Two. Petitioners mainly argue that R.A. 8762 violates the mandate of the 1987 Constitution for the State to develop a self-reliant and independent national economy effectively controlled by Filipinos. They invoke the provisions of the Declaration of Principles and State Policies under Article II of the 1987 Constitution, which read as follows:

Section 9. The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all.

x x x **x x x** **x x x**

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[3] *BAYAN (Bagong Alyansang Makabayan) v. Executive Secretary Zamora*, 396 Phil. 623, 646-647 (2000).

[4] *Public Interest Center, Inc. v. Roxas*, G.R. No. 125509, January 31, 2007, 513 SCRA 457, 470.

[5] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. Nos. 183591, 183752, 183893, 183951 & 183962, October 14, 2008, 568 SCRA 402, 457; *Bagatsing v. Committee on Privatization, PN[O]C*, 316 Phil. 404, 419 (1995).

[6] *Automotive Industry Workers Alliance (AIWA) v. Hon. Romulo*, 489 Phil. 710, 719 (2005).

Section 19. The State shall develop a self-reliant and independent national economy effectively controlled by Filipinos.

Section 20. The State recognizes the indispensable role of the private sector, encourages private enterprise, and provides incentives to needed investments.

Petitioners also invoke the provisions of the National Economy and Patrimony under Article XII of the 1987 Constitution, which reads:

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

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Section 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

Section 13. The State shall pursue a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity.

But, as the Court explained in *Tañada v. Angara*,[7] the provisions of Article II of the 1987 Constitution, the declarations of principles and state policies, are not self-executing. Legislative

[7] 338 Phil. 546, 580-581 (1997).

failure to pursue such policies cannot give rise to a cause of action in the courts.

The Court further explained in *Tañada* that Article XII of the 1987 Constitution lays down the ideals of economic nationalism: (1) by expressing preference in favor of qualified Filipinos in the grant of rights, privileges and concessions covering the national economy and patrimony and in the use of Filipino labor, domestic materials and locally-produced goods; (2) by mandating the State to adopt measures that help make them competitive; and (3) by requiring the State to develop a self-reliant and independent national economy effectively controlled by Filipinos.[8]

In other words, while Section 19, Article II of the 1987 Constitution requires the development of a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs, it does not impose a policy of Filipino monopoly of the economic environment. The objective is simply to prohibit foreign powers or interests from maneuvering our economic policies and ensure that Filipinos are given preference in all areas of development.

Indeed, the 1987 Constitution takes into account the realities of the outside world as it requires the pursuit of a trade policy that serves the general welfare and utilizes all forms and arrangements of exchange on the basis of equality and reciprocity; and speaks of industries which are competitive in both domestic and foreign markets as well as of the protection of Filipino enterprises against unfair foreign competition and trade practices. Thus, while the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world on the bases of equality and reciprocity and limits protection of Filipino enterprises only against foreign competition and trade practices that are unfair.[9]

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[8] *Id.* at 584.

[9] *Id.* at 584-585.

In other words, the 1987 Constitution does not rule out the entry of foreign investments, goods, and services. While it does not encourage their unlimited entry into the country, it does not prohibit them either. In fact, it allows an exchange on the basis of equality and reciprocity, frowning only on foreign competition that is unfair.[10] The key, as in all economies in the world, is to strike a balance between protecting local businesses and allowing the entry of foreign investments and services.

More importantly, Section 10, Article XII of the 1987 Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA and when the national interest requires. Thus, Congress can determine what policy to pass and when to pass it depending on the economic exigencies. It can enact laws allowing the entry of foreigners into certain industries not reserved by the Constitution to Filipino citizens. In this case, Congress has decided to open certain areas of the retail trade business to foreign investments instead of reserving them exclusively to Filipino citizens. The NEDA has not opposed such policy.

The control and regulation of trade in the interest of the public welfare is of course an exercise of the police power of the State. A person's right to property, whether he is a Filipino citizen or foreign national, cannot be taken from him without due process of law. In 1954, Congress enacted the Retail Trade Nationalization Act or R.A. 1180 that restricts the retail business to Filipino citizens. In denying the petition assailing the validity of such Act for violation of the foreigner's right to substantive due process of law, the Supreme Court held that the law constituted a valid exercise of police power.[11] The State had an interest in preventing alien control of the retail trade and R.A. 1180 was reasonably related to that purpose. That law is not arbitrary.

Here, to the extent that R.A. 8762, the Retail Trade Liberalization Act, lessens the restraint on the foreigners' right

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[10] *Id.* at 585.

[11] *Ichong v. Hernandez*, 101 Phil. 1155, 1191 (1957).

to property or to engage in an ordinarily lawful business, it cannot be said that the law amounts to a denial of the Filipinos' right to property and to due process of law. Filipinos continue to have the right to engage in the kinds of retail business to which the law in question has permitted the entry of foreign investors.

Certainly, it is not within the province of the Court to inquire into the wisdom of R.A. 8762 save when it blatantly violates the Constitution. But as the Court has said, there is no showing that the law has contravened any constitutional mandate. The Court is not convinced that the implementation of R.A. 8762 would eventually lead to alien control of the retail trade business. Petitioners have not mustered any concrete and strong argument to support its thesis. The law itself has provided strict safeguards on foreign participation in that business. Thus –

First, aliens can only engage in retail trade business subject to the categories above-enumerated; *Second*, only nationals from, or juridical entities formed or incorporated in countries which allow the entry of Filipino retailers shall be allowed to engage in retail trade business; and *Third*, qualified foreign retailers shall not be allowed to engage in certain retailing activities outside their accredited stores through the use of mobile or rolling stores or carts, the use of sales representatives, door-to-door selling, restaurants and *sari-sari* stores and such other similar retailing activities.

In sum, petitioners have not shown how the retail trade liberalization has prejudiced and can prejudice the local small and medium enterprises since its implementation about a decade ago.

WHEREFORE, the Court *DISMISSES* the petition for lack of merit. No costs.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.,* on official leave.

Sereno, J., on leave.

EN BANC

[G.R. No. 184869. September 21, 2010]

CENTRAL MINDANAO UNIVERSITY, represented by Officer-in-Charge Dr. Rodrigo L. Malunhao, *petitioner, vs.* **THE HONORABLE EXECUTIVE SECRETARY, THE HONORABLE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, THE CHAIRPERSON AND COMMISSIONERS OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES, and THE LEAD CONVENOR OF THE NATIONAL ANTI-POVERTY COMMISSION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; MOOT AND ACADEMIC; ISSUE OF THE PROPRIETY OF THE RTC USING TWO INCOMPATIBLE REASONS FOR DISMISSING THE ACTION IS ACADEMIC; CASE AT BAR.—There is nothing essentially wrong about a court holding on the one hand that it has no jurisdiction over a case, and on the other, based on an assumption that it has jurisdiction, deciding the case on its merits, both with the same results, which is the dismissal of the action. At any rate, the issue of the propriety of the RTC using two incompatible reasons for dismissing the action is academic. The CA from which the present petition was brought dismissed CMU's appeal on some technical ground.

2. ID.; APPEALS TO THE SUPREME COURT; THE SUPREME COURT MAY ASSUME JURISDICTION OVER A CASE TO AVOID MULTIPLICITY OF SUITS SINCE THE MAIN ISSUE OF THE CONSTITUTIONALITY OF PRESIDENTIAL PROCLAMATION 310 HAS BEEN RAISED.— Section 9(3) of the Judiciary Reorganization Act of 1980 vests in the CA appellate jurisdiction over the final judgments or orders of the RTCs and quasi-judicial bodies. But where an appeal from the RTC raises purely questions of

law, recourse should be by a petition for review on *certiorari* filed directly with this Court. x x x CMU's action was one for injunction against the implementation of Presidential Proclamation 310 that authorized the taking of lands from the university. The fact that the President issued this proclamation in Manila and that it was being enforced in Malaybalay City where the lands were located were facts that were not in issue. These were alleged in the complaint and presumed to be true by the motion to dismiss. Consequently, the CMU's remedy for assailing the correctness of the dismissal, involving as it did a pure question of law, indeed lies with this Court. x x x Whether the RTC in fact prematurely decided the constitutionality of the proclamation, resulting in the denial of CMU's right to be heard on the same, is a factual issue that was proper for the CA Mindanao Station to hear and ascertain from the parties. Consequently, the CA erred in dismissing the action on the ground that it raised pure questions of law. x x x Since the main issue of the constitutionality of Presidential Proclamation 310 has been raised and amply argued before this Court, it would serve no useful purpose to have the case remanded to the CA Mindanao Station or to the Malaybalay RTC for further proceedings. Ultimately, the issue of constitutionality of the Proclamation in question will come to this Court however the courts below decide it. Consequently, the Court should, to avoid delay and multiplicity of suits, now resolve the same.

3. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; AGRICULTURAL LANDS; THE INALIENABLE CHARACTER THEREOF IS SUSTAINED IN CASE AT BAR.— The key question lies in the character of the lands taken from CMU. In *CMU v. Department of Agrarian Reform Adjudication Board (DARAB)*, the DARAB, a national government agency charged with taking both privately-owned and government-owned agricultural lands for distribution to farmers-beneficiaries, ordered the segregation for this purpose of 400 hectares of CMU lands. The Court nullified the DARAB action considering the inalienable character of such lands, being part of the long term functions of an autonomous agricultural educational institution. Said the Court: **The construction given by the DARAB to Section 10 restricts the land area of the CMU to its present needs or to a land area presently, actively exploited and utilized by the**

university in carrying out its present educational program with its present student population and academic facility — overlooking the very significant factor of growth of the university in the years to come. By the nature of the CMU, which is a school established to promote agriculture and industry, the need for a vast tract of agricultural land for future programs of expansion is obvious. x x x It was in this same spirit that President Garcia issued Proclamation No. 476, withdrawing from sale or settlement and reserving for the Mindanao Agricultural College (forerunner of the CMU) a land reservation of 3,080 hectares as its future campus. It was set up in Bukidnon, in the hinterlands of Mindanao, in order that it can have enough resources and wide open spaces to grow as an agricultural educational institution, to develop and train future farmers of Mindanao and help attract settlers to that part of the country. x x x The education of the youth and agrarian reform are admittedly among the highest priorities in the government socio-economic programs. In this case, neither need give way to the other. Certainly, there must still be vast tracts of agricultural land in Mindanao outside the CMU land reservation which can be made available to landless peasants, assuming the claimants here, or some of them, can qualify as CARP beneficiaries. To our mind, the taking of the CMU land which had been segregated for educational purposes for distribution to yet uncertain beneficiaries is a gross misinterpretation of the authority and jurisdiction granted by law to the DARAB. The decision in this case is of far-reaching significance as far as it concerns state colleges and universities whose resources and research facilities may be gradually eroded by misconstruing the exemptions from the CARP. These state colleges and universities are the main vehicles for our scientific and technological advancement in the field of agriculture, so vital to the existence, growth and development of this country. It did not matter that it was President Arroyo who, in this case, attempted by proclamation to appropriate the lands for distribution to indigenous peoples and cultural communities. As already stated, the lands by their character have become inalienable from the moment President Garcia dedicated them

for CMU's use in scientific and technological research in the field of agriculture. They have ceased to be alienable public lands. Besides, when Congress enacted the Indigenous Peoples' Rights Act (IPRA) or Republic Act 8371 in 1997, it provided in Section 56 that "property rights within the ancestral domains already existing and/or vested" upon its effectivity "shall be recognized and respected." In this case, ownership over the subject lands had been vested in CMU as early as 1958. Consequently, transferring the lands in 2003 to the indigenous peoples around the area is not in accord with the IPRA.

APPEARANCES OF COUNSEL

Rodriguez Casila Galon & Associates for petitioner.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J.*:

This case concerns the constitutionality of a presidential proclamation that takes property from a state university, over its objections, for distribution to indigenous peoples and cultural communities.

The Facts and the Case

Petitioner Central Mindanao University (CMU) is a chartered educational institution owned and run by the State.[1] In 1958, the President issued Presidential Proclamation 476, reserving 3,401 hectares of lands of the public domain in Musuan, Bukidnon, as school site for CMU. Eventually, CMU obtained title in its name over 3,080 hectares of those lands under Original Certificates of Title (OCTs) 0-160, 0-161, and 0-162. Meanwhile, the government distributed more than 300 hectares of the remaining untitled lands to several tribes belonging to the area's cultural communities.

[1] Pursuant to Republic Act 4498, "An Act to Convert Mindanao Agricultural College into Central Mindanao University and to Authorize the Appropriation of Additional Funds Therefor."

Forty-five years later or on January 7, 2003 President Gloria Macapagal-Arroyo issued Presidential Proclamation 310 that takes 670 hectares from CMU's registered lands for distribution to indigenous peoples and cultural communities in Barangay Musuan, Maramag, Bukidnon.

On April 3, 2003, however, CMU filed a petition for prohibition against respondents Executive Secretary, Secretary of the Department of Environment and Natural Resources, Chairperson and Commissioner of the National Commission on Indigenous Peoples (NCIP), and Lead Convenor of the National Anti-Poverty Commission (collectively, NCIP, *et al.*) before the Regional Trial Court (RTC) of Malaybalay City (Branch 9), seeking to stop the implementation of Presidential Proclamation 310 and have it declared unconstitutional.

The NCIP, *et al.* moved to dismiss the case on the ground of lack of jurisdiction of the Malaybalay RTC over the action, pointing out that since the act sought to be enjoined relates to an official act of the Executive Department done in Manila, jurisdiction lies with the Manila RTC. The Malaybalay RTC denied the motion, however, and proceeded to hear CMU's application for preliminary injunction. Meanwhile, respondents NCIP, *et al.* moved for partial reconsideration of the RTC's order denying their motion to dismiss.

On October 27, 2003, after hearing the preliminary injunction incident, the RTC issued a resolution granting NCIP, *et al*'s motion for partial reconsideration and dismissed CMU's action for lack of jurisdiction. Still, the RTC ruled that Presidential Proclamation 310 was constitutional, being a valid State act. The RTC said that the ultimate owner of the lands is the State and that CMU merely held the same in its behalf. CMU filed a motion for reconsideration of the resolution but the RTC denied the same on April 19, 2004. This prompted CMU to appeal the RTC's dismissal order to the Court of Appeals (CA) Mindanao Station.[2]

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[2] Docketed as CA-G.R. SP No. 85456.

CMU raised two issues in its appeal: 1) whether or not the RTC deprived it of its right to due process when it dismissed the action; and 2) whether or not Presidential Proclamation 310 was constitutional.[3]

In a March 14, 2008 decision,[4] the CA dismissed CMU's appeal for lack of jurisdiction, ruling that CMU's recourse should have been a petition for review on *certiorari* filed directly with this Court, because it raised pure questions law—bearing mainly on the constitutionality of Presidential Proclamation 310. The CA added that whether the trial court can decide the merits of the case based solely on the hearings of the motion to dismiss and the application for injunction is also a pure question of law.

CMU filed a motion for reconsideration of the CA's order of dismissal but it denied the same,[5] prompting CMU to file the present petition for review.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in not finding that the RTC erred in dismissing its action for prohibition against NCIP, *et al.* for lack of jurisdiction and at the same time ruling that Presidential Proclamation 310 is valid and constitutional;

2. Whether or not the CA correctly dismissed CMU's appeal on the ground that it raised purely questions of law that are proper for a petition for review filed directly with this Court; and

3. Whether or not Presidential Proclamation 310 is valid and constitutional.

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[3] *Rollo*, pp. 41-42.

[4] *Id.* at 85-102; penned by Associate Justice Teresita Dy-Liacco Flores, with the concurrence of Associate Justices Jane Aurora C. Lantion and Michael P. Elbinias.

[5] *Id.* at 103-106; Resolution of the Court of Appeals dated September 22, 2008.

The Court's Rulings

One. The RTC invoked two reasons for dismissing CMU's action. The first is that jurisdiction over the action to declare Presidential Proclamation 310 lies with the RTC of Manila, not the RTC of Malaybalay City, given that such action relates to official acts of the Executive done in Manila. The second reason, presumably made on the assumption that the Malaybalay RTC had jurisdiction over the action, Presidential Proclamation 310 was valid and constitutional since the State, as ultimate owner of the subject lands, has the right to dispose of the same for some purpose other than CMU's use.

There is nothing essentially wrong about a court holding on the one hand that it has no jurisdiction over a case, and on the other, based on an assumption that it has jurisdiction, deciding the case on its merits, both with the same results, which is the dismissal of the action. At any rate, the issue of the propriety of the RTC using two incompatible reasons for dismissing the action is academic. The CA from which the present petition was brought dismissed CMU's appeal on some technical ground.

Two. Section 9(3) of the Judiciary Reorganization Act of 1980[6] vests in the CA appellate jurisdiction over the final judgments or orders of the RTCs and quasi-judicial bodies. But where an appeal from the RTC raises purely questions of law, recourse should be by a petition for review on *certiorari* filed directly with this Court. The question in this case is whether or not CMU's appeal from the RTC's order of dismissal raises purely questions of law.

As already stated, CMU raised two grounds for its appeal: 1) the RTC deprived it of its right to due process when it dismissed the action; and 2) Presidential Proclamation 310 was constitutional. Did these grounds raise factual issues that are proper for the CA to hear and adjudicate?

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[6] *Batas Pambansa Bilang* 129.

Regarding the first reason, CMU's action was one for injunction against the implementation of Presidential Proclamation 310 that authorized the taking of lands from the university. The fact that the President issued this proclamation in Manila and that it was being enforced in Malaybalay City where the lands were located were facts that were not in issue. These were alleged in the complaint and presumed to be true by the motion to dismiss. Consequently, the CMU's remedy for assailing the correctness of the dismissal, involving as it did a pure question of law, indeed lies with this Court.

As to the second reason, the CMU claimed that the Malaybalay RTC deprived it of its right to due process when it dismissed the case based on the ground that Presidential Proclamation 310, which it challenged, was constitutional. CMU points out that the issue of the constitutionality of the proclamation had not yet been properly raised and heard. NCIP, *et al.* had not yet filed an answer to join issue with CMU on that score. What NCIP, *et al.* filed was merely a motion to dismiss on the ground of lack of jurisdiction of the Malaybalay RTC over the injunction case. Whether the RTC in fact prematurely decided the constitutionality of the proclamation, resulting in the denial of CMU's right to be heard on the same, is a factual issue that was proper for the CA Mindanao Station to hear and ascertain from the parties. Consequently, the CA erred in dismissing the action on the ground that it raised pure questions of law.

Three. Since the main issue of the constitutionality of Presidential Proclamation 310 has been raised and amply argued before this Court, it would serve no useful purpose to have the case remanded to the CA Mindanao Station or to the Malaybalay RTC for further proceedings. Ultimately, the issue of constitutionality of the Proclamation in question will come to this Court however the courts below decide it. Consequently, the Court should, to avoid delay and multiplicity of suits, now resolve the same.

The key question lies in the character of the lands taken from CMU. In *CMU v. Department of Agrarian Reform Adjudication Board (DARAB)*,[7] the DARAB, a national government agency charged with taking both privately-owned and government-owned agricultural lands for distribution to farmers-beneficiaries, ordered the segregation for this purpose of 400 hectares of CMU lands. The Court nullified the DARAB action considering the inalienable character of such lands, being part of the long term functions of an autonomous agricultural educational institution. Said the Court:

The construction given by the DARAB to Section 10 restricts the land area of the CMU to its present needs or to a land area presently, actively exploited and utilized by the university in carrying out its present educational program with its present student population and academic facility — overlooking the very significant factor of growth of the university in the years to come. By the nature of the CMU, which is a school established to promote agriculture and industry, the need for a vast tract of agricultural land for future programs of expansion is obvious. At the outset, the CMU was conceived in the same manner as land grant colleges in America, a type of educational institution which blazed the trail for the development of vast tracts of unexplored and undeveloped agricultural lands in the Mid-West. What we now know as Michigan State University, Penn State University and Illinois State University, started as small land grant colleges, with meager funding to support their ever increasing educational programs. They were given extensive tracts of agricultural and forest lands to be developed to support their numerous expanding activities in the fields of agricultural technology and scientific research. Funds for the support of the educational programs of land grant colleges came from government appropriation, tuition and other student fees, private endowments and gifts, and earnings from miscellaneous sources. It was in this same spirit that President Garcia issued Proclamation No. 476, withdrawing from sale or settlement and reserving for the Mindanao Agricultural College (forerunner

[7] G.R. No. 100091, October 22, 1992, 215 SCRA 86.

of the CMU) a land reservation of 3,080 hectares as its future campus. It was set up in Bukidnon, in the hinterlands of Mindanao, in order that it can have enough resources and wide open spaces to grow as an agricultural educational institution, to develop and train future farmers of Mindanao and help attract settlers to that part of the country.

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The education of the youth and agrarian reform are admittedly among the highest priorities in the government socio-economic programs. In this case, neither need give way to the other. Certainly, there must still be vast tracts of agricultural land in Mindanao outside the CMU land reservation which can be made available to landless peasants, assuming the claimants here, or some of them, can qualify as CARP beneficiaries. To our mind, the taking of the CMU land which had been segregated for educational purposes for distribution to yet uncertain beneficiaries is a gross misinterpretation of the authority and jurisdiction granted by law to the DARAB.

The decision in this case is of far-reaching significance as far as it concerns state colleges and universities whose resources and research facilities may be gradually eroded by misconstruing the exemptions from the CARP. These state colleges and universities are the main vehicles for our scientific and technological advancement in the field of agriculture, so vital to the existence, growth and development of this country.[8]

It did not matter that it was President Arroyo who, in this case, attempted by proclamation to appropriate the lands for distribution to indigenous peoples and cultural communities. As already stated, the lands by their character have become inalienable from the moment President Garcia dedicated them for CMU's use in scientific and technological research in the field of agriculture. They have ceased to be alienable public lands.

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[8] *Id.* at 96, 101.

Besides, when Congress enacted the Indigenous Peoples' Rights Act (IPRA) or Republic Act 8371[9] in 1997, it provided in Section 56 that "property rights within the ancestral domains already existing and/or vested" upon its effectivity "shall be recognized and respected." In this case, ownership over the subject lands had been vested in CMU as early as 1958. Consequently, transferring the lands in 2003 to the indigenous peoples around the area is not in accord with the IPRA.

Furthermore, the land registration court considered the claims of several tribes belonging to the area's cultural communities in the course of the proceedings for the titling of the lands in CMU's name. Indeed, eventually, only 3,080 hectares were titled in CMU's name under OCTs 0-160, 0-161 and 0-162. More than 300 hectares were acknowledged to be in the possession of and subject to the claims of those tribes.

WHEREFORE, the Court *GRANTS* the petition, *SETS ASIDE* the March 14, 2008 decision and September 22, 2008 resolution of the Court of Appeals in CA-G.R. SP 85456, and *DECLARES* Presidential Proclamation 310 as null and void for being contrary to law and public policy.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.,* on official leave.

Sereno, J., on leave.

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[9] "An Act to Recognize, Protect and Promote the Rights of Indigenous Cultural Communities/Indigenous Peoples, Creating a National Commission on Indigenous Peoples, Establishing Implementing Mechanisms, Appropriating Funds Therefor, and for other Purposes."

EN BANC

[G.R. No. 189546. September 21, 2010]

CENTER FOR PEOPLE EMPOWERMENT IN GOVERNANCE, *petitioner, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; PROPER REMEDY FOR COMELEC TO MAKE THE SOURCE CODES FROM THE SELECTED AUTOMATED ELECTION SYSTEMS (AES) TECHNOLOGIES AVAILABLE FOR INDEPENDENT REVIEW; CASE AT BAR.— [T]he Court *GRANTS* the petition for *mandamus* and *DIRECTS* the COMELEC to make the source codes for the AES technologies it selected for implementation pursuant to R.A. 9369 immediately available to CenPEG and all other interested political parties or groups for independent review.

2. POLITICAL LAW; ELECTION LAWS; R.A. NO. 9369; SOURCE CODES FOR AUTOMATED ELECTION SYSTEMS (AES) TECHNOLOGIES ARE OPEN FOR REVIEW; CASE AT BAR.— The pertinent portion of Section 12 of R.A. 9369 is clear in that "once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof." The COMELEC has offered no reason not to comply with this requirement of the law. Indeed, its only excuse for not disclosing the source code was that it was not yet available when CenPEG asked for it and, subsequently, that the review had to be done, apparently for security reason, "under a controlled environment." The elections had passed and that reason is already stale.

APPEARANCES OF COUNSEL

Aquilino Ll. Pimentel, III and *Francisco G. Joaquin, III* for petitioner.

The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case concerns the duty of the Commission on Elections (COMELEC) to disclose the source code for the Automated Election System (AES) technologies it used in the 2010 national and local elections.

On May 26, 2009 petitioner Center for People Empowerment in Governance (CenPEG), a non-government organization,[1] wrote respondent COMELEC, requesting a copy of the source code of the Precinct Count Optical Scan (PCOS) programs, the Board of Canvassers Consolidation/Canvassing System (BOC CCS) programs for the municipal, provincial, national, and congressional canvass, the COMELEC server programs, and the source code of the in-house COMELEC programs called the Data Capturing System (DCS) utilities.

CenPEG invoked the following pertinent portion of Section 12 of Republic Act (R.A.) 9369, which provides:

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Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof.

Section 2(12) of R.A. 9369 describes the source code as the "human readable instructions that define what the computer equipment will do." This has been explained in an article:

Source code is the human readable representation of the instructions that control the operation of a computer. Computers are composed of hardware (the physical devices themselves) and software (which controls the operation of the hardware). The software instructs the computer how to operate; without software, the computer is useless. Source code is the human readable form in which software is written by computer

[1] *Rollo*, p. 6.

programmers. Source code is usually written in a programming language that is arcane and incomprehensible to non-specialists but, to a computer programmer, the source code is the master blueprint that reveals and determines how the machine will behave.

Source code could be compared to a recipe: just as a cook follows the instructions in a recipe step-by-step, so a computer executes the sequence of instructions found in the software source code. This is a reasonable analogy, but it is also imperfect. While a good cook will use her discretion and common sense in following a recipe, a computer follows the instructions in the source code in a mechanical and unfailingly literal way; thus, while errors in a recipe might be noticed and corrected by the cook, errors in source code can be disastrous, because the code is executed by the computer exactly as written, whether that was what the programmer intended or not x x x.

The source code in voting machines is in some ways analogous to the procedures provided to election workers. Procedures are instructions that are provided to people; for instance, the procedures provided to poll workers list a sequence of steps that poll workers should follow to open the polls on election morning. Source code contains instructions, not for people, but for the computers running the election; for instance, the source code for a voting machine determines the steps the machine will take when the polls are opened on election morning.[2] (Underscoring supplied)

On June 24, 2009 the COMELEC granted the request[3] for the source code of the PCOS and the CCS, but denied that for the DCS, since the DCS was a "system used in processing the Lists of Voters which is not part of the voting, counting and canvassing systems contemplated by R.A. 9369." According to

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[2] Wagner, David, *A Primer on Source Code and Its Role in Elections*, and his March 15, 2007 Testimony on Source Code Disclosure for the House Administration Elections Subcommittee of the United States Congress, *http://www.votetrustusa.org/index.php?option=com_content&task=view&id=2327&Itemid=26*.

[3] Per COMELEC *En Banc* Minute Resolution 09-0366 dated June 16, 2009.

COMELEC, if the source code for the DCS were to be divulged, unscrupulous individuals might change the program and pass off an illicit one that could benefit certain candidates or parties.

Still, the COMELEC apparently did not release even the kinds of source code that it said it was approving for release. Consequently, on July 13, 2009, CenPEG once more asked COMELEC for the source code of the PCOS, together with other documents, programs, and diagrams related to the AES. CenPEG sent follow-up letters on July 17 and 20 and on August 24, 2009.

On August 26, 2009 COMELEC replied that the source code CenPEG wanted did not yet exist for the reasons: 1) that it had not yet received the baseline source code of the provider, Smartmatic, since payment to it had been withheld as a result of a pending suit; 2) its customization of the baseline source code was targeted for completion in November 2009 yet; 3) under Section 11 of R.A. 9369, the customized source code still had to be reviewed by "an established international certification entity," which review was expected to be completed by the end of February 2010; and 4) only then would the AES be made available for review under a controlled environment.

Rejecting COMELEC's excuse, on October 5, 2009 CenPEG filed the present petition for *mandamus*, seeking to compel COMELEC to immediately make its source codes available to CenPEG and other interested parties.

COMELEC claimed in its comment that CenPEG did not have a clear, certain, and well-defined right that was enforceable by *mandamus* because COMELEC's duty to make the source code available presupposed that it already had the same. COMELEC restated the explanation it gave in its August 26, 2009 letter to CenPEG.

In its manifestation and omnibus motion, CenPEG did not believe that the source code was still unavailable considering that COMELEC had already awarded to an international certification entity the review of the same and that COMELEC had already been field testing its PCOS and CCS machines.

On February 10, 2010 COMELEC filed a manifestation, stating that it had already deposited on February 9, 2010 the source code to be used in the May 10, 2010 elections with the Bangko Sentral ng Pilipinas. Required to comment on this, CenPEG said on February 22, 2010 that the manifestation did not constitute compliance with Section 12 of R.A. 9369 but only with Section 11 of R.A. 8436.

In its earlier comment, COMELEC claimed, reiterating what it said in its August 26, 2009 letter to CenPEG, that it would make the source code available for review by the end of February 2010 "under a controlled environment." Apparently, this review had not taken place and was overtaken by the May 10, 2010 elections.

On June 21, 2010 CenPEG filed a manifestation and omnibus motion, reiterating its prayer for the issuance of a writ of *mandamus* in this case notwithstanding the fact that the elections for which the subject source code was to be used had already been held. It claimed that the source code remained important and relevant "not only for compliance with the law, and the purpose thereof, but especially in the backdrop of numerous admissions of errors and claims of fraud."

The Court finds the petition and this last manifestation meritorious.

The pertinent portion of Section 12 of R.A. 9369 is clear in that "once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof." The COMELEC has offered no reason not to comply with this requirement of the law. Indeed, its only excuse for not disclosing the source code was that it was not yet available when CenPEG asked for it and, subsequently, that the review had to be done, apparently for security reason, "under a controlled environment." The elections had passed and that reason is already stale.

WHEREFORE, the Court *GRANTS* the petition for *mandamus* and *DIRECTS* the COMELEC to make the source codes for the AES technologies it selected for implementation pursuant to R.A. 9369 immediately available to CenPEG and all other interested political parties or groups for independent review.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Peralta, Bersamin, Del Castillo, Villarama, Jr., and *Perez, JJ.,* concur.

Velasco, Jr., Nachura, Leonardo-de Castro, Brion, and *Mendoza, JJ.,* on official leave.

Sereno, J., on leave.

FIRST DIVISION

[G.R. No. 167567. September 22, 2010]

SAN MIGUEL CORPORATION, *petitioner, vs.* **BARTOLOME PUZON, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE, DEFINED.— "Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."

2. CRIMINAL LAW; REVISED PENAL CODE; THEFT; ESSENTIAL ELEMENTS.— The Revised Penal Code provides: "Art. 308. *Who are liable for theft*. – 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 personal property of another without the latter's consent. x x x" "[T]he essential elements of the crime of theft are the following: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things."

3. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; CHECKS; POSTDATED AND ANTEDATED CHECKS; PERSON TO WHOM INSTRUMENT IS DELIVERED ACQUIRES TITLE THERETO IF PARTY DELIVERING INSTRUMENT DID SO FOR THE PURPOSE OF GIVING EFFECT THERETO.— On this point the Negotiable Instruments Law provides: Sec. 12. *Antedated and postdated.* — The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. Note however that delivery as the term is used in the aforementioned provision means that the party delivering did so for the purpose of giving effect thereto. Otherwise, it cannot be said that there has been delivery of the negotiable instrument. Once there is delivery, the person to whom the instrument is delivered gets the title to the instrument completely and irrevocably. If the subject check was given by Puzon to SMC in payment of the obligation, the purpose of giving effect to the instrument is evident thus title to or ownership of the check was transferred upon delivery. However, if the check was not given as payment, there being no intent [to give effect] to the instrument, then ownership of the check was not transferred to SMC.

4. ID.; ID.; ID.; ID.; ID.; EVIDENCE SHOWS PUZON ISSUED POSTDATED CHECK, NOT IN PAYMENT OF THE OBLIGATION BUT ONLY TO COVER THE TRANSACTION; TITLE TO THE CHECK NOT TRANSFERRED TO SMC IN CASE AT BAR.— The evidence of SMC failed to establish that the check was given in payment of the obligation of Puzon. There was no provisional receipt

or official receipt issued for the amount of the check. What was issued was a receipt for the *document,* a "POSTDATED CHECK SLIP." Furthermore, the petitioner's demand letter sent to respondent states "As per company policies on receivables, all issuances are to be covered by post-dated checks. However, you have deviated from this policy by forcibly taking away the check you have issued to us to cover the December issuance." Notably, the term "payment" was not used instead the terms "covered" and "cover" were used. Although the petitioner's witness, Gregorio L. Joven III, states in paragraph 6 of his affidavit that the check was given in payment of the obligation of Puzon, the same is contradicted by his statements in paragraph 4, where he states that "As a standard company operating procedure, all beer purchases by dealers on credit shall be *covered* by postdated checks equivalent to the value of the beer products purchased"; in paragraph 9 where he states that "the transaction *covered* by the said check had not yet been paid for," and in paragraph 8 which clearly shows that partial payment is expected to be made by the return of beer empties, and not by the deposit or encashment of the check. Clearly the term "cover" was not meant to be used interchangeably with "payment." When taken in conjunction with the counter-affidavit of Puzon – where he states that "As the [liquid beer] contents are paid for, SMC return[s] to me the corresponding PDCs or request[s] me to replace them with whatever was the unpaid balance." – it becomes clear that both parties did not intend for the check to *pay* for the beer products. The evidence proves that the check was accepted, not as payment, but in accordance with the long-standing policy of SMC to require its dealers to issue postdated checks to cover its receivables. The check was only meant to *cover* the transaction and in the meantime Puzon was to pay for the transaction by some other means other than the check. This being so, title to the check did not transfer to SMC; it remained with Puzon.

5. CRIMINAL LAW; REVISED PENAL CODE; THEFT; SECOND ELEMENT THAT THE THING TAKEN BELONGS TO ANOTHER, NOT PRESENT IN CASE AT BAR.— Considering that the second element of the crime of theft is that the thing taken *belongs to another,* it is relevant to determine whether ownership of the subject check was

transferred to petitioner. x x x The second element of the felony of theft was therefore not established. Petitioner was not able to show that Puzon took a check that *belonged to another*. Hence, the prosecutor and the DOJ were correct in finding no probable cause for theft. Consequently, the CA did not err in finding no grave abuse of discretion committed by the DOJ in sustaining the dismissal of the case for theft for lack of probable cause.

APPEARANCES OF COUNSEL

Castell & Bermejo for petitioner.
Alexandre J. Andrada Villanueva for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This petition for review assails the December 21, 2004 Decision[1] and March 28, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83905, which dismissed the petition before it and denied reconsideration, respectively.

Factual Antecedents

Respondent Bartolome V. Puzon, Jr., (Puzon) owner of Bartenmyk Enterprises, was a dealer of beer products of petitioner San Miguel Corporation (SMC) for Parañaque City. Puzon purchased SMC products on credit. To ensure payment and as a business practice, SMC required him to issue postdated checks equivalent to the value of the products purchased on credit before the same were released to him. Said checks were returned to Puzon when the transactions covered by these checks were paid or settled in full.

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[1] *Rollo*, pp. 32-42; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ruben T. Reyes and Jose C. Reyes, Jr.

[2] *Id.* at 43-45.

On December 31, 2000, Puzon purchased products on credit amounting to ₱11,820,327 for which he issued, and gave to SMC, Bank of the Philippine Islands (BPI) Check Nos. 27904 (for ₱309,500.00) and 27903 (for ₱11,510,827.00) to cover the said transaction.

On January 23, 2001, Puzon, together with his accountant, visited the SMC Sales Office in Parañaque City to reconcile his account with SMC. During that visit Puzon allegedly requested to see BPI Check No. 17657. However, when he got hold of BPI Check No. 27903 which was attached to a bond paper together with BPI Check No. 17657 he allegedly immediately left the office with his accountant, bringing the checks with them.

SMC sent a letter to Puzon on March 6, 2001 demanding the return of the said checks. Puzon ignored the demand hence SMC filed a complaint against him for theft with the City Prosecutor's Office of Parañaque City.

Rulings of the Prosecutor and the Secretary of Department of Justice (DOJ)

The investigating prosecutor, Elizabeth Yu Guray found that the "relationship between [SMC] and [Puzon] appears to be one of credit or creditor-debtor relationship. The problem lies in the reconciliation of accounts and the non-payment of beer empties which cannot give rise to a criminal prosecution for theft."[3] Thus, in her July 31, 2001 Resolution,[4] she recommended the dismissal of the case for lack of evidence. SMC appealed.

On June 4, 2003, the DOJ issued its resolution[5] affirming the prosecutor's Resolution dismissing the case. Its motion for reconsideration having been denied in the April 23, 2004 DOJ Resolution,[6] SMC filed a petition for *certiorari* with the CA.

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[3] *Id.* at 141.

[4] *Id.* at 140-142.

[5] CA *rollo*, pp. 24-27.

[6] *Id.* at 22-23.

Ruling of the Court of Appeals

The CA found that the postdated checks were issued by Puzon merely as a security for the payment of his purchases and that these were not intended to be encashed. It thus concluded that SMC did not acquire ownership of the checks as it was duty bound to return the same checks to Puzon after the transactions covering them were settled. The CA agreed with the prosecutor that there was no theft, considering that a person cannot be charged with theft for taking personal property that belongs to himself. It disposed of the appeal as follows:

> WHEREFORE, finding no grave abuse of discretion committed by public respondent, the instant petition is hereby ***DISMISSED***. The assailed Resolutions of public respondent, dated 04 June 2003 and 23 April 2004, are ***AFFIRMED***. No costs at this instance.
>
> SO ORDERED.[7]

The motion for reconsideration of SMC was denied. Hence, the present petition.

Issues

Petitioner now raises the following issues:

I

WHETHER X X X PUZON HAD STOLEN FROM SMC ON JANUARY 23, 2001, AMONG OTHERS BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00)

II

WHETHER X X X THE POSTDATED CHECKS ISSUED BY PUZON, PARTICULARLY BPI CHECK NO. 27903 DATED MARCH 30, 2001 IN THE AMOUNT OF PESOS: ELEVEN MILLION FIVE HUNDRED TEN THOUSAND EIGHT HUNDRED TWENTY SEVEN (Php11,510,827.00), WERE ISSUED IN PAYMENT OF HIS BEER PURCHASES OR WERE USED MERELY AS SECURITY TO ENSURE PAYMENT OF PUZON'S OBLIGATION.

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[7] *Rollo,* p. 41.

III

WHETHER X X X THE PRACTICE OF SMC IN RETURNING THE POSTDATED CHECKS ISSUED IN PAYMENT OF BEER PRODUCTS PURCHASED ON CREDIT SHOULD THE TRANSACTIONS COVERED BY THESE CHECKS [BE] SETTLED ON [THE] MATURITY DATES THEREOF COULD BE LIKENED TO A CONTRACT OF PLEDGE.

IV

WHETHER X X X SMC HAD ESTABLISHED PROBABLE CAUSE TO JUSTIFY THE INDICTMENT OF PUZON FOR THE CRIME OF THEFT PURSUANT TO ART. 308 OF THE REVISED PENAL CODE.[8]

Petitioner's Arguments

SMC contends that Puzon was positively identified by its employees to have taken the subject postdated checks. It also contends that ownership of the checks was transferred to it because these were issued, not merely as security but were, in payment of Puzon's purchases. SMC points out that it has established more than sufficient probable cause to justify the indictment of Puzon for the crime of Theft.

Respondent's Arguments

On the other hand, Puzon contends that SMC raises questions of fact that are beyond the province of an appeal on *certiorari*. He also insists that there is no probable cause to charge him with theft because the subject checks were issued only as security and he therefore retained ownership of the same.

Our Ruling

The petition has no merit.

Preliminary Matters

At the outset we find that as pointed out by Puzon, SMC raises questions of fact. The resolution of the first issue raised by SMC of whether respondent stole the subject check, which calls for the Court to determine whether respondent is guilty of

[8] *Id.* at 305.

a felony, first requires that the facts be duly established in the proper forum and in accord with the proper procedure. This issue cannot be resolved based on mere allegations of facts and affidavits. The same is true with the second issue raised by petitioner, to wit: whether the checks issued by Puzon were payments for his purchases or were intended merely as security to ensure payment. These issues cannot be properly resolved in the present petition for review on *certiorari* which is rooted merely on the resolution of the prosecutor finding no probable cause for the filing of an information for theft.

The third issue raised by petitioner, on the other hand, would entail venturing into constitutional matters for a complete resolution. This route is unnecessary in the present case considering that the main matter for resolution here only concerns grave abuse of discretion and the existence of probable cause for theft, which at this point is more properly resolved through another more clear cut route.

Probable Cause for Theft

"Probable cause is defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial."[9] On the fine points of the determination of probable cause, *Reyes v. Pearlbank Securities, Inc.*[10] comprehensively elaborated that:

> The determination of [the existence or absence of probable cause] lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper

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[9] *Sanrio Company Limited v. Lim*, G.R. No. 168662, February 19, 2008, 546 SCRA 303, 312-313.

[10] G.R. No.171435, July 30, 2008, 560 SCRA 518, 535-536, citing *Public Utilitites Department v. Hon. Guingona, Jr.,* 417 Phil. 798, 804 (2001).

form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice. And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

In the present case, we are also not sufficiently convinced to deviate from the general rule of non-interference. Indeed the CA did not err in dismissing the petition for *certiorari* before it, absent grave abuse of discretion on the part of the DOJ Secretary in not finding probable cause against Puzon for theft.

The Revised Penal Code provides:

Art. 308. *Who are liable for theft*. – 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 personal property of another without the latter's consent.

x x x x x x x x x

"[T]he essential elements of the crime of theft are the following: (1) that there be a taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence or intimidation against persons or force upon things."[11]

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[11] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 317-

Considering that the second element is that the thing taken *belongs to another*, it is relevant to determine whether ownership of the subject check was transferred to petitioner. On this point the Negotiable Instruments Law provides:

> Sec. 12. *Antedated and postdated* – The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Underscoring supplied.)

Note however that delivery as the term is used in the aforementioned provision means that the party delivering did so for the purpose of giving effect thereto.[12] Otherwise, it cannot be said that there has been delivery of the negotiable instrument. Once there is delivery, the person to whom the instrument is delivered gets the title to the instrument completely and irrevocably.

If the subject check was given by Puzon to SMC in payment of the obligation, the purpose of giving effect to the instrument is evident thus title to or ownership of the check was transferred upon delivery. However, if the check was not given as payment, there being no intent to give effect to the instrument, then ownership of the check was not transferred to SMC.

The evidence of SMC failed to establish that the check was given in payment of the obligation of Puzon. There was no provisional receipt or official receipt issued for the amount of the check. What was issued was a receipt for the *document*, a "POSTDATED CHECK SLIP."[13]

Furthermore, the petitioner's demand letter sent to respondent states "As per company policies on receivables, all issuances are to be covered by post-dated checks. However, you have deviated from this policy by forcibly taking away the check

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318; *People v. Puig*, G.R. Nos. 173654-765, August 28, 2008, 563 SCRA 564, 570; *Cruz v. People*, G.R. No. 176504, September 3, 2008, 564 SCRA 99, 110.

[12] Sec. 16 of the Negotiable Instruments Law.

[13] *Rollo*, p. 76.

you have issued to us to cover the December issuance."[14] Notably, the term "payment" was not used instead the terms "covered" and "cover" were used.

Although the petitioner's witness, Gregorio L. Joven III, states in paragraph 6 of his affidavit that the check was given in payment of the obligation of Puzon, the same is contradicted by his statements in paragraph 4, where he states that "As a standard company operating procedure, all beer purchases by dealers on credit shall be *covered* by postdated checks equivalent to the value of the beer products purchased"; in paragraph 9 where he states that "the transaction *covered* by the said check had not yet been paid for," and in paragraph 8 which clearly shows that partial payment is expected to be made by the return of beer empties, and not by the deposit or encashment of the check. Clearly the term "cover" was not meant to be used interchangeably with "payment."

When taken in conjunction with the counter-affidavit of Puzon – where he states that "As the [liquid beer] contents are paid for, SMC return[s] to me the corresponding PDCs or request[s] me to replace them with whatever was the unpaid balance."[15] – it becomes clear that both parties did not intend for the check to *pay* for the beer products. The evidence proves that the check was accepted, not as payment, but in accordance with the long-standing policy of SMC to require its dealers to issue postdated checks to cover its receivables. The check was only meant to *cover* the transaction and in the meantime Puzon was to pay for the transaction by some other means other than the check. This being so, title to the check did not transfer to SMC; it remained with Puzon. The second element of the felony of theft was therefore not established. Petitioner was not able to show that Puzon took a check that *belonged to another*. Hence, the prosecutor and the DOJ were correct in finding no probable cause for theft.

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[14] Demand letter. *Id.* at 79.

[15] *Id.* at 113.

Consequently, the CA did not err in finding no grave abuse of discretion committed by the DOJ in sustaining the dismissal of the case for theft for lack of probable cause.

WHEREFORE, the petition is *DENIED*. The December 21, 2004 Decision and March 28, 2005 Resolution of the Court of Appeals in CA-G.R. SP. No. 83905 are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 168656. September 22, 2010]

DIMSON (MANILA), INC. and PHESCO, INC., *petitioners, vs.* **LOCAL WATER UTILITIES ADMINISTRATION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; R.A. No. 9184 (GOVERNMENT PROCUREMENT REFORM ACT); JURISDICTION OF THE REGIONAL TRIAL COURT OVER *CERTIORARI* PETITIONS INVOLVING QUESTIONS ON THE PROCUREMENT AND BIDDING PROCESS IN INFRASTRUCTURE PROJECTS ADMINISTERED BY THE VARIOUS PROCURING ENTITIES IN THE GOVERNMENT, CLARIFIED.— Section 58 of R.A. No. 9184 and Section 58 of the IRR-A uniformly state that it is the Regional Trial Court which has jurisdiction over *certiorari* petitions involving

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[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 884 dated September 1, 2010.

questions on the procurement and bidding process in infrastructure projects administered by the various procuring entities in the government. Be that as it may, the viability of this remedy would still have to depend on whether the protest mechanisms outlined in both the law and its implementing rules have been availed of until completion by the aggrieved bidder or party. Section 58 of R.A. No. 9184 materially provides: **SEC. 58.** ***Reports to Regular Courts; Certiorari.***— Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government. Implementing this provision, the IRR-A states in detail: **Section 58.** ***Resort to Regular Courts; Certiorari*** 58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, *i.e.,* resolved by the head of the procuring entity with finality. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure. 58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government. 58.3. The head of the BAC Secretariat of the procuring entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section. Clearly, the proper recourse to a court action from decisions of the BAC, such as this one, is to file a *certiorari* not before the Supreme Court but before the Regional Trial Court which is vested by R.A. No. 9184 with jurisdiction to entertain the same. In the recent case of *First United Constructors Corporation v. Poro Point Management Corporation,* we held that while indeed the *certiorari* jurisdiction of the regional trial court is concurrent with this Court's, that fact alone does not allow an unrestricted freedom of choice of the court forum. But since this is not an iron-

clad rule and the full discretionary power to take cognizance of and assume jurisdiction over special civil actions for *certiorari* directly filed with the Court may actually be exercised by it, it is nevertheless imperative that the Court's intervention be called for by exceptionally compelling reasons or be warranted by the nature of the issues involved. In other words, a direct invocation of the Supreme Court's original jurisdiction to issue the writ will be allowed only when there are special and important reasons clearly and specifically set out in the petition. In the present case, at no given time have petitioners adduced any special and important reasons to justify their direct resort to this Court on *certiorari.* Neither have they established that the issues for resolution could not properly be addressed by the proper court, nor that the remedy they were seeking could not possibly be availed of before that same court. Thus, we can only reaffirm the judicial policy that this Court must dismiss a direct invocation of its jurisdiction in the absence of any compelling and exceptional circumstances calling for a resort to the extraordinary remedy of a writ of *certiorari* and in the absence of any showing that the redress desired may never be obtained through proper recourse in the appropriate courts. Moreover, it appears that compliance with the mandatory protest mechanisms of the law is jurisdictional in character.

2. ID.; ID.; ID.; EXHAUSTION OF THE STATUTORILY AVAILABLE REMEDIES AT THE ADMINISTRATIVE LEVEL AS A PRECONDITION TO THE FILING OF A *CERTIORARI* PETITION, REQUIRED; PROTEST MECHANISMS AGAINST BAC (BIDS AND AWARDS COMMITTEE) DECISIONS, EXPLAINED.— Section 58 of R.A. No. 9184 requires that there be exhaustion of the statutorily available remedies at the administrative level as a precondition to the filing of a *certiorari* petition. This requirement points to the mechanisms for protest against decisions of the BAC in all stages of the procurement process that are outlined in both the provisions of Section 55 as well in Section 55 of the implementing rules. Pertinently the provision of Section 55 of R.A. No. 9184 states: SEC. 55. *Protests on Decisions of the BAC.*—Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying

a nonrefundable protest fee. The amount of the protest fee and the periods during which the protest may be filed and resolved shall be specified in the IRR. Implementing this provision, Section 55 of the IRR-A of the law states: **Section 55.** ***Protests on Decisions of the BAC*****:** 55.1. Decisions of the BAC with respect to the conduct of bidding may be protested in writing to the head of the procuring entity: *Provided, however*, that a prior motion for reconsideration should have been filed by the party concerned within the reglementary periods specified in this IRR-A, and the same has been resolved. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its motion for reconsideration. A protest may be made by filing a verified position paper with the head of the procuring entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the [approved budget for the contract]. 55.2. The verified position paper shall contain the following information: a) The name of bidder; b) The office address of the bidder; c) The name of project/ contract; d) The implementing office/agency or procuring entity; e) A brief statement of facts; f) The issue to be resolved; g) Such other matters and information pertinent and relevant to the proper resolution of the protest. The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect and results to the outright dismissal of the protest. Under these relevant sections of the law and the rules, the availment of the judicial remedy of *certiorari* must be made only after the filing of a motion for reconsideration of the BAC's decision before the said body. Subsequently, from the final denial of the motion for reconsideration, the aggrieved party must then lodge a protest before the head of the procuring entity through a verified position paper that formally complies with requirements in Section 55.2 of the IRR-A. Only upon the final resolution of the protest can the aggrieved party be said to have exhausted the available remedies at the administrative level. In other words, only then can he viably avail of the remedy of *certiorari* before the proper courts. Non-compliance with this statutory

requirement, under Section 58 of R.A. No. 9184, constitutes a ground for the dismissal of the action for lack of jurisdiction.

3. ID.; ID.; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; DEFINED; REASON FOR THE RULE, SUSTAINED.— The doctrine of exhaustion of administrative remedies requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of. No recourse can be had until all such remedies have been exhausted, and the special civil actions against administrative officers should not be entertained if there are superior administrative officers who could grant relief. *Carale v. Abarintos* explains the reason for the rule, thus: Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and [speedier] solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain the case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum. Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court. x x x The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly

within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. The Court has always adhered to this precept, and it has no reason to depart from it now.

APPEARANCES OF COUNSEL

Roldan and Roldan Law Offices for petitioners.
The Government Corporate Counsel for respondent.

D E C I S I O N

PERALTA, *J.*:

This is an original action for *certiorari*, prohibition and *mandamus* under Rule 65 of the Rules of Court initiated by petitioners Dimson Manila, Inc. and PHESCO, Inc. which seeks to prevent respondent Local Water Utilities Administration (LWUA) from executing and consequently performing any act under any contract relevant to the Urdaneta Water District's Water Supply System Improvement Program on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction when respondent post-disqualified petitioners despite their having placed the lowest calculated bid on the project.

Undisputed are the basic facts.

Petitioners Dimson (Manila), Inc. and PHESCO, Inc. are duly organized domestic corporations that had entered into a joint venture agreement[1] for the specific purpose of placing their bid to execute the Urdaneta Water Supply Improvement Project (the Urdaneta Project) of respondent LWUA. LWUA is the lead government agency vested by Presidential Decree No. 198[2] with the principal function of facilitating the improvement and development of provincial water utilities.

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[1] Annex "D", "D-1" and "D-2" of the petition. *Rollo*, pp. 31-33.

[2] Presidential Decree No. 198 is short-titled, "The Provincial Water Utilities Act of 1973."

On December 10 and 18, 2004, LWUA had caused the publication of an invitation to bid on the Urdaneta Project[3] — a ₱113,385,979.00 contract which primarily includes the following items:

(a) construction of 2 well pump station structures complete with related civil and electromechanical works; furnishing of 2 submersible pump sets with an average capacity of 50 lps at 17m TDH.

(b) construction of 2 booster pump stations with 6 pump sets with variable speed drives and with an average capacity of 21 lps at 39m TDH, complete with pipes, valves and fittings; furnishing of power line extension and tapping.

(c) construction of 2 100 cu.m. capacity circular concrete ground reservoirs complete with related civil and electromechanical works.

(d) supply and installation of approximately 66 km. of transmission and distribution pipelines with sizes ranging from 50mm-300mm diameter complete with valves, fittings, blow-offs, fire hydrants and related pipe appurtenances.[4]

Sixteen contractors, including petitioners' joint venture, responded to the invitation and eight of them submitted bid proposals.[5] Following the pre-bid conference in Urdaneta City, Pangasinan, petitioners submitted to LWUA's Bids and Awards Committee (BAC) their proposal in two (2) sealed envelopes each containing their compliance with eligibility requirements as a joint venture and their financial proposal as such to undertake the project. Petitioners passed the eligibility requirements and were found to have placed the lowest calculated bid at ₱107,666,358.17[6] — besting R-II Builders, Inc. at ₱108,812,800.20 and CM Pancho Construction, Inc. at ₱135,695,674.94.[7]

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[3] *Rollo*, p. 7.

[4] *Id.* at 30.

[5] *Id.* at 47.

[6] Annex "F" of the petition, *id.* at 35.

[7] Annex "H" of the petition, *id.* at 37.

However, on April 19, 2005, petitioners were informed by LWUA Administrator Lorenzo Jamora that following the post-qualification stage of the evaluation process, the joint venture would have to be disqualified by the BAC on the finding that Dimson (Manila), Inc.'s joint venture with another contractor was, as of March 17, 2005, suffering from a 30.4% slippage in the Santiago Water Supply and Treatment Project — an ongoing project likewise under LWUA's administration.[8]

Aggrieved, petitioners, through counsel, sent a letter[9] to Administrator Jamora on April 21, 2005 asserting that their post-disqualification had no factual and legal basis. They claimed that their joint venture in relation to the Urdaneta Project was distinct from the Dimson's joint venture in the Santiago Project where Dimson was only a minority partner that merely supplied the construction equipment. The alleged slippage, according to them, would not be sufficient to justify their post-disqualification, especially because it could be attributed to several other factors. Significantly, they asserted that it was in fact LWUA which ordered the suspension of the Santiago Project on December 6, 2004 on account of certain variation orders that up to the present remained unresolved. They then asked that their post-disqualification be reconsidered and the contract for the Urdaneta Project be awarded to them.[10]

Pending action on this request, the BAC, on May 31, 2005, issued Resolution No. 12,[11] s. 2005 recommending the award of the Urdaneta Project to the second lowest calculated bidder, R-II Builders. Consequently, on June 7, 2005, the LWUA Board of Trustees issued Resolution No. 102,[12] s. 2005 and awarded the contract to it.

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[8] Annex "I" of the petition, *id.* at 38.

[9] Annex "J"-"J-2" of the petition, *id.* at 39-41.

[10] *Rollo*, pp. 39-40.

[11] Annexes "N", "N-1" and "N-2" of the petition, *id.* at 47-49.

[12] *Id.*

Expectedly, petitioners' request for reconsideration was declined. In a letter[13] dated June 8, 2005, Administrator Jamora emphasized that, in any event, the BAC had the reserved right to reject any and all bids on the project, and that petitioners' post-disqualification was not without justification, because the 30.4% slippage suffered by Dimson's ongoing Santiago Project was a reason compelling enough to cause such disqualification following the pertinent provisions in the bid documents.

To prevent the execution of the project by R-II Builders, petitioners filed the instant petition for *certiorari*, prohibition and *mandamus* alleging grave abuse of discretion on the part of LWUA when it post-disqualified their joint venture from taking part in the project. The grounds raised by petitioners are essentially factual and they are as follows: that the alleged 30.4% slippage in the Santiago Project is baseless, erroneous and unfounded, and that considering the LWUA-BAC's finding that the Santiago Project slippage was only 14.634%, Dimson (Manila), Inc. would be ahead of schedule if the same is reflected in the approved project bar chart.[14]

In its Comment,[15] respondent LWUA, through the Office of the Government Corporate Counsel, stood by its decision and maintained that petitioners' post-disqualification was factually and legally justified. On the facts, LWUA pointed out that the slippage attributable to Dimson, relative to the Santiago Project, gravely affected petitioners' technical requirements during post-qualification. Likewise, it noted that petitioners failed to exhaust the available remedies prior to the filing of the instant petition, citing the Implementing Rules and Regulations of Republic Act (R.A.) No. 9184 on protest mechanism and stating that there was no motion for reconsideration filed by petitioners of the Resolution No. 12 s. of 2005 dated May 31, 2005. Thus, petitioners lacked a cause of action against respondent. Also, respondent states that injunctive relief does not lie against it and that the writs of

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[13] Annex "K" of the petition, *id.* at 42-43.

[14] *Rollo*, p. 12.

[15] *Id.* at 55-81.

certiorari, *mandamus* and prohibition are unavailing under the circumstances of the case.

The Court dismisses the petition.

To begin with, there is a serious jurisdictional issue that must be addressed in this petition. Section 58 of R.A. No. 9184 and Section 58 of the IRR-A uniformly state that it is the regional trial court which has jurisdiction over *certiorari* petitions involving questions on the procurement and bidding process in infrastructure projects administered by the various procuring entities in the government. Be that as it may, the viability of this remedy would still have to depend on whether the protest mechanisms outlined in both the law and its implementing rules have been availed of until completion by the aggrieved bidder or party. Section 58 of R.A. No. 9184 materially provides:

> **SEC. 58.** ***Reports to Regular Courts; Certiorari***.—Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.
>
> This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

Implementing this provision, the IRR-A states in detail:

> **Section 58.** ***Resort to Regular Courts; Certiorari***
>
> 58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, *i.e.*, resolved by the head of the procuring entity with finality. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.
>
> 58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary

restraining orders and injunctions relating to Infrastructure Projects of Government.

58.3. The head of the BAC Secretariat of the procuring entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section.

Clearly, the proper recourse to a court action from decisions of the BAC, such as this one, is to file a *certiorari* not before the Supreme Court but before the regional trial court which is vested by R.A. No. 9184 with jurisdiction to entertain the same. In the recent case of *First United Constructors Corporation v. Poro Point Management Corporation*,[16] we held that while indeed the *certiorari* jurisdiction of the regional trial court is concurrent with this Court's, that fact alone does not allow an unrestricted freedom of choice of the court forum.[17] But since this is not an iron-clad rule and the full discretionary power to take cognizance of and assume jurisdiction over special civil actions for *certiorari* directly filed with the Court may actually be exercised by it, it is nevertheless imperative that the Court's intervention be called for by exceptionally compelling reasons[18] or be warranted by the nature of the issues involved.[19] In other words, a direct invocation of the Supreme Court's original jurisdiction to issue the writ will be allowed only when there are special and important reasons clearly and specifically set out in the petition.[20]

In the present case, at no given time have petitioners adduced any special and important reasons to justify their direct resort to this Court on *certiorari*. Neither have they established that the issues for resolution could not properly be addressed by the proper court, nor that the remedy they were seeking could not

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[16] G.R. No. 178799, January 19, 2009, 576 SCRA 311.

[17] *Id.* at 318-319, citing *Page-Tenorio v. Tenorio*, 443 SCRA 560 (2004).

[18] *Roque, Jr. v. Commission on Elections*, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 112-113, citing, *Chavez v. National Housing Authority*, 530 SCRA 235 (2007).

[19] *Id.* at 113, citing *Cabarles v. Maceda*, 516 SCRA 303 (2007).

[20] *Id.* at 318-319, citing *Page-Tenorio v. Tenorio*, *supra* note 17.

possibly be availed of before that same court. Thus, we can only reaffirm the judicial policy that this Court must dismiss a direct invocation of its jurisdiction in the absence of any compelling and exceptional circumstances calling for a resort to the extraordinary remedy of a writ of *certiorari* and in the absence of any showing that the redress desired may never be obtained through proper recourse in the appropriate courts.

Moreover, it appears that compliance with the mandatory protest mechanisms of the law is jurisdictional in character. Section 58 of R.A. No. 9184 requires that there be exhaustion of the statutorily available remedies at the administrative level as a precondition to the filing of a *certiorari* petition. This requirement points to the mechanisms for protest against decisions of the BAC in all stages of the procurement process that are outlined in both the provisions of Section 55 as well in Section 55 of the implementing rules. Pertinently the provision of Section 55 of R.A. No. 9184 states:

> SEC. 55. *Protests on Decisions of the BAC.*—Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a nonrefundable protest fee. The amount of the protest fee and the periods during which the protest may be filed and resolved shall be specified in the IRR.

Implementing this provision, Section 55 of the IRR-A of the law states:

> **Section 55.** ***Protests on Decisions of the BAC***
>
> 55.1. Decisions of the BAC with respect to the conduct of bidding may be protested in writing to the head of the procuring entity: *Provided, however,* that a prior motion for reconsideration should have been filed by the party concerned within the reglementary periods specified in this IRR-A, and the same has been resolved. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its motion for reconsideration. A protest may be made by filing a verified position paper with the head of the procuring entity concerned, accompanied by the payment of a non-refundable protest fee. The

non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the [approved budget for the contract].

55.2. The verified position paper shall contain the following information:

a) The name of bidder;
b) The office address of the bidder;
c) The name of project/contract;
d) The implementing office/agency or procuring entity;
e) A brief statement of facts;
f) The issue to be resolved;
g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect and results to the outright dismissal of the protest.

Under these relevant sections of the law and the rules, the availment of the judicial remedy of *certiorari* must be made only after the filing of a motion for reconsideration of the BAC's decision before the said body. Subsequently, from the final denial of the motion for reconsideration, the aggrieved party must then lodge a protest before the head of the procuring entity through a verified position paper that formally complies with requirements in Section 55.2 of the IRR-A. Only upon the final resolution of the protest can the aggrieved party be said to have exhausted the available remedies at the administrative level. In other words, only then can he viably avail of the remedy of *certiorari* before the proper courts. Non-compliance with this statutory requirement, under Section 58 of R.A. No. 9184, constitutes a ground for the dismissal of the action for lack of jurisdiction.

We find that petitioners have not completely availed of the protest mechanisms under the law. To recall, the only communication that ensued between the parties in this case following the post-disqualification of petitioners was when the latter sent a letter dated April 21, 2005 addressed to Administrator

Jamora questioning the legal and factual bases on which the BAC had disqualified petitioners from the project and asking for a reconsideration.[21] It is apparent from the available records that petitioners had never sought reconsideration first from the BAC to allow the said body an opportunity to correct whatever mistake it might have supposedly committed at the post-qualification stage of the bidding process. Instead, petitioners at once coursed a remedy before Administrator Jamora, the head of the procuring entity. Even assuming petitioners deserved a measure of liberality in the application of the protest procedure in the law and the implementing rules, still, the present petition would face a certain failure inasmuch as the April 21, 2005 letter-protest has not been verified and hence, produces no legal effect such as to result in the outright dismissal of the protest.[22]

The doctrine of exhaustion of administrative remedies requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of. No recourse can be had until all such remedies have been exhausted, and the special civil actions against administrative officers should not be entertained if there are superior administrative officers who could grant relief.[23] *Carale v. Abarintos*[24] explains the reason for the rule, thus:

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts

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[21] See *rollo*, pp. 39-41. The June 8, 2005 communication sent by Administrator Jamora suggest that petitioners sent another letter to him on May 31, 2005 likewise opposing the action of the BAC in post-disqualifying their joint venture. See *rollo*, p. 42.

[22] See last paragraph, Section 55.2, Implementing Rules and Regulations-A of R.A. No. 9184.

[23] Gonzales, *Administrative Law—A Text*, 1979, p. 137.

[24] 336 Phil. 126 (1997).

by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and [speedier] solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain the case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.

Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[25]

One final note. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. The Court has always adhered to this precept, and it has no reason to depart from it now.

WHEREFORE, the Petition is *DISMISSED*.

SO ORDERED.

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

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[25] *Id.* at 135-136.

[*] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per Raffle dated September 20, 2010.

[**] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 883 dated September 1, 2010.

[***] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 170599. September 22, 2010]

PUBLIC HEARING COMMITTEE OF THE LAGUNA LAKE DEVELOPMENT AUTHORITY and HON. GENERAL MANAGER CALIXTO CATAQUIZ, *petitioners, vs.* **SM PRIME HOLDINGS, INC. (in its capacity as operator of SM CITY MANILA),** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES, EXPLAINED; THE PREMATURE INVOCATION OF THE INTERVENTION OF THE COURT IS FATAL TO ONE'S CAUSE OF ACTION.— Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. While the doctrine of exhaustion of administrative remedies is subject to several exceptions, the Court finds that the instant case does not fall under any of them.

2. ID.; ID.; LAGUNA LAKE DEVELOPMENT AUTHORITY (LLDA); THE POWER OF THE LLDA TO IMPOSE FINES AS PENALTY; SUSTAINED.— [T]he Court agrees with petitioners that respondent is already estopped from questioning the power of the LLDA to impose fines as penalty owing to the fact that respondent actively participated during the hearing of its water pollution case before the LLDA without impugning such power of the said agency. In fact, respondent even asked for a reconsideration of the Order of the LLDA which imposed a fine upon it as evidenced by its letters dated July 2, 2002 and November 29, 2002, wherein respondent, through its pollution control officer, as well as its counsel, requested for a waiver of the fine(s) imposed by the LLDA. By asking for a reconsideration of the fine imposed by the LLDA, the Court arrives at no conclusion other than that respondent has impliedly admitted the authority of the latter to impose such penalty. Hence, contrary to respondent's claim in its Comment and Memorandum, it is already barred from assailing the LLDA's authority to impose fines. In any case, this Court has categorically ruled in *Pacific Steam Laundry, Inc. v. Laguna Lake Development Authority*, that the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region. In expounding on this issue, the Court held that the adjudication of pollution cases generally pertains to the Pollution Adjudication Board (PAB), except where a special law, such as the LLDA Charter, provides for another forum. The Court further ruled that although the PAB assumed the powers and functions of the National Pollution Control Commission with respect to adjudication of pollution cases, this does not preclude the LLDA from assuming jurisdiction of pollution cases within its area of responsibility and to impose fines as penalty. In the earlier case of *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*, this Court affirmed the ruling of the CA which sustained the LLDA's Order requiring the petitioner therein to pay a fine representing penalty for pollutive wastewater discharge. Although the petitioner in that case did not challenge the LLDA's authority to impose fine, the Court acknowledged the power of the LLDA to impose fines holding that under Section 4-A of RA 4850, as amended, the LLDA is

entitled to compensation for damages resulting from failure to meet established water and effluent standards. Section 4-A provides, thus: Sec. 4-A. Compensation for damages to the water and aquatic resources of Laguna de Bay and its tributaries resulting from failure to meet established water and effluent quality standards and from such other wrongful act or omission of a person, private or public, juridical or otherwise, punishable under the law shall be awarded to the Authority to be earmarked for water quality control management.

3. ID.; ID.; ID.; THE INTENDMENT OF THE LAW IS TO CLOTHE LLDA NOT ONLY WITH THE EXPRESS POWERS GRANTED TO IT, BUT ALSO THOSE WHICH ARE IMPLIED OR INCIDENTAL BUT NECESSARY OR ESSENTIAL FOR THE FULL AND PROPER IMPLEMENTATION OF ITS PURPOSES AND FUNCTIONS.— Section 4(d) of E.O. No. 927, which further defines certain functions and powers of the LLDA, provides that the LLDA has the power to "make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished." Likewise, Section 4(i) of the same E.O. states that the LLDA is given authority to "exercise such powers and perform such other functions as may be necessary to carry out its duties and responsibilities under this Executive Order." Also, Section 4(c) authorizes the LLDA to "issue orders or decisions to compel compliance with the provisions of this Executive Order and its implementing rules and regulations only after proper notice and hearing." In *Laguna Lake Development Authority v. CA*, this Court had occasion to discuss the functions of the LLDA, thus: x x x It must be recognized in this regard that the LLDA, as a specialized administrative agency, is specifically mandated under Republic Act No. 4850 and its amendatory laws [PD 813 and EO 927], to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding Provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and

pollution. Under such a broad grant of power and authority, the LLDA, by virtue of its special charter, obviously has the responsibility to protect the inhabitants of the Laguna Lake Region from the deleterious effects of pollutants emanating from the discharge of wastes from the surrounding areas. x x x Indeed, how could the LLDA be expected to effectively perform the above-mentioned functions if, for every act or violation committed against the law it is supposed to enforce, it is required to resort to some other authority for the proper remedy or penalty. The intendment of the law, as gleaned from Section 4(i) of E.O. No. 927, is to clothe the LLDA not only with the express powers granted to it, but also those which are implied or incidental but, nonetheless, are necessary or essential for the full and proper implementation of its purposes and functions.

APPEARANCES OF COUNSEL

Legal Division (LLDA) for petitioners.
Factoran and Associates Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in the present petition for review on *certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (CA) dated June 28, 2004 and November 23, 2005, respectively, in CA-G.R. SP No. 79192. The CA Decision reversed and set aside the Orders[3] dated October 2, 2002, January 10, 2003 and May 27, 2003 of petitioner Public Hearing Committee of the Laguna Lake Development Authority (LLDA), in LLDA Case No. PH-02-03-076, while the CA Resolution denied petitioners' Motion for Reconsideration.

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[1] Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Hakim S. Abdulwahid, concurring; *rollo,* pp. 43-54.

[2] *Id.* at 55-58.

[3] *Rollo*, pp. 86-87; 92-93; 98-99.

The instant petition arose from an inspection conducted on February 4, 2002 by the Pollution Control Division of the LLDA of the wastewater collected from herein respondent's SM City Manila branch. The results of the laboratory tests showed that the sample collected from the said facility failed to conform with the effluent standards for inland water imposed in accordance with law.[4]

On March 12, 2002, the LLDA informed SM City Manila of its violation, directing the same to perform corrective measures to abate or control the pollution caused by the said company and ordering the latter to pay a penalty of "One Thousand Pesos (₱1,000.00) per day of discharging pollutive wastewater to be computed from 4 February 2002, the date of inspection, until full cessation of discharging pollutive wastewater."[5]

In a letter[6] dated March 23, 2002, respondent's Pollution Control Officer requested the LLDA to conduct a re-sampling of their effluent, claiming that they already took measures to enable their sewage treatment plant to meet the standards set forth by the LLDA.

In an Order to Pay[7] dated October 2, 2002, herein petitioner required respondent to pay a fine of Fifty Thousand Pesos (₱50,000.00) which represents the accumulated daily penalty computed from February 4, 2002 until March 25, 2002.

In two follow-up letters dated July 2, 2002[8] and November 29, 2002,[9] which were treated by the LLDA as a motion for reconsideration, respondent asked for a waiver of the fine assessed by the LLDA in its March 12, 2002 Notice of Violation and Order of October 2, 2002 on the ground that

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[4] Annex "E" to Petition, *id.* at 75.

[5] Annex "F" to Petition, *id.* at 76.

[6] Annex "G" to Petition, *id.* at 77.

[7] Annex "L" to Petition, *id.* at 86-87.

[8] Annex "I" to Petition, *id.* at 79-83.

[9] Annex "M" to Petition, *id.* at 88-91.

they immediately undertook corrective measures and that the pH levels of its effluent were already controlled even prior to their request for re-sampling leading to a minimal damage to the environment. Respondent also contended that it is a responsible operator of malls and department stores and that it was the first time that the wastewater discharge of SM City Manila failed to meet the standards of law with respect to inland water.

On January 10, 2003, the LLDA issued an Order[10] denying respondent's request for a waiver of the fine imposed on the latter.

On April 21, 2003, respondent submitted another letter[11] to the LLDA requesting for reconsideration of its Order dated January 10, 2003.

On May 27, 2003, the LLDA issued another Order to Pay[12] denying respondent's request for reconsideration and requiring payment of the fine within ten days from respondent's receipt of a copy of the said Order.

Aggrieved, respondent filed a petition for *certiorari* with the CA praying for the nullification of the Orders of the LLDA dated October 2, 2002, January 10, 2003 and May 27, 2003.

On June 28, 2004, the CA rendered its Decision granting the petition of herein respondent and reversing and setting aside the assailed Orders of the LLDA. Ruling that an administrative agency's power to impose fines should be expressly granted and may not be implied, the CA found that under its charter, Republic Act No. 4850[13] (RA 4850), the LLDA is not expressly granted any power or authority to impose fines for violations of effluent standards set by law. Thus, the CA held that the

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[10] Annex "N" to Petition, *id.* at 92-93.

[11] Annex "O" to Petition, *id.* at 94-97.

[12] Annex "P" to Petition, *id.* at 98-99.

[13] An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Functions and Duties, Providing Funds Therefor, and for other purposes.

assailed Orders of petitioner, which imposed a fine on respondent, are issued without jurisdiction and with grave abuse of discretion.

Petitioner filed a Motion for Reconsideration, but the same was denied by the CA via its Resolution dated November 23, 2005.

Hence, the instant petition based on the following grounds:

5.1. THE COURT OF APPEALS ERRED IN FINDING THAT THE PETITION CANNOT BE DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES, BY WAY OF EXCEPTION TO THE GENERAL RULE.

5.2. THE COURT OF APPEALS ERRED WHEN IT TOOK COGNIZANCE OF THE PETITION OF SM PRIME.

5.3. THE COURT OF APPEALS ERRED IN RULING THAT THE LLDA WAS NOT CONFERRED BY LAW THE POWER TO IMPOSE FINES AND, THEREFORE, CANNOT COLLECT THE SAME FROM SM PRIME HOLDINGS, INC.[14]

In their first assigned error, petitioners contend that the petition for *certiorari* filed by respondent with the CA is premature. Petitioners argue that respondent did not raise purely legal questions in its petition, but also brought to the fore factual issues which were properly within the province of the Department of Environment and Natural Resources (DENR), which is the agency having administrative supervision over the LLDA.

In the second assignment of error, petitioners aver that a reading of the provisions of Rule 43 of the Rules of Court would show that the CA has no jurisdiction over the petition for *certiorari* filed by respondent. Petitioners also assert that respondent is already barred by estoppel from questioning the LLDA's power to impose fines, because it (respondent) actively participated in the proceedings conducted by petitioners without challenging such power.

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[14] *Rollo*, p. 16.

Lastly, petitioners aver that the LLDA has the power to impose fines and penalties based on the provisions of RA 4850 and Executive Order (E.O.) No. 927.

The Court rules for the petitioners.

As to the first assigned error, the Court agrees with petitioners that respondent did not exhaust administrative remedies before filing a petition for *certiorari* with the CA.

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[15] Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.[16] The premature invocation of the intervention of the court is fatal to one's cause of action.[17] The doctrine of exhaustion of administrative remedies is based on practical and legal reasons.[18] The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[19] While the doctrine of exhaustion of

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[15] *Ongsuco v. Malones*, G.R. No. 182065, October 27, 2009, 604 SCRA 499, 511.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.* at 511-512.

administrative remedies is subject to several exceptions,[20] the Court finds that the instant case does not fall under any of them.

It is true that one of the exceptions to the doctrine of exhaustion of administrative remedies is when the issues raised are purely legal. However, the Court is not persuaded by respondent's contention that the special civil action for *certiorari* it filed with the CA involved only purely legal questions and did not raise factual issues. A perusal of the petition for *certiorari* filed by respondent readily shows that factual matters were raised, to wit: (a) whether respondent has immediately implemented remedial measures to correct the pH level of the effluent discharges of SM City Manila; and (b) whether the third party monitoring report submitted by respondent proves that it has complied with the effluent standards for inland water set by the LLDA. Respondent insists that what has been raised in the petition filed with the CA was whether the LLDA committed grave abuse of discretion in disregarding the evidence it presented and in proceeding to impose a penalty despite remedial measures undertaken by the latter. Logic dictates, however, that a determination of whether or not the LLDA indeed committed

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[20] The exceptions to the doctrine of exhaustion of administrative remedies x x x are: (1) when there is a violation of due process, (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is *estoppel* on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an *alter ego* of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (*Hongkong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*, G.R. No. 146526, May 5, 2006, 489 SCRA 578, 585-586.)

grave abuse of discretion in imposing fine on respondent would necessarily and inevitably touch on the factual issue of whether or not respondent in fact complied with the effluent standards set under the law. Since the matters raised by respondent involve factual issues, the questioned Orders of the LLDA should have been brought first before the DENR which has administrative supervision of the LLDA pursuant to E.O. No. 149.[21]

Neither may respondent resort to a petition for *certiorari* filed directly with the CA on the ground that the Orders issued by the LLDA are patently illegal and amount to lack or excess of jurisdiction because, as will be subsequently discussed, the assailed Orders of the LLDA are not illegal nor were they issued in excess of jurisdiction or with grave abuse of discretion.

Anent the second assigned error, the Court does not agree with petitioners' contention that the CA does not have jurisdiction to entertain the petition for *certiorari* filed by respondent questioning the subject Orders of the LLDA. Petitioners argue that Section 1,[22] Rule 43 of the Rules of Court enumerate the quasi-judicial agencies whose decisions or orders are directly appealable to the CA and that the LLDA is not among these

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[21] E.O. No. 149, dated December 28, 1993, was issued for the purpose of streamlining the Office of the President (OP), transferring regular agencies from the OP to the appropriate departments or agencies for policy and program coordination and integration and/or administrative supervision.

[22] Sec. 1. *Scope*. – This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

agencies. Petitioners should have noted, however, that Rule 43 refers to appeals from judgments or orders of quasi-judicial agencies in the exercise of their quasi-judicial functions. On the other hand, Rule 65 of the Rules of Court specifically governs special civil actions for *certiorari,* Section 4 of which provides that if the petition involves acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or the rules, the petition shall be filed in and cognizable only by the CA. Thus, it is clear that jurisdiction over acts or omissions of the LLDA belong to the CA.

Nonetheless, the Court agrees with petitioners that respondent is already estopped from questioning the power of the LLDA to impose fines as penalty owing to the fact that respondent actively participated during the hearing of its water pollution case before the LLDA without impugning such power of the said agency. In fact, respondent even asked for a reconsideration of the Order of the LLDA which imposed a fine upon it as evidenced by its letters dated July 2, 2002 and November 29, 2002, wherein respondent, through its pollution control officer, as well as its counsel, requested for a waiver of the fine(s) imposed by the LLDA. By asking for a reconsideration of the fine imposed by the LLDA, the Court arrives at no conclusion other than that respondent has impliedly admitted the authority of the latter to impose such penalty. Hence, contrary to respondent's claim in its Comment and Memorandum, it is already barred from assailing the LLDA's authority to impose fines.

In any case, this Court has categorically ruled in *Pacific Steam Laundry, Inc. v. Laguna Lake Development Authority*,[23] that the LLDA has the power to impose fines in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region. In expounding on this issue, the Court held that the adjudication of pollution cases generally pertains to the Pollution Adjudication Board (PAB),[24]

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[23] G.R. No. 165299, December 18, 2009, 608 SCRA 442.

[24] The Pollution Adjudication Board was created pursuant to Executive Order No. 192.

except where a special law, such as the LLDA Charter, provides for another forum. The Court further ruled that although the PAB assumed the powers and functions of the National Pollution Control Commission with respect to adjudication of pollution cases, this does not preclude the LLDA from assuming jurisdiction of pollution cases within its area of responsibility and to impose fines as penalty.

In the earlier case of *The Alexandra Condominium Corporation v. Laguna Lake Development Authority*,[25] this Court affirmed the ruling of the CA which sustained the LLDA's Order requiring the petitioner therein to pay a fine representing penalty for pollutive wastewater discharge. Although the petitioner in that case did not challenge the LLDA's authority to impose fine, the Court acknowledged the power of the LLDA to impose fines holding that under Section 4-A of RA 4850,[26] as amended, the LLDA is entitled to compensation for damages resulting from failure to meet established water and effluent standards. Section 4-A provides, thus:

> Sec. 4-A. Compensation for damages to the water and aquatic resources of Laguna de Bay and its tributaries resulting from failure to meet established water and effluent quality standards and from such other wrongful act or omission of a person, private or public, juridical or otherwise, punishable under the law shall be awarded to the Authority to be earmarked for water quality control management.

In addition, Section 4(d) of E.O. No. 927, which further defines certain functions and powers of the LLDA, provides that the LLDA has the power to "make, alter or modify orders requiring the discontinuance of pollution specifying the conditions and the time within which such discontinuance must be accomplished." Likewise, Section 4(i) of the same E.O. states that the LLDA is given authority to "exercise such powers and perform such other functions as may be necessary to carry out

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[25] G.R. No. 169228, September 11, 2009, 599 SCRA 452.

[26] An Act Creating the Laguna Lake Development Authority, Prescribing its Powers, Functions and Duties, Providing Funds Therefor, and for Other Purposes.

its duties and responsibilities under this Executive Order." Also, Section 4(c) authorizes the LLDA to "issue orders or decisions to compel compliance with the provisions of this Executive Order and its implementing rules and regulations only after proper notice and hearing."

In *Laguna Lake Development Authority v. CA*,[27] this Court had occasion to discuss the functions of the LLDA, thus:

> x x x It must be recognized in this regard that the LLDA, as a specialized administrative agency, is specifically mandated under Republic Act No. 4850 and its amendatory laws [PD 813 and EO 927], to carry out and make effective the declared national policy of promoting and accelerating the development and balanced growth of the Laguna Lake area and the surrounding Provinces of Rizal and Laguna and the cities of San Pablo, Manila, Pasay, Quezon and Caloocan with due regard and adequate provisions for environmental management and control, preservation of the quality of human life and ecological systems, and the prevention of undue ecological disturbances, deterioration and pollution. Under such a broad grant of power and authority, the LLDA, by virtue of its special charter, obviously has the responsibility to protect the inhabitants of the Laguna Lake Region from the deleterious effects of pollutants emanating from the discharge of wastes from the surrounding areas. x x x[28]

Indeed, how could the LLDA be expected to effectively perform the above-mentioned functions if, for every act or violation committed against the law it is supposed to enforce, it is required to resort to some other authority for the proper remedy or penalty. The intendment of the law, as gleaned from Section 4(i) of E.O. No. 927, is to clothe the LLDA not only with the express powers granted to it, but also those which are implied or incidental but, nonetheless, are necessary or essential for the full and proper implementation of its purposes and functions.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals, dated June 28, 2004, and the Resolution

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[27] G.R. No. 110120, March 16, 1994, 231 SCRA 292.

[28] *Id.* at 304.

dated November 23, 2005, in CA-G.R. SP No. 79192, are *REVERSED* and *SET ASIDE*. The Orders of the Laguna Lake Development Authority, dated October 2, 2002, January 10, 2003 and May 27, 2003, are hereby *REINSTATED* and *AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 170685. September 22, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ENRIQUE LIVIOCO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; DETERMINATION OF FAIR MARKET VALUE; THREE IMPORTANT CONCEPTS.— For purposes of just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking. There are three important concepts in this definition – the character of the property, its price, and the time of actual taking.

2. ID.; ID.; ID.; ID.; ID.; THE PROPERTY'S CHARACTER REFERS TO ITS ACTUAL USE AT THE TIME OF TAKING.— In expropriation cases (including cases involving

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 883 dated September 1, 2010.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886 dated September 1, 2010.

lands for agrarian reform), the property's character refers to its actual use at the time of taking, not its potential uses. Respondent himself admitted that his property was *agricultural* at the time he offered it for sale to DAR in 1988. In his letter to the DAR in 1988, respondent manifested that his land is agricultural and suitable for agricultural purposes, although it stood adjacent to residential properties. Moreover, it has been conclusively decided by final judgment in the earlier cases filed by respondent that his property was validly acquired under RA 6657 and validly distributed to agrarian reform beneficiaries. Since the coverage of RA 6657 only extends to agricultural lands, respondent's property should be conclusively treated as an *agricultural* land and valued as such.

3. ID.; ID.; ID.; ID.; ID.; IT IS THE DEPARTMENT OF AGRARIAN REFORM (DAR) THAT IS MANDATED BY LAW TO EVALUATE AND TO APPROVE LAND USE CONVERSIONS SO AS TO PREVENT FRAUDULENT EVASIONS FROM AGRARIAN REFORM COVERAGE.— The lower courts erred in ruling that the character or use of the property has changed from agricultural to residential, because there is no allegation or proof that the property was approved for conversion to other uses by DAR. It is the DAR that is mandated by law to evaluate and to approve land use conversions so as to prevent fraudulent evasions from agrarian reform coverage. Even reclassification and plans for expropriation by local government units (LGUs) will not *ipso facto* convert an agricultural property to residential, industrial or commercial. Thus, in the absence of any DAR approval for the conversion of respondent's property or an actual expropriation by an LGU, it cannot be said that the character or use of said property changed from agricultural to residential. Respondent's property remains agricultural and should be valued as such. Hence, the CA and the trial court had no legal basis for considering the subject property's value as *residential.*

4. ID.; ID.; ID.; ID.; ID.; THE POTENTIAL USE OF THE PROPERTY OR ITS ADAPTABILITY FOR CONVERSION IN THE FUTURE IS NOT THE ULTIMATE FACTOR IN DETERMINING JUST COMPENSATION.— Respondent's evidence of the value of his land as *residential* property (which the lower courts found to be preponderant) could, at most,

refer to the potential use of the property. While the potential use of an expropriated property is sometimes considered in cases where there is a great improvement in the general vicinity of the expropriated property, it should never control the determination of just compensation (which appears to be what the lower courts have erroneously done). The potential use of a property should not be the principal criterion for determining just compensation for this will be contrary to the well-settled doctrine that the fair market value of an expropriated property is determined by its character and its price at the time of taking, not its potential uses. If at all, the potential use of the property or its "adaptability for conversion in the future is a factor, not the ultimate in determining just compensation." The proper approach should have been to value respondent's property as an *agricultural* land, which value may be adjusted in light of the improvements in the Municipality of Mabalacat. Valuing the property as a *residential* land (as the lower courts have done) is not the correct approach, for reasons explained above. It would also be contrary to the social policy of agrarian reform, which is to free the tillers of the land from the bondage of the soil without delivering them to the new oppression of exorbitant land valuations. Note that in lands acquired under RA 6657, it is the farmer-beneficiaries who will ultimately pay the valuations paid to the former land owners (LBP merely advances the payment). If the farmer-beneficiaries are made to pay for lands valued as residential lands (the valuation for which is substantially higher than the valuation for agricultural lands), it is not unlikely that such farmers, unable to keep up with payment amortizations, will be forced to give up their landholdings in favor of the State or be driven to sell the property to other parties. This may just bring the State right back to the starting line where the landless remain landless and the rich acquire more landholdings from desperate farmers.

5. ID.; ID.; ID.; ID.; ID.; LAND BANK OF THE PHILIPPINES' (LBP'S) AUTHORITY IS ONLY PRELIMINARY AND THE LANDOWNER WHO DISAGREES WITH THE LBP'S VALUATION MAY BRING THE MATTER TO COURT FOR A JUDICIAL DETERMINATION OF JUST COMPENSATION. — The Court ruled that LBP's authority is only preliminary and the landowner who disagrees with the LBP's valuation may bring the matter to court for a judicial determination of just

compensation. The RTCs, organized as special agrarian courts, are the final adjudicators on the issue of just compensation. We have ruled in several cases that in determining just compensation, LBP must substantiate its valuation. In *Luciano*, the Court held: LAND BANK's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a SAC, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations. **Land Bank's valuation had to be substantiated during the hearing before it could be considered sufficient in accordance with Section 17 of RA 6657** and DAR AO No. x x x It is not enough that the landowner fails to prove a higher valuation for the property; LBP must still prove the correctness of its claims. In the absence of such substantiation, the case may have to be remanded for the reception of evidence. In the case at bar, we find that LBP did not sufficiently substantiate its valuation. While LBP insists that it strictly followed the statutory provision and its relevant implementing guidelines in arriving at its valuation, the Court notes the lack of evidence to prove the veracity of LBP's claims. LBP merely submitted its computation to the court without any evidence on record, whether documentary or testimonial, that would support the correctness of the values or data used in such computation.

6. ID.; ID.; ID.; ID.; WHEN REMAND OF THE CASE TO THE TRIAL COURT IS PROPER.— Given that both parties failed to adduce evidence of the property's value as an agricultural land at the time of taking, it is premature for the Court to make a final decision on the matter. The barren records of this case leave us in no position to resolve the dispute. Not being a trier of facts, the Court cannot also receive new evidence from the parties that would aid in the prompt resolution of this case. We are thus constrained to remand the case to the trial court for the reception of evidence and determination of just compensation in accordance with Section 17 of RA 6657.

7. ID.; ID.; ID.; ID.; JUST COMPENSATION MUST BE VALUED AT THE TIME OF TAKING; GUIDELINES PROVIDED.— The trial court should value the property as an agricultural land. It is reminded to adhere strictly to the doctrine that just

compensation *must be valued at the time of taking*. The "time of taking" is the time when the landowner was deprived of the use and benefit of his property, such as when title is transferred to the Republic. In the instant case, the records are silent as to the date when title was transferred to the Republic. However, we can take guidance from the findings contained in the final and executory decision in CA-G.R. SP No. 45486, which ruled on the validity of the DAR acquisition and is binding on both Livioco and LBP. The said Decision states that between 1993 and 1994, "the Republic[,] through DAR[,] took possession of the subject portion of [Livioco's] land and awarded the same to [agrarian reform beneficiaries] who were issued Certificates of Land Ownership Award sometime in 1994." So as not to lose time in resolving this issue, the Court declares that the evidence to be presented by the parties before the trial court for the valuation of the property must be based on the values prevalent in 1994 for like agricultural lands. The evidence must conform to Section 17 of RA 6657 and, as far as practicable, to DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994. Given the expertise of the DAR on the matter, due reliance on DAR Administrative Orders is encouraged; but, as the Administrative Orders themselves recognize, there are situations where their application is not practicable or possible. If the cited factors in the DAR Administrative Order are absent, irrelevant, or unavailable, the trial court should exercise judicial discretion and make its own computation of the just compensation based on the factors set in Section 17 of RA 6657. The trial court may impose interest on the just compensation as may be warranted by the circumstances of the case and based on prevailing jurisprudence. The trial court is reminded that the practice of earmarking funds and opening trust accounts has been rejected by the Court for purposes of effecting payment; hence, it must not be considered as valid payment. In the event that the respondent had already withdrawn the amount deposited in the LBP as required by the trial court's March 29, 2004 Order, the withdrawn amount should be deducted from the final land valuation to be paid by LBP. In case the release required by the trial court's March 29, 2004 Order has not yet been effected, the trial court's first order of business should be to require LBP's immediate compliance therewith.

APPEARANCES OF COUNSEL

LBP Legal Department for petitioner.
Quijano and Padilla Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

When the evidence received by the trial court are irrelevant to the issue of just compensation and in total disregard of the requirements provided under Section 17 of the Comprehensive Agrarian Reform Law, the Court is left with no evidence on record that could aid in the proper resolution of the case. While remand is frowned upon for obviating the speedy dispensation of justice, it becomes necessary to ensure compliance with the law and to give everyone – the landowner, the farmers, and the State – their due.

This is a Petition for Review under Rule 45, assailing the August 30, 2005 Decision[1] of the Court of Appeals (CA), as well as its December 5, 2005 Resolution[2] in CA-G.R. SP No. 83138. The dispositive portion of the assailed Decision reads as follows:

> WHEREFORE, premises considered, the petition is DENIED. The Decision dated January 29, 2004 and the Order dated March 16, 2004 of the RTC, Branch 56, Angeles City in Civil Case No. 10405 are hereby AFFIRMED.[3]

Factual Antecedents

Petitioner Land Bank of the Philippines (LBP) is the government financial institution[4] established to aid in the implementation of

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[1] *Rollo*, pp. 57-64. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo Zenarosa.

[2] *Id.* at 66.

[3] CA Decision, p. 8; *id.* at 64.

[4] Section 74, REPUBLIC ACT NO. 3844, AGRICULTURAL LAND REFORM CODE (effective August 8, 1963), reads:

the Comprehensive Agrarian Reform Program (CARP) as well as to act as financial intermediary of the Agrarian Reform Fund.[5]

Respondent Enrique Livioco (Livioco) was the owner of 30.6329 hectares of sugarland[6] located in Dapdap, Mabalacat, Pampanga. Sometime between 1987 and 1988,[7] Livioco offered his sugarland to the Department of Agrarian Reform (DAR) for acquisition under the CARP at ₱30.00 per square meter, for a total of ₱9,189,870.00. The voluntary-offer-to-sell (VOS) form[8] he submitted to the DAR indicated that his property is adjacent to residential subdivisions and to an international paper mill.[9]

The DAR referred Livioco's offer to the LBP for valuation.[10] Following Section 17 of Republic Act (RA) No. 6657 and DAR Administrative Order No. 17, series of 1989,[11] as amended by Administrative Order No. 3, series of 1991,[12] the LBP set the

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Section 74. ***Creation.*** – To finance the acquisition by the Government of landed estates for division and resale to small landholders, as well as the purchase of the landholding by the agricultural lessee from the landowner, there is hereby established a body corporate to be known as the "Land Bank of the Philippines," hereinafter called the "Bank," which shall have its principal place of business in Manila x x x

[5] Section 64, REPUBLIC ACT NO. 6657, reads:

Sec. 64. ***Financial Intermediary for the CARP.*** – The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[6] Transfer Certificate of Title No. 155279-R.

[7] Testimony of Enrique Livioco taken on October 17, 2002, p. 26.

[8] CA *rollo*, p. 125.

[9] *Id.*

[10] Records, Vol. II, pp. 476-477.

[11] Rules and Regulations Amending the Valuation of Lands Voluntarily Offered Pursuant to Executive Order No. 229 and Republic Act No. 6657 and those Compulsorily Acquired Pursuant to Republic Act No. 6657.

[12] Rules and Regulations Amending Certain Provisions of Administrative Order No. 17 which Governs the Valuation of Lands Voluntarily Offered Pursuant to Executive Order No. 229 and Republic Act No. 6657 and Compulsorily Acquired Pursuant to Republic Act No. 6657.

price at ₱3.21 per square meter or a total of ₱827,943.48 for 26 hectares.[13] Livioco was then promptly informed of the valuation[14] and that the cash portion of the claim proceeds have been "kept in trust pending [his] submission of the [ownership documentary] requirements."[15] It appears however that Livioco did not act upon the notice given to him by both government agencies. On September 20, 1991, LBP issued a certification to the Register of Deeds of Pampanga that it has earmarked the amount of ₱827,943.48 as compensation for Livioco's 26 hectares.[16]

It was only two years later[17] that Livioco requested for a reevaluation of the compensation on the ground that its value had already appreciated from the time it was first offered for sale.[18] The request was denied by Regional Director Antonio Nuesa on the ground that there was already a perfected sale.[19]

The DAR proceeded to take possession of Livioco's property. In 1994, the DAR awarded Certificates of Land Ownership Award (CLOAs) covering Livioco's property to 26 qualified farmer-beneficiaries.[20]

Livioco filed separate complaints to cancel the CLOAs and to recover his property but the same proved futile. The first case he filed in 1995 was for quieting of title, recovery of

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[13] Land Valuation Worksheet, CA *rollo*, pp. 158-162.

[14] Livioco received the Notice of Land Valuation from DAR Regional Director Antonio M. Nuesa on August 8, 1991 (*Id.* at 129).

[15] Livioco was informed by LBP's Land Valuation and Landowners Compensation Office on August 19, 1991 (*Id.* at 130).

[16] Decision in CA-G.R. SP No. 61529, p. 3; *id.* at 167.

[17] On April 4, 1993.

[18] Decision in CA-G.R. SP No. 61529, p. 3; CA *rollo*, p. 167.

[19] Exhibit 1, Defendant's Formal Offer of Exhibits, p. 3.

[20] *Enrique Livioco v. Department of Agrarian Reform*, CA-G.R. SP No. 45486 (Plaintiff's Formal Offer of Evidence, p. 5). The TCT CLOA-Numbers do not appear on record. There is likewise no record showing the date when title was transferred to the Republic.

possession and damages against the DAR, LBP, Register of Deeds, and the farmer-beneficiaries.[21] In its final and executory Decision,[22] the CA sustained the validity of the CLOAs.[23] The relevant portions of the Decision read:

> What matters most is the fact that the requirements for "Compulsory Acquisition" of private lands, especially the indispensable ones, to wit: (1) valuation of the subject property by the proper government agency which is the LBP; (2) DAR's "Notice of Land Valuation" to petitioner and; (3) most importantly, the deposit of the amount of land valuation in the name of petitioner after he rejected the said amount, were substantially complied with in the instant case.
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> Considering therefore that there was material and substantial compliance with the requirements for the "Compulsory Acquisition" of the subject land, the acquisition of the same is indubitably in order and in accordance with law.[24]

Livioco then filed in 1998 a petition for reconveyance before the DAR Regional Office.[25] The case eventually reached the CA, which dismissed the petition on the ground that the validity

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[21] *Sps. Enrique Livioco and Beatriz M. Livioco v. Department of Agrarian Reform,* CA-G.R. SP No. 61529, p. 4; *id.* at 17.

[22] *Id.* The relevant portions read:

"The DARAB decision was affirmed by the Court of Appeals on May 12, 1998 in CA-G.R. SP No. 45486 entitled "*Enrique M. Livioco vs. Department of Agrarian Reform, et al.*"

The Court of Appeals' decision was then challenged before the Supreme Court through a petition for review on *certiorari* docketed as G.R. No. 133837 (*Enrique Livioco vs. Department of Agrarian Reform, et al.*) The Supreme Court however denied the petition in a Resolution dated July 6, 1998 for "failure of the petitioner to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision as to warrant the exercise by the Court of its discretionary appellate jurisdiction in this case."

[23] *Enrique Livioco v. Department of Agrarian Reform,* CA-G.R. SP No. 45486 (*supra* note 20 at 2-13). Penned by Associate Justice Quirino D. Abad Santos, Jr. and concurred in by Associate Justices Ruben T. Reyes and Eloy R. Bello, Jr.

[24] Decision in CA-G.R. SP No. 45486, p. 12; *id.* at 13.

[25] Decision in CA-G.R. SP No. 61529, p. 4; *id.* at 17.

of the compulsory acquisition had already been decided with finality in the earlier CA case, to wit:

> As the disputed property was eventually acquired through Compulsory Acquisition, its reconveyance to the petitioners was properly disallowed by the DAR. The certifications by other government agencies that the land was identified as a resettlement area [are] of no avail as the DAR is vested with primary jurisdiction to determine and adjudicate agrarian reform matters and has exclusive original jurisdiction over all matters involving the implementation of agrarian reform.
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> x x x x x x x x x
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> Indeed, it is to the best interest of the public that the litigation regarding the reconveyance of the disputed property between the same parties for the same grounds must come to an end, the matter having [been] already fully and fairly adjudicated by the DAR, this Court and the Supreme Court which had declined to disturb the judgment of this Court.[26]

Upon the request of DAR, LBP made two amendments to the valuation. At first, they reduced the acquired area from 30.6329 hectares to 23.9191 hectares. Later, they increased the acquired area to 24.2088 hectares. The remaining 6.4241 hectares of the property was determined as not compensable because this comprised a residential area, a creek, road, and a chapel.[27] The total value for 24.2088 hectares was ₱770,904.54. Livioco was informed on August 8, 2001 that the payment was already deposited in cash and agrarian reform bonds and may be withdrawn upon submission of the documentary requirements.[28]

Unable to recover his property but unwilling to accept what he believes was an outrageously low valuation of his property, Livioco finally filed a petition for judicial determination of just compensation against DAR, LBP, and the CLOA holders

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[26] *Id.* at 8-10; *id.* at 21-23. Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Bienvenido L. Reyes and Amelita G. Tolentino.

[27] Exhibit "4", Defendant's Formal Offer of Exhibits, p. 7.

[28] Exhibit "5", *id.* at 10.

before Branch 56 of the Regional Trial Court (RTC) of Angeles City on December 18, 2001.[29] He maintained that between 1990 and 2000, the area where his property is located has become predominantly residential hence he should be paid his property's value as such. To prove that his property is now residential, Livioco presented a Certification from the Office of the Municipal Planning and Development Coordinator of the Municipality of Mabalacat that, as per zoning ordinance, Livioco's land is located in an area where the dominant land use is residential.[30] He also presented certifications from the Housing and Land Use Regulatory Board,[31] the Mt. Pinatubo Commission,[32] and the National Housing Authority[33] that his property is suitable for a resettlement area or for socialized housing. None of these plans pushed through.

Livioco then presented evidence to prove the value of his property as of 2002. According to his sworn valuation, his property has a market value of ₱700.00/square meter.[34] He also presented the Bureau of Internal Revenue (BIR) zonal value for residential lands in Dapdap, as ranging from ₱150.00 to ₱200.00/square meter.[35] He then presented Franklin Olay (Olay), chief appraiser of the Rural Bank of Mabalacat, who testified[36] and certified[37] that he valued the property at ₱800.00 per square meter, whether or not the property is residential. Olay explained that he arrived at the said value by asking the buyers of adjacent residential properties as to the prevailing

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[29] Records, Vol. I, pp. 1-5.

[30] Exhibit D-1, Plaintiff's Formal Offer of Evidence, p. 24.

[31] Exhibit "E", *id.* at 25.

[32] Exhibit "F", *id.* at 26.

[33] Exhibit "G", *id.* at 27.

[34] Exhibit "I", *id.* at 31.

[35] Exhibit "K-1", *id.* at 34.

[36] Duplicate TSN Folder, Testimony of Franklin Olay dated October 17, 2002, pp. 34-39.

[37] Exhibit "J", Plaintiff's Formal Offer of Evidence, p. 32.

selling price in the area.[38] There was also a certification from the Pinatubo Project Management Office that Livioco's property was valued at ₱300.00/square meter.[39] Livioco prayed that just compensation be computed at ₱700.00/square meter.[40]

Only LBP filed its Answer[41] and participated in the trial. It justified the ₱3.21/square meter valuation of the property on the ground that it was made pursuant to the guidelines in RA 6657 and DAR Administrative Order No. 3, series of 1991. LBP objected to respondent's theory that his property should be valued as a residential land because the same was acquired for agricultural purposes, not for its potential for conversion to other uses.[42] LBP presented its agrarian affairs specialist who testified[43] that, due to the increase in the acquired area, she was assigned to amend the claim of Livioco. She computed the total value thereof at ₱770,904.54, using the DAR Administrative Order No. 3, series of 1991.[44] The only other witness of LBP was its lawyer, who explained the legal basis for the DAR administrative orders and the factors for land valuation provided in Section 17 of RA 6657.[45]

Ruling of the Regional Trial Court

Apparently aware that neither party presented relevant evidence for the proper computation of the just compensation, the trial court issued its April 2, 2003 Order requiring the reception of additional evidence:

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[38] Duplicate TSN Folder, Testimony of Franklin Olay dated October 17, 2002, pp. 36-38.

[39] Exhibit L, Plaintiff's Formal Offer of Evidence, p. 36.

[40] Records, Vol. I, p. 4.

[41] *Id.* at 51-54.

[42] *Id.* at 53.

[43] Duplicate TSN Folder, Testimony of Teresie Pineda Garcia dated November 26, 2002, pp. 2-10.

[44] *Id.* at 5.

[45] Duplicate TSN Folder, Testimony of Alfredo B. Pandico dated November 26, 2002, pp. 11-17.

A perusal of the record of this case as well as the evidence adduced by the parties shows that the facts required for the proper computation and/or determination of just compensation for the plaintiff's property *i.e.*, land value of the property in accordance with the Listasaka, capitalized net income, comparable sales and market value pursuant to the corresponding tax declaration, are unavailable and insufficient.

WHEREFORE, for the Court to properly determine and fix the just compensation to be accorded to [respondent's] property, the reopening of this case for the purpose of the presentation of additional evidence is hereby ordered.

Let the reception of aforesaid additional evidence be set on April 22, 2003 at 8:30 am.

x x x x x x x x x[46]

Based on the records, the next hearing took place on July 10, 2003 where none of the parties presented additional evidence, whether testimonial or documentary.[47] Nevertheless, the trial court proceeded to rule in favor of Livioco:

WHEREFORE, premises considered, the Court hereby renders judgment in favor of the [respondent], Enrique Livioco, and against the Department of Agrarian Reform and the Land Bank of the Philippines with a determination that the just compensation of Livioco's property, consisting of 24.2088 hectares located at Mabalacat, Pampanga is worth Php700.00 per square meter.

Defendants Department of Agrarian Reform and Land Bank of the Philippines are, therefore, ordered to pay [respondent] the amount of Php700.00 per square meter multiplied by 24.2088 hectares representing the entire area taken by the government from the plaintiff.[48]

The trial court was of the opinion that Livioco was able to prove the higher valuation of his property with a preponderance of evidence. In contrast, there was a dearth of evidence to support LBP's ₱3.21 per square meter valuation of the property.

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[46] Records, Vol. I, p. 127.

[47] Duplicate TSN Folder, Proceedings of July 10, 2003, pp. 2-5.

[48] Records, Vol. I, pp. 191-196.

Not a single documentary evidence was presented to substantiate its valuation.

LBP sought a reconsideration[49] of the adverse decision arguing that the court should have considered the factors appearing in Section 17. It stressed that in failing to consider the property's productive capacity (capitalized net income), the court placed the farmer-beneficiaries in a very difficult position. They would not be able to pay off the just compensation for their lands because it is valued way beyond its productive capacity. The same was denied by the trial court.[50]

Upon respondent's motion, the lower court ordered LBP on March 29, 2004 to release as initial cash down payment the amount of ₱827,943.48, inclusive of legal interest accruing from the time of taking on September 20, 1991 (the date when LBP informed the Register of Deeds that it has earmarked the said amount in favor of Livioco).[51]

LBP sought a reconsideration of the said order. It clarified that the just compensation deposited by LBP in the account of respondent was only ₱770,904.54 for the 24.2088 hectares. It likewise asked that the release of the deposit be subject to respondent's compliance with the release requirements of the ownership documents.[52] The records are silent as to the court's action on the motion as well as to the execution of this order.

Ruling of the Court of Appeals[53]

Petitioner turned to the CA to no avail. The CA affirmed the trial court's decision *in toto*. First it held that factual findings of the trial courts are entitled to respect. It held that the factors for determining just compensation, set out in Section 17 of RA 6657, were all considered by the trial court in arriving at its

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[49] *Id.* at 197-207.

[50] *Id.* at 245-248.

[51] *Id.* at 261.

[52] *Id.* at 283-284.

[53] CA *rollo*, pp. 317-324.

decision. It stated that among the relevant evidence considered were Livioco's sworn valuation, tax declarations, zonal value, actual use of the property, and the socio-economic benefits contributed by the government to the property. It likewise noted that the taking of Livioco's property coincided with the Mt. Pinatubo eruption in 1991, which event affected its valuation.[54] Pursuant to Section 18(1)(b) of RA 6657, the CA ordered LBP to pay 30% of the purchase price in cash, while the balance may be paid in government financial instruments negotiable at any time.[55]

A motion for reconsideration[56] was filed on September 29, 2005, which was denied in a Resolution[57] dated December 5, 2005.

Hence, this petition.

Petitioner's arguments

In this Petition before us, LBP assails the CA's assent to the valuation of Livioco's property as a residential land. It maintains that it is not the State's policy to purchase residential land. Since the property was acquired under the CARP, it had to be valued as an agricultural land.[58] Moreover, the assumption that Livioco's property has a residential use is entirely speculative and baseless because none of the government plans to use it as a residential land was carried out.[59]

LBP also assails the Decision of the trial court which valued the land as of 1997 when the rule is that just compensation must be valued at the time of taking, which in this case was in 1988. By considering events that transpired after 1988, the court

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[54] CA Decision, p. 7; *id.* at 323.

[55] *Id.* at 7-8; *rollo*, pp. 63-64.

[56] Records, Vol. II, pp. 370-385.

[57] *Id.* at 398.

[58] Petitioner's Memorandum, p. 28; *rollo*, p. 333.

[59] *Id.* at 34-37; *id.* at 339-342.

obviously relied on factors that were not in existence at the time of taking.[60]

LBP further argues that the trial court should have given more weight to its land valuation because it is the authorized agency recognized by the legislature as having expertise on the matter.[61]

LBP insists that the Claim Valuation and Processing Form that it presented before the appellate court "clearly established the area covered, the land use or crop planted, the average price/hectare and the total value of the subject land." LBP describes this document as clear and convincing evidence of the correctness of its valuation.[62]

LBP likewise assails the lower courts' valuation on the ground that they disregarded the factors set out in Section 17 of RA 6657 for the determination of just compensation. It argues that the factors stated in that provision are exclusive and the courts cannot consider factors that are not included therein.[63]

Respondent's arguments

Respondent argues that by seeking a review of the just compensation, LBP is raising a question of fact, which entails an examination of the probative value of the evidence presented by the parties.[64] He points out that LBP is merely reiterating the arguments already presented in its motion for reconsideration before the CA, which makes the instant petition dilatory.[65]

Respondent then argues that, with respect to the determination of just compensation, courts are not bound by the findings of administrative agencies such as LBP. Courts are the final authority

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[60] *Id.* at 32-35; *id.* at 337-340.

[61] *Id.* at 21-22; *id.* at 326-327.

[62] *Id.* at 23; *id.* at 328.

[63] *Id.* at 24-28; *id.* at 329-333.

[64] Respondent's Memorandum, pp. 12-14; *id.* at 360-362.

[65] *Id.* at 15-17; *id.* at 363-365.

in this matter. LBP's valuation is only preliminary and it has the duty to prove to the trial courts the veracity of its valuation. In the instant case, the trial court decided based on the evidence presented but found LBP's valuation unsubstantiated.[66] He then prays for the dismissal of the instant petition for review.[67]

Issue

Was the compensation for respondent's property determined in accordance with law?

Our Ruling

For purposes of just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking.[68] There are three important concepts in this definition – the character of the property, its price, and the time of actual taking. Did the appellate court properly consider these three concepts when it affirmed the trial court's decision? We find that it did not.

As to the character of the property

The trial and appellate courts valued respondent's property as a *residential* land worth ₱700.00 per square meter. They considered the use for the property as having changed from agricultural in 1988 (when Livioco offered it to DAR) to residential by 2002 (allegedly due to the eruption of Mt. Pinatubo). Both courts erred in treating the land as residential and accepting the change in the character of the property, without any proof that authorized land conversion had taken place.

In expropriation cases (including cases involving lands for agrarian reform), the property's character refers to its actual

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[66] *Id.* at 17-22; *id.* at 363-370.

[67] *Id.* at 23; *id.* at 371.

[68] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, May 5, 2006, 489 SCRA 590, 613.

use at the time of taking,[69] not its potential uses.[70] Respondent himself admitted that his property was *agricultural* at the time he offered it for sale to DAR in 1988. In his letter to the DAR in 1988, respondent manifested that his land is agricultural and suitable for agricultural purposes, although it stood adjacent to residential properties.[71] Moreover, it has been conclusively decided by final judgment in the earlier cases[72] filed by respondent that his property was validly acquired under RA 6657 and validly distributed to agrarian reform beneficiaries. Since the coverage of RA 6657 only extends to agricultural lands, respondent's property should be conclusively treated as an *agricultural* land and valued as such.

The lower courts erred in ruling that the character or use of the property has changed from agricultural to residential, because there is no allegation or proof that the property was approved for conversion to other uses by DAR. It is the DAR that is mandated by law to evaluate and to approve land use conversions[73]

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[69] *Id*.

[70] *Curata v. Philippine Ports Authority*, G.R. Nos. 154211-12, June 22, 2009, 590 SCRA 214, 318-319.

[71] CA *rollo*, p. 125.

[72] CA-G.R. SP Nos. 61529 and 45486. Both cases also involve the parties herein, Livioco and the LBP, hence the factual and legal conclusions in these two decisions are binding on the two parties.

[73] Section 65, REPUBLIC ACT NO. 6657, reads:

Section 65. ***Conversion of Lands.*** – After the lapse of five years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That the beneficiary shall have fully paid his obligation.

Executive Order No. 129-A, series of 1987, (Reorganization Act of the Department of Agrarian Reform) is also instructive on the matter:

Section 4. ***Mandate.*** The Department shall be responsible for implementing the Comprehensive Agrarian Reform Program and for such purpose, it is authorized to:

so as to prevent fraudulent evasions from agrarian reform coverage. Even reclassification[74] and plans for expropriation[75]

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x x x x x x x x x

k) Approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses;

x x x x x x x x x

Section 5. ***Powers and Functions.*** Pursuant to the mandate of the Department, and in order to ensure the successful implementation of the Comprehensive Agrarian Reform Program, the Department is hereby authorized to:

x x x x x x x x x

l) Have exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law;

x x x x x x x x x

[74] Section 20, REPUBLIC ACT NO. 7160, THE LOCAL GOVERNMENT CODE:

Sec. 20. *Reclassification of Lands.* – (a) A city or municipality may, through an ordinance passed by the sanggunian after conducting public hearing for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the sanggunian concerned: *Provided,* That such reclassification shall be limited to the following percentage of the total agricultural land area, at the time of the passage of the ordinance:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): *Provided, further,* That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-Six fifty-seven (R.A. No. 6657), otherwise known as the "The Comprehensive Agrarian Reform Law," shall *not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.*

The case of *Ros v. Department of Agrarian Reform* (G.R. No. 132477, August 31, 2005, 468 SCRA 471, 478-483) explains the effect of reclassification and the necessity for conversion in this wise:

After the passage of Republic Act No. 6657, otherwise known as Comprehensive Agrarian Reform Program, agricultural lands, *though reclassified,* have to go through the process of conversion, jurisdiction over which is vested in the DAR. However, agricultural lands already reclassified before the effectivity of Rep. Act No. 6657 are exempted from conversion.

x x x x x x x x x

The requirement that agricultural lands must go through the process of conversion despite having undergone reclassification was underscored in the case of *Alarcon v. Court of Appeals,* where it was held that reclassification of land does not suffice:

In the case at bar, there is no final order of conversion. The subject landholding was merely reclassified. Conversion is different from reclassification. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform. Reclassification, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes.

x x x x x x x x x

The authority of the DAR to approve conversions of agricultural lands covered by Rep. Act No. 6657 to non-agricultural uses has *not* been pierced by the passage of the Local Government Code. The Code explicitly provides that "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Rep. Act No. 6657." (Emphasis supplied; citations omitted)

[75] A DAR Conversion Clearance is no longer necessary when the LGUs expropriate agricultural lands for a public purpose (*Province of Camarines Sur v. Court of Appeals,* G.R. No. 103125, May 17, 1993, 222 SCRA 173, 181). The expropriation of agricultural lands by LGUs was further clarified by DAR in its Administrative Order No. 2, series of 2009, which reads:

17. Pursuant to Section 4 of RA 9700, an LGU may, through its Chief Executive and/or an ordinance, exercise the power of eminent domain on agricultural lands for public use, purpose or welfare of the poor and the landless, upon payment of just compensation to agrarian reform beneficiaries (ARBs) on these lands, pursuant to the provisions of the Constitution and pertinent laws. The power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the ARBs, and such offer was not accepted. In cases where the land sought to be acquired has been issued with a Notice of Coverage or is already subject to voluntary offer to sell (with letter-offer submitted to the DAR) the concerned LGU shall suspend the exercise of its power of eminent domain until after the LAD process has been completed and the title to the property has been transferred to ARBs.

by local government units (LGUs) will not *ipso facto* convert an agricultural property to residential, industrial or commercial. Thus, in the absence of any DAR approval for the conversion of respondent's property or an actual expropriation by an LGU, it cannot be said that the character or use of said property changed from agricultural to residential. Respondent's property remains agricultural and should be valued as such. Hence, the CA and the trial court had no legal basis for considering the subject property's value as *residential*.

Respondent's evidence of the value of his land as *residential* property (which the lower courts found to be preponderant) could, at most, refer to the potential use of the property. While the potential use of an expropriated property is sometimes considered in cases where there is a great improvement in the general vicinity of the expropriated property,[76] it should never control the determination of just compensation (which appears to be what the lower courts have erroneously done). The potential use of a property should not be the principal criterion for determining just compensation for this will be contrary to the well-settled doctrine that the fair market value of an expropriated property is determined by its character and its price at the time of taking, not its potential uses. If at all, the potential use of the property or its "adaptability for conversion in the future is a factor, not the ultimate in determining just compensation."[77]

The proper approach should have been to value respondent's property as an *agricultural* land, which value may be adjusted in light of the improvements in the Municipality of Mabalacat. Valuing the property as a *residential* land (as the lower courts have done) is not the correct approach, for reasons explained above. It would also be contrary to the social policy of agrarian reform, which is to free the tillers of the land from the bondage of the soil without delivering them to the new oppression of exorbitant land valuations. Note that in lands acquired under

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[76] *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 480 Phil. 470, 480 (2004).

[77] *Curata v. Philippine Ports Authority*, *supra* note 70 at 319.

RA 6657, it is the farmer-beneficiaries who will ultimately pay the valuations paid to the former land owners (LBP merely advances the payment).[78] If the farmer-beneficiaries are made to pay for lands valued as residential lands (the valuation for which is substantially higher than the valuation for agricultural lands), it is not unlikely that such farmers, unable to keep up with payment amortizations, will be forced to give up their landholdings in favor of the State or be driven to sell the property to other parties. This may just bring the State right back to the starting line where the landless remain landless and the rich acquire more landholdings from desperate farmers.

The CA also erroneously considered the Mt. Pinatubo eruption in 1991 as converting the use for respondent's property from agricultural to residential. We find no basis for the appellate court's conclusion. First, as already explained, there was no conversion order from DAR, or even an application for conversion with DAR, to justify the CA's decision to treat the property as residential. Second, respondent himself testified that his property was not affected by the volcanic ashfall,[79] which can only mean that its nature as an agricultural land was not drastically affected. The Mt. Pinatubo eruption only served to make his property attractive to government agencies as a resettlement area, but none of these government plans panned out; hence, his property remained agricultural. Third, the circumstance that respondent's

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[78] Section 26, REPUBLIC ACT NO. 6657 reads:

Sec. 26. ***Payment by Beneficiaries.*** – Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in 30 annual amortizations at 6 percent interest *per annum*. The payments for the first three years after the award may be at reduced amounts as established by the PARC x x x

The LBP shall have a lien by way of mortgage on the land awarded to the beneficiary; and this mortgage may be foreclosed by the LBP for non-payment of an aggregate of three annual amortizations. The LBP shall advise the DAR of such proceedings and the latter shall subsequently award the forfeited landholding to other qualified beneficiaries. A beneficiary whose land, as provided herein, has been foreclosed shall thereafter be permanently disqualified from becoming a beneficiary under this Act.

[79] Duplicate TSN folder, Testimony of Enrique Livioco dated October 17, 2002, pp. 28-30.

property was surrounded by residential subdivisions was already in existence when he offered it for sale sometime between 1987 and 1988. The VOS form that respondent accomplished described his property as being located adjacent to residential subdivisions. It was not therefore a drastic change caused by volcanic eruption. All together, these circumstances negate the CA's ruling that the subject property should be treated differently because of the natural calamity.

As to the price: Applying Section 17 of RA 6657

The trial and appellate courts also erred in disregarding Section 17 of RA 6657[80] in their determination of just compensation. Section 17 of RA 6657 provides:

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[80] While this case was pending, a supervening event occurred with the advent of RA 9700, the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER). In this new law which became effective on July 1, 2009, Congress saw fit to declare that "all previously acquired lands wherein valuation is subject to challenge by landowners shall be *computed and finally resolved* pursuant to Section 17 of RA 6657, *as amended*." In turn, Section 17 of RA 6657 was amended to read as follows:

In determining just compensation, the cost of acquisition of the land, *the value of the standing crop*, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and *seventy (70%) percent of the zonal valuation of the BIR, translated into a basic formula by the DAR* shall be considered, *subject to the final decision of the proper court.* The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the nonpayment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Emphasized portions show the amendments.)

Pursuant to this authority, the DAR issued Administrative Order No. 2, series of 2009, which provided in D(2) thereof that "all previously acquired lands wherein valuation is subject to challenge by landowner shall be completed and finally resolved pursuant to Section 17 of RA 6657, *as amended.*" In its transitory provisions in Chapter VI, however, the administrative order makes an exception to the application of the amended Section 17. It states: "x x x with respect to land valuation, all claim folders *received* by LBP *prior* to July 1, 2009 shall be valued in accordance with Section 17 of RA 6657 *prior to its amendment by RA No. 9700*."

Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of the like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessments 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.

Jurisprudence is replete with reminders to special agrarian courts to strictly adhere to the factors set out in Section 17 of RA 6657.[81]

By issuing its April 2, 2003 Order requiring the reception of additional evidence, the trial court revealed its awareness of the importance of adhering to Section 17 of RA 6657. It recognized that the evidence presented by the parties were insufficient to arrive at the just compensation and that the necessary evidence were unavailable for its consideration. For some reason, however, the trial court proceeded to rule on the case without actually receiving such relevant evidence. Instead, the trial court, as

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Thus, the amended Section 17 has no retroactive effect insofar as the claim folders already received by LBP prior to the effectivity of RA 9700 are concerned. The prospective application of the amended provision is proper in order to avoid possibly prejudicing vested rights of parties.

In the case at bar, the claim folder was first forwarded by DAR to the LBP in 1990 and the amended claim folder must have been received by LBP before August 2001 (the date when they notified Livioco of the amended valuation). Since both dates of receipt occurred prior to July 1, 2009, it is Section 17 of RA 6657 that should control the challenged valuation.

[81] *Landbank of the Philippines v. Rufino,* G.R. Nos. 175644 and 175702, October 2, 2009, 602 SCRA 399, 406-412; *Landbank of the Philippines v. Heirs of Eleuterio Cruz,* G.R. No. 175175, September 29, 2008, 567 SCRA 31, 39-41; *Landbank of the Philippines v. Dizon,* G.R. No. 160394, November 27, 2009, 606 SCRA 66, 76-78; *Lee v. Landbank of the Philippines*, G.R. No. 170422, March 7, 2008, 548 SCRA 52, 59; *Landbank of the Philippines v. Lim,* G.R. No. 171941, August 2, 2007, 529 SCRA 129, 134; *Allied Banking Corporation v. Landbank of the Philippines,* G.R. No. 175422, March 13, 2009, 581 SCRA 301, 311-312.

affirmed by the CA, ruled in favor of respondent based on preponderance of evidence, regardless of the fact that the evidence presented by respondent were not really relevant to the factors mentioned in Section 17 of RA 6657.

The CA ruled that the trial court took into account all the factors in Section 17 of RA 6657. We disagree. Going over the factors in Section 17, it is clear that almost all were not properly considered and some positively ignored. For instance: (a) The "***cost of acquisition***" was not even inquired into. It would not have been difficult to require respondent to present evidence of the property's price when he acquired the same. (b) As to the "***nature***" of the property, it has already been explained that the lower courts erroneously treated it as residential rather than agricultural. (c) Also, no heed was given to the "***current value of like properties***." Since respondent's property is agricultural in nature, "like properties" in this case would be agricultural lands, preferably also sugarcane lands, within the municipality or adjacent municipalities. But the chief appraiser of the Rural Bank of Mabalacat testified that he considered the value of adjacent *residential* properties, not "like properties" as required under the law. Comparing respondent's agricultural property to residential properties is not what the law envisioned. (d) The factor of "***actual use and income of the property***" was also ignored; what was instead considered was the property's potential use.

Thus, we cannot accept the valuation by the lower courts, as it is not in accordance with Section 17 of RA 6657. It was based on respondent's evidence which were irrelevant or off-tangent to the factors laid down by Section 17.

However, we also cannot accept the valuation proffered by LBP for lack of proper substantiation.

LBP argues that its valuation should be given more weight because it is the recognized agency with expertise on the matter, but this same argument had been struck down in *Landbank of the Philippines v. Luciano.*[82] The Court ruled that LBP's authority

[82] G.R. No. 165428, November 25, 2009, 605 SCRA 426, 439.

is only preliminary and the landowner who disagrees with the LBP's valuation may bring the matter to court for a judicial determination of just compensation. The RTCs, organized as special agrarian courts, are the final adjudicators on the issue of just compensation.[83]

We have ruled in several cases that in determining just compensation, LBP must substantiate its valuation. In *Luciano*, the Court held:

> LAND BANK's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a SAC, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations. **Land Bank's valuation had to be substantiated during the hearing before it could be considered sufficient in accordance with Section 17 of RA 6657** and DAR AO No. x x x[84]

It is not enough that the landowner fails to prove a higher valuation for the property; LBP must still prove the correctness of its claims.[85] In the absence of such substantiation, the case may have to be remanded for the reception of evidence.[86]

In the case at bar, we find that LBP did not sufficiently substantiate its valuation. While LBP insists that it strictly followed the statutory provision and its relevant implementing guidelines in arriving at its valuation, the Court notes the lack of evidence to prove the veracity of LBP's claims. LBP merely submitted its computation to the court without any evidence on

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[83] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals, supra* note 68 at 611.

[84] *Landbank of the Philippines v. Luciano, supra* note 82.

[85] *Landbank of the Philippines v. Dizon, supra* note 81; *Landbank of the Philippines v. Luciano, supra* note 82; *Allied Banking Corporation v. Landbank of the Philippines, supra* note 81 at 319.

[86] *Landbank of the Philippines v. Dizon, supra* note 81 at 80; *Landbank of the Philippines v. Luciano, supra* note 82 at 439-440; *Allied Banking Corporation v. Landbank of the Philippines, supra* note 81 at 319.

record, whether documentary or testimonial, that would support the correctness of the values or data used in such computation.

LBP presented two of its officials, but their testimonies were hardly of any use. The first witness only testified that she prepared the documents, computed the value, and had the same approved by her superior. The other testified that LBP follows Section 17 of RA 6657 and the relevant administrative orders in arriving at its valuations. LBP also offered in evidence the *Claims Valuation and Processing Form* "to show the total valuation"[87] of the property. The effort was however futile because LBP did not prove the correctness of the values or data contained in the said Form. The computation in the Form may be mathematically correct, but there is no way of knowing if the values or data used in the computation are true. For this Court to accept such valuation would be jumping to a conclusion without anything to support it.[88]

Remand of the case

Given that both parties failed to adduce evidence of the property's value as an agricultural land at the time of taking, it is premature for the Court to make a final decision on the matter. The barren records of this case leave us in no position to resolve the dispute. Not being a trier of facts, the Court cannot also receive new evidence from the parties that would aid in the prompt resolution of this case. We are thus constrained to remand the case to the trial court for the reception of evidence and determination of just compensation in accordance with Section 17 of RA 6657.

Guidelines in the remand of the case

The trial court should value the property as an agricultural land.

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[87] Defendant Land Bank of the Philippines' Formal Offer of Exhibits, pp. 1 and 6-8.

[88] *Landbank of the Philippines v. Luciano, supra* note 82; *Allied Banking Corporation v. Landbank of the Philippines, supra* note 81 at 319.

It is reminded to adhere strictly to the doctrine that just compensation *must be valued at the time of taking.* The "time of taking"[89] is the time when the landowner was deprived of

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[89] *Eusebio v. Luis,* G.R. No. 162474, October 13, 2009, 603 SCRA 576, 586-587, citing *Ansaldo v. Tantuico, Jr.* (G.R. No. 50147, August 3, 1990, 188 SCRA 300):

"The reason for the rule, as pointed out in *Republic v. Lara* is that –

... where property is taken ahead of the filing of the condemnation proceedings, the value thereof may be enhanced by the public purpose for which it is taken; the entry by the plaintiff upon the property may have depreciated its value thereby; or, there may have been a natural increase in the value of the property from the time the complaint is filed, due to general economic conditions. The owner of private property should be compensated only for what he actually loses; it is not intended that his compensation shall extend beyond his loss or injury. And what he loses is only the actual value of his property at the time it is taken. This is the only way that compensation to be paid can be truly just, *i.e.*, 'just not only to the individual whose property is taken,' but to the public, which is to pay for it."

Although there are agrarian cases which hold that just compensation should be valued at the "time of payment," (*Office of the President v. Court of Appeals,* 413 Phil. 711, 716 (2001); *Landbank of the Philippines v. Estanislao,* G.R. No. 166777, July 10, 2007, 527 SCRA 181, 187; *Landbank of the Philippines v. JL Jocson and Sons,* G.R. No. 180803, October 23, 2009, 604 SCRA 373, 380-381) these decisions are not applicable in the case at bar. Said cases involved the issue of choosing between an earlier law (Presidential Decree No. 27, by which the property was acquired) and a later law (RA 6657, which was enacted while the issue of just compensation in these cases was still pending). The Court ruled that the seizure of the properties covered by PD No. 27 did not occur upon the effectivity of PD 27 but upon the actual payment of just compensation. Since the prevailing law at the time of payment was already RA 6657, the landowners have the right to be compensated under the new law. As aptly summarized in *Landbank of the Philippines v. Natividad* (G.R. No. 127198, May 16, 2005, 458 SCRA 441, 451-452):

"Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals,* we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

the use and benefit of his property, such as when title is transferred to the Republic. In the instant case, the records are silent as to the date when title was transferred to the Republic. However, we can take guidance from the findings contained in the final and executory decision in CA-G.R. SP No. 45486, which ruled on the validity of the DAR acquisition and is binding on both Livioco and LBP. The said Decision states that between 1993 and 1994, "the Republic[,] through DAR[,] took possession of the subject portion of [Livioco's] land and awarded the same to [agrarian reform beneficiaries] who were issued Certificates of Land Ownership Award sometime in 1994."[90]

So as not to lose time in resolving this issue, the Court declares that the evidence to be presented by the parties before the trial court for the valuation of the property must be based on the values prevalent in 1994 for like agricultural lands. The evidence must conform to Section 17 of RA 6657 and, as far as practicable,

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Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. x x x"

Unlike the above-cited cases, Livioco's property was acquired and to be paid under only one law, *i.e.*, RA 6657. There is no situation here which requires the Court to choose between the law prevailing at the time of acquisition and the law prevailing at the time of payment.

Since Livioco's property was acquired under RA 6657 and will be valued under RA 6657, the question regarding the "time of taking" should follow the general rule in expropriation cases where the "time of taking" is the time when the State took possession of the same and deprived the landowner of the use and enjoyment of his property.

[90] Decision in CA-G.R. SP No. 45486, p. 4; Plaintiff's Formal Offer of Evidence, p. 5. The Court cannot consider September 20, 1991 (the date when LBP informed the Register of Deeds that it has earmarked the amount in favor of Livioco) as the date of taking because there is no indication on record that Livioco's title was cancelled and a new one issued in favor of the Republic on that date. What is clear from the records is the year when CLOAs were awarded, which conclusively shows an actual "taking" of Livioco's property.

to DAR Administrative Order No. 6, series of 1992, as amended by DAR Administrative Order No. 11, series of 1994.[91]

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

A.4 In all of the above, the computed value using the applicable formula shall in no case exceed the LOs offer in case of VOS.

The LOs offer shall be grossed up from the date of the offer up to the date of receipt of claimfolder by LBP from DAR for processing.

A.5 For purposes of this Administrative Order, the date of receipt of claimfolder by LBP from DAR shall mean the date when the claimfolder is determined by the LBP to be complete with all the required documents and valuation inputs duly verified and validated, and is ready for final computation/ processing.

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

Given the expertise of the DAR on the matter, due reliance on DAR Administrative Orders is encouraged; but, as the Administrative Orders themselves recognize, there are situations where their application is not practicable or possible. If the cited factors in the DAR Administrative Order are absent, irrelevant, or unavailable, the trial court should exercise judicial discretion and make its own computation of the just compensation based on the factors set in Section 17 of RA 6657.

The trial court may impose interest on the just compensation[92] as may be warranted by the circumstances of the case and based on prevailing jurisprudence.

The trial court is reminded that the practice of earmarking funds and opening trust accounts has been rejected by the Court for purposes of effecting payment;[93] hence, it must not be considered as valid payment.

In the event that the respondent had already withdrawn the amount deposited in the LBP as required by the trial court's March 29, 2004 Order,[94] the withdrawn amount should be deducted from the final land valuation to be paid by LBP.

In case the release required by the trial court's March 29, 2004 Order has not yet been effected, the trial court's first

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

x x x x x x x x x

[92] *Landbank of the Philippines v. Wycoco*, 464 Phil 83, 100 (2004); *Curata v. Philippine Ports Authority*, *supra* note 70 at 358.

[93] *Roxas & Co., Inc. v. Court of Appeals*, 378 Phil. 727, 756 (1999); *Landbank of the Philippines v. Court of Appeals*, 319 Phil. 246, 257-258 (1995); *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, *supra* note 68 at 609-610.

[94] Records, Vol. I, p. 261.

order of business should be to require LBP's immediate compliance therewith.[95]

WHEREFORE, premises considered, the petition is *DENIED* insofar as it seeks to have the Land Bank of the Philippines' valuation of the subject property sustained. The assailed August 30, 2005 Decision of the Court of Appeals and its December 5, 2005 Resolution in CA-G.R. SP No. 83138 are *REVERSED and SET ASIDE* for lack of factual and legal basis. Civil Case No. 10405 is *REMANDED* to Branch 56 of the Regional Trial Court[96] of Angeles City for reception of evidence on the issue of just compensation. The trial court is directed to determine the just compensation in accordance with the guidelines set in this Decision. The trial court is further directed to conclude the proceedings and to submit to this Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.[97]

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Perez, JJ.,* concur.

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[95] See *Landbank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, January 20, 2009, 576 SCRA 680, 694-695.

[96] See *Landbank of the Philippines v. Dizon*, *supra* note 81 at 80; *Allied Banking Corporation v. Landbank of the Philippines*, *supra* note 81 at 319.

[97] See *Heirs of Lorenzo v. Landbank of the Philippines*, G.R. No. 166461, April 30, 2010. In this case, Agrarian Case No. 210632 was remanded to the Court of Appeals and was directed to submit to this Court a report on its findings and recommended conclusions within forty-five (45) days from notice of the Decision.

[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 884 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 173169. September 22, 2010]

IRENE MARTEL FRANCISCO, *petitioner, vs.* **NUMERIANO MALLEN, JR.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; BOARD OF DIRECTORS AND OFFICERS; WHEN MAY BE HELD PERSONALLY LIABLE FOR CORPORATE OBLIGATIONS; REQUISITES.— In *Santos v. National Labor Relations Commission*, the Court held that "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities." To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) **complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith**; and (2) **complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.**

2. ID.; ID.; ID.; ID.; BAD FAITH, CONSTRUED; NOT PRESENT IN CASE AT BAR.— To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. x x x Based on the records, respondent failed to allege either in his complaint or position paper that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith. Neither did respondent clearly and convincingly prove that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted

in bad faith. **In fact, there was no evidence whatsoever to show petitioner's participation in respondent's alleged illegal dismissal.** Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold petitioner personally liable for the monetary awards to respondent, are lacking. In view of the foregoing, the Court deems it unnecessary to determine whether respondent was constructively dismissed. Besides, it appears from the records that VIPS Coffee Shop and Restaurant did not challenge the adverse Court of Appeals' decision in CA-G.R. SP No. 72115, rendering such decision final insofar as VIPS Coffee Shop and Restaurant is concerned.

APPEARANCES OF COUNSEL

Paredes Lopez & Garcia for petitioner.
Cezar F. Maravilla, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 16 September 2005 Decision[2] of the Court of Appeals in CA-G.R. SP No. 72115. The Court of Appeals set aside the 21 December 2001 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 022641-00 and reinstated the 25 August 1999 Decision[4] of the Labor Arbiter in NLRC-NCR Case No. 00-07-05608-98.

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

[2] *Rollo*, pp. 23-33. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Lucenito N. Tagle concurring.

[3] *Id.* at 35-39. Penned by Commissioner Alberto R. Quimpo, with Commissioner Vicente S.E. Veloso concurring. Presiding Commissioner Roy V. Señeres was on leave.

[4] *Id.* at 40-46.

The Facts

On 5 April 1994, respondent Numeriano Mallen, Jr. was hired as a waiter for VIPS Coffee Shop and Restaurant, a fine dining restaurant which used to operate at the Harrison Plaza Commercial Complex in Manila.

On 30 January 1998 to 1 February 1998, respondent took an approved sick leave. On 15 February 1998, respondent took a vacation leave. Thereafter, he availed of his paternity leave.

On 18 April 1998, respondent suffered from tonsillitis, forcing him to take a three-day sick leave from 18 April 1998 to 20 April 1998. However, instead of his applied three-day sick leave, respondent was given three months leave. The memorandum dated 28 April 1998 reads:

TO	:	Mr. Numeriano Mallen, Jr.
FROM	:	VIPS Dining Head
DATE	:	28 April 1998
RE	:	AS STATED

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After a thorough review of your performance and the series of Vacation Leaves (8 days), Paternity Leave (7 days) and Sick Leave (7 days) due to several illness within the first quarter of the year, we have concluded that you are not physically fit and needs to recharge to enable you to regain your physical fitness.

As such, we are awarding to you the rest of your Vacation/Sick Leave plus Two and a half (2 ½) months (without pay) to rest and regain your physical health within the prescribed vacation.

During your vacation, you are not allowed to loiter within the premises of VIPS RESTAURANT; but instead to rest and do some health exercise and medical check-up for your physical fitness recovery program.

Moreover, when you report back to work, you are to present to the management a certificate indicating that you are fit to work regularly.

Your vacation shall take effect on April 30, 1998 up to August 1, 1998.

For your information and guidance.

Sgd.

Mr. Patty C. Bocar

Noted By:

Sgd.
Ms. Ma. Theresa Linaja[5]

On 5 May 1998, respondent filed before the Department of Labor and Employment-National Capital Region (DOLE-NCR) a complaint for underpayment of wages and non-payment of holiday pay.

Sometime in June 1998, respondent reported back to work with a medical certificate stating he was fit to work but he was refused work.

On 22 June 1998, the DOLE-NCR endorsed respondent's complaint to the NLRC when it determined that the issue of constructive dismissal was involved. On 23 July 1998, respondent filed a complaint for illegal dismissal before the NLRC-NCR. On 3 August 1998, respondent again attempted to return to work but was refused again.

The Ruling of the Labor Arbiter

On 25 August 1999, Labor Arbiter Madjayran H. Ajan rendered a decision in favor of respondent. The Labor Arbiter found that "complainant's dismissal was the price of his having filed a case with DOLE-NCR against the respondents, plus his perennial absences, which nevertheless is not a just cause. We likewise agree that the gesture of respondents to reinstate or re-employ complainant unconditionally during the proceedings did not cure the illegality of complainant's dismissal."

The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises above considered a decision is hereby issued declaring the dismissal of the complainant illegal.

[5] *Id.* at 55.

Consequently, respondents VIP's Coffee Shop & Restaurant and/or Irene Francisco are ordered to reinstate complainant to his former or equivalent position without loss of seniority rights, and to pay complainant jointly and severally his backwages hereby fixed at ₱88,000.00 as of August 31, 1999, plus his paternity pay, and attorney's fees equivalent to the monetary award, all in the aggregate of ninety nine thousand three hundred fifty pesos and 90/100 centavos (₱99,350.90).

Respondents are likewise ordered to pay complainant ₱50,000.00 for moral damages and ₱20,000.00 for exemplary damages.

SO ORDERED.[6]

The Ruling of the NLRC

The NLRC found respondent's filing of a complaint for illegal dismissal premature. The NLRC stated "[t]his conclusion is supported by the fact that in respondent's memorandum to complainant directing him to avail of his vacation/sick leave, the same is to last from April 30, 1998 to August 1, 1998. The complaint therefore filed on May 5, 1998 has no legal basis to support itself. When he filed his complaint on May 5, 1998, his cause of action based on illegal dismissal has not yet accrued."

Nevertheless, the NLRC noted, "a supervening event occurred during the pendency of the instant case which is the closure of VIPS Coffee Shop and Restaurant effective 26 August 1999, as evidenced by the Notice and report to the Department of Labor and Employment (Annexes "1" and "2" of Appeal). x x x This being the case, and in the spirit of compassion, respondents are directed to pay complainant his separation pay equivalent to one half month pay for every year of service x x x."

The dispositive portion of the NLRC's decision reads:

WHEREFORE, the Decision of the Labor Arbiter dated August 25, 1999 is hereby **MODIFIED** and respondents are instead directed to pay the complainant separation pay in the amount of ₱13,750.00 plus his paternity leave pay in the amount of ₱1,519.00 (₱217.00

[6] *Id.* at 43-46.

x 7 days). The award for moral and exemplary damages are deleted and set aside for lack of merit.

SO ORDERED.[7]

The Ruling of the Court of Appeals

The Court of Appeals found respondent constructively dismissed for having been granted an increased three months leave instead of the three days leave he applied for.

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, the petition is hereby **GRANTED**. The decision of the NLRC, First Division, dated December 21, 2001, is hereby **SET ASIDE** and the decision of Labor Arbiter Madjayran H. Ajan dated August 25, 1999 is hereby **REINSTATED**.

SO ORDERED.[8]

The Issue

The main issue in this case is whether petitioner is personally liable for the monetary awards granted in favor of respondent arising from his alleged illegal termination.

The Ruling of this Court

The petition has merit.

In *Santos v. National Labor Relations Commission*,[9] the Court held that "A corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. The rule is that obligations incurred by the corporation, acting through its directors, officers and employees, are its sole liabilities."[10]

To hold a director or officer personally liable for corporate obligations, two requisites must concur: (1) **complainant must**

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[7] *Id.* at 38-39.

[8] *Id.* at 33.

[9] 325 Phil. 145 (1996).

[10] *Id.* at 156.

allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith;[11] and (2) **complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.**[12]

In *Carag v. National Labor Relations Commission*,[13] the Court did not hold a director personally liable for corporate obligations because the two requisites are lacking, to wit:

Complainants did not allege in their complaint that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Complainants did not present any evidence showing that Carag willfully and knowingly voted for or assented to any patently unlawful act of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

Complainants did not also allege that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Complainants did not present any evidence showing that Carag is guilty of gross negligence or bad faith in directing the affairs of MAC. Neither did Arbiter Ortiguerra make any finding to this effect in her Decision.

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[11] See Section 31 of the Corporation Code, which provides:

Sec. 31. *Liability of directors, trustees or officers.* – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

When a director, trustee or officer attempts to acquire or acquires, in violation of his duty, any interest adverse to the corporation in respect of any matter which has been reposed in him in confidence, as to which equity imposes a disability upon him to deal in his own behalf, he shall be liable as a trustee for the corporation and must account for the profits which otherwise would have accrued to the corporation.

See also *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

[12] See *Ramoso v. Court of Appeals*, 400 Phil. 1260 (2000).

[13] G.R. No. 147590, 2 April 2007, 520 SCRA 28.

x x x x x x x x x

To hold a director personally liable for debts of the corporation, and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly. Bad faith is never presumed. Bad faith does not connote bad judgment or negligence. Bad faith imports a dishonest purpose. Bad faith means breach of a known duty through some ill motive or interest. Bad faith partakes of the nature of fraud. In *Businessday Information Systems and Services, Inc. v. NLRC*, we held:

> There is merit in the contention of petitioner Raul Locsin that the complaint against him should be dismissed. **A corporate officer is not personally liable for the money claims of discharged corporate employees unless he acted with evident malice and bad faith in terminating their employment. There is no evidence in this case that Locsin acted in bad faith or with malice** in carrying out the retrenchment and eventual closure of the company (*Garcia vs. NLRC*, 153 SCRA 640), hence, he may not be held personally and solidarily liable with the company for the satisfaction of the judgment in favor of the retrenched employees.[14] (Emphasis supplied)

In *McLeod v. NLRC,*[15] the Court did not hold a director, an officer, and other corporations personally liable for corporate obligations of the employer because the second requisite was lacking. The Court held:

A corporation is an artificial being invested by law with a personality **separate and distinct from that of its stockholders and from that of other corporations to which it may be connected.**

While a corporation may exist for any lawful purpose, the law will regard it as an association of persons or, in case of two corporations, merge them into one, when its corporate legal entity is used as a cloak for fraud or illegality. This is the doctrine of piercing the veil of corporate fiction. The doctrine applies only when such corporate fiction is used to defeat public convenience, justify wrong, protect fraud, or defend crime, or when it is made as a shield to confuse the legitimate issues, or where a corporation is the mere

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[14] *Id.* at 48-50.

[15] G.R. No. 146667, 23 January 2007, 512 SCRA 222.

alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.

To disregard the separate juridical personality of a corporation, the wrongdoing must be established clearly and convincingly. It cannot be presumed.[16] (Emphasis supplied)

In *Lowe, Inc. v. Court of Appeals*,[17] the Court did not hold the officers personally liable for corporate obligations because the second requisite was lacking, thus:

It is settled that in the absence of malice, bad faith, or specific provision of law, a director or an officer of a corporation cannot be made personally liable for corporate liabilities.

x x x x x x x x x

Gustilo and Castro, as corporate officers of Lowe, have personalities which are distinct and separate from that of Lowe's. **Hence, in the absence of any evidence showing that they acted with malice or in bad faith in declaring Mutuc's position redundant, Gustilo and Castro are not personally liable for the monetary awards to Mutuc.**[18] (Emphasis supplied)

In *David v. National Federation of Labor Unions*,[19] the Court did not hold an officer liable for corporate obligations because the second requisite was lacking. The Court held that "There was no showing of David willingly and knowingly voting for or assenting to patently unlawful acts of the corporation, or that David was guilty of gross negligence or bad faith."[20]

In this case, the Labor Arbiter, whose decision was reinstated by the Court of Appeals, stated that petitioner acted with malice and bad faith in constructively dismissing respondent. Thus, the

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[16] *Id.* at 245-246.

[17] G.R. Nos. 164813 and 174590, 14 August 2009, 596 SCRA 140.

[18] *Id.* at 155.

[19] G.R. Nos. 148263 and 148271-72, 21 April 2009, 586 SCRA 100.

[20] *Id.* at 110.

Labor Arbiter held petitioner personally liable for the monetary awards to respondent.

This finding lacks basis. Based on the records, respondent failed to allege either in his complaint or position paper that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith.[21] Neither did respondent clearly and convincingly prove that petitioner, as Vice-President of VIPS Coffee Shop and Restaurant, acted in bad faith. **In fact, there was no evidence whatsoever to show petitioner's participation in respondent's alleged illegal dismissal.** Clearly, the twin requisites of allegation and proof of bad faith, necessary to hold petitioner personally liable for the monetary awards to respondent, are lacking.

In view of the foregoing, the Court deems it unnecessary to determine whether respondent was constructively dismissed. Besides, it appears from the records that VIPS Coffee Shop and Restaurant did not challenge the adverse Court of Appeals' decision in CA-G.R. SP No. 72115, rendering such decision final insofar as VIPS Coffee Shop and Restaurant is concerned.[22]

WHEREFORE, we *GRANT* the petition. We *MODIFY* the Court of Appeals' Decision, dated 16 September 2005, in CA-G.R. SP No. 72115 by holding petitioner Irene Martel Francisco not liable for the monetary awards specified in the reinstated Labor Arbiter's Decision, dated 25 August 1999, in NLRC-NCR Case No. 00-07-05608-98.

SO ORDERED.

Velasco, Jr.,[*] *Peralta, Bersamin,*[**] and *Abad, JJ.,* concur.

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[21] *Rollo,* p. 134.

[22] See *Firestone Tire and Rubber Company of the Philippines v. Tempongko*, 137 Phil. 239, 244 (1969), where the Court held "failure of any of the parties in x x x a case to appeal the judgment as against him makes such judgment final and executory."

[*] Designated additional member per Special Order No. 883 dated 1 September 2010.

[**] Designated additional member per Special Order No. 886 dated 1 September 2010.

SECOND DIVISION

[G.R. No. 173396. September 22, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HON. SANDIGANBAYAN (FIFTH DIVISION), ABELARDO P. PANLAQUI, RENATO B. VELASCO, ANGELITO PELAYO and WILFREDO CUNANAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ANY ERROR COMMITTED IN THE EVALUATION OF EVIDENCE IS MERELY AN ERROR OF JUDGMENT THAT CANNOT BE REMEDIED BY *CERTIORARI*.—*Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law. The Court further expounded in *First Corporation v. Former Sixth Division of the Court of Appeals*, thus: It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari.*** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari. Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. **It is not for this Court to re-examine conflicting evidence, re-evaluate the**

credibility of the witnesses or substitute the findings of fact of the court *a quo*.

2. ID.; CRIMINAL PROCEDURE; DOUBLE JEOPARDY; AN ACQUITTAL IS IMMEDIATELY FINAL AND CANNOT BE APPEALED ON THE GROUND OF DOUBLE JEOPARDY.— It is fitting to reiterate the holding of the Court in *People v. Tria-Tirona*, to wit: x x x it is clear in this jurisdiction that after trial on the merits, **an acquittal is immediately final and cannot be appealed on the ground of double jeopardy. The only exception where double jeopardy cannot be invoked is where there is a finding of mistrial resulting in a denial of due process.**

3. ID.; ID.; ID.; ACQUITTAL CAN NO LONGER BE REVIEWED BY THE COURT AS THIS WOULD CONSTITUTE A VIOLATION OF THE CONSTITUTIONAL RIGHT AGAINST DOUBLE JEOPARDY; PRESENT IN CASE AT BAR.— Petitioner has not convincingly shown that the prosecution has indeed been deprived of due process of law. There is no showing that the trial court hampered the prosecution's presentation of evidence in any way. On the contrary, the prosecution was given ample opportunity to present its ten witnesses and all necessary documentary evidence. The case was only submitted for decision after the parties had duly rested their case. Respondent trial court clearly stated in its decision which pieces of evidence led it to its conclusion that the project was actually undertaken, justifying payment to the contractor. Clearly, petitioner failed to show that there was mistrial resulting in denial of due process. In *People v. Tria-Tirona*, the Court held that when the trial court arrives at its decision only after all the evidence had been considered, weighed and passed upon, then "any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*." In sum, there being no mistrial in this case, the acquittal of private respondents can no longer be reviewed by the Court as this would constitute a violation of the constitutional right against double jeopardy. Moreover, since the alleged error is only one of judgment, petitioner is not entitled to the extraordinary *writ of certiorari*.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Avelino Morales for Wilfredo Cunanan.
Ricardo Sampang for Abelardo P. Panlaqui and Wilfredo Cunanan.
Rivera Law Office for Angelito Pelayo and Renato B. Velasco.

D E C I S I O N

PERALTA, *J.*:

This resolves the petition for *certiorari* under Rule 65 of the Rules of Court, praying that the Decision[1] dated May 19, 2006, of the Sandiganbayan, acquitting private respondents Abelardo P. Panlaqui, Renato B. Velasco, Angelito Pelayo and Wilfredo Cunanan, of the charge for Violation of Section 3(e) of Republic Act (R.A.) No. 3019, as amended, be nullified and set aside.

The antecedent facts are set forth hereunder.

Private respondents were charged in an Information dated February 24, 1994, reading as follows:

That on or about the 1st day of September, 1991, and for some time prior or subsequent thereto, in the Municipality of Sasmuan, Province of Pampanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, ABELARDO PANLAQUI being then the Municipal Mayor of Sasmuan, Pampanga, RENATO B. VELASCO and ANGELITO PELAYO, being then the Municipal Planning and Development Coordinator and the Municipal Treasurer, respectively, of Sasmuan, Pampanga, VICTORINO MANINANG being then the Barangay Captain of Malusac, Sasmuan, Pampanga, and hence all public officers, while in the performance of their official functions, taking advantage of their position, committing the offense in relation to their office, and conspiring and confederating with one another and with

[1] Penned by Associate Justice Ma. Cristina G. Cortez-Estrada, with Associate Justices Roland B. Jurado and Teresita V. Diaz-Baldos, concurring; *rollo*, pp. 13-69.

WILFREDO CUNANAN, the representative of J.S. Lim Construction, did then and there willfully, unlawfully, criminally and with evident bad faith cause undue injury to the Government and grant unwarranted benefits to J.S. Lim Construction in the following manner: accused ABELARDO P. PANLAQUI, without being authorized by the Sangguniang Bayan of Sasmuan, Pampanga, entered into a Contract of Lease of Equipment with J.S. Lim Construction, represented by accused WILFREDO CUNANAN, whereby the municipality leased seven (7) units of Crane on Barge with Clamshell and one (1) unit of Back Hoe on Barge for an unstipulated consideration for a period of thirty (30) days, which equipment items were to be purportedly used for the deepening and dredging of the Palto and Pakulayo Rivers in Sasmuan, Pampanga; thereafter accused caused it to appear that work on the said project had been accomplished and 100% completed per the approved Program of Work and Specifications and turned over to Barangay Malusac; as a result of the issuance of the Accomplishment Report and Certificate of Project Completion and Turn-Over, payments of ₱511,612.20 and ₱616,314.60 were made to and received by accused WILFREDO CUNANAN notwithstanding the fact that no work had actually been done on the Palto and Pakulayo Rivers considering that J.S. Lim Construction had no barge or any kind of vessel registered with the First Coast Guard District and that no business license/permit had been granted to the said company by the Municipal Treasurer's Office of Guagua, Pampanga, which acts of the accused caused undue injury to the Government and granted unwarranted benefits to J.S. Lim Construction in the total amount of ONE MILLION ONE HUNDRED TWENTY-SEVEN THOUSAND NINE HUNDRED TWENTY-SIX AND 80/100 PESOS (₱1,127,926.80), Philippine Currency.

CONTRARY TO LAW.[2]

Private respondents were duly arraigned on April 10, 1996, pleading not guilty to the charge against them. Thereafter, trial on the merits ensued. Both the prosecution and the defense were able to present the testimonies of their numerous witnesses and their respective documentary exhibits.

On May 19, 2006, the Sandiganbayan rendered the assailed Decision,[3] the dispositive portion of which reads as follows:

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[2] Decision, *rollo*, pp. 13-14.

[3] *Rollo*, pp. 159-216.

WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt, accused ABELARDO P. PANLAQUI, RENATO B. VELASCO, ANGELITO PELAYO and WILFREDO CUNANAN are hereby declared NOT GUILTY in Criminal Case No. 20637 for Violation of Section 3(e) of Republic Act No. 3019. They are ordered ACQUITTED of the said offense charged against them.

The cash bonds posted by all the aforesaid accused to obtain their provisional liberty are hereby ordered returned to them, subject to the usual accounting and auditing procedures.

The Hold Departure Order issued against the same accused are likewise ordered lifted.

There can be no pronouncement as to civil liability as the facts from which the same might arise were not proven in the case at bar.

SO ORDERED.[4]

The People, represented by the Office of the Ombudsman, through the Office of the Special Prosecutor, then filed the present petition for *certiorari*, alleging that:

I

THE COURT *A QUO* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT DISREGARDED THE MANDATORY PROVISIONS OF PRESIDENTIAL DECREE (PD) NO. 1594 AND SUPPLIED A DEFENSE NOT INVOKED BY RESPONDENTS AND ANCHORED ITS DECISION ON POSSIBILITIES, MERE ASSUMPTION OR CONJECTURE RATHER THAN ON FACTS ESTABLISHED BY EVIDENCE ON RECORD, THEREBY VIOLATING PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS OF LAW.

II

THE COURT *A QUO* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT IGNORED THE EVIDENCE ADDUCED BY THE PETITIONER AND DECLARED THAT THE PETITIONER

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

FAILED TO PRESENT ANY EVIDENCE TO PROVE THAT SAID RESPONDENTS VIOLATED THE PROVISIONS OF SECTION 3(e) OF R.A. 3019.[5]

The Court finds the petition unmeritorious.

It is fitting to reiterate the holding of the Court in *People v. Tria-Tirona*,[6] to wit:

x x x it is clear in this jurisdiction that after trial on the merits, **an acquittal is immediately final and cannot be appealed on the ground of double jeopardy. The only exception where double jeopardy cannot be invoked is where there is a finding of mistrial resulting in a denial of due process.**

x x x x x x x x x

x x x ***Certiorari* will not be issued to cure errors by the trial court in its appreciation of the evidence of the parties, and its conclusions anchored on the said findings and its conclusions of law.**[7]

The Court further expounded in *First Corporation v. Former Sixth Division of the Court of Appeals*,[8] thus:

It is a fundamental aphorism in law that a review of facts and evidence is not the province of the extraordinary remedy of *certiorari*, which is *extra ordinem* – beyond the ambit of appeal. **In *certiorari* proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. It does not include an inquiry as to the correctness of the evaluation of evidence. Any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*.** An *error of judgment* is one which the court may commit in the exercise of its jurisdiction. An *error of jurisdiction* is one where the act complained of was issued by the

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[5] *Id*. at 117

[6] G.R. No. 130106, July 15, 2005, 463 SCRA 462.

[7] *Id*. at 469-470. (Emphasis supplied.)

[8] G.R. No. 171989, July 4, 2007, 526 SCRA 564; also quoted in *Soriano v. Marcelo*, G.R. No. 160772, July 13, 2009, 592 SCRA 394.

court without or in excess of jurisdiction, or with grave abuse of discretion, which is tantamount to lack or in excess of jurisdiction and which error is correctible only by the extraordinary writ of *certiorari*. *Certiorari* will not be issued to cure errors of the trial court in its appreciation of the evidence of the parties, or its conclusions anchored on the said findings and its conclusions of law. **It is not for this Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses or substitute the findings of fact of the court *a quo***. (Emphasis supplied.)[9]

The aim of the present petition is to overturn the Sandiganbayan's conclusion that "there is no doubt that dredging work was performed along the Palto and Pakulayo Rivers"[10] and the "project was actually undertaken and accomplished by the said contractor x x x [h]ence the payment made to the latter was justified."[11] From such finding, the trial court held that the prosecution failed to prove the presence of all the elements of the offense charged, resulting in the acquittal of private respondents. Petitioner points out that the lower court erred in arriving at such conclusion, since prosecution evidence shows that as of September 2, 1991 to October 2, 1991, when the dredging works were supposedly conducted, there was as yet no approved plans and specifications as required by Presidential Decree (PD) No. 1594 before bidding for construction contracts can proceed. Petitioner doubts that the proper procedure for bidding had been followed. Petitioner then asks how the project could have proceeded on September 2, 1991 when the required plan was only dated November 18, 1991.

The foregoing is essentially an issue involving an alleged error of judgment, not an error of jurisdiction. Petitioner has not convincingly shown that the prosecution has indeed been deprived of due process of law. There is no showing that the trial court hampered the prosecution's presentation of evidence

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[9] *First Corporation v. Former Sixth Division of the Court of Appeals, supra,* at 578.

[10] Decision, *rollo,* p. 208.

[11] *Id.* at 213.

in any way. On the contrary, the prosecution was given ample opportunity to present its ten witnesses and all necessary documentary evidence. The case was only submitted for decision after the parties had duly rested their case. Respondent trial court clearly stated in its decision which pieces of evidence led it to its conclusion that the project was actually undertaken, justifying payment to the contractor. Clearly, petitioner failed to show that there was mistrial resulting in denial of due process.

In *People v. Tria-Tirona*,[12] the Court held that when the trial court arrives at its decision only after all the evidence had been considered, weighed and passed upon, then "any error committed in the evaluation of evidence is merely an error of judgment that cannot be remedied by *certiorari*."[13]

In sum, there being no mistrial in this case, the acquittal of private respondents can no longer be reviewed by the Court as this would constitute a violation of the constitutional right against double jeopardy. Moreover, since the alleged error is only one of judgment, petitioner is not entitled to the extraordinary *writ of certiorari*.

WHEREFORE, the petition is *DISMISSED* for lack of merit. The Decision dated May 19, 2006 of the Sandiganbayan is *AFFIRMED*.

SO ORDERED.

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

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[12] *Supra* note 6.

[13] *Id.* at 470.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 883, dated September 1, 2010.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886, dated September 1, 2010.

SECOND DIVISION

[G.R. Nos. 174040-41. September 22, 2010]

INSULAR HOTEL EMPLOYEES UNION-NFL, *petitioner, vs.* **WATERFRONT INSULAR HOTEL DAVAO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; ONLY A CERTIFIED OR DULY RECOGNIZED BARGAINING AGENT MAY FILE A NOTICE OF STRIKE OR REQUEST FOR PREVENTIVE MEDIATION.— Procedurally, the first step to submit a case for mediation is to file a notice of preventive mediation with the National Conciliation and Mediation Board (NCMB). It is only after this step that a submission agreement may be entered into by the parties concerned. Section 3, Rule IV of the NCMB Manual of Procedure provides who may file a notice of preventive mediation, to wit: *Who may file a notice or declare a strike or lockout or request preventive mediation.* – **Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlocks and unfair labor practices**. The employer may file a notice or declare a lockout or request for preventive mediation in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may file a notice, request preventive mediation or declare a strike, but only on grounds of unfair labor practice. From the foregoing, it is clear that only a certified or duly recognized bargaining agent may file a notice or request for preventive mediation. It is curious that even Cullo himself admitted, in a number of pleadings, that the case was filed not by the Union but by individual members thereof. Clearly, therefore, the NCMB had no jurisdiction to entertain the notice filed before it.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; JURISDICTION; PRINCIPLE OF ESTOPPEL BY LACHES; THE DOCTRINE MUST BE APPLIED WITH

GREAT CARE AND THE EQUITY MUST BE STRONG IN ITS FAVOR.— Respondent cannot be estopped in raising the jurisdictional issue, because it is basic that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel. In *Figueroa v. People*, this Court explained that estoppel is the exception rather than the rule, to wit: Applying the said doctrine to the instant case, the petitioner is in no way estopped by laches in assailing the jurisdiction of the RTC, considering that he raised the lack thereof in his appeal before the appellate court. At that time, no considerable period had yet elapsed for laches to attach. True, delay alone, though unreasonable, will not sustain the defense of "estoppel by laches" *unless it further appears that the party, knowing his rights, has not sought to enforce them until the condition of the party pleading laches has in good faith become so changed that he cannot be restored to his former state, if the rights be then enforced, due to loss of evidence, change of title, intervention of equities, and other causes.* In applying the principle of estoppel by laches in the exceptional case of *Sibonghanoy*, the Court therein considered the patent and revolting inequity and unfairness of having the judgment creditors go up their Calvary once more after more or less 15 years. The same, however, does not obtain in the instant case. We note at this point that estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely—only from necessity, and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice. x x x

3. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; CONDITIONS OF EMPLOYMENT; WAGES; PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS; COLLECTIVE BARGAINING AGREEMENT AS EXCEPTION; SUSTAINED.— Article 100 of the Labor Code provides: PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS– Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of the promulgation of this Code. On this note, *Apex Mining Company, Inc. v. NLRC* is instructive, to wit: Clearly, the

prohibition against elimination or diminution of benefits set out in Article 100 of the Labor Code is specifically concerned with benefits already enjoyed at the time of the promulgation of the Labor Code. Article 100 does not, in other words, purport to apply to situations arising after the promulgation date of the Labor Code x x x. Even assuming *arguendo* that Article 100 applies to the case at bar, this Court agrees with respondent that the same does not prohibit a union from offering and agreeing to reduce wages and benefits of the employees. In *Rivera v. Espiritu*, this Court ruled that the right to free collective bargaining, after all, includes the right to suspend it, thus: A CBA is "a contract executed upon request of either the employer or the exclusive bargaining representative incorporating the agreement reached after negotiations with respect to wages, hours of work and all other terms and conditions of employment, including proposals for adjusting any grievances or questions arising under such agreement." The primary purpose of a CBA is the stabilization of labor-management relations in order to create a climate of a sound and stable industrial peace. In construing a CBA, the courts must be practical and realistic and give due consideration to the context in which it is negotiated and the purpose which it is intended to serve. **The assailed PAL-PALEA agreement was the result of voluntary collective bargaining negotiations undertaken in the light of the severe financial situation faced by the employer, with the peculiar and unique intention of not merely promoting industrial peace at PAL, but preventing the latter's closure.** We find no conflict between said agreement and Article 253-A of the Labor Code. Article 253-A has a two-fold purpose. One is to promote industrial stability and predictability. Inasmuch as the agreement sought to promote industrial peace at PAL during its rehabilitation, said agreement satisfies the first purpose of Article 253-A. The other is to assign specific timetables wherein negotiations become a matter of right and requirement. Nothing in Article 253-A, prohibits the parties from waiving or suspending the mandatory timetables and agreeing on the remedies to enforce the same. In the instant case, it was PALEA, as the exclusive bargaining agent of PAL's ground employees, that voluntarily entered into the CBA with PAL. It was also PALEA that voluntarily opted for the 10-year suspension of the CBA. Either case was the union's exercise of its right to

collective bargaining. **The right to free collective bargaining, after all, includes the right to suspend it**.

4. ID.; ID.; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT; THE SIGNING OF THE INDIVIDUAL "RECONFIRMATION OF EMPLOYMENT" SHOULD BE DEEMED AN IMPLIED RATIFICATION BY THE UNION MEMBERS OF THE MOA.— Stipulated in each Reconfirmation of Employment were the new salary and benefits scheme. In addition, it bears to stress that specific provisions of the new contract also made reference to the MOA. Thus, the individual members of the union cannot feign knowledge of the execution of the MOA. Each contract was freely entered into and there is no indication that the same was attended by fraud, misrepresentation or duress. To this Court's mind, the signing of the individual "Reconfirmation of Employment" should, therefore, be deemed an implied ratification by the Union members of the MOA. In *Planters Products, Inc. v. NLRC*, this Court refrained from declaring a CBA invalid notwithstanding that the same was not ratified in view of the fact that the employees had enjoyed benefits under it, thus: Under Article 231 of the Labor Code and Sec. 1, Rule IX, Book V of the Implementing Rules, the parties to a collective [bargaining] agreement are required to furnish copies of the appropriate Regional Office with accompanying proof of ratification by the majority of all the workers in a bargaining unit. This was not done in the case at bar. But we do not declare the 1984-1987 CBA invalid or void considering that the employees have enjoyed benefits from it. They cannot receive benefits under provisions favorable to them and later insist that the CBA is void simply because other provisions turn out not to the liking of certain employees. x x x. Moreover, the two CBAs prior to the 1984-1987 CBA were not also formally ratified, yet the employees are basing their present claims on these CBAs. **It is iniquitous to receive benefits from a CBA and later on disclaim its validity**. Applied to the case at bar, while the terms of the MOA undoubtedly reduced the salaries and certain benefits previously enjoyed by the members of the Union, it cannot escape this Court's attention that it was the execution of the MOA which paved the way for the re-opening of the hotel, notwithstanding its financial distress. More importantly, the execution of the MOA allowed respondents to keep their jobs.

It would certainly be iniquitous for the members of the Union to sign new contracts prompting the re-opening of the hotel only to later on renege on their agreement on the fact of the non-ratification of the MOA. In addition, it bears to point out that Rojas did not act unilaterally when he negotiated with respondent's management. The Constitution and By-Laws of DIHFEU-NFL clearly provide that the president is authorized to represent the union on all occasions and in all matters in which representation of the union may be agreed or required.

5. ID.; ID.; ID.; THE LAW RECOGNIZES THAT MANAGEMENT HAS RIGHTS WHICH ARE ALSO ENTITLED TO RESPECT AND ENFORCEMENT IN THE INTEREST OF FAIR PLAY.— Withal, while the scales of justice usually tilt in favor of labor, the peculiar circumstances herein prevent this Court from applying the same in the instant petition. Even if our laws endeavor to give life to the constitutional policy on social justice and on the protection of labor, it does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.

APPEARANCES OF COUNSEL

Danilo A. Cullo for petitioner.
Tiu Teves and Ramos for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the Decision[2] dated October 11, 2005, and the Resolution[3] dated July 13, 2006 of the Court of Appeals (CA) in consolidated

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[1] *Rollo*, pp. 7-63.

[2] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Ramon R. Garcia, concurring; *id.* at 66-82.

[3] *Id.* at 84-85.

labor cases docketed as CA-G.R. SP No. 83831 and CA-G.R. SP No. 83657. Said Decision reversed the Decision[4] dated the April 5, 2004 of the Accredited Voluntary Arbitrator Rosalina L. Montejo (AVA Montejo).

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

On November 6, 2000, respondent Waterfront Insular Hotel Davao (respondent) sent the Department of Labor and Employment (DOLE), Region XI, Davao City, a Notice of Suspension of Operations[5] notifying the same that it will suspend its operations for a period of six months due to severe and serious business losses. In said notice, respondent assured the DOLE that if the company could not resume its operations within the six-month period, the company would pay the affected employees all the benefits legally due to them.

During the period of the suspension, Domy R. Rojas (Rojas), the President of Davao Insular Hotel Free Employees Union (DIHFEU-NFL), the recognized labor organization in Waterfront Davao, sent respondent a number of letters asking management to reconsider its decision.

In a letter[6] dated November 8, 2000, Rojas intimated that the members of the Union were determined to keep their jobs and that they believed they too had to help respondent, thus:

x x x x x x x x x

Sir, we are determined to keep our jobs and push the Hotel up from sinking. We believe that we have to help in this (sic) critical times. Initially, we intend to suspend the re-negotiations of our CBA. We could talk further on possible adjustments on economic benefits, the details of which we are hoping to discuss with you or any of your emissaries. x x x[7]

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[4] *Rollo*, pp. 86-96.

[5] CA *rollo*, Vol. 1, p. 342.

[6] *Rollo*, p. 558.

[7] *Id.*

In another letter[8] dated November 10, 2000, Rojas reiterated the Union's desire to help respondent, to wit:

We would like to thank you for giving us the opportunity to meet [with] your representatives in order for us to air our sentiments and extend our helping hands for a possible reconsideration of the company's decision.

The talks have enabled us to initially come up with a suggestion of solving the high cost on payroll.

We propose that 25 years and above be paid their due retirement benefits and put their length of service to zero without loss of status of employment with a minimum hiring rate.

Thru this scheme, the company would be able to save a substantial amount and reduce greatly the payroll costs without affecting the finance of the families of the employees because they will still have a job from where they could get their income.

Moreover, we are also open to a possible reduction of some economic benefits as our gesture of sincere desire to help.

We are looking forward to a more fruitful round of talks in order to save the hotel.[9]

In another letter[10] dated November 20, 2000, Rojas sent respondent more proposals as a form of the Union's gesture of their intention to help the company, thus:

1) Suspension of [the] CBA for ten years, No strike no lock-out shall be enforced.
2) Pay all the employees their benefits due, and put the length of service to zero with a minimum hiring rate. Payment of benefits may be on a staggered basis or as available.
3) Night premium and holiday pays shall be according to law. Overtime hours rendered shall be offsetted as practiced.
4) Reduce the sick leaves and vacation leaves to 15 days/15days.
5) Emergency leave and birthday off are hereby waived.

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[8] *Id.* at 559.

[9] *Id.*

[10] *Id.* at 560-561.

6) Duty meal allowance is fixed at ₱30.00 only. No more midnight snacks and double meal allowance. The cook drinks be stopped as practiced.
7) We will shoulder 50% of the group health insurance and family medical allowance be reduced to 1,500.00 instead of 3,000.00.
8) The practice of bringing home our uniforms for laundry be continued.
9) Fixed manning shall be implemented, the rest of manpower requirements maybe sourced thru WAP and casual hiring. Manpower for fixed manning shall be 145 rank-and-file union members.
10) Union will cooperate fully on strict implementation of house rules in order to attain desired productivity and discipline. The union will not tolerate problem members.
11) The union in its desire to be of utmost service would adopt multi-tasking for the hotel to be more competitive.

It is understood that with the suspension of the CBA renegotiations, the same existing CBA shall be adopted and that all provisions therein shall remain enforced except for those mentioned in this proposal.

These proposals shall automatically supersede the affected provisions of the CBA.[11]

In a handwritten letter[12] dated November 25, 2000, Rojas once again appealed to respondent for it to consider their proposals and to re-open the hotel. In said letter, Rojas stated that manpower for fixed manning shall be one hundred (100) rank-and-file Union members instead of the one hundred forty-five (145) originally proposed.

Finally, sometime in January 2001, DIHFEU-NFL, through Rojas, submitted to respondent a Manifesto[13] concretizing their earlier proposals.

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[11] *Id.*

[12] *Id.* at 562-563.

[13] CA *rollo*, Vol. 1, pp. 362-364.

MANIFESTO

On behalf of all its members, the Davao Insular Hotel Free Employees' Union-National Federation of Labor (the "Union"), hereby declares:

WHEREAS, the Union recognizes and admits that the Davao Insular Hotel (the "Hotel"), in the sound exercise of its managerial prerogatives, has temporarily ceased its operations on December 7, 2000, due to substantial economic losses;

WHEREAS, the Union acknowledges that the heavy losses experienced by the Hotel were basically brought about by several factors, one of which is the huge payroll cost;

NOW, THEREFORE, to uplift and revive the Hotel's financial viability, and, thus encourage the Hotel to resume its operations, the Union hereby submits to the Hotel the following proposals:

A. RETIREMENT & REDUCED BENEFITS:

1. Retirement. – The Hotel shall pay all employees qualified to retire their retirement benefits under the terms and conditions of the existing Collective Bargaining Agreement (CBA) and retrench those not yet qualified. Retired employees who may later on be rehired by the Hotel shall be considered as newly hired employees and are entitled to applicable existing minimum wage rates. As such, they hereby expressly waive any right that they may have with respect to their length of service.

2. Overtime and Holiday Pay. – Night shift differential premium and holiday pay shall be paid in accordance with the provisions of the Labor Code. Offsetting of overtime shall be continued.

3. Leaves. – Vacation and sick leave periods shall be limited to a maximum of ten (10) days each, while emergency and birthday leaves are hereby expressly waived.

4. Duty Meal Privileges. – Meal allowance shall be reduced to ₱30.00 per duty. Midnight snacks, double meal allowance and cooks' drinks shall no longer be allowed.

5. Corporate Group Healthcare Programs. – Only one (1) person shall be covered by the healthcare program. Family medical allowance shall be reduced to ₱1,500.00 per year.

6. Uniforms Laundry. – The practice of bringing home employees' uniforms for washing shall be continued.

7. Other Terms and Conditions. – The standards prescribed in the Labor Code of the Philippines shall be observed as regards all other terms and conditions of employment not specifically mentioned in this Manifesto.

B. RESTRUCTURE OF MANPOWER

1. Hiring Procedure. – Within the first year of its re-opening, the Hotel shall rehire eighty (80) employees with regular status at the time of the Hotel's closure. After the first year of operations, if management should deem fit, ten (10) more employees with regular status at the time of closure may be rehired provided that the Hotel achieves an owner's profit (net profit) within the same period. In the event of increased owner's profits, the Hotel may again increase the number of its employees by rehiring employees presently

After series of negotiations, respondent and DIHFEU-NFL, represented by its President, Rojas, and Vice-Presidents, Exequiel J. Varela Jr. and Avelino C. Bation, Jr., signed a Memorandum of Agreement[14] (MOA) wherein respondent agreed to re-open the hotel subject to certain concessions offered by DIHFEU-NFL in its Manifesto.

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with regular status. Notwithstanding the foregoing provisions, the Hotel may, in its discretion, fill up its other manning requirements in excess of the eighty (80) rehired employees from an independent recruitment agency.

2. Salary Scale. – The Union hereby abandons the existing pay scale. Thus, the respective salaries of the eighty (80) rehired employees shall be in accordance with a new scheme to be devised by the Hotel.

C. MISCELLANEOUS

1. Industrial Peace. – The Union agrees not to cause, conduct or support any form of strike within the next ten (10) years of the Hotel's operations. It likewise agrees to treat the present Collective Bargaining Agreement as inoperative within the same period insofar as the economic provisions are concerned. Upon the lapse of the above period, at which time the term of the Collective Bargaining Agreement shall be deemed to have lapsed, the parties may negotiate for a new Collective Bargaining Agreement.

2. Disciplinary Committee. – The Hotel shall establish a disciplinary committee which will decide disciplinary cases involving violations of the Hotel's House Rules and Regulations. The committee shall be composed of eight persons, four (4) of whom shall be members of the management, while the remaining four (4) shall be members of the Union. The members of the committee shall choose a presiding officer among themselves. The findings of the committee shall be forwarded to the Human Relations Department Manager, who shall give his recommendations to the General Manager. The decision of the General Manager shall be final and immediately executory.

3. Multi-Tasking and Multi-Skilled Employees. – Rehired employees shall be trained to perform multi-tasking jobs.

4. Non-intervention of the Union. – The Union further undertakes not to intervene in any matter that is primarily within the exclusive discretion of the Hotel management, such as, but not limited to, the grant of business concessions within the Hotel.

[14] CA *rollo*, Vol., pp. 366-371.

MEMORANDUM OF AGREEMENT

Know All Men By These Presents:

This Memorandum of Agreement, entered into this day of May 08 2001 at Cebu City, Philippines, by and between:

DAVAO INSULAR HOTEL, COMPANY, INC., a corporation duly organized and existing under the laws of the Philippines and doing business under the name and style: "Waterfront Insular Hotel Davao," hereinafter "Hotel";

-and-

DAVAO INSULAR HOTEL FREE EMPLOYEES' UNION-NATIONAL FEDERATION OF LABOR (DIHFEUNFL), the duly recognized exclusive bargaining agent among the rank-and-file employees of the Hotel; hereinafter the "Union"

W I T N E S S E T H :

WHEREAS, due to severe economic losses, the Hotel was constrained to temporarily cease operations on December 7, 2000.

WHEREAS, the Union acknowledges and admits that the closure of the Hotel was in accordance with the sound, valid, and good faith exercise of the Hotel's managerial prerogatives, and that the heavy business losses experienced by the Hotel were brought about by factors that actually exist, one which is the huge payroll cost;

WHEREAS, the parties recognize that a condition precedent to the Hotel's resumption of business operations is its ability to remain financially viable during the first ten (10) years following its resumption of operations;

WHEREAS, the parties acknowledge that the Hotel's financial viability can only be achieved by a comprehensive reorganization of its system of operations;

WHEREAS, on January 6, 2001, the economic provisions of the Collective Bargaining Agreement dated January 6, 1998 (hereinafter, the "CBA") between the Hotel and the Union are due for re-negotiation;

WHEREAS, the Union, through a Manifesto dated February 24, 2001, in an effort to help the Hotel achieve financial viability for purposes of resuming its business operations and avoiding permanent closure, initiated the re-negotiation of the economic provisions of the CBA by offering reduced employee benefits;

NOW, THEREFORE, in view of the foregoing premises, the parties, pursuant to Section 2 of Article XXVI of the CBA, hereby agree to the following amendments to the CBA:

A. TENURE AND PRIORITY OF EMPLOYMENT (Article III)

The following shall be introduced as Sections 5, 6 and 7 under Article II of the CBA:

Section 5. Reduction of Personnel. – To help reduce the Hotel's payroll cost upon its resumption of operations, the parties hereby agrees to the retention of 100 rank-and file personnel with regular status at the time of the temporary closure of the hotel. Employees excluded by the parties may avail of their retirement benefits in accordance with the terms and conditions of Article XXIII of this Agreement.

Section 6. Multi-Tasking and Multi-Skilled Employees. – Retained employees shall be trained to perform multi-tasking jobs.

Section 7. Hiring Procedure. – Within the first year or resumption of its operations and provided that it achieves an owner's profit (net profit), the Hotel may, if management should deem fit, source its manpower requirements from among those excluded employees mentioned in the immediately preceding paragraph, or any qualified member/s of their immediate families in accordance with Section 4, Article III of the CBA. However, this provision shall not in any way preclude the Hotel, in the valid exercise of its management prerogative, from filling up its other manning requirements, in excess of the one hundred (100) retained employees, from an independent recruitment agency or elsewhere.

B. RIGHTS AND DUTIES (Article IV)

Sections 1 and 2a of Article IV of the CBA are hereby amended to read as follows:

Section 1. Industrial Peace – The Union agrees not to cause, conduct or support any form of strike within the next ten (10) years following the Hotel's resumption of operations.

Section 2a. Non-intervention of the Union – The Union further undertakes not to intervene in any matter that is primarily within the exclusive discretion of the Hotel management, such as, but not limited to, the grant of business concessions within the Hotel.

The following provisions are hereby incorporated as Sections 2b and 2c under Article IV of the CBA:

2b. Disciplinary Action – NO employee shall be subjected to disciplinary action without due process and without just cause.

2c. Disciplinary Committee – The Hotel shall establish a disciplinary committee that will decide disciplinary cases involving employees' violations of the Hotel's House Rules and regulations. The committee shall be composed of eight (8) members, four of whom shall represent management, while the remaining four shall be members-representatives of the Union. The members of the committee shall choose a presiding officer among themselves. The findings of the committee shall be forwarded to the Human Resources Department Manager, who shall give his recommendations to the General Manager, shall become immediately final and executory.

C. COMPENSATION (Article V)

Section 4 and Section 5 of Article V of the CBA are hereby amended as follows:

Section 4a. Salary Scale – The salary scale of the retired rank-and file employees shall be in accordance with a new compensation scheme to be determined by the Hotel, which shall in no case be less than the existing minimum rates prescribed by the Regional Tripartite Wages and Productivity Board.

Section 5. Duty Meals – Meal allowance for regular employee shall be Thirty Pesos (₱30.00) per duty.

Sections 5a and 5b under Article V are hereby expressly repealed.

D. WORK SCHEDULE, OVERTIME, NIGHT DIFFERENTIAL (Article VI)

Sections 1a, 2, 2b, and 4 of Article VI are hereby amended to read as follows:

Section 1a. Additional Rates – Employees requested for duty during his day off shall be paid his rest day premium in accordance with the requirements of the provisions of the Labor Code.

Section 2. Overtime Work – Overtime premiums shall be determined in accordance with the requirements of the provisions of the Labor Code. Offsetting of overtime shall be continued.

Section 4. Nightshift Differential – Payment of night shift differential premium shall be in accordance with the requirements of the provisions of the Labor Code.

E. HEALTH BENEFITS (Article VIII)

Section 2 of Article VIII is hereby amended to read as follows:

Section 2. Medical Allowance – The employee shall charge the cost of medicine and/or medical assistance incurred by him up to the amount of ₱1,500.00 per year.

F. UNIFORM (Article IX)

The following provision shall be introduced under Article IX as Section 5:

Section 5. Uniforms Laundry – Laundry of uniforms shall be the sole responsibility of the employees and shall be done outside the Hotel premises.

G. VACATION LEAVE (Article XI)

Section 1 of Article XI are hereby amended to read as follows:

Section 1. Number of Days Vacation Leave – Employees who have rendered at least one year of continuous service shall be entitled to a vacation leave of ten (10) working days after each completed year of service.

Sections 1a and 1b are hereby repealed.

H. SICK LEAVE (Article XII)

Section 1a of Article XII is hereby amended to read as follows;

Section 1a. Number of Days Sick Leave – Employees shall be granted ten (10) working days sick leave with pay per year.

Unused sick leave at the end of each year shall be 100% convertible to cash.

I. EMERGENCY LEAVE (Article XXIII)

The following provisions shall be introduced as Section 6 under Article XXIII of the CBA:

Article XIII of the CBA on Emergency Leave is hereby expressly repealed.

x x x x x x x x x

Accordingly, respondent downsized its manpower structure to 100 rank-and-file employees as set forth in the terms of the MOA. Moreover, as agreed upon in the MOA, a new pay scale was also prepared by respondent.

The retained employees individually signed a "Reconfirmation of Employment"[15] which embodied the new terms and conditions of their continued employment. Each employee was assisted by Rojas who also signed the document.

On June 15, 2001, respondent resumed its business operations.

On August 22, 2002, Darius Joves (Joves) and Debbie Planas, claiming to be local officers of the National Federation of Labor (NFL), filed a Notice of Mediation[16] before the National Conciliation and Mediation Board (NCMB), Region XI, Davao City. In said Notice, it was stated that the Union involved was "DARIUS JOVES/DEBBIE PLANAS *ET AL.*, National Federation of Labor." The issue raised in said Notice was the "Diminution of wages and other benefits through unlawful Memorandum of Agreement."

K. AMENDMENTS, DISSEMINATION, DURATION RENEWAL (Article XXVI)

Section 1 of Article XXVI of the CBA shall be amended to read as follows:

Section 1. Effectivity and Duration – This Agreement, as amended, shall be in full force and effect immediately upon its execution by the parties. The Union expressly waives its rights to renegotiate the wages and all other provisions contained in the Agreement, as amended, for a period of ten (10) years following the Hotel's resumption of operations.

The following provisions shall be introduced under Article XXVI of the CBA as Sections 5 and 6:

Section 5. Separability Clause – Should any of the above provisions be hereinafter declared invalid, the other provisions unaffected thereby shall continue to remain in full force and effect.

Section 6. Repealing Clause – All terms and conditions of the Agreement inconsistent with the foregoing provisions shall be deemed superseded and repealed by the provisions hereof.

IN WITNESS WHEREOF. The parties have hereunto affixed their signature this on the date and at the place mentioned above.

[15] See *rollo*, pp. 596-770.

[16] CA *rollo*, Vol. 1, pp. 110-111.

On August 29, 2002, the NCMB called Joves and respondent to a conference to explore the possibility of settling the conflict. In the said conference, respondent and petitioner Insular Hotel Employees Union-NFL (IHEU-NFL), represented by Joves, signed a Submission Agreement[17] wherein they chose AVA Alfredo C. Olvida (AVA Olvida) to act as voluntary arbitrator. Submitted for the resolution of AVA Olvida was the determination of whether or not there was a diminution of wages and other benefits through an unlawful MOA. In support of his authority to file the complaint, Joves, assisted by Atty. Danilo Cullo (Cullo), presented several Special Powers of Attorney (SPA) which were, however, undated and unnotarized.

On September 2, 2002, respondent filed with the NCMB a Manifestation with Motion for a Second Preliminary Conference,[18] raising the following grounds:

1) The persons who filed the instant complaint in the name of the Insular Hotel Employees Union-NFL have no authority to represent the Union;
2) The individuals who executed the special powers of attorney in favor of the person who filed the instant complaint have no standing to cause the filing of the instant complaint; and
3) The existence of an intra-union dispute renders the filing of the instant case premature.[19]

On September 16, 2002, a second preliminary conference was conducted in the NCMB, where Cullo denied any existence of an intra-union dispute among the members of the union. Cullo, however, confirmed that the case was filed not by the IHEU-NFL but by the NFL. When asked to present his authority from NFL, Cullo admitted that the case was, in fact, filed by individual employees named in the SPAs. The hearing officer directed both parties to elevate the aforementioned issues to AVA Olvida.[20]

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[17] *Id.* at 112.

[18] *Id.* at 113-115.

[19] *Id.* at 113.

[20] *Rollo*, p. 71.

The case was docketed as Case No. AC-220-RB-11-09-022-02 and referred to AVA Olvida. Respondent again raised its objections, specifically arguing that the persons who signed the complaint were not the authorized representatives of the Union indicated in the Submission Agreement nor were they parties to the MOA. AVA Olvida directed respondent to file a formal motion to withdraw its submission to voluntary arbitration.

On October 16, 2002, respondent filed its Motion to Withdraw.[21] Cullo then filed an Opposition[22] where the same was captioned:

> NATIONAL FEDERATION OF LABOR
> And 79 Individual Employees, Union Members,
> Complainants,
>
> -versus-
>
> Waterfront Insular Hotel Davao,
> Respondent.

In said Opposition, Cullo reiterated that the complainants were not representing IHEU-NFL, to wit:

> x x x x x x x x x

> 2. Respondent must have been lost when it said that the individuals who executed the SPA have no standing to represent the union nor to assail the validity of Memorandum of Agreement (MOA). **What is correct is that the individual complainants are not representing the union** but filing the complaint through their appointed attorneys-in-fact to assert their individual rights as workers who are entitled to the benefits granted by law and stipulated in the collective bargaining agreement.[23]

On November 11, 2002, AVA Olvida issued a Resolution[24] denying respondent's Motion to Withdraw. On December 16,

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[21] CA *rollo*,Vol. 1, pp. 117-119.

[22] *Id.* at 123-125.

[23] *Id.* at 123. (Emphasis supplied).

[24] *Id.* at 78-82.

2002, respondent filed a Motion for Reconsideration[25] where it stressed that the Submission Agreement was void because the Union did not consent thereto. Respondent pointed out that the Union had not issued any resolution duly authorizing the individual employees or NFL to file the notice of mediation with the NCMB.

Cullo filed a Comment/Opposition[26] to respondent's Motion for Reconsideration. Again, Cullo admitted that the case was not initiated by the IHEU-NFL, to wit:

> The case was initiated by complainants by filling up Revised Form No. 1 of the NCMB duly furnishing respondent, copy of which is hereto attached as Annex "A" for reference and consideration of the Honorable Voluntary Arbitrator. There is no mention there of Insular Hotel Employees Union, but only National Federation of Labor (NFL). The one appearing at the Submission Agreement was only a matter of filling up the blanks particularly on the question there of Union; which was filled up with Insular Hotel Employees Union-NFL. There is nothing there that indicates that it is a complainant as the case is initiated by the individual workers and National Federation of Labor, not by the local union. The local union was not included as party-complainant considering that it was a party to the assailed MOA.[27]

On March 18, 2003, AVA Olvida issued a Resolution[28] denying respondent's Motion for Reconsideration. He, however, ruled that respondent was correct when it raised its objection to NFL as proper party-complainant, thus:

> Anent to the real complainant in this instant voluntary arbitration case, the respondent is correct when it raised objection to the National Federation of Labor (NFL) and as proper party-complainants.
>
> The proper party-complainant is INSULAR HOTEL EMPLOYEES UNION-NFL, the recognized and incumbent bargaining agent of the rank-and-file employees of the respondent hotel. In the submission agreement of the parties dated August 29, 2002, the party complainant

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[25] *Id.* at 251-268.

[26] *Id.* at 283-304.

[27] *Id.* at 288.

[28] *Id.* at 83-88.

written is INSULAR HOTEL EMPLOYEES UNION-NFL and not the NATIONAL FEDERATION OF LABOR and 79 other members.

However, since the NFL is the mother federation of the local union, and signatory to the existing CBA, it can represent the union, the officers, the members or union and officers or members, as the case may be, in all stages of proceedings in courts or administrative bodies provided that the issue of the case will involve labor-management relationship like in the case at bar.

The dispositive portion of the March 18, 2003 Resolution of AVA Olvida reads:

WHEREFORE, premises considered, the motion for reconsideration filed by respondent is DENIED. The resolution dated November 11, 2002 is modified in so far as the party-complainant is concerned; thus, instead of "National Federation of Labor and 79 individual employees, union members," shall be "Insular Hotel Employees Union-NFL *et al.*, as stated in the joint submission agreement dated August 29, 2002. Respondent is directed to comply with the decision of this Arbitrator dated November 11, 2002,

No further motion of the same nature shall be entertained.[29]

On May 9, 2003, respondent filed its Position Paper *Ad Cautelam*,[30] where it declared, among others, that the same was without prejudice to its earlier objections against the jurisdiction of the NCMB and AVA Olvida and the standing of the persons who filed the notice of mediation.

Cullo, now using the caption "Insular Hotel Employees Union-NFL, *Complainant,"* filed a Comment[31] dated June 5, 2003. On June 23, 2003, respondent filed its Reply.[32]

Later, respondent filed a Motion for Inhibition[33] alleging AVA Olvida's bias and prejudice towards the cause of the employees.

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[29] *Id.* at 88.

[30] *Id.* at 317-341.

[31] *Id.* at 380-405.

[32] *Id.* at 406-424.

[33] CA *rollo*, Vol. 2, pp. 620-632.

In an Order[34] dated July 25, 2003, AVA Olvida voluntarily inhibited himself out of "*delicadeza*" and ordered the remand of the case to the NCMB.

On August 12, 2003, the NCMB issued a Notice requiring the parties to appear before the conciliator for the selection of a new voluntary arbitrator.

In a letter[35] dated August 19, 2003 addressed to the NCMB, respondent reiterated its position that the individual union members have no standing to file the notice of mediation before the NCMB. Respondent stressed that the complaint should have been filed by the Union.

On September 12, 2003, the NCMB sent both parties a Notice[36] asking them to appear before it for the selection of the new voluntary arbitrator. Respondent, however, maintained its stand that the NCMB had no jurisdiction over the case. Consequently, at the instance of Cullo, the NCMB approved *ex parte* the selection of AVA Montejo as the new voluntary arbitrator.

On April 5, 2004, AVA Montejo rendered a Decision[37] ruling in favor of Cullo, the dispositive portion of which reads:

WHEREOF, in view of the all the foregoing, judgment is hereby rendered:

1. Declaring the Memorandum of Agreement in question as invalid as it is contrary to law and public policy;
2. Declaring that there is a diminution of the wages and other benefits of the Union members and officers under the said invalid MOA.
3. Ordering respondent management to immediately reinstate the workers wage rates and other benefits that they were receiving and enjoying before the signing of the invalid MOA;
4. Ordering the management respondent to pay attorney's fees in an amount equivalent to ten percent (10%) of whatever total amount that the workers union may receive representing individual wage differentials.

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[34] *Id.* at 675.

[35] *Id.* at 676-677.

[36] *Id.* at 678.

[37] CA *rollo*, Vol. 1, pp. 89-100.

As to the other claims of the Union regarding diminution of other benefits, this accredited voluntary arbitrator is of the opinion that she has no authority to entertain, particularly as to the computation thereof.

SO ORDERED.[38]

Both parties appealed the Decision of AVA Montejo to the CA. Cullo only assailed the Decision in so far as it did not categorically order respondent to pay the covered workers their differentials in wages reckoned from the effectivity of the MOA up to the actual reinstatement of the reduced wages and benefits. Cullos' petition was docketed as CA-G.R. SP No. 83831. Respondent, for its part, questioned among others the jurisdiction of the NCMB. Respondent maintained that the MOA it had entered into with the officers of the Union was valid. Respondent's petition was docketed as CA-G.R. SP No. 83657. Both cases were consolidated by the CA.

On October 11, 2005, the CA rendered a Decision[39] ruling in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition for review in CA-G.R. SP No. 83657 is hereby GRANTED, while the petition in CA-G.R. SP No. 83831 is DENIED. Consequently, the assailed Decision dated April 5, 2004 rendered by AVA Rosalina L. Montejo is hereby REVERSED and a new one entered declaring the Memorandum of Agreement dated May 8, 2001 VALID and ENFORCEABLE. Parties are DIRECTED to comply with the terms and conditions thereof.

SO ORDERED.[40]

Aggrieved, Cullo filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution[41] dated July 13, 2006.

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[38] *Id.* at 100.

[39] *Rollo*, pp. 66-82.

[40] *Id.* at 81.

[41] *Id.* at 84-85.

Hence, herein petition, with Cullo raising the following issues for this Court's resolution, to wit:

I.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN FINDING THAT THE ACCREDITED VOLUNTARY ARBITRATOR HAS NO JURISDICTION OVER THE CASE SIMPLY BECAUSE THE NOTICE OF MEDIATION DOES NOT MENTION THE NAME OF THE LOCAL UNION BUT ONLY THE AFFILIATE FEDERATION THEREBY DISREGARDING THE SUBMISSION AGREEMENT DULY SIGNED BY THE PARTIES AND THEIR LEGAL COUNSELS THAT MENTIONS THE NAME OF THE LOCAL UNION.

II.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR BY DISREGARDING THE PROVISIONS OF THE CBA SIMPLY BECAUSE IT BELIEVED THE UNPROVEN ALLEGATIONS OF RESPONDENT HOTEL THAT IT WAS SUFFERING FROM FINANCIAL CRISIS.

III.

THE HONORABLE COURT OF APPEALS MUST HAVE SERIOUSLY ERRED IN CONCLUDING THAT ARTICLE 100 OF THE LABOR CODE APPLIES ONLY TO BENEFITS ENJOYED PRIOR TO THE ADOPTION OF THE LABOR CODE WHICH, IN EFFECT, ALLOWS THE DIMINUTION OF THE BENEFITS ENJOYED BY EMPLOYEES FROM ITS ADOPTION HENCEFORTH.[42]

The petition is not meritorious.

Anent the first error raised, Cullo argues that the CA erred when it overlooked the fact that before the case was submitted to voluntary arbitration, the parties signed a Submission Agreement which mentioned the name of the local union and not only NFL. Cullo, thus, contends that the CA committed error when it ruled that the voluntary arbitrator had no jurisdiction over the case simply because the Notice of Mediation did not state the name

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[42] *Id.* at 47-48.

of the local union thereby disregarding the Submission Agreement which states the names of local union as Insular Hotel Employees Union-NFL.[43]

In its Memorandum,[44] respondent maintains its position that the NCMB and Voluntary Arbitrators had no jurisdiction over the complaint. Respondent, however, now also contends that *IHEU-NFL* is a non-entity since it is *DIHFEU-NFL* which is considered by the DOLE as the only registered union in Waterfront Davao.[45] Respondent argues that the Submission Agreement does not name the local union DIHFEU-NFL and that it had timely withdrawn its consent to arbitrate by filing a motion to withdraw.

A review of the development of the case shows that there has been much confusion as to the identity of the party which filed the case against respondent. In the Notice of Mediation[46] filed before the NCMB, it stated that the union involved was "DARIUS JOVES/DEBBIE PLANAS *ET AL.*, National Federation of Labor." In the Submission Agreement,[47] however, it stated that the union involved was "INSULAR HOTEL EMPLOYEES UNION-NFL."

Furthermore, a perusal of the records would reveal that after signing the Submission Agreement, respondent persistently questioned the authority and standing of the individual employees to file the complaint. Cullo then clarified in subsequent documents captioned as "National Federation of Labor and 79 Individual Employees, Union Members, *Complainants*" that the individual complainants are not representing the union, but filing the complaint through their appointed attorneys-in-fact.[48] AVA Olvida, however, in a Resolution dated March 18, 2003, agreed

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[43] *Id.* at 48.

[44] *Id.* at 877-906.

[45] See DOLE Certification dated November 16, 2006, *id.* at 551.

[46] CA *rollo*, Vol. 1, pp. 110-111.

[47] *Id.* at 112.

[48] See Opposition to Motion to Withdraw, CA *rollo*, Vol. 1, *id.* at 123-125.

with respondent that the proper party-complainant should be *INSULAR HOTEL EMPLOYEES UNION-NFL*, to wit:

> x x x In the submission agreement of the parties dated August 29, 2002, the party complainant written is INSULAR HOTEL EMPLOYEES UNION-NFL and not the NATIONAL FEDERATION OF LABOR and 79 other members.[49]

The dispositive portion of the Resolution dated March 18, 2003 of AVA Olvida reads:

> WHEREFORE, premises considered, the motion for reconsideration filed by respondent is DENIED. The resolution dated November 11, 2002, is modified in so far as the party complainant is concerned, thus, instead of "National Federation of Labor and 79 individual employees, union members," shall be "Insular Hotel Employees Union-NFL *et al.*, as stated in the joint submission agreement dated August 29, 2002. Respondent is directed to comply with the decision of this Arbitrator dated November 11, 2002.[50]

After the March 18, 2003 Resolution of AVA Olvida, Cullo adopted "Insular Hotel Employees Union-NFL *et al.*, *Complainant*" as the caption in all his subsequent pleadings. Respondent, however, was still adamant that neither Cullo nor the individual employees had authority to file the case in behalf of the Union.

While it is undisputed that a submission agreement was signed by respondent and "IHEU-NFL," then represented by Joves and Cullo, this Court finds that there are two circumstances which affect its validity: *first*, the Notice of Mediation was filed by a party who had no authority to do so; *second*, that respondent had persistently voiced out its objection questioning the authority of Joves, Cullo and the individual members of the Union to file the complaint before the NCMB.

Procedurally, the first step to submit a case for mediation is to file a notice of preventive mediation with the NCMB. It is

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[49] CA *rollo*, Vol. 1, p. 87.

[50] *Id.* at 88.

only after this step that a submission agreement may be entered into by the parties concerned.

Section 3, Rule IV of the NCMB Manual of Procedure provides who may file a notice of preventive mediation, to wit:

> *Who may file a notice or declare a strike or lockout or request preventive mediation. –*
>
> **Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlocks and unfair labor practices**. The employer may file a notice or declare a lockout or request for preventive mediation in the same cases. In the absence of a certified or duly recognized bargaining representative, any legitimate labor organization in the establishment may file a notice, request preventive mediation or declare a strike, but only on grounds of unfair labor practice.

From the foregoing, it is clear that only a certified or duly recognized bargaining agent may file a notice or request for preventive mediation. It is curious that even Cullo himself admitted, in a number of pleadings, that the case was filed not by the Union but by individual members thereof. Clearly, therefore, the NCMB had no jurisdiction to entertain the notice filed before it.

Even though respondent signed a Submission Agreement, it had, however, immediately manifested its desire to withdraw from the proceedings after it became apparent that the Union had no part in the complaint. As a matter of fact, only four days had lapsed after the signing of the Submission Agreement when respondent called the attention of AVA Olvida in a "Manifestation with Motion for a Second Preliminary Conference"[51] that the persons who filed the instant complaint in the name of Insular Hotel Employees Union-NFL had no authority to represent the Union. Respondent cannot be estopped in raising the jurisdictional issue, because it is basic that the issue of jurisdiction may be raised at any stage of the proceedings, even on appeal, and is not lost by waiver or by estoppel.

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[51] *Id.* at 113-115.

In *Figueroa v. People*,[52] this Court explained that estoppel is the exception rather than the rule, to wit:

> Applying the said doctrine to the instant case, the petitioner is in no way estopped by laches in assailing the jurisdiction of the RTC, considering that he raised the lack thereof in his appeal before the appellate court. At that time, no considerable period had yet elapsed for laches to attach. True, delay alone, though unreasonable, will not sustain the defense of "estoppel by laches" *unless it further appears that the party, knowing his rights, has not sought to enforce them until the condition of the party pleading laches has in good faith become so changed that he cannot be restored to his former state, if the rights be then enforced, due to loss of evidence, change of title, intervention of equities, and other causes*. In applying the principle of estoppel by laches in the exceptional case of *Sibonghanoy*, the Court therein considered the patent and revolting inequity and unfairness of having the judgment creditors go up their Calvary once more after more or less 15 years.The same, however, does not obtain in the instant case.
>
> We note at this point that estoppel, being in the nature of a forfeiture, is not favored by law. It is to be applied rarely—only from necessity, and only in extraordinary circumstances. The doctrine must be applied with great care and the equity must be strong in its favor. When misapplied, the doctrine of estoppel may be a most effective weapon for the accomplishment of injustice. x x x (Italics supplied.)[53]

The question to be resolved then is, do the individual members of the Union have the requisite standing to question the MOA before the NCMB? On this note, *Tabigue v. International Copra Export Corporation (INTERCO)*[54] is instructive:

> Respecting petitioners' thesis that unsettled grievances should be referred to voluntary arbitration as called for in the CBA, the same does not lie.The pertinent portion of the CBA reads:
>
> > In case of any dispute arising from the interpretation or implementation of this Agreement or any matter affecting the relations of Labor and Management, the UNION and the

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[52] G.R. No. 147406, July 14, 2008, 558 SCRA 63.

[53] *Id.* at 81-83.

[54] G.R. No. 183335, December 23, 2009, 609 SCRA 223.

> COMPANY agree to exhaust all possibilities of conciliation through the grievance machinery. The committee shall resolve all problems submitted to it within fifteen (15) days after the problems ha[ve] been discussed by the members. If the dispute or grievance cannot be settled by the Committee, or if the committee failed to act on the matter within the period of fifteen (15) days herein stipulated, the UNION and the COMPANY agree to submit the issue to Voluntary Arbitration. Selection of the arbitrator shall be made within seven (7) days from the date of notification by the aggrieved party. The Arbitrator shall be selected by lottery from four (4) qualified individuals nominated by in equal numbers by both parties taken from the list of Arbitrators prepared by the National Conciliation and Mediation Board (NCMB). If the Company and the Union representatives within ten (10) days fail to agree on the Arbitrator, the NCMB shall name the Arbitrator. The decision of the Arbitrator shall be final and binding upon the parties. However, the Arbitrator shall not have the authority to change any provisions of the Agreement.The cost of arbitration shall be borne equally by the parties.

Petitioners have not, however, been duly authorized to represent the union. *Apropos* is this Court's pronouncement in *Atlas Farms, Inc. v. National Labor Relations Commission, viz*:

> x x x Pursuant to Article 260 of the Labor Code, the parties to a CBA shall name or designate their respective representatives to the grievance machinery and if the grievance is unsettled in that level, it shall automatically be referred to the voluntary arbitrators designated in advance by parties to a CBA. Consequently, **only disputes involving the union and the company shall be referred to the grievance machinery or voluntary arbitrators**. (Emphasis and underscoring supplied.)[55]

If the individual members of the Union have no authority to file the case, does the federation to which the local union is affiliated have the standing to do so? On this note, *Coastal Subic Bay Terminal, Inc. v. Department of Labor and Employment*[56] is enlightening, thus:

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[55] *Id.* at 231-232.

[56] G.R. No. 157117, November 20, 2006, 507 SCRA 300.

x x x A local union does not owe its existence to the federation with which it is affiliated. It is a separate and distinct voluntary association owing its creation to the will of its members. **Mere affiliation does not divest the local union of its own personality, neither does it give the mother federation the license to act independently of the local union.** It only gives rise to a contract of agency, where the former acts in representation of the latter. Hence, local unions are considered principals while the federation is deemed to be merely their agent. x x x[57]

Based on the foregoing, this Court agrees with approval with the disquisition of the CA when it ruled that NFL had no authority to file the complaint in behalf of the individual employees, to wit:

Anent the first issue, We hold that the voluntary arbitrator had no jurisdiction over the case. Waterfront contents that the Notice of Mediation does not mention the name of the Union but merely referred to the National Federation of Labor (NFL) with which the Union is affiliated. In the subsequent pleadings, NFL's legal counsel even confirmed that the case was not filed by the union but by NFL and the individual employees named in the SPAs which were not even dated nor notarized.

Even granting that petitioner Union was affiliated with NFL, still the relationship between that of the local union and the labor federation or national union with which the former was affiliated is generally understood to be that of agency, where the local is the principal and the federation the agency. Being merely an agent of the local union, NFL should have presented its authority to file the Notice of Mediation. While We commend NFL's zealousness in protecting the rights of lowly workers, We cannot, however, allow it to go beyond what it is empowered to do.

As provided under the NCMB Manual of Procedures, only a certified or duly recognized bargaining representative and an employer may file a notice of mediation, declare a strike or lockout or request preventive mediation. The Collective Bargaining Agreement (CBA), on the other, recognizes that DIHFEU-NFL is the exclusive bargaining representative of all permanent employees. The inclusion of the word "NFL" after the name of the local union merely stresses that the

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[57] *Id.* at 311-312. (Emphasis supplied.)

local union is NFL's affiliate. It does not, however, mean that the local union cannot stand on its own. The local union owes its creation and continued existence to the will of its members and not to the federation to which it belongs. The spring cannot rise higher than its source, so to speak.[58]

In its Memorandum, respondent contends that IHEU-NFL is a non-entity and that DIHFEU-NFL is the only recognized bargaining unit in their establishment. While the resolution of the said argument is already moot and academic given the discussion above, this Court shall address the same nevertheless.

While the November 16, 2006 Certification[59] of the DOLE clearly states that "IHEU-NFL" is not a registered labor organization, this Court finds that respondent is estopped from questioning the same as it did not raise the said issue in the proceedings before the NCMB and the Voluntary Arbitrators. A perusal of the records reveals that the main theory posed by respondent was whether or not the individual employees had the authority to file the complaint notwithstanding the apparent non-participation of the union. Respondent never put in issue the fact that DIHFEU-NFL was not the same as IHEU-NFL. Consequently, it is already too late in the day to assert the same.

Anent the second issue raised by Cullo, the same is again without merit.

Cullo contends that respondent was not really suffering from serious losses as found by the CA. Cullo anchors his position on the denial by the Wage Board of respondent's petition for exemption from Wage Order No. RTWPB-X1-08 on the ground that it is a distressed establishment.[60] In said denial, the Board ruled:

A careful analysis of applicant's audited financial statements showed that during the period ending December 31, 1999, it registered

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[58] *Rollo*, pp. 77-78.

[59] *Id.* at 551.

[60] See *rollo*, pp. 25-26.

retained earnings amounting to ₱8,661,260.00. **Applicant's interim financial statements for the quarter ending June 30, 2000 cannot be considered, as the same was not audited**. Accordingly, this Board finds that applicant is not qualified for exemption as a distressed establishment pursuant to the aforecited criteria.[61]

In its Decision, the CA held that upholding the validity of the MOA would mean the continuance of the hotel's operation and financial viability, to wit:

x x x We cannot close Our eyes to the impending financial distress that an employer may suffer should the terms of employment under the said CBA continue.

If indeed We are to tilt the balance of justice to labor, then We would be inclined to favor for the nonce petitioner Waterfront. To uphold the validity of the MOA would mean the continuance of the hotel's operation and financial viability. Otherwise, the eventual permanent closure of the hotel would only result to prejudice of the employees, as a consequence thereof, will necessarily lose their jobs.[62]

In its petition before the CA, respondent submitted its audited financial statements[63] which show that for the years 1998, 1999, until September 30, 2000, its total operating losses amounted to ₱48,409,385.00. Based on the foregoing, the CA was not without basis when it declared that respondent was suffering from impending financial distress. While the Wage Board denied respondent's petition for exemption, this Court notes that the denial was partly due to the fact that the June 2000 financial statements then submitted by respondent were not audited. Cullo did not question nor discredit the accuracy and authenticity of respondent's audited financial statements. This Court, therefore, has no reason to question the veracity of the contents thereof. Moreover, it bears to point out that respondent's audited financial

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[61] *Id.* at 25. (Emphasis supplied.)

[62] *Id.* at 79.

[63] CA *rollo*, Vol.1, pp. 343-355.

statements covering the years 2001 to 2005 show that it still continues to suffer losses.[64]

Finally, anent the last issue raised by Cullo, the same is without merit.

Cullo argues that the CA must have erred in concluding that Article 100 of the Labor Code applies only to benefits already enjoyed at the time of the promulgation of the Labor Code.

Article 100 of the Labor Code provides:

> PROHIBITION AGAINST ELIMINATION OR DIMINUTION OF BENEFITS – Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of the promulgation of this Code.

On this note, *Apex Mining Company, Inc. v. NLRC*[65] is instructive, to wit:

> Clearly, the prohibition against elimination or diminution of benefits set out in Article 100 of the Labor Code is specifically concerned with benefits already enjoyed at the time of the promulgation of the Labor Code. Article 100 does not, in other words, purport to apply to situations arising after the promulgation date of the Labor Code x x x.[66]

Even assuming *arguendo* that Article 100 applies to the case at bar, this Court agrees with respondent that the same does not prohibit a union from offering and agreeing to reduce wages and benefits of the employees. In *Rivera v. Espiritu*,[67] this

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[64] 2001 - ₱39,495,634.00
2002 - ₱32,845,995.00
2003 - ₱23,924,784.00
2004 - ₱ 9,540,927.00
2005 - ₱ 3,330,939.00

See Audited Financial Statements, *rollo*, pp. 567-594.

[65] G.R. No. 86200, February 25, 1992, 206 SCRA 497.

[66] *Id.* at 501.

[67] 425 Phil. 169 (2002).

Court ruled that the right to free collective bargaining, after all, includes the right to suspend it, thus:

> A CBA is "a contract executed upon request of either the employer or the exclusive bargaining representative incorporating the agreement reached after negotiations with respect to wages, hours of work and all other terms and conditions of employment, including proposals for adjusting any grievances or questions arising under such agreement." The primary purpose of a CBA is the stabilization of labor-management relations in order to create a climate of a sound and stable industrial peace. In construing a CBA, the courts must be practical and realistic and give due consideration to the context in which it is negotiated and the purpose which it is intended to serve.
>
> **The assailed PAL-PALEA agreement was the result of voluntary collective bargaining negotiations undertaken in the light of the severe financial situation faced by the employer, with the peculiar and unique intention of not merely promoting industrial peace at PAL, but preventing the latter's closure.** We find no conflict between said agreement and Article 253-A of the Labor Code. Article 253-A has a two-fold purpose. One is to promote industrial stability and predictability. Inasmuch as the agreement sought to promote industrial peace at PAL during its rehabilitation, said agreement satisfies the first purpose of Article 253-A. The other is to assign specific timetables wherein negotiations become a matter of right and requirement. Nothing in Article 253-A, prohibits the parties from waiving or suspending the mandatory timetables and agreeing on the remedies to enforce the same.
>
> In the instant case, it was PALEA, as the exclusive bargaining agent of PAL's ground employees, that voluntarily entered into the CBA with PAL. It was also PALEA that voluntarily opted for the 10-year suspension of the CBA. Either case was the union's exercise of its right to collective bargaining. **The right to free collective bargaining, after all, includes the right to suspend it**.[68]

Lastly, this Court is not unmindful of the fact that DIHFEU-NFL's Constitution and By-Laws specifically provides that "the results of the collective bargaining negotiations shall be subject to ratification and approval by majority vote of the

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[68] *Id.* at 182-183. (Emphasis supplied.)

Union members at a meeting convened, or by plebiscite held for such special purpose."[69] Accordingly, it is undisputed that the MOA was not subject to ratification by the general membership of the Union. The question to be resolved then is, does the non-ratification of the MOA in accordance with the Union's constitution prove fatal to the validity thereof?

It must be remembered that after the MOA was signed, the members of the Union individually signed contracts denominated as "Reconfirmation of Employment."[70] Cullo did not dispute the fact that of the 87 members of the Union, who signed and accepted the "Reconfirmation of Employment," 71 are the respondent employees in the case at bar. Moreover, it bears to stress that all the employees were assisted by Rojas, DIHFEU-NFL's president, who even co-signed each contract.

Stipulated in each Reconfirmation of Employment were the new salary and benefits scheme. In addition, it bears to stress that specific provisions of the new contract also made reference to the MOA. Thus, the individual members of the union cannot feign knowledge of the execution of the MOA. Each contract was freely entered into and there is no indication that the same was attended by fraud, misrepresentation or duress. To this Court's mind, the signing of the individual "Reconfirmation of Employment" should, therefore, be deemed an implied ratification by the Union members of the MOA.

In *Planters Products, Inc. v. NLRC*,[71] this Court refrained from declaring a CBA invalid notwithstanding that the same was not ratified in view of the fact that the employees had enjoyed benefits under it, thus:

> Under Article 231 of the Labor Code and Sec. 1, Rule IX, Book V of the Implementing Rules, the parties to a collective [bargaining] agreement are required to furnish copies of the appropriate Regional Office with accompanying proof of ratification by the majority of

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[69] CA *rollo*, Vol. 1, p. 279.

[70] See copies of Reconfirmation of Employment, *rollo*, pp. 596-770.

[71] 251 Phil. 310 (1989).

all the workers in a bargaining unit. This was not done in the case at bar. But we do not declare the 1984-1987 CBA invalid or void considering that the employees have enjoyed benefits from it. They cannot receive benefits under provisions favorable to them and later insist that the CBA is void simply because other provisions turn out not to the liking of certain employees. x x x. Moreover, the two CBAs prior to the 1984-1987 CBA were not also formally ratified, yet the employees are basing their present claims on these CBAs. **It is iniquitous to receive benefits from a CBA and later on disclaim its validity**.[72]

Applied to the case at bar, while the terms of the MOA undoubtedly reduced the salaries and certain benefits previously enjoyed by the members of the Union, it cannot escape this Court's attention that it was the execution of the MOA which paved the way for the re-opening of the hotel, notwithstanding its financial distress. More importantly, the execution of the MOA allowed respondents to keep their jobs. It would certainly be iniquitous for the members of the Union to sign new contracts prompting the re-opening of the hotel only to later on renege on their agreement on the fact of the non-ratification of the MOA.

In addition, it bears to point out that Rojas did not act unilaterally when he negotiated with respondent's management. The Constitution and By-Laws of DIHFEU-NFL clearly provide that the president is authorized to represent the union on all occasions and in all matters in which representation of the union may be agreed or required.[73] Furthermore, Rojas was properly authorized under a Board of Directors Resolution[74] to negotiate with respondent, the pertinent portions of which read:

SECRETARY's CERTIFICATE

I, MA. SOCORRO LISETTE B. IBARRA, x x x, do hereby certify that, at a meeting of the Board of Directors of the DIHFEU-NFL,

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[72] *Id.* at 322. (Emphasis supplied).

[73] See Article VII, Section 1 of DIHFEU-NFL Constitution and By-Laws, CA *rollo,* Vol. 1, p. 271.

[74] *Rollo,* p. 595.

on 28 Feb. 2001 with a quorum duly constituted, the following resolutions were unanimously approved:

> RESOLVED, as it is hereby resolved that the Manifesto dated 25 Feb. 2001 be approved ratified and adopted;
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> **RESOLVED, FURTHER, that Mr. Domy R. Rojas, the president of the DIHFEU-NFL, be hereby authorized to negotiate with Waterfront Insular Hotel Davao and to work for the latter's acceptance of the proposals contained in DIHFEU-NFL Manifesto**; and
>
> **RESOLVED, FINALLY, that Mr. Domy R. Rojas is hereby authorized to sign any and all documents to implement, and carry into effect, his foregoing authority**.[75]

Withal, while the scales of justice usually tilt in favor of labor, the peculiar circumstances herein prevent this Court from applying the same in the instant petition. Even if our laws endeavor to give life to the constitutional policy on social justice and on the protection of labor, it does not mean that every labor dispute will be decided in favor of the workers. The law also recognizes that management has rights which are also entitled to respect and enforcement in the interest of fair play.[76]

WHEREFORE, premises considered, the petition is *DENIED*. The Decision dated October 11, 2005, and the Resolution dated July 13, 2006 of the Court of Appeals in consolidated labor cases docketed as CA-G.R. SP No. 83831 and CA-G.R. SP No. 83657, are *AFFIRMED*.

SO ORDERED.

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

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[75] *Id.* (Emphasis supplied).

[76] *Duncan Association of Detailman-PTGWO v. Glaxo Wellcome Philippines, Inc.*, 481 Phil. 687, 700 (2004).

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 883 dated September 1, 2010.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 886 dated September 1, 2010.

FIRST DIVISION

[G.R. No. 182291. September 22, 2010]

PHILIP S. YU, *petitioner, vs.* **HERNAN G. LIM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; REQUISITES.— Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.

2. ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.— What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues. Based on the foregoing considerations, respondent did not have the legal obligation to disclose the previous filing and subsequent dismissal of the cadastral case in Zamboanga City. x x x. Moreover, in the Zamboanga case, what was invoked was the court's cadastral or administrative authority, the issue being administrative in nature, involving as it does the correction of a wrongful issuance of duplicate titles. There were no judicial issues that required resolution. In the Caloocan case, on the other hand, the issues are civil in nature, concerning the rights and responsibilities of the parties under the Deed of Absolute Sale which they executed. Hence, in this case, the Caloocan

court is called upon to exercise its judicial powers. Clearly, it cannot be said that respondent committed perjury when he failed to disclose in his Certification Against Forum Shopping the previous filing of the cadastral case.

3. CRIMINAL LAW; PERJURY; ELEMENTS; NOT PRESENT.— More importantly, it must be emphasized that perjury is the **willful and corrupt** assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. Thus, a mere assertion of a false objective fact or a falsehood is not enough. The assertion must be deliberate and willful. In the case at bar, even assuming that respondent was required to disclose the Zamboanga case, petitioner failed to establish that respondent's failure to do so was willful and deliberate. Thus, an essential element of the crime of perjury is absent.

APPEARANCES OF COUNSEL

Cayetano Sebastian Ata Dado & Cruz for petitioner.
Zamora Poblador Vasquez & Bretaña for respondent.

D E C I S I O N

PEREZ, *J.*:

The Case

In this Petition for Review[1] on *Certiorari*, petitioner Philip S. Yu seeks to set aside the Decision[2] dated 20 December 2007 and the Resolution[3] dated 18 March 2008 of the Court of Appeals in CA-G.R. SP No. 99893. The challenged Decision and Resolution granted respondent's petition for *certiorari* which sought the nullification of the Resolution[4] dated 4

[1] *Rollo,* pp. 28-48.

[2] Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Lucas P. Bersamin (now members of this Court) and Romeo F. Barza, concurring; *rollo,* pp. 7-23.

[3] *Id.* at 25-26.

[4] CA *rollo,* pp. 31-36.

September 2006 of the Secretary of Justice which, in turn, ordered the filing of an Information against respondent for the crime of Perjury.

The Antecedents

On 5 February 2004, respondent, as representative of HGL Development Corporation (HGL), filed before the Regional Trial Court (RTC) of Zamboanga City a "Petition to Declare New Owner's Duplicate of Transfer Certificate of Title Nos. T-107, 353, T-107,354, T-107,355, T-103,790 as Null and Void and to Revive the Old Owner's Duplicate."[5] This petition was docketed as Cadastral Case No. 04-09 before Branch 14 of said court.

It appears that petitioner and his co-owners of the aforementioned parcels of land sold the same to HGL by virtue of a Deed of Absolute Sale dated 19 August 2003.[6] HGL then sought the cancellation of the Transfer Certificate of Titles (TCTs) in the names of the vendors, and the issuance of new TCTs in its name, with the Register of Deeds of Zamboanga City. The latter, however, refused to do so on the ground that **new** owner's duplicate copies of the TCTs covering the subject parcels of land had been issued to the vendors by virtue of an order of RTC, Branch 16, Zamboanga City dated 7 July 1995.[7] Apparently, the vendors succeeded in having the TCTs in their possession cancelled, and new owner's duplicates thereof issued to them, by alleging the loss of their copies of the TCTs.[8] Hence, the refusal of the Register of Deeds of Zamboanga City to cancel the TCTs presented by HGL, it appearing that the same had already been cancelled as far back as 1995.

Demands were then made by respondent upon the vendors to surrender the new owner's duplicate copies of the TCTs to enable HGL to secure their cancellation and the issuance of new TCTs in its name, but the vendors unreasonably refused

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[5] *Id.* at 64-67.

[6] *Id.* at 49-51.

[7] *Rollo*, p. 75.

[8] *Id.* at 123.

to comply with the demands.[9] Thus, the filing of Cadastral Case No. 04-09, wherein HGL, through herein respondent, prayed for the declaration as null and void of the new owner's duplicate TCTs and the revival of the original owner's duplicate TCTs in the possession of HGL.[10] The petition was dismissed by the trial court on 20 May 2004 for lack of merit.[11]

On 2 June 2004, HGL filed a complaint[12] before the Regional Trial Court of Caloocan City against some of the vendors, namely: Sy Pek Ha, Ricafort S. Yu, and herein petitioner Philip S. Yu, for "Specific Performance and Surrender of Owner's Duplicate Titles, Declaratory Relief or Reformation of Instrument, Cancellation and Issuance of New Titles, and Damages," praying, among others, that defendants be ordered to surrender to plaintiff the new owner's duplicate TCTs and that the Register of Deeds of Zamboanga City be ordered to cancel all TCTs in the name of the vendors and new ones be issued to HGL. The complaint was docketed as Civil Case No. C-20899(04).

On 18 August 2005, petitioner filed before the Office of the City Prosecutor of Caloocan City a criminal complaint[13] for Perjury against respondent, alleging that as the representative of HGL, the latter made untruthful statements in the Verification and Certification Against Forum Shopping which he signed and attached to the above-mentioned civil complaint for specific performance. Petitioner claimed that respondent's statement that HGL has not commenced any other action or filed any claim involving the same issues in any other court, tribunal or quasi-judicial agency is absolutely false since the corporation had earlier filed Cadastral Case No. 04-09 with the RTC of Zamboanga City.[14]

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[9] *Id.* at 75.

[10] *Id.* at 119.

[11] *Id.* at 151.

[12] *Id.* at 71-82.

[13] *Id.* at 336-337.

[14] CA *rollo*, p. 90.

The Ruling of the Office of the City Prosecutor of Caloocan City

In its Resolution[15] dated 15 February 2006, the Office of the Assistant City Prosecutor of Caloocan City dismissed, for lack of merit, petitioner's complaint for perjury. It found that while the Zamboanga case and the Caloocan case involve the same *res*, they do not involve the same parties and the same rights or relief prayed for. The causes of action in the two cases are likewise not the same, being founded on different acts. In other words, none of the requisites of forum shopping were satisfied. Hence, it concluded, it follows that respondent did not commit perjury when he made his representations in the Certificate of Non-Forum Shopping.[16]

Petitioner filed an appeal from the Resolution of the city prosecutor dismissing his complaint. In his Petition for Review[17] before the Department of Justice, petitioner claimed that the city prosecutor of Caloocan City committed manifest and reversible error in dismissing the criminal complaint against respondent since all the elements of perjury are present in this case.[18] He thus prayed for the reversal and setting aside of the Resolution of the city prosecutor.[19]

The Ruling of the Department of Justice

In its Resolution[20] dated 4 September 2006, the Department of Justice granted the petition for review and directed the filing of an Information for Perjury against respondent. It held that Cadastral Case No. 04-09, filed in Zamboanga City, involved the same TCTs, the same relief for the declaration of nullity of the TCTs in the possession of the vendors, the same parties and essentially the same facts and issues as Civil Case No. 20899(04)

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[15] *Rollo,* pp. 349-354.

[16] *Id.* at 353-354.

[17] *Id.* at 355-367.

[18] *Id.* at 361.

[19] *Id.* at 367.

[20] CA *rollo supra* note 4.

pending in the RTC of Caloocan City.[21] Thus, it is clear that respondent should have disclosed in his Verification and Certification Against Forum Shopping the previous filing of Cadastral Case No. 04-09.[22]

Respondent filed a Motion for Reconsideration[23] dated 8 September 2006 praying for the reversal of the aforesaid Resolution but the same was denied in a Resolution dated 29 June 2007.[24]

As a result, respondent filed a Petition for *Certiorari* with an Urgent Application for a Temporary Restraining Order and Writ of Preliminary Injunction[25] with the Court of Appeals praying that the appellate court declare that no probable cause exists to indict him for perjury, that the criminal complaint be dismissed, and that a writ of preliminary injunction be issued directing the Secretary of Justice to cease and desist from implementing his assailed resolutions.[26] Respondent claimed that in issuing the questioned resolutions, the Secretary of the Department of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction. He maintained that there is absolutely no probable cause to indict him for perjury as he has not made any willful and deliberate assertion of a falsehood in his Verification and Certification Against Forum Shopping.[27]

The Ruling of the Court of Appeals

In its Decision[28] dated 20 December 2007, the Court of Appeals granted respondent's petition, nullified and set aside the assailed resolutions, and prohibited the Secretary of Justice and the Office

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[21] *Id.* at 34.

[22] *Id.* at 35.

[23] *Id.* at 140-150.

[24] *Id.* at 29.

[25] *Id.* at 2-26.

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

[27] *Id.* at 12.

[28] *Rollo,* pp. 7-23.

of the City Prosecutor of Caloocan and their agents from prosecuting respondent for perjury. The Court of Appeals held that the lack of probable cause against respondent herein is glaringly evident from the records; hence, the Secretary of Justice committed grave abuse of discretion amounting to excess or lack of jurisdiction when he issued the challenged resolutions.[29]

Petitioner filed a motion for reconsideration but the same was denied by the Court of Appeals in a Resolution dated 18 March 2008.[30]

Hence, this petition for review on *certiorari*.

The Issue

The lone issue for consideration in the case at bar is whether or not the Court of Appeals erred in modifying and setting aside the resolutions of the Department of Justice directing the filing of an Information for Perjury against respondent herein.

Petitioner claims that all the elements of perjury –

(a) That the accused made a statement under oath or executed an affidavit upon a material matter;

(b) That the statement or affidavit was made before a competent officer authorized to receive and administer oaths;

(c) That in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and

(d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose

— are present in this case. The Verification and Certification Against Forum Shopping is a statement under oath, subscribed and sworn to before a duly commissioned notary public, in which respondent made a willful and deliberate assertion of a falsehood. The falsehood consists in respondent's pronouncement that the corporation which he represents has not commenced any other action or filed any claim, involving the same issues,

[29] *Id.* at 22.

[30] *Id.* at 25.

in any other court, tribunal or quasi-judicial agency. Petitioner maintains that this statement is absolutely false considering the earlier act of respondent of filing a cadastral case in Zamboanga City involving substantially the same parties, facts, issues and reliefs prayed for.[31] According to petitioner, the two cases have one and the same legal objective: the cancellation of the new owner's duplicate copies of titles in the possession of the defendants (the vendors) in the Caloocan City case and the upholding of the owner's duplicate copies of titles in the corporation's possession. Thus, respondent had the legal obligation to disclose the previous filing and dismissal of the cadastral case.[32]

Petitioner further contends that the matter of whether the act of making a "false certification" should subject the offender to prosecution for perjury is to be tested not by the elements of forum shopping but by the elements of perjury. Consequently, regardless of whether or not respondent is guilty of forum shopping, what is at issue in the criminal complaint is whether respondent made a willful and deliberate assertion in a public document of a falsehood upon a material matter regarding which he had the legal obligation to state the truth. Petitioner submits that respondent had done so, making the latter liable for prosecution for the crime of perjury under Article 183 of the Revised Penal Code.[33]

Finally, petitioner asserts that concomitant with his authority and power to control the prosecution of criminal offenses, it is the public prosecutor who is vested with the discretionary power to determine whether a *prima facie* case exists or not. Given this latitude and authority granted by law to the investigating prosecutor, the rule is that courts will not interfere with the conduct of preliminary investigations or the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for that of the

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[31] *Id.* at 37-38.

[32] *Id.* at 40-41.

[33] *Id.* at 43.

executive branch. As a matter of whether to prosecute or not is purely discretionary on the part of the public prosecutor, his findings on the existence of probable cause are not subject to review by the courts, unless these are patently shown to have been made with grave abuse of discretion.[34]

The Ruling of the Court

At the outset, it must be stated that what the Court is essentially called upon to resolve in this case is the existence of probable cause sufficient to indict respondent for perjury.

Petitioner correctly pointed out that this Court will not ordinarily interfere with the conduct of preliminary investigation and leave to the investigating prosecutor adequate latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against an offender.[35] Nonetheless, as petitioner himself admitted, the rule applies **unless** such determination is patently shown to have been made with grave abuse of discretion. Thus, as an exception, this Court may inquire into the determination of probable cause during preliminary investigation if, based on the records, the prosecutor committed grave abuse of discretion.[36]

The exception to the rule finds application here. As properly found by the Court of Appeals, the Secretary of Justice manifestly acted with or in excess of his authority when he ordered the filing of an information for perjury against respondent despite the absence of probable cause against him.[37]

Petitioner insists that the existence – or absence – of perjury should be defined by its own elements, and not those of forum shopping. Hence, petitioner argued, even if the elements of forum

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[34] *Id.* at 44-46.

[35] *Monfort III vs. Salvatierra*, G.R. No. 168301, 5 March 2007, 517 SCRA 447, 463, citing *Punzalan vs. Dela Peña*, G.R. No. 158543, 21 July 2004, 434 SCRA 601, 611.

[36] *Id.* citing *Filadams Pharma, Inc. vs. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470.

[37] *Rollo,* p. 15.

shopping may not all be present, such fact does not relieve the affiant from liability for perjury if all the elements of this latter offense are otherwise present.[38]

What this argument failed to consider, however, is that since perjury requires a willful and deliberate assertion of a falsehood in a statement under oath or in an affidavit, and the statement or affidavit in question here is respondent's verification and certification against forum shopping, it then becomes necessary to consider the elements of forum shopping to determine whether or not respondent has committed perjury. In other words, since the act of respondent allegedly constituting perjury consists in the statement under oath which he made in the certification of non-forum shopping, the existence of perjury should be determined *vis-à-vis* the elements of forum shopping.

It is significant to note that, notwithstanding his protests and insistence against the application of the elements of forum shopping in deciding whether or not perjury exists, petitioner himself, in his petition, utilized the elements of forum shopping to support his argument that the statement of respondent that "the corporation has not commenced any other action or filed any claim involving the same issues in any other court" is "absolutely false." Thus, petitioner claimed that:

"(a) **As to the principal party**. HGL Development Corporation is the petitioner in both cases. x x x. The fact that in the civil case, x x x the parties involved are HGL and private respondent, among others, is of no moment. It is apparent that the parties are substantially identical, if not the same. x x x.

"(b) **As to the essential facts**. In both cases HGL Development Corporation is asserting **legal ownership** of five parcels of land located at Zamboanga City x x x.

"(c) **As to the essential issues**. The essential issues are identical in both cases. These issues refer to (a) the legal ownership of the subject parcels of land; (b) who between the parties are validly entitled to the owner's duplicate copies of the titles; and (c) which of the titles – the ones in the corporation's possession or in the other

[38] *Id.* at 565.

parties' possession – should be declared valid. In both the cadastral case in Zamboanga City and the civil case in Caloocan City, HGL Development Corporation prayed for **the upholding of its right of ownership over the properties and of the validity of the owner's duplicate copies of titles in its possession and, inevitably, the cancellation or declaration as null and void of contrary owner's duplicate copies of titles over the same properties.**

"(d) **As to the relief prayed for**. In both cases, the corporation prayed for the declaration as null and void of the new owner's duplicate copies and for the revival or restoration of the original duplicate copies in its possession. x x x."[39]

The foregoing is explicit acknowledgement of the necessity of determining first whether or not the elements of forum shopping are present in order to finally resolve the issue of perjury.

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[40]

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility

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[39] *Id.* at 38-39.

[40] *Lim vs. Vianzon*, G.R. No. 137187, 3 August 2006, 497 SCRA 482, 494-495, citing *Rudecon Management Corporation vs. Singson*, G.R. No. 150798, 31 March 2005, 454 SCRA 612, 632-633.

of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[41]

Based on the foregoing considerations, respondent did not have the legal obligation to disclose the previous filing and subsequent dismissal of the cadastral case in Zamboanga City.

As correctly put by the Assistant City Prosecutor of Caloocan City in his Resolution dismissing petitioner's complaint for perjury:

"A perusal of the two cases would show that while it involves the same *res,* it does not involve the same parties or rights or relief prayed for. In sum, none of the requisites [of forum shopping were] satisfied.

"The case in Caloocan was of course founded upon the complainants' failure to comply with its obligations as vendor, and therefore, it cannot be gainsaid that the rights asserted (by respondent as buyer and relief sought therein *i.e.*, specific performance contract of sale) were entirely different from those asserted in Zamboanga (revival of the old owner's duplicate that had been thought to be lost). The latter case stemmed from the finding of the old certificates, leading to respondent's filing a petition to declare the new certificates null and void and to revive the old owner's duplicate. The former case arose from the deed of absolute sale and the failure of the complainant to fulfill its obligation under the contract of sale between the parties herein.

"The causes of action in the two cases are not the same: they are founded on different acts; the rights violated are different; and the relief sought is also different. The *res judicata* test when applied to the two cases in question shows that regardless of whoever will ultimately prevail in the Zamboanga case, the final judgment therein-whether granting or denying the petition-will not be conclusive between the parties in the Caloocan case, and vice versa. x x x."[42]

Moreover, in the Zamboanga case, what was invoked was the court's cadastral or administrative authority, the issue being administrative in nature, involving as it does the correction of

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[41] *Id.* at 495.

[42] *Rollo,* pp. 353-354.

a wrongful issuance of duplicate titles. There were no judicial issues that required resolution.

In the Caloocan case, on the other hand, the issues are civil in nature, concerning the rights and responsibilities of the parties under the Deed of Absolute Sale which they executed. Hence, in this case, the Caloocan court is called upon to exercise its judicial powers.

Clearly, it cannot be said that respondent committed perjury when he failed to disclose in his Certification Against Forum Shopping the previous filing of the cadastral case.

More importantly, it must be emphasized that perjury is the **willful and corrupt** assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. Thus, a mere assertion of a false objective fact or a falsehood is not enough. The assertion must be deliberate and willful.[43]

In the case at bar, even assuming that respondent was required to disclose the Zamboanga case, petitioner failed to establish that respondent's failure to do so was willful and deliberate. Thus, an essential element of the crime of perjury is absent. As a result, there is no reason to disturb the ruling of the Court of Appeals.

WHEREFORE, the instant petition is hereby *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 99893 dated 20 December 2007 and 18 March 2008, respectively, are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Abad,*[**] *JJ.,* concur.

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[43] *Villanueva vs. Secretary of Justice*, G.R. No. 162187, 18 November 2005, 475 SCRA 495, 513, citing *U.S. vs. Estraña*, 16 Phil. 520 (1910) and *Padua vs. Paz*, A.M. No. P-00-1445, 30 April 2003, 402 SCRA 21.

[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

[**] Designated additional member per Raffle dated 1 July 2010.

FIRST DIVISION

[G.R. No. 183094. September 22, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REYNALDO BARDE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FINDINGS OF FACT OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, AS WELL AS ITS CONCLUSIONS ANCHORED ON SAID FINDINGS, ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT.— Primarily, it has been jurisprudentially acknowledged that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. In this case, it is notable that the Court of Appeals affirmed the factual findings of the trial court, according credence and great weight to the testimonies of the prosecution witnesses. Settled is the rule that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court, unless the trial court had overlooked, disregarded, misunderstood, or misapplied some fact or circumstance of weight and significance which if considered would have altered the result of the case. None of these circumstances is attendant in this case. This Court, thus, finds no cogent reason to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.

2. ID.; ID.; ID.; ALIBI AND DENIAL; INHERENTLY WEAK DEFENSES; REQUISITES TO PROSPER; NOT PRESENT

IN CASE AT BAR.— In comparison with the clear and straightforward testimony of prosecution witnesses, all that appellant could muster is the defense of denial and *alibi*. It is well-entrenched that *alibi* and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. They warrant the least credibility or none at all and cannot prevail over the positive identification of the appellant by the prosecution witnesses. For *alibi* to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like *alibi*, as an exonerating justification is inherently weak and if uncorroborated regresses to blatant impotence. Like *alibi*, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. In this case, appellant himself and all his witnesses admitted that appellant was at the scene of the crime until the explosion occurred. With that, the defense ultimately failed to meet the necessary requisites for the proper invocation of *alibi* as a defense.

3. CRIMINAL LAW; COMPLEX CRIME; MULTIPLE MURDER WITH DOUBLE ATTEMPTED MURDER; PRESENT IN CASE AT BAR.— The trial court and the appellate court convicted appellant of the complex crime of multiple murder with multiple frustrated murder. **This Court believes, however, that appellant should only be convicted of the complex crime of multiple murder with double attempted murder.** Appellant's act of detonating a hand grenade, particularly an M26-A1 fragmentation grenade, inside the dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, resulted in the death of 15 people, namely: Francisco Biago, Jr., Roger Siso, Nicanor Oloroso, Margie Bañadera, Victor Bañadera, Bienvenido Bañadera, Diosdado Bañadera, William Butial, Maryjane Bechayda, Richard Blansa, Efren Yasul, Jose Bombales, Deony Balidoy, Daisy Olorozo and Rolly Belga. The fact of death of these deceased victims was evidenced by their respective certificates of death and testimonies of their respective relatives.

The defense similarly admitted that these victims died as a result of the explosion incident. Article 248 of the Revised Penal Code provides: ART. 248. *Murder*. – Any person who, not falling within the provisions of Article 246 shall kill another, **shall be guilty of murder** and shall be punished by *reclusion perpetua* to death **if committed with any of the following attendant circumstances**: 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity. x x x 3. **By means of** inundation, fire, poison, **explosion**, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin. From the afore-quoted provision of law, the killing of the aforesaid deceased victims with the use of explosive, *i.e.*, hand grenade particularly M26-A1 fragmentation grenade, certainly qualifies the crime to murder. x x x Despite the fact that the injuries sustained by Purisima and Ligaya were not mortal or fatal, it does not necessarily follow that the crimes committed against them were simply less serious physical injuries, because appellant was motivated by the same intent to kill when he detonated the explosive device inside the dancing place. **Since the injuries inflicted upon them were not fatal and there was no showing that they would have died if not for the timely medical assistance accorded to them, the crime committed against them is merely attempted murder.**

4. ID.; ID.; ID.; PENALTY.— [I]t is clear that this case falls under the first clause of Article 48 of the Revised Penal Code because by a single act, that of detonating an explosive device inside the dancing place, appellant committed two grave felonies, namely, (1) murder as to the 15 persons named in the Information; and (2) attempted murder as to Purisima and Ligaya. Therefore, this Court holds appellant guilty beyond reasonable doubt of the **complex crime of multiple murder with double attempted murder**. *As to penalty*. Article 48 of the Revised Penal Code explicitly states: ART. 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the **penalty for the most serious crime shall be imposed, the same to be applied in its**

maximum period. A complex crime is committed when a single act constitutes two or more grave or less grave felonies. Appellant's single act of detonating an explosive device may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a single criminal impulse which shows his lesser degree of perversity. Thus, applying the aforesaid provision of law, the maximum penalty for the most serious crime, which is murder, is death. Pursuant, however, to Republic Act No. 9346 which prohibits the imposition of the death penalty, the appellate court properly reduced the penalty of death, which it previously imposed upon the appellant, to *reclusion perpetua*.

5. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN PRESENT, TWO CONDITIONS MUST CONCUR.— Treachery, which was alleged in the Information, also attended the commission of the crime. Time and again, this Court, in a *plethora* of cases, has consistently held that there is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. There are two (2) conditions that must concur for treachery to exist, to wit: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. "The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape.

6. ID.; ID.; ID.; WHEN CONSIDERED GENERIC AGGRAVATING CIRCUMSTANCE; CASE AT BAR.— As elucidated by the trial court in its Decision: The victims were completely unaware of the danger forthcoming to them as they were in the midst of enjoying a dance. The [appellant] who caused the rolling of the hand grenade was at a complete advantage knowing that no risk to his life was involved as he can immediately fled [and] run away from the scene of the crime before any explosion could occur. There was no defense so to speak of that may

came from the victims because they were completely unaware of the danger about to happen in their midst resulting as it did to deaths and injuries to many people among the crowd dancing. The act of rolling the hand grenade is unpardonable. It is a treacherous heinous act of the highest order. The victims can do nothing but to cry to high heavens for vengeance. x x x As supported by the evidence adduced at the trial, [it] is fully convinced that the crime charge was committed under a cloak of treachery, and there is no doubt about it. The attacker suddenly came armed with a live fragmentation grenade, removed its pin and threw it towards the crowd who were enjoying a dance, unsuspecting of any danger that larks in their midst, thereby depriving them of any real opportunity to defend themselves. The attacker has employed a swift and unexpected attack to insure its execution without risk to himself x x x. As the killing, in this case, is perpetrated with both treachery and by means of explosives, the latter shall be considered as a qualifying circumstance since it is the principal mode of attack. Reason dictates that this attendant circumstance should qualify the offense while treachery will be considered merely as a generic aggravating circumstance.

7. ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS.— For evident premeditation to be appreciated, the prosecution must prove the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to their determination to commit the crime; and (3) the lapse of a period of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of the act. However, none of these elements could be gathered from the evidence on record.

8. REMEDIAL LAW; CRIMINAL PROCEDURE; THE COURT SHALL CONSIDER NO EVIDENCE WHICH HAS NOT BEEN FORMALLY OFFERED.— As this Court has previously stated, the rest of the injured victims named in the Information failed to testify. Though their medical certificates were attached in the records, they were not marked as exhibits and were not formally offered as evidence by the prosecution. Consequently, this Court cannot consider the same to hold that the crime committed as to them is frustrated murder and to grant damages in their favor. This Court has held in *People v. Franco*, thus:

We thus reiterate the rule that **the court shall consider no evidence which has not been formally offered**. So fundamental is this injunction that litigants alike are corollarily enjoined to formally offer any evidence which they desire the court to consider. Mr. Chief Justice Moran explained the rationale behind the rule in this wise: The **offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered** by the parties to the suit. Without the testimonies of the other injured victims or their medical certificates, the court will have no basis to hold that appellant committed the crime of frustrated murder as to them.

9. CRIMINAL LAW; CIVIL LIABILITY; MORAL DAMAGES; WHEN AWARD THEREOF IS MANDATORY.— Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof. Moral damages like civil indemnity, is also mandatory upon the finding of the fact of murder. To conform with recent jurisprudence on heinous crimes where the proper imposable penalty is death, if not for Republic Act No. 9346, the award of civil indemnity and moral damages to the heirs of each of the deceased victims are both increased to ₱75,000.00 each. x x x Ordinary human experience and common sense dictate that the wounds inflicted upon the surviving victims, Purisima and Ligaya would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries. It is only justifiable to grant them moral damages in the amount of ₱40,000.00 each in conformity with this Court's ruling in *People v. Mokammad.*

10. ID.; ID.; EXEMPLARY DAMAGES; MAY BE AWARDED IN CRIMINAL CASES AS PART OF CIVIL LIABILITY IF THE CRIME WAS COMMITTED WITH ONE OR MORE AGGRAVATING CIRCUMSTANCES.— It is settled that exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances. In this case, the generic aggravating circumstance of treachery attended the commission of the crime. The award of exemplary damages, therefore, is in order. To conform to current jurisprudence, this Court likewise increased

the award of exemplary damages given by the appellate court to the heirs of each of the deceased victims to ₱30,000.00 each. x x x [T]he award of exemplary damages is also in order considering that the crime was attended by the qualifying circumstance of treachery. The award of exemplary damages to Purisima and Ligaya is increased to ₱30,000.00 to conform to current jurisprudence.

11. ID.; ID.; TEMPERATE DAMAGES; IN LIEU OF ACTUAL DAMAGES, TEMPERATE DAMAGES MAY BE RECOVERED WHERE IT HAS BEEN SHOWN THAT THE VICTIM'S FAMILY SUFFERED SOME PECUNIARY LOSS BUT THE AMOUNT THEREOF CANNOT BE PROVED WITH CERTAINTY AS PROVIDED FOR UNDER ARTICLE 2224 OF THE CIVIL CODE.— Actual damages cannot be awarded for failure to present the receipts covering the expenditures for the wake, coffin, burial and other expenses for the death of the victims. In lieu thereof, temperate damages may be recovered where it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty as provided for under Article 2224 of the Civil Code. This Court finds the award of ₱25,000.00 each to the heirs of each of the deceased victims proper. x x x This Court affirms the appellate court's award of ₱25,000.00 as temperate damages to each of the surviving victims, Purisima and Ligaya. It is beyond doubt that these two surviving victims were hospitalized and spent money for their medication. However, Purisima failed to present any receipt for her hospitalization and medication. Nevertheless, it could not be denied that she suffered pecuniary loss; thus, it is only prudent to award ₱25,000.00 to her as temperate damages. Ligaya, on the other hand, presented receipts for her hospitalization and medication but the receipts were less than ₱25,000.00. In *People v. Magdaraog* citing *People v. Andres, Jr.*, when actual damages proven by receipts during the trial amount to less than ₱25,000.00 as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 24 September 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 01245, which affirmed with modifications, the Decision[2] dated 29 January 2005 of the Regional Trial Court (RTC) of Legazpi City, 5th Judicial Region, Branch 1, in Criminal Case No. 8661, finding herein appellant Reynaldo Barde (appellant) guilty beyond reasonable doubt of the complex crime of multiple murder with multiple frustrated murder. The appellate court, however, increased the penalty imposed upon the appellant by the court *a quo* from *reclusion perpetua* to the ultimate penalty of death, being the maximum penalty prescribed by law, for the crime of murder. In view, however, of the subsequent passage of Republic Act No. 9346[3] prohibiting the imposition of the death penalty, the appellate court reduced the penalty to *reclusion perpetua*. The appellate court further increased the amount of moral and temperate damages awarded by the court *a quo* to the heirs of each of the deceased victims from ₱30,000.00 to ₱50,000.00 and from ₱5,000.00 to ₱25,000.00, respectively. The heirs of each of the deceased victims were also awarded exemplary damages of ₱25,000.00. With respect to the surviving victims, Purisima Dado (Purisima) and Ligaya Dado (Ligaya), the appellate court similarly increased the temperate damages awarded to them by the court *a quo* from ₱5,000.00 to ₱25,000.00 each. They were also awarded exemplary damages of ₱25,000.00 each.

On the other hand, appellant's co-accused and brother, Jimmy Barde (Jimmy), was acquitted for failure of the prosecution to prove conspiracy and for insufficiency of evidence to prove his

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[1] Penned by Associate Justice Noel G. Tijam with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Sesinando E. Villon, concurring. *Rollo*, pp. 3-23.

[2] Penned by Judge Romeo S. Dañas. CA *rollo*, pp. 13-49.

[3] Also known as, "An Act Prohibiting the Imposition of Death Penalty in the Philippines." It was signed into law on 24 June 2006.

guilt for the crime charged. No civil liability has been adjudged against him as there was no preponderance of evidence to prove the same.

Appellant and Jimmy were charged in an Information[4] dated 13 August 1999 with the complex crime of multiple murder and multiple frustrated murder, the accusatory portion of which reads:

That on or about the 15th day of April, 1999 at more or less 12:30 o'clock in the morning, at Sitio Santo Niño, Barangay Liguan, Municipality of Rapu-Rapu, Province of Albay, Philippines and within the jurisdiction of this Honorable Court, the above-named [appellant and Jimmy], conspiring and confederating and acting in concert to achieve a common purpose, willfully, unlawfully and feloniously, **with intent to kill and committed with the qualifying circumstances of treachery (*alevosia*), evident premeditation, and by means of explosion**, did then and there roll and explode a hand grenade (M26-A1 Fragmentation grenade) inside the dance area which exploded and resulted to the instantaneous deaths of the following persons, to wit:

1. FRANCISCO BIAGO, JR. *alias* Tikboy[5]
2. ROGER SISO[6]
3. NICANOR OLOROSO
4. MARGIE BAÑADERA
5. VICTOR BAÑADERA
6. BIENVENIDO BAÑADERA
7. DIOSDADO BAÑADERA[7]
8. WILLIAM BUTIAL
9. MARYJANE BECHAYDA
10. RICHARD BLANSA[8]

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[4] Records, pp. 166-168.

[5] As evidenced by Certificate of Death dated 5 July 1999. Exhibit "1", records, p. 373.

[6] As evidenced by Certificate of Death dated 19 April 1999, Exhibit "F", *id.* at 370.

[7] Per Certificate of Death dated 16 April 1999, it should be "Diosdado Bañadera, Jr., Exhibit "L", *id.* at 29.

[8] In Richard's Certificate of Death dated 3 May 1999 his surname is spelled as "Blanza," Exhibit "K", *id.* at 375.

11. EFREN YASUL[9]
12. JOSE BOMBALES[10]
13. DEONY BALIDOY[11]
14. DAISY OLOROZO[12]
15. ROLLY BELGA[13]

This single act of exploding the hand grenade (M26-A1 Fragmentation grenade) by the above-named [appellant and Jimmy] also caused and resulted in the injuries and wounding on the different and various parts of the bodies of at least seventy six (76) persons, namely, to wit:

1. JOEL MORALES
2. MARGARITA YASOL
3. SANTOS BAÑADERA, JR.
4. LEA BAÑADERA
5. LIGAYA DADO[14]
6. VIRGILIO BAÑADERA
7. MANUEL BAÑADERA
8. RODOLFO GALANG, JR.
9. PURISIMA DAO[15]
10. MELCHOR BALIDOY
11. ABUNDIO BARCENILLA
12. LOURDES BALIDOY
13. JULIO ROMANGAYA
14. FRANDY SANGCAP
39. WILLIAM BALUTE, JR.
40. JESUS CAÑO
41. BIENVENIDO CAÑO
42. VICTOR BORJAL
43. VIRGILIO BALINGBING
44. ALEJANDRO BALUTE
45. GIL BINAMIRA, JR.
46. RODELITA BARNEDO
47. SANTIAGO BARNIDO
48. LEVI MAGALONA
49. JUANITO CAÑO
50. ARELFA BETCHAYDA
51. EDITHA BELCHES
52. JANET BOMBALES

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[9] In Efren's Certificate of Death dated 19 April 1999, his surname is spelled as "Yasol," Exhibit "G", *id.* at 371.

[10] As evidenced by Certificate of Death dated 21 May 1999, Exhibit "H", *id.* at 372.

[11] Per Certificate of Death dated 21 April 1999, Balidoy's first name is spelled as "Junnie," Exhibit "P", *id.* at 380.

[12] Per Certificate of Death dated 15 April 1999, Daisy's surname is spelled as "Oloroso," Exhibit "J", *id.* at 374.

[13] As evidenced by Certificate of Death dated 23 April 1999, Exhibit "M", *id.* at 28.

[14] As evidenced by Medical Certificate dated 26 April 1999, Exhibit "R", *id.* at 382.

[15] As evidenced by Medico-legal Certificate issued on 23 April 1999, Exhibit "Q", *id.* at 381.

15. LOLIT BERSABE
16. DONDON BERSABE
17. FERMIN BARNEDO, JR.
18. THERESA BAJARO
19. ANTONIO ECAL
20. FLORENCIA ECAL
21. MA. NETOS ECAL
22. VENUS ECAL
23. NELIZ MORALINA
24. NORMA BAJARO
25. ALEX BAÑADERA
26. ALADIN MORALINA
27. PEDRO BIÑAS, JR.
28. ROMEO MORALINA
29. PABLITO FORMENTO
30. ANGELES BOMBALES
31. SARDONINA BERSABE
32. DOLORES BAÑADERA
33. CATALINO BARRAMEDA
34. ABIGAEL BROSO
35. NILDA YASOL
36. ESPERANZA BARDE
37. RYAN BALUTE
38. ROBERTO BETITO
53. MARILOU BETCHAYDA
54. MARIFE BETCHAYDA
55. ROSEMARIE BEQUIO
56. ALEXANDER BASALLOTE
57. VICTOR BALLARES
58. LUIS OLOROSO, JR.
59. DOMINGO SISO
60. DOMINGO MICALLER
61. JENIFER OLOROSO
62. CATALINO ARCINUE
63. VIOLETA BUEMIA
64. TIRSO BARBERAN
65. NELLY BUEMIA
66. RODOLFO BOMBITA
67. BIENVENIDO BAÑADERA
68. BERNARDINO BARBERAN, JR.
69. MYLEN CERILLO
70. DIONY BALIDOY
71. PO3 SAMUEL BATAS
72. LITO BERMAS
73. JOSEPHINE BEJORO
74. ROGER BELARO
75. ADELA VERGARA
76. VINCENT BERMEJO

these wounds and injuries caused being fatal and mortal; and thus the above-named [appellant and Jimmy] have already performed all the acts of execution which would have produced the crime of Multiple Murder but which nevertheless did not produce it by reason of causes independent of the will of the [appellant and Jimmy], that is, the able and timely medical assistance given to these victims which prevented their deaths, to the damage and prejudice of the legal heirs of those who died herein and also those who suffered injuries on the various parts of their bodies.[16] [Emphasis supplied].

Upon arraignment,[17] appellant and Jimmy, assisted by counsels *de oficio*, pleaded NOT GUILTY to the crime charged. Thereafter, trial on the merits ensued.

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[16] Records, pp. 166-168.

[17] Per Order dated 19 October 1999, *id.* at 201.

As culled from the records and testimonies of prosecution witnesses, the facts of this case are as follows:

On 14 April 1999, at around 9:00 p.m., Elmer Oloroso (Elmer), one of the prosecution witnesses and first cousin of appellant and Jimmy, was at a dancing place[18] at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, to attend a dance held in connection with the feast day celebration thereat. The dancing place, which was more or less ten (10) meters long and eight (8) meters wide, was enclosed by bamboo fence and properly equipped with long benches. It was well-lighted by the fluorescent lights surrounding it and an oscillating light located at the center thereof. While sitting on the bench inside the dancing place, near the front gate thereof, Elmer saw appellant and Jimmy outside holding flashlights and focusing the same toward the people inside.[19]

At around 11:00 p.m., Jimmy entered the dancing place and approached the person sitting beside Elmer. The latter overheard Jimmy telling the person beside him to go out and look for their companions. Not long after, Jimmy went out of the dancing place and it was the last time Elmer saw him on that particular day.[20]

Then, at around 12:00 midnight, which was already 15 April 1999, Elmer spotted appellant, who was wearing *maong* pants and *maong* jacket with a belt bag tied around his waist, entered the dancing place and walked towards the people who were dancing. At that time, Jimmy was no longer there. Elmer, who was only more or less three (3) meters away from the appellant, saw the latter get a rounded object from his belt bag, which he believed to be a hand grenade as he has previously seen one from military men when he was in Manila. Later, appellant pulled something from that rounded object, rolled it to the ground

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[18] It was simply called a "dancing place," instead of dancing hall because it was just an open space properly enclosed with bamboo fence.

[19] TSN, 12 November 1999, pp. 6-10, 12-13 and 35; TSN, 17 November 1999, pp. 5 and 38; TSN, 25 November 1999, p. 7.

[20] TSN, 12 November 1999, pp. 11 and 13.

towards the center of the dancing place where the people were dancing, and left immediately. Five seconds thereafter, the rounded object exploded. At that moment, appellant was already one-half meter away from the gate of the dancing place.[21]

The lights went off, people scampered away, and many died and were seriously injured as a result of the said explosion. Elmer went out of the dancing place, together with the crowd, through the destroyed bamboo fence. Realizing his brothers and sisters might still be inside the dancing place, Elmer went back, together with the people carrying flashlights and torches, to look for his siblings. There he saw the lifeless body of his brother, Nicanor Oloroso (Nicanor). His other brother, Luis Oloroso (Luis), on the other hand, was seriously injured. Elmer's two other siblings, Jenny and Edwin, both surnamed Oloroso, was slightly injured. Elmer immediately brought Luis at Bicol Regional Training and Teaching Hospital (BRTTH), Albay Provincial Hospital, where the latter was confined for almost three months.[22]

The second prosecution witness, Antonio Barcelona (Antonio), corroborated Elmer's testimony on material points. Antonio first met appellant on 20 March 1999 as the latter's brother, Rafael Barde (Rafael), invited him to their house to attend a dance in Mancao, Rapu-Rapu, Albay. There they had a little conversation and appellant told Antonio that he would not enter any dancing place without creating any trouble. On 14 April 1999 at around 9:30 p.m., Antonio again met appellant at the dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay. While Antonio was inside the dancing place, appellant saw him and summoned him to go out. Then, Antonio and appellant, who was then with his brothers, Jimmy and Joel, both surnamed Barde, conversed about their work.[23] Suddenly, appellant uttered, "*Diyan lang*

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[21] TSN, 12 November 1999, pp. 14-16, 20, 23, 53 and 63; TSN, 17 November 1999, pp. 8 and 29-31; TSN, 18 November 1999, pp. 14 and 37; TSN, 24 November 1999, pp. 9-12; TSN, 25 November 1999, p. 3.

[22] TSN, 12 November 1999, pp. 22-24, 26-32, 36-39 and 43; TSN, 18 November 1999, pp. 12-13.

[23] TSN, 26 November 1999, pp. 4-7 and 24; TSN, 9 February 2000, p. 50.

kamo, dai kamo maghale sa Tokawan na iyan, to kong may ribok man, yaon kami sa likod lang."[24] Appellant told Antonio that he would just be behind him and his companions because there might be a trouble. Thereafter, Antonio went inside the dancing place.[25]

At about 11:30 p.m., the dance was declared open to all. At this juncture, appellant and his two brothers went inside the dancing place. Jimmy then approached Antonio. Then, at around 12:30 a.m. of 15 April 1999, Antonio noticed appellant walking slowly towards the crowd inside the dancing place with his hands partly hidden inside his *maong* jacket with an eagle figure at the back thereof. Suddenly, appellant stopped, looked around, got something from his waist line, rolled it to the ground towards the crowd and hastily left. Antonio confirmed that what was rolled to the ground by appellant was a grenade because after more or less four seconds that thing exploded. Appellant was already in front of the gate of the dancing place when the explosion occurred. Antonio was not injured as he was more or less four (4) meters away from the place where the explosion occurred. Darkness followed after the explosion as the lights went off. People bustled. Many died and were injured.[26]

Other prosecution witnesses, Alexander Basallote (Alexander) and Nilda Yasol (Nilda) – the *Barangay* Captain of Liguan, Rapu-Rapu, Albay, also corroborated the testimonies of Elmer and Antonio.

The prosecution likewise presented Senior Police Officer 2 Hipolito Talagtag (SPO2 Talagtag),[27] who was assigned at R-4

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[24] TSN, 26 November 1999, p. 9.

[25] *Id.* at 10.

[26] *Id.* at 12-17, 21-22; TSN, 10 February 2000, pp. 19 and 22.

[27] He is a member of the Philippine National Police (PNP) since 1981. In 1998, he had undergone training at Camp Bagong Diwa, Taguig City, as scout ranger, airborne SWAT and in Explosive Ordinance Disposal (EOD). During the course of his training, he studied different kinds of explosives, *i.e.*, hand grenade, rifle grenade, bombs, TNT, death cord and the like. He was able to complete the 45 days of training in the said field [TSN, 28 September 2000, pp. 3-5].

Division, Explosive and Ordinance Disposal, Police Regional Office 5 at Camp Simeon Ola, Legazpi City. On 15 April 1999, SPO2 Talagtag received a call from Colonel Delos Santos (Col. Delos Santos), Chief of R-4 Division, Supply of RECOM 5, informing him about the explosion incident happened in a dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, and asking assistance from them. In response thereto, a team was organized composed of members from the Crime Laboratory, IID Investigators, CIS Investigating Agents and the Explosive Ordinance Team. Thereafter, the team proceeded to the scene of the crime. They reached the place at more or less 11:00 a.m. of 16 April 1999. The team found a crater inside the dancing place that served as their lead in determining the kind of explosive used. In the course of their investigation, they interviewed people living nearby who told them that the explosion was loud. Later, SPO2 Talagtag placed a magnet in the crater inside the dancing place and recovered several shrapnels similar to those that can be found in an M26-A1 fragmentation grenade. By reason thereof, SPO2 Talagtag concluded that the explosion was caused by an M26-A1 fragmentation grenade. Thereafter, the recovered shrapnels were turned over to the crime laboratory at Camp Simeon Ola, Legazpi City, for examination.[28]

Engineer Ma. Julieta Razonable (Engr. Razonable), Police Senior Inspector and Forensic Chemical Officer assigned at Camp Simeon Ola, Legazpi City, received the specimen, *i.e.*, the shrapnels recovered at the scene of the crime, for physical examination. Her examination yielded positive result, meaning, the specimen submitted to her were part of a hand grenade fragmentation, M26-A1.[29] This result was subsequently reduced into writing as evidenced by Physical Identification Report No. PI-601-A-99 dated 16 April 1999.[30]

In his defense, appellant vehemently denied the charge against him and offered a different version of the incident.

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[28] TSN, 28 September 2000, pp. 7-16.

[29] TSN, 11 January 2001, pp. 3-4.

[30] Exhibit "O", Records, pp. 4-5.

Appellant asseverated that at around 7:00 p.m. on 14 April 1999 he was at home in Mancao, Rapu-Rapu, Albay, organizing the plates, spoons, forks and other kitchen utensils that they were about to bring to the house of Teodora Arsenue (Teodora) at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, in connection with the feast day celebration in the said place. Then, at around 7:30 p.m., the appellant, together with his mother Gloria Barde (Gloria) and brothers Jimmy, Joel, Rafael, Jovito, Jr., all surnamed Barde, proceeded to the house of Teodora and reached the same before 9:00 p.m. Teodora offered them food. After eating, they acceded to the suggestion of Jovito, Jr., to go to the dancing place also located at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, only a ten minute-walk away from the house of Teodora.[31]

Upon reaching the dancing place, they stayed outside as they had no tickets. At around 11:30 p.m., through the help of William Gutchal (William),[32] appellant and his brothers Joel and Jimmy, both surnamed Barde, were able to enter the dancing place while his mother and other brothers remained outside. They immediately proceeded to the left side of the dancing place near the baffles of the sound system and stood behind the benches as the same were already occupied. The three of them remained in that place until the explosion occurred inside the dancing place, which was more or less twenty-five (25) meters away from them. The people dancing in the area of the explosion died and some were injured.[33]

Appellant claimed that he had no idea how the explosion started because at that time he and his brother Jimmy were talking to Roger Springael (Roger), who was standing outside the bamboo fence surrounding the dancing place, as the latter was interested in buying a fighting cock from him. His other brother, Joel, was also with them, but he was sleeping. In the course of their conversation, he suddenly heard an explosion. All lights went off and there was a total blackout inside the

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[31] TSN, 16 May 2003, pp. 4-9.

[32] Sometimes spelled as Butial.

[33] TSN, 16 May 2003, pp. 10-15.

dancing place. People were then pushing each other in order to get out. Appellant was able to go out and run towards a lighted place nearby. When the people carrying torches came, appellant went back to the dancing place to look for his mother and brothers. It was already 2:00 a.m. of 15 April 1999, when he saw his mother and brothers. They went home afterwards. When they reached their house, appellant and his father went to the house of his injured cousin to inform the latter's family of what happened.[34]

The following day, or on 16 April 1999, appellant and Jimmy were invited by Police Officer, Efren Cardeño (Cardeño), at Camp Simeon Ola, Legazpi City, to be utilized as witnesses to the explosion incident happened on 15 April 1999. They refused the invitation as they did not actually witness the explosion. But, Cardeño insisted. On 17 April 1999, appellant and Jimmy went with Cardeño at Camp Simeon Ola, Legazpi City. Thereafter, they did not see Cardeño anymore.[35]

While appellant was at Camp Simeon Ola, Legazpi City, he was brought in one of the offices there and was told to be a witness to the explosion incident happened at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay. Shortly thereafter, the investigator showed him a typewritten document and was ordered to sign the same but, he refused because he did not understand its contents. Appellant maintained that he was even promised money and work should he sign it and testify but, once again, he refused. Due to his incessant refusal, he was ordered to go out. There he saw Jimmy who told him that he was also made to sign a certain document but, he also refused.[36]

Between 10:00 p.m. to 11:00 p.m. of 17 April 1999, appellant and Jimmy were awakened but the latter continued sleeping. As such, it was only appellant who was brought in another room and was made to drink wine by persons in civilian clothes.

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[34] *Id.* at 16-21.

[35] *Id.* at 24-28.

[36] *Id.* at 29-32.

When appellant declined, he was then accused as the person responsible for the explosion incident. Appellant, however, strongly denied the accusation. At this instance, appellant was kicked and boxed and was ordered to admit the accusation but he refused to admit it. Appellant was subsequently brought inside a detention cell. When he met Jimmy, the latter told him that he was also tortured.[37]

The next day, or on 18 April 1999, appellant and Jimmy were brought at the office of a certain General Navarro and they were ordered to stand up with more than 30 people. Later, Antonio arrived. Appellant avowed that a certain person in civilian clothes instructed Antonio to point at them as the perpetrators of the explosion incident, which Antonio did. When they were pinpointed as the authors of the crime, they neither reacted nor denied the accusations. Afterwards, appellant and Jimmy were brought back inside their detention cell.[38]

Appellant similarly denied having met Antonio on 20 March 1999 at a dance in Mancao, Rapu-Rapu, Albay. Appellant likewise denied having told Antonio that whenever he enters a dance hall he would always create trouble. Appellant maintained that he saw Antonio for the first time when the latter pinpointed him and Jimmy at the office of a certain General Navarro. The second time was when Antonio testified in court. Appellant, however, confirmed that Elmer is his first cousin and he did not know any reason why he would accuse him with such a grave offense.[39]

Other defense witnesses, Roger, Jimmy and Gloria corroborated appellant's testimony.

Wilfredo Echague (Wilfredo), a radio broadcaster at Radio *Filipino, DWRL*, since 19 February 1991, testified that on 11 August 2001 while conducting series of interviews in relation to the explosion incident that happened on 15 April 1999 at

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[37] *Id.* at 33-38.

[38] TSN, 18 July 2003, pp. 4-8.

[39] *Id.* at 10-11 and 19.

Sitio Sto. Niño, Liguan, Rapu-Rapu, Albay, he met Violeta Buemia (Violeta) at the latter's residence in Cabangan, Villa Hermosa, Rapu-Rapu, Albay, who claimed personal knowledge about the explosion incident. Wilfredo's interview on Violeta was recorded by the former. On 17 August 2001, he accompanied Violeta to the National Bureau of Investigation (NBI), Legazpi City, where she executed her sworn statement before Atty. Raymundo D. Sarga, Jr. (Atty. Sarga), Head Agent of NBI, Legazpi City.[40]

Violeta affirmed that Wilfredo had interviewed her regarding the explosion incident and he had also accompanied her in executing her sworn statement before the NBI, Legazpi City.[41] During her testimony, she disclosed that at around 10:00 p.m. of 14 April 1999, she and her daughter entered the dancing place at Sto. Niño, Liguan, Rapu-Rapu, Albay. Her daughter sat down while she stood near the gate. At round 12:00 a.m., which was already 15 April 1999, she went out to urinate. In a distance of more or less two (2) meters, she saw Eddie Oloroso (Eddie) standing outside the dancing place and then throw something inside that hit the wire beside a fluorescent bulb causing some sparks. The place became very bright and she confirmed that it was really Eddie who threw that something. Eddie then ran away. The thing exploded when it fell on the ground. The place became dark thereafter. She was hit by the flying pebbles coming from the explosion. She then looked for her daughter and was able to find her. Many died and seriously injured in the said explosion incident.[42]

Violeta also explained that it took her more than two years after the incident happened to come out and testify because she was afraid. Her conscience, however, kept bothering her so she decided to divulge what she knew about the incident.[43] Later in her testimony, Violeta admitted that she saw Eddie

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[40] TSN, 5 December 2001, pp. 3-15.

[41] TSN, 16 May 2002, p. 4.

[42] TSN, 10 April 2002, pp. 6-17.

[43] TSN, 16 May 2002, pp. 6-8.

outside the dancing place and it was appellant and Jimmy, whom she saw sitting inside the dancing place at the far end of the fence.[44]

Finding the defense of appellant and Jimmy unmeritorious *vis-a-vis* the evidence proffered by the prosecution, the trial court rendered its Decision on 29 January 2005 finding appellant guilty of the complex crime of multiple murder with multiple frustrated murder and imposing upon him the penalty of *reclusion perpetua*. He was also ordered to pay the legal heirs of each of the deceased victims the amount of ₱50,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱5,000.00 as temperate damages, as well as each of the surviving victims, Purisima and Ligaya, the amount of ₱20,000.00 as moral damages and ₱5,000.00 as temperate/actual damages. Jimmy, on the other hand, was acquitted of the crime charged for the prosecution's failure to prove conspiracy and for insufficiency of evidence. No civil liability was adjudged against him there being no preponderance of evidence to prove the same.[45]

Aggrieved, appellant moved for the reconsideration of the aforesaid RTC Decision but it was denied in an Order[46] dated 15 June 2005 for lack of merit.

Accordingly, appellant elevated the 29 January 2005 RTC Decision to the Court of Appeals with the lone assignment of error, thus:

THE TRIAL COURT GRAVELY ERRED IN FINDING [APPELLANT] GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT.[47]

On 24 September 2007, the Court of Appeals rendered its Decision, disposing:

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[44] TSN, 10 July 2001, pp. 5-6.

[45] CA *rollo*, pp. 46-49

[46] Records, pp. 625-630.

[47] CA *rollo*, pp. 66-67.

WHEREFORE, the Appeal is Denied. The Decision dated [29 January 2005] of the [RTC] of Lega[z]pi City, Branch 1, in Criminal Case No. 8661, is **AFFIRMED** with **MODIFICATION** in that:

1. The [appellant] shall suffer the penalty of **Death**. However, in view of the subsequent passage of R.A. No. 9346, which was approved on [24 June 2006], which repealed R.A. No. 8177[48] and R.A. No. 7659,[49] the penalty of Death is REDUCED to ***RECLUSION PERPETUA***.

2. The [appellant] is hereby ordered to indemnify the heirs of the deceased the amount of ₱50,000.00, as moral damages, ₱25,000.00, as temperate damages and ₱25,000.00 as exemplary damages. [Appellant] is also ordered to pay each Purisima Dado and Ligaya Dado temperate damages in the amount of ₱25,000.00 and exemplary damages in the amount of ₱25,000.00.[50] [Emphasis supplied].

Appellant moved for the reconsideration of the aforesaid Court of Appeals Decision, but to no avail.[51]

Unable to accept his conviction, appellant appeals to this Court reiterating the same assignment of error he raised before the Court of Appeals, to wit: *the trial court gravely erred in finding appellant guilty of the crime charged despite failure of the prosecution to establish his guilt beyond reasonable doubt.*

Appellant asserts that his guilt was not proven beyond reasonable doubt because the evidence presented by the prosecution was not sufficient to overcome his constitutionally enshrined right to be presumed innocent. He casts doubts on the credibility of prosecution witness Elmer because his statements

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[48] "An Act Designating Death by Lethal Injection as the Method of Carrying Out Capital Punishment Amending for the Purpose of Article 81 of the Revised Penal Code, as amended by Section 24 of Republic Act No. 7659."

[49] "An Act to Impose the Death Penalty on Certain Heinous Crimes, amending for that Purpose the Revised Penal Code, as amended, other Special Penal Laws and for Other Purposes."

[50] CA *rollo*, pp. 21-22.

[51] *Id.* at 211.

were replete with inconsistencies. According to appellant, Elmer, at first, declared that after the explosion, lights went off and he saw appellant leave the dancing place but Elmer later stated that immediately after appellant threw the grenade, the latter went out and upon reaching the gate, the explosion occurred. These inconsistent statements of Elmer allegedly created doubts as to what actually transpired and who the real culprit was. Appellant then claims that there is a possibility that Elmer is a rehearsed witness as such inconsistencies relate to material points.

Appellant's contentions are not well-founded, thus, his conviction must stand.

Primarily, it has been jurisprudentially acknowledged that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth.[52] In this case, it is notable that the Court of Appeals affirmed the factual findings of the trial court, according credence and great weight to the testimonies of the prosecution witnesses. Settled is the rule that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court,[53] unless the trial court had overlooked, disregarded, misunderstood, or misapplied some fact or circumstance of weight and significance which if considered would have altered the result of the case.[54] None of these circumstances is attendant in this case. This Court, thus, finds no cogent reason to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.

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[52] *People v. Lalongisip,* G.R. No. 188331, 16 June 2010.

[53] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 730.

[54] *People v. Cahindo,* 334 Phil. 507, 512 (1997).

Prosecution witnesses, Elmer and Antonio, actually witnessed the explosion incident. Both of them narrated in detail the events that transpired prior, during and after the explosion. They had a vivid recollection of how appellant entered the dancing place, walked towards the people who were dancing, got a rounded object from the belt bag tied on his waist, pulled something from it, rolled it to the ground towards the people who were dancing and left the place rapidly. Immediately thereafter, the explosion occurred. The trial court characterized their testimonies as candid, spontaneous and straightforward that despite rigid cross-examination their testimonies on who and how the crime was committed remained unshaken and undisturbed.[55]

With certainty, these prosecution witnesses positively identified appellant as the person who rolled a rounded object, which was later confirmed as an M26-A1 fragmentation grenade, towards the people who were dancing, the explosion killing and causing injuries to many. The identity of appellant was clear to the prosecution witnesses because the dancing place where the explosion occurred was well lighted. Besides, Elmer and Antonio knew the appellant well. Elmer is appellant's first cousin. Antonio met appellant prior to the explosion incident at a dance in Mancao, Rapu-Rapu, Albay, where they engaged in some conversations. Given these circumstances, the prosecution witnesses could not have been mistaken as to appellant's identity.

The records were also wanting in evidence that would show that these witnesses were impelled by improper motive to impute such a grave offense against the appellant. Even appellant himself admitted that he did not know any reason why Elmer would accuse him with such an offense with pernicious consequences on his life and liberty, considering the fact that they are relatives.

It bears stressing that Elmer's brother, Nicanor, died, his other brother, Luis, was seriously injured and almost died and his two other siblings were also injured because of the explosion. Elmer had more than enough reason to identify the

[55] CA *rollo*, p. 40.

appellant.[56] Indeed, his relationship to the victims cannot be taken against him and it does not automatically impair his credibility and render his testimony less worthy of credence since that no improper motive can be ascribed to him for testifying.[57] It would be unnatural for a relative who is interested in seeking justice for the victims to testify against an innocent person and allow the guilty one to go unpunished.[58] Rather, his inherent desire to bring to justice those whom he personally knew committed a crime against his close relative makes his identification of the appellant all the more credible.[59]

In comparison with the clear and straightforward testimony of prosecution witnesses, all that appellant could muster is the defense of denial and *alibi*. It is well-entrenched that *alibi* and denial are inherently weak and have always been viewed with disfavor by the courts due to the facility with which they can be concocted. They warrant the least credibility or none at all and cannot prevail over the positive identification of the appellant by the prosecution witnesses.[60] For *alibi* to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[61] Denial, like *alibi*, as an exonerating justification is inherently weak and if uncorroborated regresses to blatant impotence. Like *alibi*, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.[62]

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[56] *People v. Gaviola*, 384 Phil. 314, 319 (2000).

[57] *People v. Batidor*, 362 Phil. 673, 685 (1999).

[58] *People v. Gaviola*, *supra* note 56; *People v. Batidor*, *id.*

[59] *People v. Gaviola*, *id.* at 319-320.

[60] *People v. Estepano*, 367 Phil. 209, 217-218 (1999).

[61] *People v. Berdin*, 462 Phil. 290, 304 (2003).

[62] *People v. Francisco*, 397 Phil. 973, 985 (2000).

In this case, appellant himself and all his witnesses admitted that appellant was at the scene of the crime until the explosion occurred. With that, the defense ultimately failed to meet the necessary requisites for the proper invocation of *alibi* as a defense.

Appellant's defense of denial cannot also be given any considerable weight as it was unsubstantiated. The testimony of Violeta pointing at Eddie as the real culprit is intended to bolster appellant's defense of denial. However, it cannot be given credence. Her testimony was given only after more than two years from the time the incident happened, and she failed to offer any convincing evidence to justify such delay. Records do not show that there was any threat on Violeta's life that might have prevented from coming out to testify. She herself admitted that after the explosion incident she did not see Eddie anymore. Eddie then could not have possibly threatened her. She could freely testify on what she knew about the explosion incident had she wanted to. Her alleged fear is unfounded. It cannot justify her long delay in disclosing it before the court *a quo*. Moreover, if she was, indeed, afraid, she would not have allowed herself to be interviewed by a radio broadcaster and would not have divulged to him all that she knew about the incident. Instead of directly disclosing it to the proper authorities, she had chosen to tell it first to a radio broadcaster. Further, the only reason she gave the court for her silence of more than two years was that she began to be bothered by her conscience as she recently kept on dreaming of those who died in the explosion incident especially during "All Souls Day." Violeta, in other words, cannot rely on the doctrine that delay of witnesses in revealing what they know about a crime is attributable to their natural reticence against involvement therein.[63]

More telling is Violeta's categorical admission that Eddie was outside the dancing place and it was appellant whom she saw inside the dancing place prior to the explosion incident. With this testimony, Violeta made appellant's defense of denial even weaker.

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[63] *People v. Berja*, 331 Phil. 514, 526 (1996).

In light of the categorical and positive identification of the appellant by prosecution witnesses, without any showing of ill-motive on the part of the latter testifying on the matter, appellant's defense of bare denial and *alibi* cannot prosper.[64]

As regards the alleged inconsistencies on Elmer's narration of events, this Court considers the same trivial, inconsequential and do not affect the credibility of the statement that it was appellant who rolled the hand grenade towards the people dancing inside the dancing place, the explosion killing and injuring scores of victims. Furthermore, the alleged inconsistencies pointed to by appellant have been properly clarified in the course of Elmer's testimony. As the Court of Appeals stated in its Decision, thus:

> Records reveal that during the direct examination, Elmer testified that immediately after the [appellant] rolled the grenade, he went out and when he was about to reach the gate the grenade exploded, while on cross-examination, Elmer testified that he saw [appellant] leave the [dancing place] after the explosion. However, when the trial court and [appellant's counsel] asked him about the inconsistency, Elmer clarified and confirmed that [appellant] left the dance place before the explosion.[65]

Inconsistencies in the testimonies of witnesses which refer to minor and insignificant details do not destroy their credibility. They, instead, manifest truthfulness and candor and erase any suspicion of rehearsed testimony.[66]

All told, this Court affirms the findings of the trial court and the appellate court that, indeed, appellant was the author of the explosion incident that happened on 15 April 1999 inside the dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, which took away the lives and caused injuries to the people thereat.

As to the crime committed. The trial court and the appellate court convicted appellant of the complex crime of multiple murder with multiple frustrated murder. **This Court believes, however,**

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[64] *People v. Ondalok*, 339 Phil. 17, 26 (1997).

[65] *Rollo*, p. 18.

[66] *People v. Mallari*, 369 Phil. 872, 884-885 (1999).

that appellant should only be convicted of the complex crime of multiple murder with double attempted murder.

Appellant's act of detonating a hand grenade, particularly an M26-A1 fragmentation grenade, inside the dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, resulted in the death of 15 people, namely: Francisco Biago, Jr., Roger Siso, Nicanor Oloroso, Margie Bañadera, Victor Bañadera, Bienvenido Bañadera, Diosdado Bañadera, William Butial, Maryjane Bechayda, Richard Blansa, Efren Yasul, Jose Bombales, Deony Balidoy, Daisy Olorozo and Rolly Belga. The fact of death of these deceased victims was evidenced by their respective certificates of death and testimonies of their respective relatives. The defense similarly admitted that these victims died as a result of the explosion incident.

Article 248 of the Revised Penal Code provides:

> ART. 248. *Murder*. – Any person who, not falling within the provisions of Article 246 shall kill another, **shall be guilty of murder** and shall be punished by *reclusion perpetua* to death **if committed with any of the following attendant circumstances**:
>
> 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
>
> x x x x x x x x x
>
> 3. **By means of** inundation, fire, poison, **explosion**, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin. [Emphasis supplied].

From the afore-quoted provision of law, the killing of the aforesaid deceased victims with the use of explosive, *i.e.*, hand grenade particularly M26-A1 fragmentation grenade, certainly qualifies the crime to murder.

Treachery, which was alleged in the Information, also attended the commission of the crime. Time and again, this Court, in a *plethora* of cases, has consistently held that there is treachery when the offender commits any of the crimes against persons,

employing means, methods or forms in the execution thereof, which tend directly and specially to ensure its execution without risk to himself arising from the defense that the offended party might make. There are two (2) conditions that must concur for treachery to exist, to wit: (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[67] "The essence of treachery is that the attack is deliberate and without warning, done in a swift and unexpected manner, affording the hapless, unarmed and unsuspecting victim no chance to resist or escape."[68]

As elucidated by the trial court in its Decision:

> The victims were completely unaware of the danger forthcoming to them as they were in the midst of enjoying a dance. The [appellant] who caused the rolling of the hand grenade was at a complete advantage knowing that no risk to his life was involved as he can immediately fled [and] run away from the scene of the crime before any explosion could occur. There was no defense so to speak of that may came from the victims because they were completely unaware of the danger about to happen in their midst resulting as it did to deaths and injuries to many people among the crowd dancing. The act of rolling the hand grenade is unpardonable. It is a treacherous heinous act of the highest order. The victims can do nothing but to cry to high heavens for vengeance.
>
> x x x x x x x x x
>
> As supported by the evidence adduced at the trial, [it] is fully convinced that the crime charge was committed under a cloak of treachery, and there is no doubt about it. The attacker suddenly came armed with a live fragmentation grenade, removed its pin and threw it towards the crowd who were enjoying a dance, unsuspecting of any danger that larks in their midst, thereby depriving them of any real opportunity to defend themselves. The attacker has employed a swift and unexpected attack to insure its execution without risk to himself x x x.[69]

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[67] *People v. Mokammad*, G.R. No. 180594, 19 August 2009, 596 SCRA 497, 509.

[68] *People v. Lansang*, 436 Phil. 71, 78 (2002).

[69] CA *rollo*, pp. 37-38.

As the killing, in this case, is perpetrated with both treachery and by means of explosives, the latter shall be considered as a qualifying circumstance since it is the principal mode of attack. Reason dictates that this attendant circumstance should qualify the offense while treachery will be considered merely as a generic aggravating circumstance.[70]

The Information also alleged that evident premeditation attended the commission of the crime. For evident premeditation to be appreciated, the prosecution must prove the following elements: (1) the time when the accused decided to commit the crime; (2) an overt act showing that the accused clung to their determination to commit the crime; and (3) the lapse of a period of time between the decision and the execution of the crime sufficient to allow the accused to reflect upon the consequences of the act.[71] However, none of these elements could be gathered from the evidence on record.

Appellant's act of detonating a hand grenade, particularly M26-A1 fragmentation grenade, inside the dancing place at *Sitio* Sto. Niño, Liguan, Rapu-Rapu, Albay, likewise resulted in the wounding of several persons. But, out of the 76 injured victims named in the Information, only Purisima and Ligaya, both surnamed Dado, appeared personally in court to testify on the injuries and damages sustained by them by reason thereof.

Purisima affirmed that after the explosion she was brought to the hospital because she suffered punctured wounds on her legs and forehead by reason thereof. Also, she was not able to walk for two (2) weeks. She was not confined though.[72] She was issued medical certificate[73] dated 23 April 1999 in relation thereto stating that her injuries will incapacitate her or will

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[70] *Malana v. People*, G.R. No. 173612, 26 March 2008, 549 SCRA 451, 470-471.

[71] *People v. Caballes*, G.R. Nos. 102723-24, 19 June 1997, 274 SCRA 83, 97-98.

[72] TSN, 11 January 2001, pp. 9-10.

[73] Records, p. 381.

require medical assistance for one to two weeks. Her testimony, as well as her medical certificate, however, never mentioned that the wounds or injuries sustained by her were fatal or mortal and had it not for the timely medical assistance accorded to her she would have died. In the same way, Ligaya stated that because of the explosion she suffered blasting injuries on her chest and right forearm. She was confined and treated for five days at BRTTH, Legazpi City,[74] as evidenced by her medical certificate[75] dated 26 April 1999. There was also no mention that her injuries and wounds were mortal or fatal.

Despite the fact that the injuries sustained by Purisima and Ligaya were not mortal or fatal, it does not necessarily follow that the crimes committed against them were simply less serious physical injuries,[76] because appellant was motivated by the same intent to kill when he detonated the explosive device inside the dancing place.[77] **Since the injuries inflicted upon them were not fatal and there was no showing that they would have died if not for the timely medical assistance accorded to them, the crime committed against them is merely attempted murder.**

As this Court has previously stated, the rest of the injured victims named in the Information failed to testify. Though their medical certificates were attached in the records, they were not marked as exhibits and were not formally offered as evidence by the prosecution. Consequently, this Court cannot consider the same to hold that the crime committed as to them is frustrated murder and to grant damages in their favor. This Court has held in *People v. Franco*,[78] thus:

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[74] TSN, 11 January 2001, pp. 12-14.

[75] Records, p. 382.

[76] ART. 265. *Less serious physical injuries.* — Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*. [Revised Penal Code].

[77] *Malana v. People*, *supra* note 70.

[78] 336 Phil. 206 (1997).

We thus reiterate the rule that **the court shall consider no evidence which has not been formally offered**. So fundamental is this injunction that litigants alike are corollarily enjoined to formally offer any evidence which they desire the court to consider. Mr. Chief Justice Moran explained the rationale behind the rule in this wise:

The **offer is necessary because it is the duty of a judge to rest his findings of facts and his judgment only and strictly upon the evidence offered** by the parties to the suit.[79] [Emphasis supplied].

Without the testimonies of the other injured victims or their medical certificates, the court will have no basis to hold that appellant committed the crime of frustrated murder as to them.

Given the foregoing, it is clear that this case falls under the first clause of Article 48[80] of the Revised Penal Code because by a single act, that of detonating an explosive device inside the dancing place, appellant committed two grave felonies, namely, (1) murder as to the 15 persons named in the Information; and (2) attempted murder as to Purisima and Ligaya.

Therefore, this Court holds appellant guilty beyond reasonable doubt of the **complex crime of multiple murder with double attempted murder**.

As to penalty. Article 48 of the Revised Penal Code explicitly states:

ART. 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the **penalty for the most serious crime shall be imposed, the same to be applied in its maximum period**. [Emphasis supplied].

A complex crime is committed when a single act constitutes two or more grave or less grave felonies. Appellant's single act

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[79] *Id.* at 210.

[80] ART. 48. *Penalty for complex crimes*. – When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000).

of detonating an explosive device may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered only as a single crime in law on which a single penalty is imposed because the offender was impelled by a single criminal impulse which shows his lesser degree of perversity.[81] Thus, applying the aforesaid provision of law, the maximum penalty for the most serious crime, which is murder, is death. Pursuant, however, to Republic Act No. 9346 which prohibits the imposition of the death penalty, the appellate court properly reduced the penalty of death, which it previously imposed upon the appellant, to *reclusion perpetua*.

As to damages. Article 2206 of the Civil Code provides that when death occurs as a result of a crime, the heirs of the deceased are entitled to be indemnified for the death of the victim without need of any evidence or proof thereof.[82] Moral damages like civil indemnity, is also mandatory upon the finding of the fact of murder.[83] To conform with recent jurisprudence on heinous crimes where the proper imposable penalty is death, if not for Republic Act No. 9346, the award of civil indemnity and moral damages to the heirs of each of the deceased victims are both increased to ₱75,000.00 each.[84]

It is settled that exemplary damages may be awarded in criminal cases as part of civil liability if the crime was committed with one or more aggravating circumstances.[85] In this case, the generic aggravating circumstance of treachery attended the commission of the crime. The award of exemplary damages, therefore, is in order. To conform to current jurisprudence, this Court likewise

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[81] *Malana v. People*, *supra* note 70 at 468.

[82] *People v. Galladan*, 376 Phil. 682, 687 (1999).

[83] *People v. Catian*, 425 Phil. 364, 380 (2002).

[84] *People v. Sanchez*, G.R. No. 188610, 29 July 2010 citing *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738.

[85] *People v. Alajay*, 456 Phil. 83, 96 (2003).

increased the award of exemplary damages given by the appellate court to the heirs of each of the deceased victims to ₱30,000.00 each.[86]

Actual damages cannot be awarded for failure to present the receipts covering the expenditures for the wake, coffin, burial and other expenses for the death of the victims. In lieu thereof, temperate damages may be recovered where it has been shown that the victim's family suffered some pecuniary loss but the amount thereof cannot be proved with certainty as provided for under Article 2224 of the Civil Code.[87] This Court finds the award of ₱25,000.00 each to the heirs of each of the deceased victims proper.

The surviving victims, Purisima and Ligaya, are also entitled to moral, temperate and exemplary damages.

Ordinary human experience and common sense dictate that the wounds inflicted upon the surviving victims, Purisima and Ligaya would naturally cause physical suffering, fright, serious anxiety, moral shock, and similar injuries. It is only justifiable to grant them moral damages in the amount of ₱40,000.00 each in conformity with this Court's ruling in *People v. Mokammad*.[88]

This Court affirms the appellate court's award of ₱25,000.00 as temperate damages to each of the surviving victims, Purisima and Ligaya. It is beyond doubt that these two surviving victims were hospitalized and spent money for their medication. However, Purisima failed to present any receipt for her hospitalization and medication. Nevertheless, it could not be denied that she suffered pecuniary loss; thus, it is only prudent to award ₱25,000.00 to her as temperate damages.[89] Ligaya, on the other hand, presented receipts for her hospitalization

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[86] *People v. Sanchez*, *supra* note 84.

[87] *Nueva España v. People*, G.R. No. 163351, 21 June 2005, 460 SCRA 547, 557.

[88] *Supra* note 67 at 513.

[89] *People v. Mokammad*, *supra* note 67.

and medication but the receipts were less than ₱25,000.00. In *People v. Magdaraog*[90] citing *People v. Andres, Jr.*,[91] when actual damages proven by receipts during the trial amount to less than ₱25,000.00 as in this case, the award of temperate damages for ₱25,000.00 is justified in lieu of actual damages of a lesser amount.

Finally, the award of exemplary damages is also in order considering that the crime was attended by the qualifying circumstance of treachery.[92] The award of exemplary damages to Purisima and Ligaya is increased to ₱30,000.00 to conform to current jurisprudence.

WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01245 dated 24 September 2007 is hereby *AFFIRMED* with *MODIFICATIONS*. Appellant is found guilty of the complex crime of multiple murder with double attempted murder. In view, however, of Republic Act No. 9346 prohibiting the imposition of the death penalty, appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* without the benefit of parole. The award of civil indemnity, moral and exemplary damages to the heirs of each of the deceased victims are hereby increased to ₱75,000.00, ₱75,000.00, and ₱30,000.00, respectively. The surviving victims, Purisima and Ligaya, are also awarded moral damages of ₱40,000.00 each. The award of exemplary damages to these surviving victims is likewise increased to ₱30,000.00 each.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Del Castillo, JJ.,* concur.

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[90] G.R. No. 151251, 19 May 2004, 428 SCRA 529, 543.

[91] 456 Phil. 355 (2003).

[92] *People v. Mokammad*, *supra* note 67 at 513.

[*] Per Special Order No. 884, Associate Justice Conchita Carpio Morales is designated as an additional member of the First Division in place of Associate Justice Teresita J. Leonardo-De Castro, who is on Official Leave.

FIRST DIVISION

[G.R. No. 185008. September 22, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MAXIMO OLIMBA *alias* "JONNY",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; PRINCIPLES IN THE DETERMINATION OF THE INNOCENCE OR GUILT OF THE ACCUSED IN RAPE CASES.— The well-entrenched principles in the determination of the innocence or guilt of the accused in rape cases are, once again, seriously considered in the evaluation of this case. The three principles are: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.

2. ID.; ID.; WHEN AN ACCUSED MAY BE CONVICTED ON THE BASIS OF THE LONE, UNCORROBORATED TESTIMONY OF THE RAPE VICTIM.— Due to the nature of the commission of the crime of rape, the testimony of the victim may be sufficient to convict the accused, provided that such testimony is "credible, natural, convincing and consistent with human nature and the normal course of things." Thus, in *People v. Leonardo*, we stated the evidentiary value of the testimony of the rape victim: Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.

3. ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.— Time and again, we reiterate that *lust is no respecter of time and place*. Thus, in *People v. Anguac*, we rejected appellant's claim that it is impossible for the victim's siblings, who were sleeping with her, not to be awakened during the rape incident because, in numerous cases, this Court has found that rape could indeed be committed in the same room where other family members are sleeping.

4. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; MUST BE STRONGLY SUPPORTED BY CORROBORATIVE EVIDENCE IN ORDER TO MERIT CREDIBILITY.— We cannot give weight to the self-serving alibi and denial of the appellant over the positive and straight forward testimony of AAA and BBB. Once more, we apply the settled rule that "alibi is an inherently weak defense that is viewed with suspicion because it is easy to fabricate." Alibi and denial must be strongly supported by corroborative evidence in order to merit credibility.

5. CRIMINAL LAW; RAPE; ELEMENTS; CASE AT BAR.— Under Sec. 2 of the Anti-Rape Law of 1997, rape is committed, among others, "[b]y a man who shall have carnal knowledge of a woman" by means of force, threat or intimidation. x x x The presence of threat and intimidation was likewise established. After every rape, appellant threatened AAA that he would kill her siblings should she report the incidents. Also, in view of their father-daughter relationship, the moral ascendancy of appellant over AAA and BBB can substitute for violence and intimidation. For this reason, appellant's use of a six-inch long knife to cower BBB in fear and yield her into submission can be considered already a surplusage for the purpose of proving the element of threat or intimidation. With the testimonies of AAA and BBB, and even assuming for the sake of argument that the defense was able to diminish the probative value of the medical findings presented to corroborate the testimony of the victims, we are convinced that the prosecution has established the guilt of the appellant beyond reasonable doubt. It bears stressing that the lone and uncorroborated testimony of a rape victim, as long as it is clear, convincing and otherwise consistent with human nature, may suffice to convict the accused.

6. ID.; ID.; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; ESTABLISHED IN CASE AT BAR.— The twin qualifying circumstances of minority and relationship that were specifically alleged in the Informations were likewise adequately established by the prosecution. The machine copies of the certificates of live birth of AAA and BBB, which the defense voluntarily admitted to be faithful reproductions of the original copies, the testimonies of AAA and BBB stating that the appellant is their father, and the testimony of appellant himself admitting that AAA and BBB are his daughters, sufficiently proved the following: (1) that AAA and BBB were born on 18 November 1989 and 6 January 1991, respectively; (2) that they were minors, being 13 and 12 years old, respectively, at the time they were repeatedly defiled during the early months of 2003; and (3) that appellant is their father. These are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court, which provides that "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof."

7. ID.; ID.; EACH AND EVERY CHARGE OF RAPE IS A DISTINCT AND SEPARATE CRIME.— Settled is the rule that each and every charge of rape is a distinct and separate crime; each must be proven beyond reasonable doubt. It is, therefore, necessary that the victim of rape provide further details on how each of the act was committed, otherwise, the bare allegation would be inadequate to establish the guilt of the accused.

8. ID.; ID.; CONVICTION; QUANTUM OF EVIDENCE REQUIRED FOR THE CONVICTION OF AN ACCUSED IS PROOF BEYOND REASONABLE DOUBT.— Basic is the rule that where the prosecution fails to meet the quantum of evidence required for the conviction of an accused, that is, proof beyond reasonable doubt, this Court shall consider in the latter's favor his constitutional right to be presumed innocent. Necessarily, appellant should be acquitted in these cases. In light of this result, we see a need to remind the prosecution to ensure that the quantum of evidence required for the conviction of an accused charged of multiple counts of rape or any crime for that matter is met in accordance with the ruling in this case.

9. ID.; ID.; IMPOSABLE PENALTY.— *Penalty of reclusion perpetua in lieu of death penalty; non-eligibility for parole.* Article 266-B of the Revised Penal Code provides that the penalty of death shall be imposed when rape is committed with the twin qualifying circumstances of minority and relationship. However, with the enactment of Republic Act No. 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*) on 24 June 2006, the Court of Appeals correctly reduced the penalty of death to *reclusion perpetua* in Criminal Case Nos. 2234 to 2237 and 2239. This, notwithstanding, appellant should not be eligible for parole as the law specifically provides: Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

10. ID.; ID.; CIVIL LIABILITY; PROPER MONETARY AWARDS.— Finding appellant guilty of only three (3) counts of rape committed against AAA in Criminal Case Nos. 2234, 2237, and 2239 and two (2) counts of rape committed against BBB in Criminal Case Nos. 2235 and 2236, all qualified by the twin special aggravating circumstances of minority and relationship, and applying current jurisprudence, each victim shall be entitled to the following for each count of rape: civil indemnity in the amount of ₱75,000.00; and moral damages in the amount of ₱75,000.00. Also for each count of rape, the award of exemplary damages in the amount of ₱30,000.00 "to set a public example and serve as deterrent against elders who abuse and corrupt the youth" is likewise in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Widower Maximo Olimba *alias* "Jonny", herein appellant, was accused of several counts of rape by two (2) of his three

(3) minor daughters aged thirteen[1] and twelve.[2] He seeks before this Court the reversal of his conviction by the trial court and the appellate court.

Consistent with the ruling of this Court in *People v. Cabalquinto*,[3] we shall withhold the real names of victims AAA and BBB, as well as those of their family members, and any other relevant information that would tend to establish or compromise their identities.

On 11 June 2003, the prosecution filed before the Regional Trial Court twelve (12) separate Informations for rape against appellant. Ten (10) charges, docketed as Criminal Case Nos. N-2234 and N-2237 to N-2245,[4] were allegedly committed against his daughter AAA. The remaining two (2), docketed as Criminal Case Nos. N-2235 and N-2236, were allegedly committed against his daughter BBB.[5]

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[1] AAA was only thirteen (13) years old (not fourteen [14] years old as alleged in the Informations) during the rape incidents in the early months of 2003 because she was born on 18 November 1989.

[2] BBB was already twelve (12) years old (not ten [10] years old as alleged in the Informations) during the rape incidents in 2003 because she was born on 6 January 1991.

[3] G.R. No. 167693, 19 September 2006, 502 SCRA 419.

[4] Save for the dates of the incidents, to wit: first week of JANUARY 2003; second week of JANUARY 2003; third week of JANUARY 2003; 30th and 31st JANUARY 2003; first week of MARCH 2003; second week of MARCH 2003; third week of MARCH 2003; fourth week of MARCH 2003; and 19 APRIL 2003, the Informations in Criminal Case Nos. N-2234 and N-2237 to N-2245 uniformly read:

That on or about xxx, at xxx, Philippines and within the jurisdiction of this Honorable Court, said accused, with lewd designs and by means of force and intimidation, did then and there, willfully, unlawfully and feloniously succeeded in having carnal knowledge with his 14-year old daughter AAA against her will and inside their own dwelling, to her damage and prejudice.

CONTRARY TO LAW, with the aggravating circumstance that the victim is his very own daughter.

[5] The Informations in Criminal Case Nos. N-2235 and N-2236, which are similarly worded except for the dates the crimes were committed, to wit: last week of APRIL 2003; and "the last week of MAY 24, 2003 (sic)," read:

On 17 July 2003, appellant entered pleas of not guilty to all the charges. On 9 September 2003, pre-trial was terminated without any stipulation of facts. Thereafter, trial ensued with the prosecution presenting the testimonies of: (1) AAA;[6] (2) BBB;[7] and (3) Dr. Fernando B. Montejo,[8] Municipal Health Officer, Municipality of xxx, Province of xxx, who identified the Medical Certificate issued to BBB. On the other hand, only appellant[9] testified for the defense.

Criminal Case Nos. N-2234 and N-2237 to N-2245

The evidence for the prosecution may be summarized in the following manner:

AAA was born on 18 November 1989.[10] She was first raped by appellant at the early age of eight (8) years old.[11] She never told the incident to her grandmother, who was then staying with them, because the appellant threatened to kill her siblings.[12] Besides, her grandmother was sick at the time of the incident.[13] Since then, AAA has been repeatedly raped.

AAA testified that sometime during the first week of January 2003, she, herein appellant, and the rest of the children took

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That on or about xxx, late in the evening at xxx, Philippines and within the jurisdiction of this Honorable Court, said BBB was awakened when her father, herein accused, sleep beside her and with lewd designs and by means of force and intimidation, did then and there, willfully unlawfully and feloniously succeeded in ravishing his 10-year old daughter BBB against her will and inside their own dwelling to her damage and prejudice.

CONTRARY TO LAW, with the aggravating circumstance that the victim is his very own daughter.

[6] TSN, 19 November 2003, pp. 1-25.

[7] TSN, 10 December 2003, pp. 1-14.

[8] TSN, 12 November 2003, pp. 1-10.

[9] TSN, 28 January 2004, pp. 1-17.

[10] Records, p. 35.

[11] TSN, 19 November 2003, p. 11.

[12] *Id.* at 14.

[13] *Id.* at 15.

their supper and retired for the night.[14] AAA, however, could not sleep as she was apprehensive that appellant would rape her again.[15] True enough, around midnight, appellant took off AAA's shorts and underwear, and inserted his male organ into her vagina.[16] She pleaded and begged for pity but to no avail.[17] She could not shout because he threatened to harm her.[18] She pinched her sister BBB lying next to her but the latter did nothing.[19] Helpless and without recourse, she just kept on crying.[20]

Appellant also raped AAA on or about the second week of January 2003.[21] At around midnight, when the rest of the children were already fast asleep, appellant removed her shorts and underwear and inserted his male organ into her vagina.[22] She asked him to stop and reminded him that she is his daughter. As before, she did not shout because she was afraid he would hurt her.[23]

The rape was repeated on or about the third week of January 2003. Appellant took AAA's shorts and underwear and inserted his male organ into her vagina.[24] She asked for mercy but to no avail.[25] She did not attempt to shout or thereafter report the incident because she was afraid that appellant would kill her siblings.[26]

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[14] TSN, 19 November 2003, p. 5.

[15] *Id.* at 17.

[16] *Id.* at 5 and 17.

[17] *Id.* at 18.

[18] *Id.*

[19] *Id.*

[20] *Id.* at 6 and 19.

[21] *Id.* at 6.

[22] *Id.* at 19 to 20.

[23] *Id.* at 20.

[24] *Id.*

[25] *Id.* at 20 to 21.

[26] *Id.* at 21.

Despite the sexual abuses, AAA could not leave the house for good because of the repeated threats to the lives of her siblings.[27] Appellant also maltreated her whenever she refused to submit to his lustful desires.[28] On an unspecified date, he kicked her stomach and she collapsed on the floor.[29]

Appellant continued to rape AAA on or about the 30th and 31st of January 2003; the first, second, third, and fourth week of March 2003; and the 19th of April 2003.[30]

Thereafter, AAA agreed to be the housemaid of CCC. She went with CCC to Manila.[31] While in Manila, she told CCC of the sexual abuses she suffered from his father.[32] CCC sent her back to file charges against the appellant.[33] She, accompanied by CCC's daughter DDD, returned and proceeded to the police station to report the incidents.[34] AAA also submitted herself to physical examination,[35] which revealed the following findings:

> Genitalia: no gross deformities
> : non-hyperemia
> : (+) old hymenal scar 9 o'clock position[36]

In refuting the allegations,[37] appellant claimed AAA was not in their hometown in January 2003[38] on the alleged rape incidents subject of Criminal Case Nos. 2234, 2237, 2239,

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[27] *Id.*

[28] *Id.* at 23.

[29] *Id.*

[30] *Id.* at 7-9 and 21.

[31] *Id.* at 9.

[32] *Id.* at 10.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] Records, p. 5.

[37] TSN, 28 January 2004, p. 3.

[38] *Id.* at 3.

2240, and 2241. She was in Manila from April 2002 to January 2003.[39] He learned from his cousin EEE that AAA returned only on 1 February 2003. She stayed with EEE because she did not send the money she earned from working in Manila to appellant.[40]

On 14 April 2003, AAA finally went back to appellant's house.[41] He hit her with a bamboo stick because she refused to go home with him when he tried to fetch her on an unspecified date.[42] Afterwards, he learned from a certain FFF that AAA went back to Manila.[43] Appellant thereafter saw her at the police station on 26 May 2003.[44]

Criminal Case Nos. N-2235 and N-2236

BBB, who was born on 6 January 1991,[45] could not remember the date when she was first raped by appellant.[46] She was subsequently defiled on two (2) more occasions.[47]

Thus, sometime during the last week of April 2003, appellant, BBB, and her two (2) brothers retired for the night[48] in their living room.[49] Two (2) of her siblings were not around. One of them was AAA. She was already in Manila.[50]

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

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

[41] *Id.* at 6.

[42] *Id.* at 5.

[43] *Id.* at 6.

[44] *Id.* at 6-7.

[45] Records, p. 36.

[46] TSN, 10 December 2003, p. 6.

[47] *Id.*

[48] *Id.* at 5.

[49] *Id.* at 8.

[50] *Id.* at 5.

Later that evening, BBB felt appellant undress her.[51] Appellant took off her underwear and inserted his male organ into her vagina.[52] She did not exert any effort to resist him because she was afraid of the six-inch long knife he held.[53] Her attempt to wake a brother up, who lay next to her, proved to be futile.[54]

This was repeated in the evening of 24 May 2003 while BBB's siblings were fast asleep.[55] He kissed BBB on her lips and inserted his male organ into her vagina.[56]

During trial, Dr. Fernando B. Montejo, MD, MPH, Municipal Health Officer, Municipality of xxx, Province of xxx, identified the Medical Certificate submitted to the court to be the same he issued when he examined BBB. The Certificate indicated the following: (1) "abrasion with mucosal swelling (R) vaginal vault;"[57] and (2) "semen-like substance seen and felt at cervical os."[58]

On examination, the doctor testified that the abrasion and swelling in the right side of BBB's vagina could have been caused by a male organ. Further, the semen-like substance at the cervical canal could have come from a male organ. However, he clarified that the substance was not conclusively identified as semen allegedly because the medical technologist was not "competent" to further examine it in the microscope.[59]

Appellant solely testified for the defense and denied the allegations of rape.[60] He countered that BBB left his house on

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[51] *Id.*

[52] *Id.*

[53] *Id.* at 5 and 9.

[54] *Id.* at 5.

[55] *Id.*

[56] *Id.* at 6.

[57] Records, p. 5-a.

[58] *Id.*

[59] TSN, 12 November 2003, pp. 6-7.

[60] TSN, 28 January 2004, p. 7.

14 April 2003, the very day that he maltreated AAA.[61] He looked for and found BBB only on 25 May 2003.[62] Hence, she was not staying in his house during the last week of April 2003 and on 24 May 2003 when the rapes were allegedly committed.[63] He added that BBB started leaving his house without permission in 2002 and has been given scoldings.[64] He also claimed that he was in his house working and could not recall any unusual incident on 24 May 2003 when BBB was allegedly raped for the third time.[65]

When asked what could be the possible motive for the filing of the case against appellant, he answered that AAA and BBB did not want anybody to look after them.[66] He also believed that AAA filed a complaint against him because "she made mistake (sic) since she did not give [him] money xxx."[67] On the other hand, BBB filed the complaints because he scolded her.[68]

On 5 July 2004, the regional trial court found appellant guilty of twelve (12) counts of rape[69] in Criminal Case Nos. N-2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244 and 2245. The dispositive portion reads:

> WHEREFORE, premises considered, this Court finds the accused **Maximo Olimba *Y* Montero** GUILTY beyond reasonable doubt of the crime of Rape in two (2) counts for **Crim. Case No. 2235** and **Crim. Case No. 2236**. He is meted the penalty of two (2) **Death penalties** by lethal injections.

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[61] *Id.* at 7-8.

[62] *Id.* at 14.

[63] *Id.* at 8 and 14.

[64] *Id.* at 8.

[65] *Id.*

[66] *Id.* at 9.

[67] *Id.* at 12.

[68] *Id.* at 16.

[69] Judgment penned by Judge Enrique C. Asis. Records, pp. 53-73.

The victim (BBB) is awarded ₱150,000.00 in civil indemnity and ₱175,000.00 in moral damages, for each count.

In Criminal Cases Nos. **2234, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244 and 2245**, where the victim is (**AAA**), the accused **Maximo Olimba *Y* Montero** is found **GUILTY** beyond reasonable doubt of the crime of Rape on Ten (10) Counts. He is meted the penalty of **Death** for each count, through lethal injection.

The accused Maximo Olimba *Y* Montero shall pay the victim (AAA) the amount of **₱75,000.00** in civil indemnity for each rape committed. The accused shall further pay **₱100,000.00** to (AAA) in moral damages for each Rape.

Appealed to this Court, the case was transferred to the Court of Appeals for its disposition[70] in accordance with the ruling in *People v. Mateo*[71] allowing an intermediate review by the Court of Appeals of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death.

On 30 August 2007, the decision[72] of the trial court was AFFIRMED by the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00530 with the MODIFICATION that the penalty of death in each of the cases should be reduced to *reclusion perpetua* in accordance with the law prohibiting the imposition of death penalty.[73]

On 14 July 2008, the Court of Appeals gave due course to the appellant's notice of appeal.[74] This Court required the parties to simultaneously file their respective supplemental briefs.[75] Only the appellant opted to submit his supplemental brief.[76]

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[70] Resolution dated 17 January 2006. CA *rollo*, p. 129.

[71] G.R. No. 147678-87, 7 July 2004, 433 SCRA 640.

[72] Penned by Associate Justice Agustin S. Dizon with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring. CA *rollo*, pp. 139-145.

[73] *Id.* at 144.

[74] CA *rollo*, p. 155.

[75] *Rollo*, p. 18.

[76] *Id.* at 22-27.

Our Ruling

We uphold the conviction of the appellant.

The well-entrenched principles in the determination of the innocence or guilt of the accused in rape cases are, once again, seriously considered in the evaluation of this case. The three principles are:

> (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[77]

Due to the nature of the commission of the crime of rape, the testimony of the victim may be sufficient to convict the accused, provided that such testimony is "credible, natural, convincing and consistent with human nature and the normal course of things."[78] Thus, in *People v. Leonardo*,[79] we stated the evidentiary value of the testimony of the rape victim:

> Credible witness and credible testimony are the two essential elements for the determination of the weight of a particular testimony. This principle could not ring any truer where the prosecution relies mainly on the testimony of the complainant, corroborated by the medico-legal findings of a physician. Be that as it may, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing and otherwise consistent with human nature.[80]

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[77] *People v. Dalisay*, G.R. No. 188106, 25 November 2009, 605 SCRA 807, 814 citing *People v. Glivano*, G.R. No. 177565, 28 January 2008, 542 SCRA 656, 662 further citing *People v. Malones*, G.R. No. 124388-90, 11 March 2004, 425 SCRA 318, 329.

[78] *People v. Cadap*, G.R. No. 190633, 5 July 2010.

[79] G.R. No. 181036, 6 July 2010.

[80] *Id.* citing *People v. Dy*, 425 Phil. 608, 645 (2002).

Upon these considerations, we have ascertained that the prosecution has sufficiently established the appellant's guilt beyond reasonable doubt.

Credibility of the Witnesses for the Prosecution

The trial court categorically stated that AAA and BBB "were straightforward and coherent, further made believable by their display of candor and naivete."[81] The appellate court, in turn, applied the settled policy that "the finding of trial courts on the credibility of witnesses deserve[s] a high degree of respect and will not be disturbed on appeal."[82]

Before us, appellant now posits that the instant case falls within the established exceptions[83] finding refuge in our ruling in *People v. Guittap*.[84] Thus:

> While it is our policy to accord proper deference to the factual findings of the trial court, owing to their unique opportunity to observe the witnesses firsthand and note their demeanor, conduct, and attitude under grueling examination, where there exist facts or circumstances of weight and influence which have been ignored or misconstrued, or where the trial court acted arbitrarily in its appreciation of facts, we may disregard its findings.[85]

We find the exception to the rule inapplicable in this case.

No material inconsistencies in the testimony of AAA

In his Supplemental Brief dated 5 March 2009, appellant points out that there were material inconsistencies in the testimony of AAA that cannot be considered insignificant.[86] Specifically, it was revealed on cross examination that her grandmother was also staying in the house and sleeping thereat

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[81] Records, pp. 68-69.

[82] *Rollo,* p. 9 citing *People v. Catillano,* 377 SCRA 79.

[83] *Id.*

[84] G.R. No. 144621, 451 Phil. 214 (2003).

[85] *Rollo,* p. 22.

[86] *Id.*

at the time of the rape incident. This, he argues, affects the likelihood of the consummation of rape because AAA's grandmother would definitely have noticed the untoward incident.[87]

We are not convinced. Time and again, we reiterate that *lust is no respecter of time and place*. Thus, in *People v. Anguac*,[88] we rejected appellant's claim that it is impossible for the victim's siblings, who were sleeping with her, not to be awakened during the rape incident because, in numerous cases, this Court has found that rape could indeed be committed in the same room where other family members are sleeping.[89]

Even assuming for the sake of argument that the prosecution failed to reconcile AAA's statements as to the dates when her grandmother lived with them, we consider such to be trivial a matter to impair AAA's credibility. Such would not diminish the value of the testimony.[90] On the contrary, it would strengthen the credibility of the testimony because it erases any suspicion of a coached or rehearsed witness.[91]

Appellant further contends that the inconsistent testimony on AAA's attempt to wake BBB up is likewise material because the act could not have been consummated if, indeed, BBB was roused from her sleep.[92]

This is likewise unmeritorious. It should be noted that BBB, the supposed witness to the incident, is a mere child, who could be cowed into silence by a person exercising moral ascendancy and influence over her. Granting that appellant could have discontinued his bestial act, if and when there was a witness to

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[87] *Id.* at 22-24.

[88] G.R. No. 176744, 5 June 2009, 588 SCRA 716, 724.

[89] *Id.* citing *People v. Besmonte*, 397 SCRA 513, 523.

[90] *People v. Macapanas*, G.R. No. 187049, 4 May 2010.

[91] *Id.* citing *People v. Murillo*, G.R. Nos. 128851-56, 19 February 2001, 352 SCRA 105, 118.

[92] *Rollo*, pp. 22-23.

the commission of the crime, it was clear in the testimony of AAA that appellant was not aware that BBB was then already awake.

Q And [BBB] was awaken[ed] while your father was doing this thing to you?
A Yes, sir.
Q What did [BBB] do?
A She did not do anything.

Neither can we sustain the appellant's contention that AAA was in Manila when some of the rape incidents were allegedly committed. The source of the information is a third person[93] who was not presented in court. Sans any validation, the allegation remains to be hearsay. Further, a thorough examination of the testimony of AAA would show that she left for Manila only once[94] sometime after 19 April 2003 after the last rape incident.[95] We confirm the observation of the trial court that her entire testimony was clear, consistent, and convincing.

Failure to immediately report the rape incidents was reasonable

Applying *People v. Romero, Jr.*,[96] where this Court doubted the credibility of the seventeen-year-old complainant because she failed to "come out in the open and bring her abuser[-*compadre* of her aunt] to justice" in a span of eight months,[97] appellant argues that the failure of AAA and BBB to immediately report the rape incidents significantly affects their credibility.[98] *Romero*, however, is not on all fours with the prevailing circumstances of this case. The flaws and inconsistencies in

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[93] TSN, 28 January 2004, p. 4.

[94] TSN, 13 November 2003, p. 15.

[95] *Id.* at 9.

[96] *Rollo*, p. 23.

[97] *People v. Romero, Jr.*, G.R. No. L-43805, 23 October 1982, 117 SCRA 897, 902.

[98] *Rollo*, p. 24.

the testimony of the complaining witness in that case were so material that it seriously impaired the witness' credibility.[99]

In the recent case of *People v. Alarcon*,[100] this Court well explained the reason why the failure of a victim to immediately report the rape does not essentially weaken the case against an accused.[101]

> The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, AAA did not report what her father did to her because she was terribly afraid that he would harm her. This is a normal reaction by minors – to hide the truth because they are easily intimidated by threats on their person and other members of the family. xxx The only time she felt safe was after they had moved out of their father's house.[102] As written in *People vs. Macapanas*,
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> > x x x. How the victim comforted herself after the incident was not significant as it had nothing to do with the elements of the crime of rape. Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange, startling or frightful experience.[103]

The reliance of appellant on the acquittal of the accused in *People v. Ladrillo*[104] is likewise misplaced. In that case, it was alleged that the crime was committed "on or about the year 1992," in appellant's residence in Abanico, Puerto Princesa City, when the defense was able to prove that appellant had

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[99] *People v. Romero, Jr.*, *supra* note 97 at 901-902.

[100] G.R. No. 177219, 9 July 2010.

[101] *Id.*

[102] *Id.*

[103] *Id.* citing *People v. Macapanas*, *supra* note 90.

[104] 377 Phil. 904 (1999).

never been there nor was he familiar with the complainant and her family until he resided thereat in 1993.[105] With this piece of information, together with other material inconsistencies in the testimony of the complainant, we ruled:

> xxx. But the mind cannot rest easy if this case is resolved against accused-appellant on the basis of the evidence for the prosecution which, xxx, is characterized by glaring inconsistencies, missing links and loose ends that refuse to tie up.[106]

In the case at bar, we found no inconsistent statement so material that it would seriously affect the credibility of the witnesses.

Moral character of the victim is immaterial

Neither can we sustain appellant's argument that the credibility of BBB's testimony is compromised by her "apparent exposure xxx to the ways of the world at an early age of seven (7)"[107] because she and her friends frequent the *poblacion*.[108] BBB has satisfactorily explained the reason why she sometimes passed the night in the *poblacion* with her friends. She was afraid that her father would rape her again.[109] Assuming for the sake of argument that BBB is a woman of loose morals, she is not precluded from being a victim of rape.[110] Even prostitutes can be victims of rape.[111] It bears stressing that in rape, the moral character of the victim is immaterial, the essence of rape being

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[105] *Id.* at 71.

[106] *Id.* at 74.

[107] *Rollo,* p. 25.

[108] TSN, December 10, 2003, p. 10.

[109] *Id.*

[110] *People v. Baluya,* G.R. No. 133005, 430 Phil. 349, 363 (2002).

[111] *Id.* citing *People v. Rosales,* G.R. No. 124920, 8 September 1999, 313 SCRA 757, 762; *People v. Alfeche,* G.R. No. 124213, 17 August 1998, 294 SCRA 352, 377 citing *People v. Rivera,* G.R. Nos. 88298-99, 1 March 1995, 242 SCRA 26, 37; *People v. Barera,* 262 SCRA 63, 77 [1996].

the act of having carnal knowledge of a woman without her consent.[112]

Motive vis-a-vis credible testimony

Appellant's contention that AAA and BBB charged him of rape only because they wanted to be emancipated from parental guidance and discipline is likewise without merit. Time-honored is the doctrine that motives, such as those attributable to revenge, family feuds, or resentment, cannot destroy the credibility of minor complainants who gave unwavering testimonies during their direct and cross-examinations.[113] The testimonies of AAA and BBB were solid throughout the direct and cross-examination. In fact, the cross-examination even strengthened the cases against the appellant as most of the material questions necessary to prove the elements of rape were established when the witnesses answered the questions of the defense counsel.[114]

Bare Denial of the Appellant

We cannot give weight to the self-serving alibi and denial of the appellant over the positive and straight forward testimony of AAA and BBB. Once more, we apply the settled rule that "alibi is an inherently weak defense that is viewed with suspicion because it is easy to fabricate."[115] Alibi and denial must be strongly supported by corroborative evidence in order to merit credibility.[116] Appellant's alibi is, simply, uncorroborated.

Elements of Rape

Under Sec. 2 of the Anti-Rape Law of 1997,[117] rape is committed, among others, "[b]y a man who shall have carnal

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[112] *People v. Baluya*, *supra* note 110.

[113] *People v. Anguac*, *supra* note at 88 at 723 citing *People v. Alejo*, G.R. No. 149370, 23 September 2002, 411 SCRA 563, 573 and *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003, 418 SCRA 237, 248-249.

[114] TSN, 19 November 2003, pp. 11-24 and TSN, 10 December 2003, pp. 7-10.

[115] *People v. Jacob*, G.R. No. 177151, 22 August 2008, 565 SCRA 203.

[116] *Id.*

[117] Republic Act No. 8353.

knowledge of a woman" by means of force, threat or intimidation.[118]

On the bases of the consistent and forthright testimonies of 13-year-old victim AAA and 12-year-old victim BBB detailing their harrowing experiences that concluded with positive statements that appellant inserted his organ into their private parts,[119] the prosecution has sufficiently established that appellant had carnal knowledge of (1) AAA on or about the 1st, 2nd and 3rd week of January, 2003 [Criminal Case Nos. 2234, 2237, and 2239] and (2) BBB on or about the last week of April, 2003 and 24 May 2003 [Criminal Case Nos. 2235 and 2236].

The presence of threat and intimidation was likewise established. After every rape, appellant threatened AAA that he would kill her siblings should she report the incidents. Also, in view of their father-daughter relationship, the moral ascendancy of appellant over AAA and BBB can substitute for violence and intimidation.[120] For this reason, appellant's use of a six-inch long knife[121] to cower BBB in fear and yield her into submission can be considered already a surplusage for the purpose of proving the element of threat or intimidation.

With the testimonies of AAA and BBB, and even assuming for the sake of argument that the defense was able to diminish the probative value of the medical findings presented to corroborate the testimony of the victims, we are convinced that the prosecution has established the guilt of the appellant beyond reasonable doubt. It bears stressing that the lone and uncorroborated testimony of a rape victim, as long as it is clear, convincing and otherwise consistent with human nature, may suffice to convict the accused.[122]

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[118] *Id.*, paragraph 1(a), Art. 266-A of Sec. 2 of the Anti-Rape Law of 1997.

[119] TSN, 19 November 2003, pp. 5 and 20 and TSN, 10 December 2003, pp. 5-6.

[120] *People v. Dimanawa*, G.R. No. 184600, 9 March 2010.

[121] TSN, 10 December 2003, pp. 5 and 9.

[122] *People v. Leonardo, supra* note 79 citing *People v. Dy*, 425 Phil. 608, 645-646 (2002).

Presence of Special Qualifying Circumstances

The twin qualifying circumstances of minority and relationship that were specifically alleged in the Informations were likewise adequately established by the prosecution. The machine copies of the certificates of live birth of AAA and BBB, which the defense voluntarily admitted to be faithful reproductions of the original copies,[123] the testimonies of AAA and BBB stating that the appellant is their father,[124] and the testimony of appellant himself admitting that AAA and BBB are his daughters,[125] sufficiently proved the following: (1) that AAA and BBB were born on 18 November 1989 and 6 January 1991, respectively; (2) that they were minors, being 13 and 12 years old, respectively, at the time they were repeatedly defiled during the early months of 2003; and (3) that appellant is their father.

These are judicial admissions within the contemplation of Section 4, Rule 129 of the Revised Rules of Court, which provides that "[a]n admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof."[126]

Modifications in the Ruling of the Court of Appeals

Quantum of evidence in each and every charge of rape

Settled is the rule that each and every charge of rape is a distinct and separate crime;[127] each must be proven beyond reasonable doubt.[128] It is, therefore, necessary that the victim of rape provide further details on how each of the act was committed, otherwise, the bare allegation would be inadequate to establish the guilt of the accused.[129]

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[123] TSN, 10 December 2003, p. 12.

[124] TSN, 19 November 2003, p. 3 and TSN, 10 December 2003, p. 3.

[125] TSN, 28 January 2004, pp. 9 and 13.

[126] *People v. Lauga,* G.R. No. 186228, 15 March 2010.

[127] *People v. de la Torre,* G.R. Nos. 121213 and 121216-23, 13 January 2004, 419 SCRA 18, 36.

[128] *People v. Guardian,* 435 Phil. 666, 681 (2002).

[129] *People v. de la Torre, supra* note 127; *People v. Guardian, id.*

Applying this principle, the conviction of the appellant in Criminal Case Nos. 2238, 2240, 2241, 2242, 2243, 2244 and 2245 (referring to the rape incidents on or about the 30th and 31st of January 2003, the 1st, 2nd, 3rd and 4th weeks of March 2003, and on or about 19 April 2003) should be reversed.

In these cases, the prosecution merely had AAA testify that she was repeatedly raped on different dates[130] but failed to touch on how each of the acts was committed. Thus:

[Criminal Case No. 2240]

Q	On January 30, 2003 what happened?
A	He again raped me.
Q	Where?
A	In our house.
Q	What time was it?
A	Midnight.
Q	Where were your siblings then?
A	They [were] all asleep.

[Criminal Case No. 2241]

Q	How about on the following day that is January 31, 2003 what happened?
A	He again raped me.
Q	Where?
A	In our house.
Q	What time was it?
A	Also midnight.
Q	What were your siblings do[ing] then?
A	They [were] sleeping.

[Criminal Case No. 2242]

Q	In the first week of March year 2003 what happened?
A	I was again raped by my father.
Q	What time was it?
A	Midnight.
Q	And your siblings[,] what were they doing?
A	Sleeping.

[130] TSN, 19 November 2003, pp. 7-9.

[Criminal Case No. 2243]

Q On the second week of March, 2003 what happened?
A He again raped me.
Q What time was it?
A Midnight.
Q How about your siblings where were they?
A Sleeping.

[Criminal Case No. 2244]

Q In the third week of March what happened?
A He again raped me.
Q Where?
A In our house.
Q What time was it?
A Midnight.
Q How about your siblings where were they?
A In our house sleeping.

[Criminal Case No. 2245]

Q On the fourth week of March 2003 what happened?
A He again raped me.
Q What time was it?
A Midnight.
Q How about your siblings where were they?
A Sleeping.

[Criminal Case No. 2238]

Q Now, [AAA] on April 19, 2003, what happened?
A He again raped me.
Q Where?
A In our house.
Q What time was it?
A Midnight.
Q How about your siblings?
A In our house sleeping.

On cross examination,[131] AAA testified:

x x x x x x x x x

[131] TSN, 19 November 2003, pp. 21-22.

Q The same thing happened subsequent weeks particularly on January 30 and weeks of March 2003?
A Yes, Sir.

ATTY. ALBAO:

Q And in these particular incidents you were likewise wearing shorts?
A Sometimes I am wearing pants.
Q But when this rape incidents happened you are already wearing shorts?
A Sometimes I was wearing long pants.

Clearly, these are too general, inadequate and insufficient to establish the appellant's guilt beyond reasonable doubt.[132]

Basic is the rule that where the prosecution fails to meet the quantum of evidence required for the conviction of an accused, that is, proof beyond reasonable doubt, this Court shall consider in the latter's favor his constitutional right to be presumed innocent.[133] Necessarily, appellant should be acquitted in these cases.

In light of this result, we see a need to remind the prosecution to ensure that the quantum of evidence required for the conviction of an accused charged of multiple counts of rape or any crime for that matter is met in accordance with the ruling in this case.

Penalty of reclusion perpetua in lieu of death penalty; non-eligibility for parole

Article 266-B of the Revised Penal Code provides that the penalty of death shall be imposed when rape is committed with the twin qualifying circumstances of minority and relationship.[134]

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[132] *People v. de la Torre*, 464 Phil. 23, 45-46 (2004).

[133] *People v. Ladrillo, supra* note 104 at 72.

[134] Title Eight, Chapter Three, Revised Penal Code, as amended by "The Anti-Rape Law of 1997" provides, in part:

ART. 266-B. *Penalties.* – Rape under paragraph 1 of the next preceding article shall be punished by xxx

However, with the enactment of Republic Act No. 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*) on 24 June 2006, the Court of Appeals correctly reduced the penalty of death to *reclusion perpetua*[135] in Criminal Case Nos. 2234 to 2237 and 2239.

This, notwithstanding, appellant should not be eligible for parole as the law[136] specifically provides:

> Sec. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

Monetary liability

Finding appellant guilty of only three (3) counts of rape committed against AAA in Criminal Case Nos. 2234, 2237, and 2239 and two (2) counts of rape committed against BBB in Criminal Case Nos. 2235 and 2236, all qualified by the twin special aggravating circumstances of minority and relationship, and applying current jurisprudence,[137] each victim shall be entitled to the following for each count of rape: civil indemnity in the amount of ₱75,000.00; and moral damages in the amount of ₱75,000.00. Also for each count of rape, the award of exemplary damages in the amount of ₱30,000.00 "to set a public example

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x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.

[135] *Rollo,* p. 10.

[136] Republic Act No. 9346.

[137] *People v. Lauga, supra* note 126 citing *People v. Sia,* G.R. No. 174059, 27 February 2009, 580 SCRA 364, 367-368.

and serve as deterrent against elders who abuse and corrupt the youth"[138] is likewise in order.

WHEREFORE, the Decision dated 30 August 2007 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00530, finding appellant Maximo Olimba guilty beyond reasonable doubt of twelve (12) counts of rape is hereby *MODIFIED* in the following manner:

1. Appellant is found *GUILTY* beyond reasonable doubt of three (3) counts of qualified rape committed against AAA in Criminal Case Nos. 2234, 2237, and 2239. For each count of rape, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay AAA the amount of ₱75,000.00 (or a total of ₱225,000.00) as civil indemnity, ₱75,000.00 (or a total of ₱225,000.00) as moral damages, and ₱30,000.00 (or a total of ₱90,000.00) as exemplary damages;

2. Appellant is also found *GUILTY* beyond reasonable doubt of two (2) counts of qualified rape committed against BBB in Criminal Case Nos. 2235 and 2236. For each count of rape, he is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and to pay BBB the amount of ₱75,000.00 (or a total of ₱150,000.00) as civil indemnity, ₱75,000.00 (or a total of ₱150,000.00) as moral damages, and ₱30,000.00 (or a total of ₱60,000.00) as exemplary damages; and

3. With respect to Criminal Case Nos. 2238, 2240, 2241, 2242, 2243, 2244 and 2245, the appellant is hereby *ACQUITTED* for failure of the prosecution to prove his guilt beyond reasonable doubt.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] *Velasco, Jr.,* and *Del Castillo, JJ.,* concur.

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[138] *People v. Rante,* G.R. No. 184809, 29 March 2010 citing *People v. Cañada,* G.R. No. 175317, 2 October 2009.

[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

THIRD DIVISION

[G.R. No. 155097. September 27, 2010]

PHILIPPINE AIRLINES EMPLOYEES ASSOCIATION (PALEA), herein represented by ALEXANDER O. BARRIENTOS, *petitioner, vs.* **Hon. HANS LEO J. CACDAC (Director of Bureau of Labor Relations), Hon. ALEXANDER MARAAN (Regional Director, National Capital Region), CYNTHIA J. TOLENTINO (Representation Officer, Labor Relations Division, National Capital Region, Department of Labor and Employment), NIDA J. VILLAGRACIA, DOLLY OCAMPO, GERARDO F. RIVERA (In their respective capacities as candidates for President of petitioner PALEA),** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ESSENTIAL REQUISITES; NOT PRESENT.— Indeed, relief in a special civil action for *certiorari* is available only when the following essential requisites concur: (*a*) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (*b*) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. There is no concurrence of the requisites in C.A.-G.R. SP No. 69889. Firstly, PALEA should have first waited for the final election results as certified by DOLE-NCR before filing the petition for *certiorari*. As the BLR Director pointed out in the letter dated February 27, 2002, the petition for the plebiscite to amend PALEA's Constitution and By-Laws was merely incidental to the conduct of the general election pursuant to the final and executory decision of the BLR. As such, the recourse open to PALEA was not to forthwith file the petition for *certiorari* to assail such denial, but to first await the final election results as certified by DOLE-NCR. That PALEA did not so wait signified

that it ignored the character of *certiorari* as an extraordinary recourse to resort to when there is no plain, speedy and adequate remedy in the ordinary course of law. And, secondly, the Regional Director and the BLR Director were definitely not exercising judicial or quasi-judicial functions in respectively issuing the February 15, 2002 order and the February 27, 2002 letter. Instead, they were thereby performing the purely ministerial act of enforcing the already final and executory BLR resolution dated July 28, 2000 directing the conduct of the general election (which the CA had affirmed in CA-G.R. SP No. 60886 through its final and executory judgment dated March 28, 2001).

APPEARANCES OF COUNSEL

Froilan M. Bacungan and Associates and *Rolando F. Cabalitan* for petitioner.
Bienvenido T. Jamoralin, Jr. for Philippine Airlines.
Potenciano A. Flores, Jr. for Dolly Ocampo.
Lagman Lagman & Mones Law Firm for Gerardo F. Rivera.

R E S O L U T I O N

BERSAMIN, *J.*:

The Philippine Airlines Employees Association (PALEA), represented by its hold-over president Alexander O. Barrientos, appeals the decision rendered on September 5, 2002 by the Court of Appeals (CA) in C.A.-G.R. No. 69889, dismissing its petition for *certiorari* for lack of merit.[1]

Antecedents

PALEA was the sole and exclusive bargaining representative of all regular rank-and-file employees of Philippine Air Lines. Due to the expiration of the five-year term of its set of officers elected in 1995, PALEA held a general election for its new officers on February 17, 21, 23 and 24, 2000 through a

[1] *Rollo*, pp. 64-75; penned by Associate Justice Bienvenido L. Reyes, with Associate Justice Roberto A. Barrios (deceased) and Associate Justice Edgardo F. Sundiam (deceased) concurring.

Commission on Elections (Comelec) composed of a chairman and two members appointed by the incumbent president with the concurrence of three-fourths of all the members of the Board of Directors. After the casting of votes, the Comelec canvassed the votes and proclaimed the winners.

In a resolution dated June 15, 2000 issued in NCR-OD-0003-010-LRD, however, the Regional Director of the Bureau of Labor Relations (BLR), acting upon the petition of some of the presidential candidates as well as some members of PALEA, nullified the general election and the proclamation of the winners on the ground that the general election was found to be riddled with fraud and irregularities; and ordered the holding of another general election under the direct supervision of the Department of Labor and Employment (DOLE).[2]

On appeal, the BLR Director of the National Capital Region issued a resolution on July 28, 2000 affirming the decision of the BLR Regional Director.

Thereafter, Jose Peñas III, who had been proclaimed as the winning candidate for president in the nullified general election, filed a petition for *certiorari* in the CA to annul the resolution dated July 28, 2000 (CA-G.R. SP No. 60886). On March 28, 2001, however, the CA dismissed the petition for *certiorari* and upheld the order for the conduct of another general election in order to settle the leadership issue in PALEA once and for all.[3]

Subsequently, DOLE carried out pre-election proceedings and designated Cynthia J. Tolentino to head the Comelec.

During the pre-election proceedings, some PALEA members assigned in the PAL Cargo Sub-department filed with the BLR Regional Director a petition to conduct a plebiscite to amend the PALEA Constitution and By-Laws in order that they would have a representative in the PALEA Board of Directors. The filing of the petition caused the BLR to suspend the conduct of

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[2] *Id.,* pp. 66-67.

[3] CA *Rollo,* pp. 120-130.

the pre-election conference until the issue on the amendment of the PALEA Constitution and By-Laws was resolved.

On February 15, 2002, the BLR Regional Director dismissed the petition to conduct a plebiscite to amend the PALEA Constitution and By-Laws and directed the immediate conduct of the general election.[4]

The order of February 15, 2002 was appealed.

Through his letter dated February 27, 2002,[5] respondent BLR Director denied the appeal because the assailed order was not appealable for being interlocutory in nature pursuant to Section 5, Rule XXV of Department Order No. 9 of DOLE,[6] considering that the petition to conduct the plebiscite to amend the PALEA Constitution and By-Laws was merely incidental to the issue of the conduct of election. He opined that "[a]bsent final election results as certified by DOLE-NCR, this Office cannot take cognizance of the appeal." He thus informed PALEA that his office was remanding "the entire records of the case to the Regional Office of origin for the continuation of the proceedings."[7]

Nonetheless, PALEA, represented by its holdover president, elevated the denial of the appeal of the February 15, 2002 order to respondent BLR Director.

In the meanwhile, on March 8, 2002, the Comelec went through with the pre-election conference and adopted the election guidelines and mechanics. The general election was set on April 5, 2002, from 7:00 *am* to 5:00 *pm*.

PALEA, through its holdover president, filed a petition for *certiorari*,[8] docketed as CA-G.R. SP No. 69889, ascribing

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[4] *Rollo,* pp. 76-85.

[5] *Id.*, pp. 86-87.

[6] Section 5. *Incidental motions will not be given due course*. – In all proceedings at all levels, motions for dismissals or any other incidental motions shall not be given due course, but shall remain as part of the records for whatever purpose they may be worth when the case is decided on the merits.

[7] *Rollo,* p. 87.

[8] CA *Rollo,* pp. 2-17.

grave abuse of discretion to the Regional Director and the BLR Director for issuing the February 15, 2002 order and the February 27, 2002 letter; and praying that a temporary restraining order (TRO) be issued to restrain the holding of the general election scheduled on April 5, 2002.

The CA issued a TRO on the day of the general election, but the Comelec received the TRO only after the close of the polls and the canvass of the ballots was about to start.

In the end, the CA dismissed the petition for *certiorari* in C.A.-G.R. SP No. 69889, and ordered the Comelec to complete the canvass of the results of the April 5, 2002 election and to proclaim the winners. The CA observed that the petition for *certiorari* was clearly intended to forestall the implementation of the already final and executory judgment rendered on March 28, 2001 in C.A.-G.R. SP No. 60886 (upholding the resolution dated July 28, 2000 of the BLR Director directing the immediate conduct of election of PALEA). The decretal portion of the decision reads:

> WHEREFORE, the instant petition is hereby DISMISSED for utter lack of merit. Public respondents are hereby ordered to complete the canvass of the results of the 5 April 2002 election of PALEA officers and thereafter to proclaim the winners in the said election.[9]

Hence, this appeal of PALEA, claiming that the CA erred:

1. In granting the affirmative reliefs sought by the private respondents, despite categorically ruling that it had no jurisdiction over the petition;
2. In holding that it had no jurisdiction to rule on the issue presented for its resolution by the petitioners;
3. In considering the election of PALEA union officers as valid not on the basis of any specific findings of fact but on the totally wrong perception that the petition was filed clearly to forestall the implementation of the

[9] *Rollo,* p. 75.

already final and executory judgment that directed the immediate conduct of election of PALEA union officers;

4. In considering the election of PALEA union officers held on April 5, 2002 as valid, although the election was conducted not in accordance with the Constitution and By-Laws or the applicable rule on election of officers of labor organizations embodied in the rules implementing the *Labor Code*.[10]

Ruling

The petition lacks merit.

In relation to the first and second specification of errors, the CA held:[11]

Emphatically, a cursory reading of the petition for *certiorari*, memorandum and rejoinder, would reveal that they did not delve on the matters resolved by the assailed Order and letter. These pleadings never raised the issue of the propriety of the dismissal of the petition to conduct plebiscite to amend the Constitution and By-Laws of PALEA. Likewise, they never argued against the holding of election of PALEA officers under the supervision of the DOLE, but conformably to PALEA's Constitution and By-Laws. **Rather, petitioners took a different turn by questioning the manner in which the conduct of the election of PALEA officers was implemented. This is clear when they posed the issue: "How shall the PALEA election of its union officers be conducted?" Corollarily, petitioners argued that the PALEA election of its officers was conducted by the DOLE contrary to the: 1) Constitution and By-Laws of the PALEA; 2) Rules and Regulations Implementing the Labor Code; and 3) Supreme Court Ruling in the case of *University of Santo Tomas Faculty Union vs. Dir. Benedicto Ernesto R. Bitonio, et al.*. Considering that the election of PALEA officers was actually held on 5 April 2002 as casting of votes was completed and almost seventy percent (70%) of the votes were already canvassed, the petitioners now prayed: 1) That said election be considered null and void; and**

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[10] *Petition,* pp. 12-13; *Rollo,* pp. 23-24.

[11] *Id.,* pp. 72-73.

2) that this Court issue an order that will permanently enjoin the PALEA elections held on 5 April 2002 as conducted by the DOLE; and 3) that this Court direct the DOLE to supervise the new PALEA election of officers and appoint the chairman of the Committee on Elections to take charge of the same.

Be it noted that the holding of the election on 5 April 2002 was but an implementation of the Resolution of the BLR dated 28 July 2000 which was affirmed by the Court of Appeals in CA- G.R. SP-60886 in the already final and executory judgment dated 28 March 2001. The nullification of the February 2000 election in the aforesaid decision dated 28 March 2001 gave way to the holding of the pre-election conferences by the DOLE. Upon the filing of the petition to conduct plebiscite to amend the Constitution and By-Laws of PALEA, petitioners Romasanta and other PALEA members sought "to enjoin the implementation or enforcement of the Decision ordering the conduct of a new election of PALEA Officers" pending the resolution of the petition. Thus, the NCR-DOLE issued an Order on 25 January 2002 suspending the pre-election conferences which were then being conducted by the Bureau of Labor Relations preparatory to the holding of a new election. Subsequently, the petition to conduct plebiscite to amend the Constitution and By-Laws was dismissed for lack of merit. **Thus, the lifting of said Order dated 25 January 2002 and directing of the continuation of the election proceedings in the questioned Order was merely incidental to the dismissal of the petition to amend.**

We thus agree with respondents that the present petition for *certiorari* was actually filed to prevent the conduct of the election of PALEA union officers scheduled on 5 April 2002. (emphasis supplied)

As the foregoing excerpt clearly indicates, the CA found that PALEA had assailed the February 15, 2002 order of the Regional Director and the February 27, 2002 letter of the BLR Director (dismissing the petition to amend the PALEA Constitution and By-Laws for lack of merit), but the arguments PALEA advanced in its petition for *certiorari* and its other pleadings did not at all touch on the supposed subject matter and assailed only the manner by which the April 5, 2002 election had been conducted.

In view of its rationalization of its dismissal of the petition for *certiorari*, the CA acted properly and correctly considering that PALEA was unjustified in commencing its special civil action for *certiorari*.

Indeed, relief in a special civil action for *certiorari* is available only when the following essential requisites concur: (*a*) the petition must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (*b*) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[12] There is no concurrence of the requisites in C.A.-G.R. SP No. 69889. Firstly, PALEA should have first waited for the final election results as certified by DOLE-NCR before filing the petition for *certiorari*. As the BLR Director pointed out in the letter dated February 27, 2002, the petition for the plebiscite to amend PALEA's Constitution and By-Laws was merely incidental to the conduct of the general election pursuant to the final and executory decision of the BLR. As such, the recourse open to PALEA was not to forthwith file the petition for *certiorari* to assail such denial, but to first await the final election results as certified by DOLE-NCR. That PALEA did not so wait signified that it ignored the character of *certiorari* as an extraordinary recourse to resort to when there is no plain, speedy and adequate remedy in the ordinary course of law. And, secondly, the Regional Director and the BLR Director were definitely not exercising judicial or quasi-judicial functions in respectively issuing the February 15, 2002 order and the February 27, 2002 letter. Instead, they were thereby performing the purely ministerial act of enforcing the already final and executory BLR resolution dated July 28, 2000 directing the conduct of the general election (which the CA had affirmed in CA-G.R. SP No. 60886 through its final and executory judgment dated March 28, 2001).

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[12] Section 1, Rule 65, *Rules of Court*; *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346.

Nor are we persuaded by the submission of PALEA that the CA erroneously granted affirmative reliefs prayed for by the private respondents despite dismissing PALEA's petition.

PALEA ignores that, *one*, the canvass of the April 5, 2002 election was suspended and DOLE was restrained from implementing the order of February 15, 2002 for the immediate conduct of the election as the result of the CA's TRO issued at PALEA's instance; and, *two*, as the necessary and logical consequence of its dismissal of PALEA's petition for *certiorari*, the CA directed the completion of the canvass of the election results suspended by the TRO. It should simply be plain that the CA did not unduly abuse its discretion.

Also, contrary to PALEA's urging, the CA did not unduly rule on the validity of the conduct of the election. The statements on the validity of the election the CA made were *obiter dicta*, or mere expressions of its opinion that were not necessary to its decision to dismiss the petition for *certiorari*.

IN VIEW OF THE FOREGOING, we deny the petition for review on *certiorari*, and affirm the decision dated September 5, 2002 rendered by the Court of Appeals in C.A.-G.R. No. 69889.

SO ORDERED.

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

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[*] Additional member per Special Order No. 885 dated September 1, 2010.

THIRD DIVISION

[G.R. No. 160302. September 27, 2010]

DANILO ESCARIO, PANFILO AGAO, ARSENIO AMADOR, ELMER COLICO, ROMANO DELUMEN, DOMINADOR AGUILO, OLYMPIO GOLOSINO, RICARDO LABAN, LORETO MORATA, ROBERTO TIGUE, GILBERT VIBAR, THOMAS MANCILLA, JR., NESTOR LASTIMOSO, JIMMY MIRABALLES, JAILE OLISA, ISIDRO SANCHEZ, ANTONIO SARCIA, OSCAR CONTRERAS, ROMEO ZAMORA, MARIANO GAGAL, ROBERTO MARTIZANO, DOMINGO SANTILLICES, ARIEL ESCARIO, HEIRS OF FELIX LUCIANO, and MALAYANG SAMAHAN NG MGA MANGGAGAWA SA BALANCED FOODS, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION (THIRD DIVISION), PINAKAMASARAP CORPORATION, DR. SY LIAN TIN, and DOMINGO TAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; SUBSTANTIVE DUE PROCESS, EXPLAINED.— By its use of the phrase *unjustly dismissed,* Article 279 refers to a dismissal that is unjustly done, *that is*, the employer dismisses the employee without observing due process, either substantive or procedural. Substantive due process requires the attendance of any of the just or authorized causes for terminating an employee as provided under Article 278 (termination by employer), or Article 283 (closure of establishment and reduction of personnel), or Article 284 (disease as ground for termination), all of the *Labor Code*; while procedural due process demands compliance with the twin-notice requirement.

2. ID.; ID.; ID.; PARTICIPATION IN AN ILLEGAL STRIKE, AS CAUSE; DISTINCTION BETWEEN A UNION OFFICER AND A UNION MEMBER, CLARIFIED.— Contemplating

two causes for the dismissal of an employee, that is: (*a*) unlawful lockout; and (*b*) participation in an illegal strike, the third paragraph of Article 264(*a*) authorizes the award of full backwages only when the termination of employment is a consequence of an unlawful lockout. On the consequences of an illegal strike, the provision distinguishes between a union officer and a union member participating in an illegal strike. A union officer who knowingly participates in an illegal strike is deemed to have lost his employment status, but a union member who is merely instigated or induced to participate in the illegal strike is more benignly treated. Part of the explanation for the benign consideration for the union member is the policy of reinstating rank-and-file workers who are misled into supporting illegal strikes, absent any finding that such workers committed illegal acts during the period of the illegal strikes.

3. ID.; ID.; ID.; ILLEGAL DISMISSAL; PAYMENT OF BACKWAGES, AS REMEDY; WHEN PROPER.— As a general rule, backwages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment. The grant of backwages to him is in furtherance and effectuation of the public objectives of the *Labor Code*, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the *Labor Code*. That backwages are not granted to employees participating in an illegal strike simply accords with the reality that they do not render work for the employer during the period of the illegal strike. According to *G&S Transport Corporation v. Infante*: With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working**. x x x In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that **for this exception to apply, it is required that the strike**

be legal, a situation that does not obtain in the case at bar. x x x Under the principle of *a fair day's wage for a fair day's labor*, the petitioners were not entitled to the wages during the period of the strike (even if the strike might be legal), because they performed no work during the strike. Verily, it was neither fair nor just that the dismissed employees should litigate against their employer on the latter's time. Thus, the Court deleted the award of backwages and held that the striking workers were entitled only to reinstatement in *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*, considering that the striking employees did not render work for the employer during the strike.

4. ID.; ID.; ID.; ID.; REINSTATEMENT, AS REMEDY; WHEN ORDER OF REINSTATEMENT IS DEEMED WAIVED BY THE EMPLOYEE INVOLVED.— The absence from an order of reinstatement of an alternative relief should the employer or a supervening event not within the control of the employee prevent reinstatement negates the very purpose of the order. The judgment favorable to the employee is thereby reduced to a mere paper victory, for it is all too easy for the employer to simply refuse to have the employee back. To safeguard the spirit of social justice that the Court has advocated in favor of the working man, therefore, the right to reinstatement is to be considered renounced or waived only when the employee unjustifiably or unreasonably refuses to return to work upon being so ordered or after the employer has offered to reinstate him.

5. ID.; ID.; ID.; ID.; ID.; PAYMENT OF SEPARATION PAY IN LIEU OF REINSTATEMENT; WHEN PROPER.— [S]eparation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee. Here, PINA

manifested that the reinstatement of the petitioners would not be feasible because: (*a*) it would "inflict disruption and oppression upon the employer"; (*b*) "petitioners [had] stayed away" for more than 15 years; (*c*) its machines had depreciated and had been replaced with newer, better ones; and (*d*) it now sold goods through independent distributors, thereby abolishing the positions related to sales and distribution. Under the circumstances, the grant of separation pay in lieu of reinstatement of the petitioners was proper. It is not disputable that the grant of separation pay or some other financial assistance to an employee is based on equity, which has been defined as justice outside law, or as being ethical rather than jural and as belonging to the sphere of morals than of law. This Court has granted separation pay as a measure of social justice even when an employee has been validly dismissed, as long as the dismissal has not been due to serious misconduct or reflective of personal integrity or morality.

6. ID.; ID.; ID.; ID.; ID.; ID.; AMOUNT OF SEPARATION PAY EQUIVALENT TO ONE MONTH SALARY PER YEAR OF SERVICE, SUSTAINED.— In *G & S Transport*, the Court awarded separation pay equivalent to one month salary per year of service considering that 17 years had passed from the time when the striking employees were refused reinstatement. In *Association of Independent Unions in the Philippines v. NLRC,* the Court allowed separation pay equivalent to one month salary per year of service considering that eight years had elapsed since the employees had staged their illegal strike. Here, we note that this case has dragged for almost 17 years from the time of the illegal strike. Bearing in mind PINA's manifestation that the positions that the petitioners used to hold had ceased to exist for various reasons, we hold that separation pay equivalent to one month per year of service in lieu of reinstatement fully aligns with the aforecited rulings of the Court on the matter.

APPEARANCES OF COUNSEL

Armando Ampil & Ramon Ampil for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

Conformably with the long honored principle of *a fair day's wage for a fair day's labor*, employees dismissed for joining an illegal strike are not entitled to backwages for the period of the strike even if they are reinstated by virtue of their being merely members of the striking union who did not commit any illegal act during the strike.

We apply this principle in resolving this appeal *via* a petition for review on *certiorari* of the decision dated August 18, 2003 of the Court of Appeals (CA),[1] affirming the decision dated November 29, 2001 rendered by the National Labor Relations Commission (NLRC) directing their reinstatement of the petitioners to their former positions without backwages, or, in lieu of reinstatement, the payment of separation pay equivalent to one-half month per year of service.[2]

Antecedents

The petitioners were among the regular employees of respondent Pinakamasarap Corporation (PINA), a corporation engaged in manufacturing and selling food seasoning. They were members of petitioner Malayang Samahan ng mga Manggagawa sa Balanced Foods (Union).

At 8:30 in the morning of March 13, 1993, all the officers and some 200 members of the Union walked out of PINA's premises and proceeded to the *barangay* office to show support for Juanito Cañete, an officer of the Union charged with oral defamation by Aurora Manor, PINA's personnel manager, and Yolanda Fabella, Manor's secretary.[3] It appears that the

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[1] *Rollo*, pp. 26-37; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice of the Court of Appeals), with Associate Justices Eubolo G. Verzola (deceased) and Regalado E. Maambong (retired), concurring.

[2] *Id.*, pp. 42-51.

[3] *Id.*, p. 46.

proceedings in the *barangay* resulted in a settlement, and the officers and members of the Union all returned to work thereafter.

As a result of the walkout, PINA preventively suspended all officers of the Union because of the March 13, 1993 incident. PINA terminated the officers of the Union after a month.

On April 14, 1993, PINA filed a complaint for unfair labor practice (ULP) and damages. The complaint was assigned to then Labor Arbiter Raul Aquino, who ruled in his decision dated July 13, 1994 that the March 13, 1993 incident was an illegal walkout constituting ULP; and that all the Union's officers, except Cañete, had thereby lost their employment.[4]

On April 28, 1993, the Union filed a notice of strike, claiming that PINA was guilty of union busting through the constructive dismissal of its officers.[5] On May 9, 1993, the Union held a strike vote, at which a majority of 190 members of the Union voted to strike.[6] The strike was held in the afternoon of June 15, 1993.[7]

PINA retaliated by charging the petitioners with ULP and abandonment of work, stating that they had violated provisions on strike of the collective bargaining agreement (CBA), such as: (*a*) sabotage by the insertion of foreign matter in the bottling of company products; (*b*) decreased production output by slowdown; (*c*) serious misconduct, and willful disobedience and insubordination to the orders of the Management and its representatives; (*d*) disruption of the work place by invading the premises and perpetrating commotion and disorder, and by causing fear and apprehension; (*e*) abandonment of work since June 28, 1993 despite notices to return to work individually sent to them; and (*f*) picketing within the company premises on June 15, 1993 that effectively barred with the use of threat and

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[4] *Id.*, p. 47.

[5] *Id.*

[6] *Id.*

[7] *Id.*; the date appears as June 23, 1993 in page 4 of the petition for review on *certiorari.*

intimidation the ingress and egress of PINA's officials, employees, suppliers, and customers.[8]

On September 30, 1994, the Third Division of the National Labor Relations Commission (NLRC) issued a temporary restraining order (TRO), enjoining the Union's officers and members to cease and desist from barricading and obstructing the entrance to and exit from PINA's premises, to refrain from committing any and all forms of violence, and to remove all forms of obstructions such as streamers, placards, or human barricade.[9]

On November 29, 1994, the NLRC granted the writ of preliminary injunction.[10]

On August 18, 1998, Labor Arbiter Jose G. de Vera (LA) rendered a decision, to wit:

> WHEREFORE, all the foregoing premises being considered, judgment is hereby rendered declaring the subject strike to be illegal.
>
> The complainant's prayer for decertification of the respondent union being outside of the jurisdiction of this Arbitration Branch may not be given due course.
>
> And finally, the claims for moral and exemplary damages for want of factual basis are dismissed.
>
> SO ORDERED.[11]

On appeal, the NLRC sustained the finding that the strike was illegal, but reversed the LA's ruling that there was abandonment, *viz*:

> However, we disagree with the conclusion that respondents' union members should be considered to have abandoned their employment.

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[8] *Id.,* p. 45.

[9] *Id.,* p. 47.

[10] *Id.*

[11] *Id.,* p. 32.

Under Article 264 of the Labor Code, as amended, the union officers who knowingly participate in the illegal strike may be declared to have lost their employment status. However, mere participation of a union member in the illegal strike does not mean loss of employment status unless he participates in the commission of illegal acts during the strike. While it is true that complainant thru individual memorandum directed the respondents to return to work (pp. 1031-1112, Records) there is no showing that respondents deliberately refused to return to work. A worker who joins a strike does so precisely to assert or improve the terms and conditions of his work. If his purpose is to abandon his work, he would not go to the trouble of joining a strike (*BLTB v. NLRC,* 212 SCRA 794).

WHEREFORE, premises considered, the Decision appealed from is hereby MODIFIED in that complainant company is directed to reinstate respondents named in the complaint to their former positions but without backwages. In the event that reinstatement is not feasible complainant company is directed to pay respondents separation pay at one (½) half month per year of service.

SO ORDERED.[12]

Following the denial of their motion for reconsideration, the petitioners assailed the NLRC's decision through a petition for *certiorari* in the Court of Appeals (CA), claiming that the NLRC gravely abused its discretion in not awarding backwages pursuant to Article 279 of the *Labor Code*, and in not declaring their strike as a good faith strike.

On August 18, 2003, the CA affirmed the NLRC.[13] In denying the petitioners' claim for full backwages, the CA applied the third paragraph of Article 264(a) instead of Article 279 of the *Labor Code*, explaining that the only instance under Article 264 when a dismissed employee would be reinstated with full backwages was when he was dismissed by reason of an illegal lockout; that Article 264 was silent on the award of backwages to employees participating in a lawful strike; and that a

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[12] *Id.,* pp. 50-51.

[13] *Id.,* pp. 26-37; penned by Associate Justice Andres B. Reyes, Jr. (now Presiding Justice), and concurred in by Associate Justice Eubolo G. Verzola (now deceased) and Associate Justice Regalado E. Maambong (now retired).

reinstatement with full backwages would be granted only when the dismissal of the petitioners was not done in accordance with Article 282 (dismissals with just causes) and Article 283 (dismissals with authorized causes) of the *Labor Code*.

The CA disposed thus:[14]

> WHEREFORE, premises considered, the Petition is DISMISSED for lack of merit and the assailed 29 November 2001 Decision of respondent Commission in NLRC NRC CA No. 009701-95 is hereby AFFIRMED *in toto*. No costs.
>
> SO ORDERED.[15]

On October 13, 2003, the CA denied the petitioners' motion for reconsideration.[16]

Hence, this appeal *via* petition for review on *certiorari*.

Issue

The petitioners posit that they are entitled to full backwages from the date of dismissal until the date of actual reinstatement due to their not being found to have abandoned their jobs. They insist that the CA decided the question in a manner contrary to law and jurisprudence.

Ruling

We sustain the CA, but modify the decision on the amount of the backwages in order to accord with equity and jurisprudence.

I
Third Paragraph of Article 264 (*a*), *Labor Code*, is Applicable

The petitioners contend that they are entitled to full backwages by virtue of their reinstatement, and submit that applicable to their situation is Article 279, not the third paragraph of Article 264(*a*), both of the *Labor Code*.

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[14] *Id.*

[15] *Id.*, p. 37.

[16] *Id.*, pp. 39-40.

We do not agree with the petitioners.

Article 279 provides:

Article 279. *Security of Tenure*. – In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is **unjustly dismissed** from work shall be entitled to reinstatement without loss of seniority rights and other privileges **and to his full backwages**, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

By its use of the phrase *unjustly dismissed*, Article 279 refers to a dismissal that is unjustly done, *that is*, the employer dismisses the employee without observing due process, either substantive or procedural. Substantive due process requires the attendance of any of the just or authorized causes for terminating an employee as provided under Article 278 (termination by employer), or Article 283 (closure of establishment and reduction of personnel), or Article 284 (disease as ground for termination), all of the *Labor Code*; while procedural due process demands compliance with the twin-notice requirement.[17]

In contrast, the third paragraph of Article 264(*a*) states:

Art. 264. *Prohibited activities*. – (a) xxx

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status; Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

x x x x x x x x x

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[17] Chan, *Law on Labor Relations and Termination of Employment Annotated*, 1996, pp. 604-614.

Contemplating two causes for the dismissal of an employee, that is: (*a*) unlawful lockout; and (*b*) participation in an illegal strike, the third paragraph of Article 264(*a*) authorizes the award of full backwages only when the termination of employment is a consequence of an unlawful lockout. On the consequences of an illegal strike, the provision distinguishes between a union officer and a union member participating in an illegal strike. A union officer who knowingly participates in an illegal strike is deemed to have lost his employment status, but a union member who is merely instigated or induced to participate in the illegal strike is more benignly treated. Part of the explanation for the benign consideration for the union member is the policy of reinstating rank-and-file workers who are misled into supporting illegal strikes, absent any finding that such workers committed illegal acts during the period of the illegal strikes.[18]

The petitioners were terminated for joining a strike that was later declared to be illegal. The NLRC ordered their reinstatement or, in lieu of reinstatement, the payment of their separation pay, because they were mere rank-and-file workers whom the Union's officers had misled into joining the illegal strike. They were not unjustly dismissed from work. Based on the text and intent of the two aforequoted provisions of the *Labor Code*, therefore, it is plain that Article 264(*a*) is the applicable one.

II
Petitioners not entitled to backwages despite their reinstatement: *A fair day's wage for a fair day's labor*

The petitioners argue that the finding of no abandonment equated to a finding of illegal dismissal in their favor. Hence, they were entitled to full backwages.

The petitioners' argument cannot be sustained.

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[18] *Stamford Marketing Corporation v. Julian*, G.R. No. 145496, February 24, 2004, 423 SCRA 633, 648; *Gold City Integrated Port Service v. National Labor Relations Commission*, G.R. Nos. 103560 and 103599, July 6, 1995, 245 SCRA 628.

The petitioners' participation in the illegal strike was precisely what prompted PINA to file a complaint to declare them, as striking employees, to have lost their employment status. However, the NLRC ultimately ordered their reinstatement after finding that they had not abandoned their work by joining the illegal strike. They were thus entitled only to reinstatement, regardless of whether or not the strike was the consequence of the employer's ULP,[19] considering that a strike was not a renunciation of the employment relation.[20]

As a general rule, backwages are granted to indemnify a dismissed employee for his loss of earnings during the whole period that he is out of his job. Considering that an illegally dismissed employee is not deemed to have left his employment, he is entitled to all the rights and privileges that accrue to him from the employment.[21] The grant of backwages to him is in furtherance and effectuation of the public objectives of the *Labor Code*, and is in the nature of a command to the employer to make a public reparation for his illegal dismissal of the employee in violation of the *Labor Code*.[22]

That backwages are not granted to employees participating in an illegal strike simply accords with the reality that they do not render work for the employer during the period of the illegal strike.[23] According to *G&S Transport Corporation v. Infante*:[24]

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[19] *Cromwell Commercial Employees and Laborers Union (PTUC) v. Court of Industrial Relations*, G.R. No. L-19778, September 30, 1964, 12 SCRA 124; *Phil. Steam Navigation Co. v. Phil. Marine Officers Guild*, G.R. Nos. L-20667 and L-20669, October 29, 1965, 15 SCRA 174.

[20] *Feati University v. Bautista*, G.R. No. L-21278, December 27, 1966, 18 SCRA 1191, 1224; *Rex Taxicab v. Court of Industrial Relations*, 70 Phil. 621, 631; *Radio Operators v. PHILMAROA*, 102 Phil. 530.

[21] *Gold City Integrated Port Services, Inc. v. National Labor Relations Commission*, 245 SCRA 628 and *Cristobal v. Melchor*, 101 SCRA 857.

[22] *Imperial Textile Mills, Inc. v. National Labor Relations Commission*, G.R. No. 101527, January 19, 1993, 217 SCRA 237, 247.

[23] *Lapanday Workers Union v. National Labor Relations Commission*, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 107.

[24] G.R. No. 160303, September 13, 2007, 533 SCRA 288, 301-302.

With respect to backwages, the principle of a "fair day's wage for a fair day's labor" remains as the basic factor in determining the award thereof. **If there is no work performed by the employee there can be no wage or pay unless, of course, the laborer was able, willing and ready to work but was illegally locked out, suspended or dismissed or otherwise illegally prevented from working.** xxx In *Philippine Marine Officers' Guild v. Compañia Maritima*, as affirmed in *Philippine Diamond Hotel and Resort v. Manila Diamond Hotel Employees Union*, the Court stressed that **for this exception to apply, it is required that the strike be legal**, a situation that does not obtain in the case at bar. (emphasis supplied)

The petitioners herein do not deny their participation in the June 15, 1993 strike. As such, they did not suffer any loss of earnings during their absence from work. Their reinstatement *sans* backwages is in order, to conform to the policy of *a fair day's wage for a fair day's labor*.

Under the principle of *a fair day's wage for a fair day's labor*, the petitioners were not entitled to the wages during the period of the strike (even if the strike might be legal), because they performed no work during the strike. Verily, it was neither fair nor just that the dismissed employees should litigate against their employer on the latter's time.[25] Thus, the Court deleted the award of backwages and held that the striking workers were entitled only to reinstatement in *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union*,[26] considering that the striking employees did not render work for the employer during the strike.

III
Appropriate Amount for Separation Pay Is One Month per Year of Service

The petitioners were ordered reinstated because they were union members merely instigated or induced to participate in

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[25] *Sugue v. Triumph International (Phils.) Inc.*, G.R. Nos. 164804 and 164784, January 30, 2009, 577 SCRA 323; *Social Security System v. SSS Supervisors' Union*, G.R. No. L-31832, October 23, 1982, 117 SCRA 746; *J. P. Heilbronn Co. v. Nat'l Labor Union*, 92 Phil. 575 (1953).

[26] G.R. No. 158075, June 30, 2006, 494 SCRA 195.

the illegal strike. By joining the strike, they did not renounce their employment relation with PINA but remained as its employees.

The absence from an order of reinstatement of an alternative relief should the employer or a supervening event not within the control of the employee prevent reinstatement negates the very purpose of the order. The judgment favorable to the employee is thereby reduced to a mere paper victory, for it is all too easy for the employer to simply refuse to have the employee back. To safeguard the spirit of social justice that the Court has advocated in favor of the working man, therefore, the right to reinstatement is to be considered renounced or waived only when the employee unjustifiably or unreasonably refuses to return to work upon being so ordered or after the employer has offered to reinstate him.[27]

However, separation pay is made an alternative relief in lieu of reinstatement in certain circumstances, like: (*a*) when reinstatement can no longer be effected in view of the passage of a long period of time or because of the realities of the situation; (*b*) reinstatement is inimical to the employer's interest; (*c*) reinstatement is no longer feasible; (*d*) reinstatement does not serve the best interests of the parties involved; (*e*) the employer is prejudiced by the workers' continued employment; (*f*) facts that make execution unjust or inequitable have supervened; or (*g*) strained relations between the employer and employee.[28]

Here, PINA manifested that the reinstatement of the petitioners would not be feasible because: (*a*) it would "inflict disruption and oppression upon the employer;" (*b*) "petitioners [had] stayed away" for more than 15 years; (*c*) its machines had depreciated and had been replaced with newer, better ones; and (*d*) it now

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[27] *Salvador v. Court of Appeals (Special Sixth Division)*, G.R. No. 127501, May 5, 2000, 331 SCRA 438, 445; *East Asiatic Company, Ltd. v. Court of Industrial Relations*, G.R. No. L-29068, 40 SCRA 521, 537-538.

[28] Poquiz, *Labor Relations Law with Notes and Cases* Volume II (2006), p. 319, citing *Manipon, Jr. v. National Labor Relations Commission*, G.R. No. 105338, December 24, 1994, 239 SCRA 451.

sold goods through independent distributors, thereby abolishing the positions related to sales and distribution.[29]

Under the circumstances, the grant of separation pay in lieu of reinstatement of the petitioners was proper. It is not disputable that the grant of separation pay or some other financial assistance to an employee is based on equity, which has been defined as justice outside law, or as being ethical rather than jural and as belonging to the sphere of morals than of law.[30] This Court has granted separation pay as a measure of social justice even when an employee has been validly dismissed, as long as the dismissal has not been due to serious misconduct or reflective of personal integrity or morality.[31]

What is the appropriate amount for separation pay?

In *G & S Transport*,[32] the Court awarded separation pay equivalent to one month salary per year of service considering that 17 years had passed from the time when the striking employees were refused reinstatement. In *Association of Independent Unions in the Philippines v. NLRC*,[33] the Court allowed separation pay equivalent to one month salary per year of service considering that eight years had elapsed since the employees had staged their illegal strike.

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[29] Private Respondent's Manifestation dated January 19, 2009 (pp. 3-4). *Rollo*, pp. 121-122.

[30] *Salavarria v. Letran College*, G.R. No. 110396, September 25, 1998, 296 SCRA 184, 191; *Phil. Long Distance Telephone Co. v. National Labor Relations Commission*, G.R. No. 80609, August 23, 1988, 164 SCRA 671, 682.

[31] *Philippine Commercial International Bank v. Abad*, G.R. No. 158045, February 28, 2005, 452 SCRA 579, 587; *Gustilo v. Wyeth Philippines Inc.*, G.R. No. 149629, October 4, 2004, 440 SCRA 67, 76; *Gabuay v. Oversea Paper Supply, Inc.*, G.R. No. 148837, August 13, 2004, 436 SCRA 514.

[32] *Supra* at note 24, p. 304; See also *Philippine Diamond Hotel and Resort, Inc. (Manila Diamond Hotel) v. Manila Diamond Hotel Employees Union, supra* at note 26, p. 217.

[33] G.R. No. 120505, March 25, 1999, 305 SCRA 219, 235.

Here, we note that this case has dragged for almost 17 years from the time of the illegal strike. Bearing in mind PINA's manifestation that the positions that the petitioners used to hold had ceased to exist for various reasons, we hold that separation pay equivalent to one month per year of service in lieu of reinstatement fully aligns with the aforecited rulings of the Court on the matter.

WHEREFORE, we affirm the decision dated August 18, 2003 of the Court of Appeals, subject to the modification to the effect that in lieu of reinstatement the petitioners are granted backwages equivalent of one month for every year of service.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 163610. September 27, 2010]

HEIRS OF ENRIQUE TORING, represented herein by MORIE TORING, *petitioners, vs.* **HEIRS OF TEODOSIA BOQUILAGA, represented herein by PAULINO CADLAWON, CRISPIN ALBURO, VIVENCIO GOMEZ, EDUARDO CONCUERA and PONCIANO NAILON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; CONCLUSIVE ON THIS COURT WHEN SUPPORTED BY THE EVIDENCE ON RECORD;

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[*] Additional member per Special Order No. 885 dated September 1, 2010.

EXCEPTIONS.— As a general rule, factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record. There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is a grave abuse of discretion; (4) *the judgment is based on a misapprehension of facts*; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) *the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion*; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. ID.; CIVIL PROCEDURE; ACTIONS; THE NATURE OF AN ACTION IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT AND THE CHARACTER OF THE RELIEF SOUGHT BY PLAINTIFF.— The nature of an action is determined by the material allegations of the complaint and the character of the relief sought by plaintiff, and the law in effect when the action was filed irrespective of whether he is entitled to all or only some of such relief. As gleaned from the averments of the petition filed before the trial court, though captioned as for delivery or production of documents and annulment of document, petitioners' action was really for quieting of title *and* cancellation of reconstituted titles.

3. CIVIL LAW; PROPERTY; QUIETING OF TITLE; NATURE OF ACTION, DISCUSSED.— Quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure "… an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim." In such action,

the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.

4. ID.; ID.; JUDICIAL RECONSTITUTION OF TITLE; WHEN PROPER.— The governing law for judicial reconstitution of titles is Republic Act No. 26. Based on the provisions of said law, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) *that the certificate of title was in force at the time it was lost and destroyed*; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title. x x x The reconstituted OCTs on their face contained no entry whatsoever as to the number of the OCT issued pursuant to the decrees of registration, nor the date of its issuance. We have held that such absence of any document, private or official, mentioning the number of the certificate of title and date when the certificate of title was issued, does not warrant the granting of a petition for reconstitution. Moreover, notice of hearing of the petition for reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition.

5. ID.; ID.; ID.; PURPOSE THEREOF, EXPLAINED.— The nature of judicial reconstitution proceedings is the restoration of an instrument or the reissuance of a new duplicate certificate of title which is supposed to have been lost or destroyed in its original form and condition. Its purpose is to have the title

reproduced after proper proceedings in the same form they were when the loss or destruction occurred and not to pass upon the ownership of the land covered by the lost or destroyed title.

6. ID.; ID.; OWNERSHIP; WHEN TAX DECLARATION AND RECEIPTS FOR TAX PAYMENTS CONSTITUTE STRONG EVIDENCE OF OWNERSHIP.— While tax declarations and receipts are not conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declarations and receipts are strong evidence of ownership. And even assuming that respondents are indeed occupying the lands or portions thereof, it is not clear whether they occupy or possess the same as owners or tenants.

7. ID.; ESTOPPEL; LACHES; DEFINITION; NOT APPRECIATED IN CASE AT BAR.— Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. This equitable defense is based upon grounds of public policy, which requires the discouragement of stale claims for the peace of society. Indeed, while it is true that a Torrens Title is indefeasible and imprescriptible, the registered landowner may lose his right to recover the possession of his registered property by reason of laches. In this case, however, laches cannot be appreciated in respondents' favor.

8. ID.; ID.; ID.; ELEMENTS.— It should be stressed that laches is not concerned only with the mere lapse of time. The following elements must be present in order to constitute laches:(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Marlo O. Cugtas for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

For review under Rule 45 of the 1997 Rules of Civil Procedure, as amended, are the Decision[1] dated July 11, 2003 of the Court of Appeals (CA) in CA-G.R. CV No. 70432 which affirmed the Decision[2] dated January 27, 1998 of the Regional Trial Court (RTC) of Bogo, Cebu, Branch 61 dismissing Civil Case No. BOGO-00105 except as to the land covered by reconstituted Transfer Certificate of Title (TCT) No. RT-3989 (T-16805) in the name of Enrique Toring, and the Resolution dated April 5, 2004 denying the motion for reconsideration.

The case antecedents:

On October 10, 1996, the heirs of Enrique Toring (petitioners) filed before the trial court a petition for "production, delivery, surrender of documents, annulment of document" against the heirs of Teodosia Boquilaga (respondents). The petition was subsequently amended to include as defendants Attys. Joseph Bernaldez, Earvin Estandarte and Marlo Cugtas.

Petitioners alleged the following:

3. During the lifetime of the late Teodosia Boquilaga, and more particularly on June 3, 1927, said Teodosia Boquilaga sold to Enrique Toring now deceased, parcels of land for a consideration of Five Hundred and Eleven Pesos (₱511.00), and particularly described as follows:

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[1] *Rollo*, pp. 37-41. Penned by Associate Justice Conrado M. Vasquez, Jr. and concurred in by Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang.

[2] *Id.* at 62-69. Penned by Judge Ildefonso G. Mantilla.

"Lot No. 1835, Cadastral Case No. 7, Cadastral Record No. 442, Decree No. 230740, with Original Certificate of Title No. 13720"

"Lot No. 2248, Cadastral Case No. 7, Cad. Record No. 442 Decree No. 231111, Original Certificate of Title No. 14057"

"Lot No. 2249, Cadastral Case No. 7, Cadastral Record No. 442, Decree No. 23112 (sic) [231112], Certificate of Title No. 14167"

"Lot No. 1834, Cadastral Case No. 7, Cadastral Record No. 442 Decree No. 230739, Original Certificate of [Title] No. 13719"

These voluntary dealings of the above described parcels of land is (sic) evidenced by a deed of absolute sale written in Spanish, hereto attach[ed] as annex "A";

4. This deed of absolute sale was duly registered with the [Register] of Deeds, and the fees for the registration were duly paid. Thereafter, *new Transfer [Certificates] of [Title] were issued by the Office of the [Register] of Deeds in the Province of Cebu, for all the parcels of land,* in the name [of] Enrique Toring, and attached as annex "B" and made [an] integral part of this petition;

5. That from the issuance of [Transfer Certificates] of Title, particularly August 20, 1927, plaintiffs have been in possession and religiously paid the real taxes due on said described lots, and collecting the proceeds of the fruits of the land. However, *during World War II, the canceled Original Certificate in the name of Teodosia [Boquilaga], and the Transfer [Certificates] of [Title] in the name of Enrique Toring in the books of the Register of Deeds were destroyed;*

6. That lately, while plaintiffs exercising their right of ownership over these parcels of land, defendants refused to share the proceeds and fruits of land on the reason that they owned the land. The matter was referred to the Office of the Barangay Captain, and in a conference, defendants presented Original Certificates of Title. Surprised by these Original [Certificates] of [Title], plaintiffs made verification from the Register of Deeds of the Province of Cebu, and from the Regional Trial Court Branch 16, Cebu City, and discovered that *defendants representing the heirs of Teodosia Boquilaga filed a petition for reconstitution of title, and succeeded in having the*

original certificates of title reconstituted covering the four parcels of land in the name of Teodosia [Boquilaga]. The petition, the decision, the reconstituted titles, and the certification to file action are hereto attached as annexes "C", "D", "E", and "F" and as part and parcel of this petition;

7. *Plaintiffs were never served any notice of the petition for reconstitution of the Original Certificates* because the persons alleged in the petition as the actual possessor, or the adjacent lot owner alleged in the petition have long been dead, thus resulting into the success of the petition, and the failure of plaintiffs to interpose their opposition;

8. Meanwhile, in an earlier date, lot no. 1834 was reconstituted and new Certificate of Title was issued in the name of Enrique Toring attached hereto as annex "G", and as a part of this petition;

9. *For the services rendered by the [law] office in the reconstitution of the original certificate of titles, lot 1835 was transferred in the name of defendants Attorneys* Joseph Bernaldez, Ervin B. Estandarte, and Marlo Cugtas under transfer certificate of title no. 97615, attached and made an integral part of this petition as annex "H";

10. Under P.D. 1529, registration is the operative act that conveys and affects the land, and that there is a need by plaintiffs to confirm the operative act made in the year 1927, and thus intend to register the sale with the Register of Deeds;

11. *It is imperative for plaintiffs to take hold of the reconstituted Original [Certificates] of [Title] and the Transfer Certificates of Title 97615 now in possession with defendants to register and confirm the sale made in the year 1927, which documents are unjustifiably withheld by defendants;*

x x x[3] (Italics supplied.)

Petitioners thus sought the issuance of an order directing the defendants to deliver, produce and surrender the reconstituted Original Certificates of Title (OCTs) (RO-13240, RO-13238 and RO-13239) and TCT No. 97615. Should the defendants refuse to deliver the said titles, it is prayed that the court (a) declare OCT Nos. RO-13240, RO-13238 and RO-13239 and

[3] *Id.* at 49-50.

TCT No. 97615 null and void; (b) direct the Register of Deeds to cancel said titles and in lieu thereof issue new TCTs in the name of Enrique Toring; and (c) declare OCT No. 13237 null and void for being cancelled by TCT No. RT-3989.[4]

In their Answer with Motion to Hear Affirmative Defenses, defendants denied petitioners' allegations and asserted that it was the heirs of Teodosia Boquilaga who have been in possession of the land since time immemorial, enjoying the fruits thereof and paying the taxes due thereon as evidenced by tax receipts issued for the years 1992 to 1995. They likewise denied "for want of knowledge or information sufficient to form a belief as to the truth x x x relative to the original certificate of title in the name of Teodosia Boquilaga which was cancelled and the transfer certificate of title in the name of Enrique Toring were destroyed in the advent of the second world war." Prior to the reconstitution by defendants, it was verified from the Register of Deeds of the Province of Cebu and the Land Registration Authority (LRA) that no such titles were issued covering the subject lots; petitioners have yet to register their alleged deed of sale but that is now not proper. Defendants averred that Lot Nos. 1834, 2248 and 2249 rightfully belong to the heirs of Teodosia Boquilaga, while the lot covered by TCT No. 97615 (Lot No. 1835) was acquired by Attys. Bernaldez, Estandarte and Cugtas in good faith and in consideration of services rendered, hence acquired by innocent third persons in good faith and for value. As special and affirmative defenses, defendants contended that the RTC has no jurisdiction in this case since the assessed value of the properties involved does not exceed ₱20,000.00, and that petitioners are guilty of laches for failing to act and take corrective measures with the Register of Deeds for sixty-nine (69) years on the alleged destruction of the documents.[5]

The parties agreed to submit the case for decision on the basis of position papers, memoranda/comment and other documentary evidence in support of their respective claims.

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[4] *Id.* at 50-51.

[5] Records, pp. 240-243.

On January 27, 1998, the trial court rendered its Decision dismissing the case on the ground that it cannot interfere with or render null and void the decision made by a co-equal and coordinate branch of the court which ordered the reconstitution of the OCTs in the name of Teodosia Boquilaga. Under the circumstances, petitioners' owner's duplicate certificates of title in the name of Enrique Toring are deemed "overtaken by the reconstituted title[s]." Further, the trial court found petitioners guilty of laches in not reconstituting the original TCTs in the name of Enrique Toring and in not making any opposition to the reconstitution proceedings filed by the heirs of Teodosia Boquilaga. However, it was declared that the dismissal of the case will not affect the reconstituted TCT No. RT-3989 in the name of Enrique Toring.[6]

Aggrieved, petitioners appealed to the CA arguing that the trial court erred in concluding that the action is one for the annulment of the order of the court which granted reconstitution, when in truth the petitioners merely sought the delivery of the owner's duplicate copies of the reconstituted OCTs. They also faulted the trial court in failing to consider that the defendants' predecessor-in-interest had long ago sold the lots to Enrique Toring, which document of sale defendants have not denied, and therefore defendant-heirs are no longer owners. Petitioners further assailed the trial court in finding them guilty of laches despite recognizing the existence of the owner's duplicate of TCTs in the name of Enrique Toring; the submission by the petitioners of annexes in their Comment/Reply to defendants' memorandum showing that there were previous cases wherein petitioners have asserted and defended their right over the subject properties and prevailed; and the fact that the OCTs were reconstituted by defendants only in 1995 and the petitioners instituted this case in 1996.[7]

By Decision dated July 11, 2003, the CA dismissed the appeal and affirmed the trial court's ruling. It held that apart from the bare assertion that their predecessor-in-interest, Enrique Toring,

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[6] *Rollo,* pp. 67-69.

[7] CA *rollo,* pp. 19-34.

purchased the subject lands from Teodosia Boquilaga for which TCTs in his name were issued but were lost during the last world war, petitioners have not established any right over the subject lands, and hence the reconstituted OCTs stand as strong evidence of ownership by the heirs of Teodosia Boquilaga. The appellate court likewise upheld the trial court's finding that petitioners were guilty of laches, citing their unexplained failure or neglect to have the alleged lost or destroyed TCTs reconstituted for more than fifty (50) years which weighs heavily against their claim and even bolsters the defendants-appellees' claim that no such titles really exist.[8]

A motion for reconsideration was filed by the petitioners but the CA denied the same in its Resolution[9] dated April 5, 2004.

Petitioners submit the following arguments in this petition for review on *certiorari*:

I.

THE COURT OF APPEALS OVERLOOKED AND DISREGARDED CONCLUSIVE EVIDENCE ON RECORD THAT THE SUBJECT LANDS WERE ALREADY SOLD AS EARLY AS JUNE 3, 1927 BY TEODOSIA BOQUILAGA, RESPONDENTS' PREDECESSOR, TO ENRIQUE TORING, PETITIONERS' PREDECESSOR, AS EVIDENCED BY THE ANCIENT DEED OF SALE IN SPANISH LANGUAGE DATED JUNE 3, 1927 — WHICH EVIDENCE, IF PROPERLY CONSIDERED, WOULD HAVE CHANGED THE OUTCOME OF THE CASE.

II.

THE COURT OF APPEALS OVERLOOKED AND DISREGARDED CONCLUSIVE EVIDENCE ON RECORD THAT THE PETITIONERS ARE IN ACTUAL POSSESSION OF THE ORIGINAL OWNERS' DUPLICATE TRANSFER CERTIFICATES OF TITLE IN THE NAME OF ENRIQUE TORING WHICH ARE GOOD PROOF OF PETITIONERS' OWNERSHIP OF SUBJECT LANDS — WHICH EVIDENCE, IF PROPERLY CONSIDERED, WOULD HAVE ALTERED THE OUTCOME OF THE CASE.

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[8] *Rollo,* pp. 40-41.

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

III.

THE COURT OF APPEALS OVERLOOKED THE FACT THAT THE TITLES THAT PETITIONERS HAD RECONSTITUTED WERE THE CANCELLED ORIGINAL CERTIFICATES OF TITLE IN THE NAME OF TEODOSIA BOQUILAGA WHICH DO NOT PROVE OWNERSHIP OF THE LANDS BECAUSE THEY WERE ALREADY CANCELLED BY ENRIQUE TORING'S TRANSFER CERTIFICATES OF TITLE.

IV.

THE COURT OF APPEALS ERRED IN HOLDING PETITIONERS GUILTY OF LACHES JUST BECAUSE THEY FAILED TO RECONSTITUTE TORING'S ORIGINAL TRANSFER CERTIFICATES OF TITLE ON FILE IN THE RECORDS OF THE REGISTRY OF DEEDS, IT APPEARING THAT THEY AND THEIR PREDECESSOR HAVE BEEN IN ACTUAL POSSESSION OF THE LAND SINCE 1927 AND ARE IN POSSESSION OF THE ORIGINAL OWNER'S DUPLICATE TRANSFER CERTIFICATES OF TITLE IN THE NAME OF THEIR PREDECESSOR, ENRIQUE TORING.

V.

THE COURT OF APPEALS ERRED IN NOT REVERSING THE TRIAL COURT'S RULING THAT THE COMPLAINT/PETITION FILED BY PETITIONERS WITH THE TRIAL COURT WAS TANTAMOUNT TO AN ACTION TO ASSAIL THE DECISION OF A CO-EQUAL COURT, IT APPEARING THAT THE SAID COMPLAINT/PETITION WAS MERELY TO COMPEL DELIVERY OR SURRENDER BY RESPONDENTS OF THE RECONSTITUTED CERTIFICATES OF TITLE.[10]

The issues raised are purely questions of fact that this Court cannot review in a petition filed under Rule 45. Ultimately, we are asked to determine the ownership of the subject lots originally registered in the name of Teodosia Boquilaga, respondents' predecessor-in-interest.

The CA declared that petitioners failed to establish any right over the lots other than their bare assertion that their predecessor-in-interest purchased these properties from Teodosia Boquilaga

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[10] *Id.* at 17-18.

and subsequently titles in his name were issued but were lost during the last world war. It agreed with the trial court in finding that whatever claim petitioners have on the subject properties was lost by their unexplained neglect for more than fifty (50) years since the destruction of the records in the registry of deeds during the last world war, under the principle of laches. As to the nature of the action filed by petitioners, the CA likewise affirmed the trial court's ruling that it is one (1) for annulment of the reconstituted title, which essentially assails the judgment or order of a co-equal court.

As a general rule, factual findings of the trial court, especially those affirmed by the CA, are conclusive on this Court when supported by the evidence on record.[11] There are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is a grave abuse of discretion; (4) *the judgment is based on a misapprehension of facts*; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) *the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion*; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[12]

In the case at bar, the records showed that the original petition was filed in the Municipal Circuit Trial Court of Bogo-San Remigio, Cebu but was subsequently transferred to the RTC on motion of the petitioners. TCT Nos. 16802, 16803, 16804 and RT-3989 (T-16805) were attached to the petition together

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[11] *Dimaranan v. Heirs of Spouses Hermogenes Arayata and Flaviana Arayata*, G.R. No. 184193, March 29, 2010, p. 11, citing *Limbauan v. Acosta*, G.R. No. 148606, June 30, 2008, 556 SCRA 614, 628.

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

with Annexes "A", "C" to "G" mentioned therein.[13] However, upon elevation to the CA, the records transmitted had missing pages, including the pages subsequent to the original petition where copies of the aforesaid TCTs should have been attached.[14] At any rate, there appears to be no indication from the pleadings filed and orders/decision issued by the trial court throughout the proceedings that such documentary evidence was not submitted by petitioners. Hence, the CA could have been misled by the absence of these annexes from the records transmitted on appeal. Petitioners submitted to this Court the photocopies of TCT Nos. 16802, 16803 and 16804 certified as true copy from the records by the RTC of Bogo, Branch 61 Clerk of Court VI Atty. Rey Dadula Caayon.[15]

TCT Nos. 16802, 16803 and 16804 in the name of Enrique Toring clearly indicate the corresponding lots and *Original Certificates of Title* from which each title was derived, the dates of issuance of such OCTs, as well as Cadastral Case Decree Numbers of the original registration, correspond to the recitals in the *Escritura de Venta Absoluta* pertaining to the properties being conveyed by Teodosia Boquilaga (TCT No. 16802[16] which is a transfer from OCT No. 13720 issued on November 22, 1926 covering Lot 1835 pursuant to Decree No. 230740; TCT No. 16803[17] which is a transfer from OCT No. 14057 issued on November 29, 1926 covering Lot 2248 pursuant to Decree No. 231111; and TCT No. 16804[18] which is a transfer from OCT No. 14167 issued on November 29, 1926 covering Lot 2249 pursuant to Decree No. 231112). As to Lot 1834, the reconstituted title TCT No. RT-3989

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[13] Records, pp. 1-192.

[14] See records, pages 7-10 [attached Annex "B" (TCTs in the name of Enrique Toring) of the Petition] were missing.

[15] *Rollo*, pp. 54, 56 and 57.

[16] *Rollo*, p. 54.

[17] *Id.* at 56.

[18] *Id.* at 57.

(T-16805)[19] also in the name of Enrique Toring likewise shows on its face that the lot covered thereby (Lot 1834) was originally registered on November 22, 1926 pursuant to Decree No. 230739 in Cad Rec. No. 442 under OCT No. O-13719, which again corresponds to the recitals of the aforesaid document of sale executed by respondents' predecessor-in-interest. It must be noted that petitioners presented before the trial court *the owner's duplicate copies* of the said TCTs in the name of Enrique Toring. Indeed, had these pieces of evidence been duly considered on appeal, the resolution of the issue of ownership would have tilted in petitioners' favor.

But first, we resolve the issue of the propriety of the suit filed by the petitioners. The nature of an action is determined by the material allegations of the complaint and the character of the relief sought by plaintiff, and the law in effect when the action was filed irrespective of whether he is entitled to all or only some of such relief.[20] As gleaned from the averments of the petition filed before the trial court, though captioned as for delivery or production of documents and annulment of document, petitioners' action was really for quieting of title *and* cancellation of reconstituted titles.

Petitioners had prayed for the following reliefs before the trial court:

WHEREFORE, it is respectfully prayed that an order be issued;

a. Directing defendants to deliver, produce, and surrender Original [Certificates] of Title Nos. RO- 13240, 13238, 13239, and Transfer Certificate of Title [No.] 97615 to plaintiffs, and should defendants refuse to surrender these documents, to declare Original Certificate of Titles Nos. – RO- 13238, 13239, 13240, and Transfer Certificate of Title 97615 null and void, and directing the Register of Deeds

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[19] *Id.* at 61.

[20] *Iglesia ni Cristo v. Ponferrada*, G.R. No. 168943, October 27, 2006, 505 SCRA 828, 845, citing *Barangay Piapi v. Talip*, G.R. No. 138248, September 7, 2005, 469 SCRA 409, 413; *Hilario v. Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815, 824; and *Serdoncillo v. Spouses Benolirao*, 358 Phil. 83 (1998).

of the Province of Cebu, to cancel said Original Certificates of Title, and Transfer Certificate of Title and in lieu thereof issue new Transfer Certificates of Title in the name of Enrique Toring;

b. Declare as null and void Original Certificate of Title 13237, being canceled by Transfer Certificate of Title RT-3989;

c. Directing defendants heirs of Teodosia [Boquilaga] to pay ₱20,000.00 as attorney's fees.

Plaintiffs, pray for other remedies just and equitable applicable to their case, pertinent with law and equity.[21]

Petitioners contend that the delivery of the reconstituted OCTs in the name of Teodosia Boquilaga was necessary to confirm *and* register the 1927 sale in favor of their predecessor-in-interest, Enrique Toring. It appears that the remedy contemplated is a petition for surrender of withheld owner's duplicate certificates provided in Section 107 of Presidential Decree (P.D.) No. 1529.

SECTION 107. *Surrender of withheld duplicate certificates.* — Where it is necessary to issue a new certificate of title pursuant to any involuntary instrument which divests the title of the registered owner against his consent or **where a voluntary instrument cannot be registered by reason of the refusal or failure of the holder to surrender the owner's duplicate certificate of title,** the party in interest may file a petition in court to compel surrender of the same to the Register of Deeds. The court, after hearing, may order the registered owner or any person withholding the duplicate certificate to surrender the same, and direct the entry of a new certificate or memorandum upon such surrender. If the person withholding the duplicate certificate is not amenable to the process of the court, or if [for] any reason the outstanding owner's duplicate certificate cannot be delivered, the court may order the annulment of the same as well as the issuance of a new certificate of title in lieu thereof. Such new certificate and all duplicates thereof shall contain a memorandum of the annulment of the outstanding duplicate. (Emphasis supplied.)

However, petitioners themselves alleged that the 1927 sale had long been duly registered — OCT Nos. 1379, 14167,

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[21] *Rollo,* pp. 50-51.

14057 and 13720 in the name of Teodosia Boquilaga covering Cadastral Lot Nos. 1834, 2249, 2248 and 1835, respectively, as mentioned in the *Escritura de Venta Absoluta*[22] dated June 3, 1927, were cancelled and in lieu thereof TCTs have been issued in the name of Enrique Toring on August 20, 1927. Their predecessor-in-interest having already succeeded in registering the deed of sale as early as 1927, it is clear that the procedure under Section 107 of P.D. No. 1529 is inapplicable.

Quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. Originating in equity jurisprudence, its purpose is to secure "… an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim."[23] In such action, the competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper places, and to make the claimant, who has no rights to said immovable, respect and not disturb the one so entitled, but also for the benefit of both, so that whoever has the right will see every cloud of doubt over the property dissipated, and he can thereafter fearlessly introduce the improvements he may desire, as well as use, and even abuse the property as he deems fit.[24]

In alleging that petitioners were not served any notice as actual possessors or adjacent owners of the petition for reconstitution (Cad Case No. 7, Cad. Rec. No. 442, Decree Nos. 230739, 230740, 231111 and 231112) filed by the respondents for reconstitution of OCTs in the name of Teodosia Boquilaga which was granted by the court; and that the said OCTs have already been cancelled by the issuance of TCTs in

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

[23] *Baricuatro, Jr. v. Court of Appeals*, G.R. No. 105902, February 9, 2000, 325 SCRA 137, 146, citing TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. 2, p. 148.

[24] *Id.* at 146-147.

the name of Enrique Toring by virtue of a deed of sale executed in 1927 by Teodosia Boquilaga – petitioners did not just seek to remove any doubt or uncertainty in the title of their predecessor-in-interest over the subject real properties, but also claimed irregularity and defects in the reconstitution proceedings which resulted in the issuance of reconstituted OCT Nos. RO-13237, RO-13238, RO-13239 and RO-13240 in the name of Teodosia Boquilaga.

The governing law for judicial reconstitution of titles is Republic Act No. 26. Based on the provisions of said law, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) *that the certificate of title was in force at the time it was lost and destroyed*; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.[25] If indeed, as petitioners claimed, the OCTs in the name of Teodosia Boquilaga were already cancelled and new TCTs have already been issued in the name of Enrique Toring as early as 1927, then the reconstituted OCT Nos. RO-13237, RO-13238, RO-13239 and RO-13240 issued in Cad Case No. 7, Cad Rec. No. 442 are null and void.

It may also be noted that the petition for reconstitution filed by respondents and the Certifications issued by the LRA stated only the registration decree numbers issued in favor of Teodosia Boquilaga without mentioning the numbers of the OCTs and dates of their issuance.[26] The reconstituted OCTs on their face contained no entry whatsoever as to the number of the OCT issued pursuant to the decrees of registration, nor the date of its issuance. We have held that such absence of any document,

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[25] *Republic v. Tuastumban,* G.R. No. 173210, April 24, 2009, 586 SCRA 600, 610-614, citing Sections 2, 3, 12 and 13 of R.A. No. 26.

[26] Records, pp. 11-19, 299-304.

private or official, mentioning the number of the certificate of title and date when the certificate of title was issued, does not warrant the granting of a petition for reconstitution.[27] Moreover, notice of hearing of the petition for reconstitution of title must be served on the actual possessors of the property. Notice thereof by publication is insufficient. Jurisprudence is to the effect settled that in petitions for reconstitution of titles, actual owners and possessors of the land involved must be duly served with actual and personal notice of the petition.[28]

The decision granting the petition for reconstitution filed by the respondents was promulgated on May 9, 1996. There is no allegation or proof that petitioners availed of the remedies of appeal, petition for relief, *certiorari* or annulment of judgment before the CA questioning the validity of the said reconstitution order.

Notwithstanding petitioners' failure to avail of the aforementioned remedies, the decision in the reconstitution case is not a bar to the adjudication of the issue of ownership raised in the present case. The nature of judicial reconstitution proceedings is the restoration of an instrument or the reissuance of a new duplicate certificate of title which is supposed to have been lost or destroyed in its original form and condition. Its purpose is to have the title reproduced after proper proceedings in the same form they were when the loss or destruction occurred and not to pass upon the ownership of the land covered by the lost or destroyed title.[29]

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[27] *Tahanan Development Corp. v. Court of Appeals, et al.,* 203 Phil. 652 (1982) cited in *Republic v. Heirs of Julio Ramos,* G.R. No. 169481, February 22, 2010, p. 11.

[28] *Dordas v. Court of Appeals,* G.R. No. 118836, March 21, 1997, 270 SCRA 328, 336.

[29] *Heirs of Rolando N. Abadilla v. Galarosa,* G.R. No. 149041, July 12, 2006, 494 SCRA 675, 688, citing *Puzon v. Sta. Lucia Realty and Development, Inc.,* G.R. No. 139518, March 6, 2001, 353 SCRA 699, 710; *Heirs of Susana De Guzman Tuazon v. Court of Appeals,* G.R. No. 125758, January 20, 2004, 420 SCRA 219, 228; *Stilianopulos v. City of Legaspi,* 374 Phil. 879, 893-894 (1999); and *Lee v. Republic of the Phil.,* 418 Phil. 793, 803 (2001).

We explained in the case of *Heirs of Susana De Guzman Tuazon v. Court of Appeals*[30] that:

> [I]n x x x reconstitution under Section 109 of P.D. No. 1529 and R.A. No. 26, the nature of the action denotes a restoration of the instrument which is supposed to have been lost or destroyed in its original form and condition. The purpose of the action is merely to have the same reproduced, after proper proceedings, in the same form they were when the loss or destruction occurred, and does not pass upon the ownership of the land covered by the lost or destroyed title. It bears stressing at this point that ownership should not be confused with a certificate of title. **Registering land under the Torrens System does not create or vest title because registration is not a mode of acquiring ownership.** A certificate of title is merely an evidence of ownership or title over the particular property described therein. Corollarily, **any question involving the issue of ownership must be threshed out in a separate suit**, which is exactly what the private respondents did when they filed Civil Case No. 95-3577 ["Quieting of Title and Nullification and Cancellation of Title"] before Branch 74. The trial court will then conduct a full-blown trial wherein the parties will present their respective evidence on the issue of ownership of the subject properties to enable the court to resolve the said issue. x x x. (Emphasis supplied.)

After a careful review, we hold that petitioners have satisfactorily established their claim of ownership over the subject lots by preponderance of evidence. The existence and due execution of the *Escritura de Venta Absoluta* was never disputed by the respondents. Petitioners' documentary evidence showed that the registration fees for the transfer of the lots mentioned in the said deed of absolute sale was duly paid, resulting in the issuance of TCTs in the name of Enrique Toring. Thereafter, petitioners took possession of the land, sharing in the fruits thereof and paying the realty taxes due on the lands.[31] While the original owner's duplicate TCTs were in the possession of petitioners, the original transfer certificates of title on file with the registry of deeds were lost or destroyed during the last

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[30] *Supra*.

[31] Records, pp. 355-430.

world war. Petitioners were also able to judicially reconstitute TCT No. T-16805 (RT-3989) on November 11, 1994, as per the annotation thereon.[32]

On the other hand, respondents have not adduced competent evidence other than the reconstituted OCTs in their possession. The tax receipts presented revealed that they belatedly paid real estate taxes in 1995 (for the years 1992 to 1995),[33] which weakens their claim of possession since time immemorial. While tax declarations and receipts are not conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declarations and receipts are strong evidence of ownership.[34] And even assuming that respondents are indeed occupying the lands or portions thereof, it is not clear whether they occupy or possess the same as owners or tenants.

Clearly, the trial and appellate courts seriously erred in disregarding material evidence strongly supporting petitioners' claim of ownership of the disputed lots. There is likewise no basis for the conclusion that laches had set in, as to defeat the right of the petitioners to assert their claim over the subject properties.

Laches means the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[35] This equitable defense is based upon grounds of public policy, which requires the discouragement of stale claims for the peace of society. Indeed, while it is true that a Torrens Title is indefeasible and

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[32] *Rollo,* p. 61.

[33] Records, p. 247.

[34] *Gesmundo v. Court of Appeals,* G.R. No. 119870, December 23, 1999, 321 SCRA 487, 495.

[35] *Republic v. Court of Appeals,* G.R. No. 116111, January 21, 1999, 301 SCRA 366, 378-379.

imprescriptible, the registered landowner may lose his right to recover the possession of his registered property by reason of laches.[36] In this case, however, laches cannot be appreciated in respondents' favor.

It should be stressed that laches is not concerned only with the mere lapse of time. The following elements must be present in order to constitute laches:

(1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy;

(2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;

(3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and

(4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.[37]

Only the first element was present in this case, which occurred from the moment respondents refused to give petitioners' share in the fruits and proceeds of the land, claiming that they are owners thereof. In the ensuing *barangay* proceedings, respondents presented the reconstituted OCTs prompting petitioners to verify with the office of the registry of deeds. It was only then that petitioners discovered that respondents indeed filed a petition for judicial reconstitution. There being no personal notice to

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[36] *Heirs of Enrique Diaz v. Virata,* G.R. No. 162037, August 7, 2006, 498 SCRA 141, 167, citing *Vda. de Rigonan v. Derecho,* G.R. No. 159571, July 15, 2005, 463 SCRA 627, 648 and *Isabela Colleges, Inc. v. Heirs of Nieves Tolentino-Rivera,* G.R. No. 132677, October 20, 2000, 344 SCRA 95, 107.

[37] *Heirs of Anacleto B. Nieto v. Municipality of Meycauayan, Bulacan,* G.R. No. 150654, December 13, 2007, 540 SCRA 100, 107-108, citing *Pineda v. Heirs of Eliseo Guevara,* G.R. No. 143188, February 14, 2007, 515 SCRA 627, 635 and *Heirs of Juan and Ines Panganiban v. Dayrit,* G.R. No. 151235, July 28, 2005, 464 SCRA 370, 382.

them as actual possessors or adjacent lot owners, petitioners never had the opportunity to file their opposition. The order of reconstitution was issued in May 1996. Petitioners' filing of the present suit for the delivery and cancellation of said reconstituted OCTs in the possession of respondents on October 20, 1996, after the lapse of only five months, cannot be considered as unreasonable delay amounting to laches.

Additionally, petitioners showed that they were never amiss in asserting their rights over the subject lots whenever any incident threatened their peaceful possession and ownership. They attached as annexes to the Comment/Reply dated September 4, 1997, copies of the judgment rendered in a criminal case for qualified theft filed against one Genaro Amoro Regala (Crim. Case No. CU-2312) and Orders issued in Civil Case No. B-571 and CAR Case No. 1197. In these instances, the courts have recognized petitioners' ownership of the lands involved.[38]

WHEREFORE, the petition is *GRANTED*. The Decision dated July 11, 2003 and Resolution dated April 5, 2004 of the Court of Appeals in CA-G.R. CV No. 70432 are hereby *REVERSED* and *SET ASIDE*. Petitioners Heirs of Enrique Toring are hereby declared the lawful owners of Lot Nos. 1834, 1835, 2248 and 2249 (Cad. Case No. 7, Cad. Rec. No. 442, Decree Nos. 230739, 230740, 231111 and 231112) situated in Bogo, Cebu.

No costs.

SO ORDERED.

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

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[38] Records, pp. 538-559.

[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

SECOND DIVISION

[G.R. No. 172250. September 27, 2010]

HEIRS OF PEDRO BARZ, namely: ANGELO BARZ and MERLINDA BARZ, *petitioners, vs.* **SPOUSES JOSE GESALEM and ROSA GESALEM, represented [by] their Attorney-in-Fact, JONATHAN U. GESALEM; HON. AUGUSTINE VESTIL-Presiding Judge, Regional Trial Court, Branch 56, Mandaue City; COURT OF APPEALS, NINETEENTH DIVISION, CEBU CITY,** *respondents.*

SYLLABUS

CIVIL LAW; CONTRACTS; COMPROMISE AGREEMENTS; BESTOWED JUDICIAL APPROVAL IN CASE AT BAR FOR BEING NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS AND PUBLIC POLICY.— The Court finds that the Compromise Agreement is not contrary to law, morals, good customs and public policy. Moreover, it appears to be freely executed by petitioners and respondents, with the assistance of their respective counsels. The Court finds no reason not to grant the prayer of the parties and hereby bestows judicial approval of their Compromise Agreement.

APPEARANCES OF COUNSEL

Sisinio M. Andales and Eleno M. Andales, Jr. for petitioners.
Reuel T. Pintor for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals dated February 28, 2006 in CA-G.R.

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

CEB-SP No. 00767, and its Resolution dated April 11, 2006 denying petitioners' motion for reconsideration.

The Decision of the Court of Appeals affirmed the Order of the Regional Trial Court (RTC) of Mandaue City, Branch 56, denying petitioners' motion to dismiss the respondents' Complaint for reconveyance.

The facts[2] are as follows:

Petitioners' predecessor, Pedro Barz, is the registered owner of a parcel of land, located in Mandaue City, Cebu, identified as Lot No. 896 of Plan No. II-5121, which formed part of the *Hacienda de Mandaue.* This parcel of land was originally owned by the spouses Esteban and Lorenza Sanchez.

When the spouses Esteban and Lorenza Sanchez died intestate, the land was inherited by their daughter, Juana Perez, married to Numeriano Barz.

On April 16, 1929, Juana Perez sold a parcel of land identified as Lot No. 896-A, with an approximate area of 2,505 square meters, to Panfilo Retuerto.

However, on April 26, 1935, Panfilo Retuerto purchased the aforementioned lot from the Archbishop of Cebu.

Meantime, the San Carlos Seminary in Cebu filed a Petition with the *Juzgado de Primera Instancia* (now the Regional Trial Court) in Cebu for the issuance of titles over several parcels of land in *Hacienda de Mandaue*, including Lot No. 896-A, earlier purchased by Panfilo Retuerto from Juana Perez and from the Archbishop of Cebu.

In August 1937, the Court rendered a decision declaring Panfilo Retuerto as the owner of the said parcel of land. On July 22, 1940, the Court issued an Order directing the *General del Registro de Terrenos* (later the Land Registration Commission) for the issuance of the appropriate decree over the said parcel of land

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[2] Taken from G.R. No. 148180 entitled *Catalina Vda. de Retuerto v. Barz, rollo,* p. 197, and the Decision of the Court of Appeals in CA-G.R. CEB-SP No. 00767, *rollo,* p. 51.

in favor of Panfilo Retuerto. However, no decree was issued, because of the outbreak of the Second World War. After the war, Panfilo Retuerto failed to secure the appropriate decree.

Twenty years elapsed. Juana Perez Barz died intestate and was survived by her son, Pedro Barz. Sometime in 1966, Pedro Barz filed with the Court of First Instance of Cebu an application for confirmation of his title over Lot No. 896 of Plan No. II-5121. Panfilo Retuerto did not file any opposition to the application. After appropriate proceedings, the Court rendered a decision declaring Pedro Barz as the lawful owner of the property. On August 18, 1966, Decree No. N-110287 was issued over the property in favor of Pedro Barz. On the basis of the said decree, the Register of Deeds issued Original Certificate of Title (OCT) No. 521 in the name of Pedro Barz on November 13, 1968.

Thereafter, Lot No. 896 was subdivided into four lots, namely, Lot 896-A, with an area of 507 square meters; Lot 896-B, with an area of 2,142 square meters; Lot 896-C, with an area of 5,580 square meters; and Lot 896-D, with an area of 12,253 square meters. On October 18, 1967, Pedro Barz sold Lot 896-C to Jose Gesalem.

On December 29, 1975, Panfilo Retuerto died intestate, and was survived by his wife, Catalina Retuerto, and their children, namely, Gaudencio, Loreto, Francisca, Francisco, Efigenia and Guillerma. The heirs executed an *Extrajudicial Settlement and Sale of the Estate of Panfilo Retuerto*, adjudicating unto themselves, as owners, the said property, and deeding 1,703 square meters of the property to Loreto Retuerto, and the remaining 440 square meters to Efigenia Retuerto. Thereafter, 440 square meters of the property was sold to the spouses Jose and Rosa Gesalem, respondents herein.

Pedro Barz died intestate and was survived by his heirs, Angelo P. Barz and Merlinda Barz. Loreto Retuerto also died intestate and was survived by his heirs, namely, Romeo, Antonia, Narcisa, Corazon and Patrocinia, all surnamed Retuerto.

The heirs of Panfilo Retuerto claimed ownership over subdivision Lot 896-B and a part of Lot 896-A covered by OCT No. 521 under the name of Teofila Barz.

On September 5, 1989, Angelo P. Barz and Merlinda Barz filed with the RTC of Mandaue City a Complaint against Catalina Retuerto and the other heirs of Panfilo Retuerto, as well as the spouses Jose and Rosa Gesalem for Quieting of Title, Damages and Attorney's Fees. The case was docketed as Civil Case No. MAN-697.

On April 3, 1997, the RTC of Mandaue City rendered a Decision in favor of Angelo P. Barz and Merlinda Barz, who were declared as the absolute owners of Lot Nos. 896-A and 896-B. It declared the documents adduced by the Retuertos as unenforceable and ineffective against OCT No. 521, and ordered the Retuertos to vacate the premises of Lot Nos. 896-A and 896-B. It also declared the Deed of Sale executed by the Retuertos in favor of the spouses Jose and Rosa Gesalem as null and void, and ordered the Spouses Gesalem to vacate the portion of Lot No. 896-B allegedly sold to them by the Retuertos.

The heirs of Panfilo Retuerto and the spouses Jose and Rosa Gesalem appealed the decision of the RTC of Mandaue City to the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 59975.

The Court of Appeals affirmed the Decision of the trial court, but set aside the award of attorney's fees.[3]

Thereafter, the heirs of Panfilo Retuerto and the Spouses Gesalem filed a Petition for review on *certiorari* of the Decision of the Court of Appeals with this Court. The case was docketed as G.R. No. 148180.

On December 19, 2001, this Court rendered a Decision[4] in G.R. No. 148180, affirming the decision of the Court of Appeals in CA-G.R. CV No. 59975. The Court held in the main that OCT

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[3] CA Decision in CA-G.R. CV No. 59975, *rollo*, pp. 181-196.

[4] *Rollo*, pp. 197-209.

No. 521, issued in the name of Pedro Barz on November 13, 1968, became indefeasible after the lapse of one year from the date of entry of the decree of registration, and could no longer be controverted.

Realizing that no collateral attack on title to property is allowed, as stated in the Court's decision in G.R. No. 148180, the Spouses Gesalem, respondents herein, filed with the RTC of Mandaue City a Complaint for reconveyance with a prayer for the issuance of a temporary restraining order and/or a writ of injunction against the heirs of Pedro Barz, petitioners herein. The case was docketed as Civil Case No. MAN-4639.

Respondents alleged in their Amended Complaint[5] that they are the possessors and true owners of a 440-square-meter portion of Lot 896-A, with a total of 2,505 square meters, located at Pagsabungan, Mandaue City. They asserted that the 440-square-meter lot was sold to them by the heirs of Panfilo Retuerto. They contended that their property was erroneously included in the title of petitioners and/or their predecessor.

After filing their Answer denying the material allegations in the Complaint, petitioners filed a Motion to Dismiss on the ground of *res judicata,* laches and lack of cause of action.

Petitioners contended that the issues raised in the Complaint had already been laid to rest in the decision of this Court in G.R. No. 148180; hence, *res judicata* had allegedly set in. Petitioners further contended that private respondents are guilty of laches.

In an Order dated November 24, 2004, the RTC of Mandaue City, Branch 56 (trial court) denied petitioners' Motion to Dismiss for lack of merit. The trial court held that the elements of *res judicata* are not present in this case, because there is no identity of parties and causes of action. Moreover, laches would not apply in private respondents' case, because there was no intentional and unequivocal delay in the assertion of their rights.

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[5] *Id*. at 60-78.

Petitioners' motion for reconsideration was denied by the trial court in an Order dated April 11, 2005.

Petitioners filed a petition for *certiorari* with the Court of Appeals, alleging that the presiding judge of the trial court, Judge Augustine Vestil, committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying their motion to dismiss and their motion for reconsideration.

On February 28, 2006, the Court of Appeals rendered a Decision,[6] the dispositive portion of which reads:

> WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the petition filed in this case and AFFIRMING the assailed Orders of the public respondent dated November 24, 2004 and April 11, 2005 both in Civil Case No. MAN-4639.[7]

The Court of Appeals held that for *res judicata* to apply, the following requisites must be present: (a) finality of the former judgment; (b) the court which rendered it had jurisdiction over the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter and causes of action.

The Court of Appeals held that based on the foregoing, the trial court did not commit grave abuse of discretion when it held that *res judicata* does not apply for there is no identity of parties and causes of action in this action for reconveyance filed by respondents and petitioners' action for quieting of title, which had been resolved by this Court in G.R. No. 148180.

The appellate court held that the ultimate test to ascertain identity of causes of action is whether or not the same evidence fully supports and establishes both the first and second cases. As correctly held by the trial court, the causes of action for reconveyance and quieting of title require different sets of evidence for their support and establishment.

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[6] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring; *id.* at 51-57.

[7] *Id.* at 57.

Moreover, the Court of Appeals held that the trial court's preliminary finding that laches does not apply for lack of its necessary elements is an exercise of its judgment; thus, *certiorari* cannot lie. *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. The appellate court stated that whether or not the elements of laches are indeed present can be thoroughly determined during the trial on the merits of the case.

Petitioners' motion for reconsideration was denied for lack of merit by the Court of Appeals in a Resolution[8] dated April 11, 2006.

Thereafter, petitioners filed this petition raising the following issues:

I

WHETHER OR NOT THE COURT *A QUO* WAS CORRECT IN DISREGARDING THE PRINCIPLE OF *RES JUDICATA* IN THIS INSTANT CASE.

II

WHETHER OR NOT THE COURT *A QUO* WAS CORRECT IN DISREGARDING THE PRINCIPLES OF LACHES AND PRESCRIPTION[9]

In a Resolution dated June 21, 2006, the Court required the respondents to file their Comment on the petition. On August 11, 2006, respondents filed their Comment. Thereafter, petitioners filed their Reply to the Comment of respondents.

While the case was pending, the parties, assisted by their respective counsels, filed on May 6, 2010 a Joint Manifestation, which reads:

1. The instant case originated from Civil Case No. MAN-4639, Regional Trial Court, Branch 56, Mandaue City;

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

[9] *Id.* at 26.

2. All parties have come to a settlement and agreement on all issues in the instant case;

3. They have voluntarily waived all their claims and counterclaims relative to the instant case they have finally settled the same;

4. The parties likewise submit to this Honorable Court their Compromise Agreement, hereto attached.

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court to approve the compromise agreement and to consequently dismiss the instant case.

Other just and equitable remedies under the law are likewise prayed for.

x x x x x x x x x

COMPROMISE AGREEMENT

COME NOW, ALL PARTIES, assisted by their respective counsels and unto this Honorable Court most respectfully submit this Compromise Agreement as final settlement in the above-entitled case, to wit:

The instant case originated from Civil Case No. MAN-4639, Regional Trial Court, Branch 56, Mandaue City;

All parties have come to a settlement and agreement on all issues in the instant case;

It is the mutual desire of all parties to put an end to all litigation involving the said parcel of land subject matter of this case and terminate all legal proceedings involving the same, hence this Compromise Agreement.

1. Angelo Barz and Me[r]linda Barz-Tabasa, being the only Heirs of Pedro & Teofila Barz, shall sell to Sps. Jose & Rosa Gesalem the remaining portion of OCT No. 521 denominated as lot 896-B with an area of 2,142 sq.m. more or less, situated at Pagsabungan, Mandaue City, Philippines. Likewise, the above parties hereby waive all their rights, interest, ownership and participation over the area of 440 square meters which is the subject matter of this case in favor of Sps. Jose & Rosa Gesalem;

2. In consideration of paragraph one, Sps. Jose and Rosa Gesalem shall pay Angelo Barz and Me[r]linda Barz-Tabasa the amount of

Four Million Five Hundred Thousand Pesos (₱4,5000,000.00) (sic) Philippine currency;

3. Angelo Barz and Me[r]linda Barz-Tabasa hereby undertake to protect Sps. Jose and Rosa Gesalem from any claims whatsoever from any person over the above parcel of land;

4. In consideration of the foregoing, all parties hereby waive and quitclaim all their claims, counterclaims, rights and interests against each other.

PRAYER

WHEREFORE, the parties most respectfully submit and pray to the Honorable Court that their Compromise Agreement be approved not being contrary to law and that a decision on the case be rendered based on the aforesaid Compromise Agreement as final disposition of the case.

Other just and equitable remedies under the law are likewise prayed for.

Cebu City for Manila, Philippines, April 6, 2010.

H[EI]RS OF PEDRO & ME[R]LINDA BARZ:

(Signed)
ANGELO BARZ

(Signed)
MERLINDA-BARZ

Assisted by Counsel:
(Signed)
SISINIO M. ANDALES

x x x x x x x x x

JOSE GESALEM

ROSA GESALEM

By:
(Signed)
JONATHAN GESALEM

Assisted by Counsel:
(Signed)
REUEL PINTOR

x x x x x x x x x

The Court notes that respondents spouses Jose and Rosa Gesalem seek the reconveyance of the parcel of land with an area of 400 square meters, which was allegedly sold to them by Panfilo Retuerto. The sale was nullified by the Court in G.R. No. 148180, as it affirmed the decision of the Court of Appeals, which sustained the decision of the RTC of Mandaue City declaring Angelo Barz and Merlinda Barz, petitioners herein, as the absolute owners of Lot 896-A and Lot 896-B, and ordering the spouses Jose and Rosa Gesalem, respondents herein, to vacate the 400-square-meter-lot, allegedly sold to them, that formed part of Lot 896-B, with an area of 2,142 square meters.

In the Compromise Agreement, petitioners have agreed to sell to respondents Lot 896-B, with an area of 2,142 square meters, for ₱4.5 million. Petitioners waive their rights and interest over the area of 440 square meters, which is the subject matter of this case, in favor of respondents. It must be pointed out that the 400 square-meter-lot sought to be recovered by respondents is part of Lot 896-B, which is now the subject of sale between petitioners and respondents in the Compromise Agreement. In consideration of the sale, the parties waive their claims against each other, and they pray that a decision be rendered based on the Compromise Agreement as final disposition of the case.

The Court finds that the Compromise Agreement is not contrary to law, morals, good customs and public policy. Moreover, it appears to be freely executed by petitioners and respondents, with the assistance of their respective counsels. The Court finds no reason not to grant the prayer of the parties and hereby bestows judicial approval of their Compromise Agreement.

WHEREFORE, judgment is rendered in accordance with the Compromise Agreement dated April 6, 2010, and the parties are enjoined to abide by its terms and conditions.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 173057-74. September 27, 2010]

BGen. (Ret.) JOSE S. RAMISCAL, JR., *petitioner, vs.* **HON. JOSE R. HERNANDEZ, as Justice of the Sandiganbayan; 4TH DIVISION, SANDIGANBAYAN and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; DISQUALIFICATION OF JUDICIAL OFFICERS; RULE ON INHIBITION AND DISQUALIFICATION OF JUDGES; TWO KINDS OF INHIBITION.— The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court: Section 1. *Disqualification of judges*.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.

2. ID.; ID.; ID.; ID.; ID.; AN ALLEGATION OF PREJUDGMENT CONSTITUTES MERE CONJECTURE AND IS NOT ONE OF THE JUST OR VALID REASONS CONTEMPLATED IN THE RULES.— We have ruled in *Philippine Commercial*

International Bank v. Dy Hong Pi, that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial. An allegation of prejudgment, without more, constitutes mere conjecture and is not one of the "just or valid reasons" contemplated in the second paragraph of Section 1, Rule 137 of the Rules of Court for which a judge may inhibit himself from hearing the case. The bare allegations of the judge's partiality, as in this case, will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough.

3. ID.; ID.; ID.; ID.; ID.; MARITAL RELATIONSHIP BY ITSELF IS NOT A GROUND TO DISQUALIFY A JUDGE FROM HEARING A CASE, EXPLAINED.— And even if we were to assume that petitioner indeed invoked the first paragraph of Section 1, Rule 137 in his motions to inhibit, we should stress that marital relationship by itself is not a ground to disqualify a judge from hearing a case. Under the first paragraph of the rule on inhibition, "No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise...." The relationship mentioned therein becomes relevant only when such spouse or child of the judge is "**pecuniarily interested**" as heir, legatee, creditor or otherwise. Petitioner, however, miserably failed to show that Professor Carolina G. Hernandez is financially or pecuniarily interested in these cases before the Sandiganbayan to justify the inhibition of Justice Hernandez under the first paragraph of Section 1 of Rule 137.

APPEARANCES OF COUNSEL

Garayblas Garayblas Dela Cruz Cairme Law Offices for petitioner.

D E C I S I O N

VILLARAMA, JR., *J.*:

This is a Petition for *Certiorari* and Prohibition with prayer for the issuance of a Temporary Restraining Order (TRO) seeking to reverse and set aside the Resolution[1] dated May 4, 2006 of the Sandiganbayan in Criminal Case Nos. 28022-23 and 25122-45. The assailed Resolution denied petitioner's motions for inhibition,[2] which sought to disqualify respondent Justice Jose R. Hernandez, Associate Justice of the Sandiganbayan, Fourth Division, from taking part in said cases.

The facts are as follows:

Petitioner, Retired BGen. Jose S. Ramiscal, Jr., then President of the Armed Forces of the Philippines-Retirement and Separation Benefits System (AFP-RSBS),[3] signed several deeds of sale for the acquisition of parcels of land for the development of housing projects and for other concerns. However, it appears that the landowners from whom the AFP-RSBS acquired the lots executed unilateral deeds of sale providing for a lesser consideration apparently to evade the payment of correct taxes. Hence, the Senate Blue Ribbon Committee conducted an extensive investigation in 1998 on the alleged anomaly.

In its Report dated December 23, 1998, the Committee concluded that there were irregularities committed by the officials of the AFP-RSBS and recommended the prosecution of those responsible, including petitioner, who had signed the

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[1] *Rollo*, pp. 58-64. Penned by Associate Justice Jose R. Hernandez.

[2] *Id.* at 36-44.

[3] Presidential Decree No. 361, Section 1. An Armed Forces Retirement and Separation Benefits System, referred to in this Act as "System," for payment of retirement and separation benefits provided and existing laws to military members of the Armed Forces of the Philippines and such similar laws as may in the future be enacted applicable to commissioned officers and enlisted personnel of the Armed Forces of the Philippines is hereby established.

unregistered deeds of sale as AFP-RSBS President. Accordingly, on January 28, 1999, fourteen (14) informations were filed with the Sandiganbayan against petitioner for violation of Section 3(e)[4] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and for the crime of *estafa* through falsification of public documents as defined under paragraph 4 of Article 171[5] of the Revised Penal Code, as amended.[6] The informations charging petitioner with violations of the Anti-Graft and Corrupt Practices Act were docketed as Criminal Case Nos. 25122-25133 while those charging *estafa* through falsification of public documents were docketed as Criminal Case Nos. 25134-25145.

Then, on July 27, 2003, junior officers and enlisted men from elite units of the AFP took over the Oakwood Premier Apartments at Ayala Center in Makati City to air their grievances about graft and corruption in the military. In response to the incident, President Gloria Macapagal-Arroyo created a Fact-

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

x x x x x x x x x

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

[5] ART. 171. *Falsification by public officer, employee or notary or ecclesiastic minister*.—The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

4. Making untruthful statements in a narration of facts;

x x x x x x x x x

[6] *Rollo*, p. 5.

Finding Commission (Feliciano Commission) wherein respondent's wife, Professor Carolina G. Hernandez, was appointed as one of the Commissioners. On October 17, 2003, the Feliciano Commission submitted its Report recommending, among others, the prosecution of petitioner. President Arroyo then issued Executive Order No. 255 on December 5, 2003, creating the Office of a Presidential Adviser under the Office of the President to implement the recommendations of the Feliciano Commission.[7] Professor Carolina G. Hernandez was appointed as Presidential Adviser in the newly created office. Shortly thereafter, respondent Justice Hernandez was appointed as Associate Justice of the Sandiganbayan and assigned to its Fourth Division.

On October 11, 2004, eight additional informations were filed with the Sandiganbayan against petitioner. Two were assigned to the Fourth Division of the court, one for violation of R.A. No. 3019, docketed as Criminal Case No. 28022, and the other for *estafa* through falsification of public documents, docketed as Criminal Case No. 28023.

On April 6, 2006, petitioner filed two motions to inhibit Justice Hernandez from taking part in Criminal Case Nos. 25122-45 and Criminal Case Nos. 28022-23 pending before the Fourth Division. Petitioner cited that Justice Hernandez' wife, Professor Hernandez, was a member of the Feliciano Commission and was tasked to implement fully the recommendations of the Senate Blue Ribbon Committee, including his criminal prosecution. Further, the spousal relationship between Justice Hernandez and Professor Hernandez created in his mind impression of partiality and bias, which circumstance constitutes a just and valid ground for his inhibition under the second paragraph of Section 1, Rule 137 of the Rules of Court.

In its Consolidated Comment/Opposition,[8] the Office of the Special Prosecutor (OSP) asserted that the grounds raised by petitioner in his motions for inhibition were anchored on mere

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[7] *Id.* at 33-34.

[8] *Id.* at 45-48.

speculations and conjectures. It stressed that the recommendation of the Feliciano Commission was a product of consensus of the members of the Commission which was a collegial body. And even if Professor Hernandez signed the Report of the Commission to implement the recommendations of the Senate Blue Ribbon Committee, the findings of the said Commission did not remove the presumption of innocence in petitioner's favor. Hence, the OSP argued that the mere membership of Prof. Hernandez in the Feliciano Commission did not automatically disqualify Justice Hernandez from hearing the criminal cases against petitioners.

On May 4, 2006, Justice Hernandez issued the assailed Resolution, the dispositive portion of which reads:

ACCORDINGLY, accused Jose S. Ramiscal's Motions for Inhibition are DENIED.

SO ORDERED.

Petitioner did not seek reconsideration of the Resolution, but instead filed a petition for *certiorari* and prohibition before this Court on the following grounds:

I

THE RESPONDENT HON. JOSE R. HERNANDEZ COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN REFUSING TO INHIBIT HIMSELF FROM THE CASES PENDING BEFORE THE 4TH DIVISION AGAINST PETITIONER NOTWITHSTANDING THAT UNDER RULE 137 HE IS DISQUALIFIED TO TRY OR SIT IN JUDGMENT IN THESE CASES;

II

THE RESPONDENT 4TH DIVISION OF THE SANDIGANBAYAN IS PROCEEDING TO HEAR THESE CASES WITHOUT OR IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION NOTWITHSTANDING THAT ITS MEMBER, THE RESPONDENT JUSTICE JOSE HERNANDEZ, IS DISQUALIFIED FROM SITTING OR TAKING PART IN ITS PROCEEDINGS; AND,

III

THE HON. JUSTICE HERNANDEZ IS DISQUALIFIED FROM TAKING PART IN SITTING OR HEARING THE CASES AGAINST PETITIONER IN ALL THE CASES PENDING BEFORE ALL THE FIVE (5) DIVISIONS OF THE SANDIGANBAYAN IN CONSEQUENCE OF HIS DISQUALIFICATION UNDER RULE 137.[9]

Essentially, the issue is: Did Justice Hernandez commit grave abuse of discretion amounting to lack or excess of jurisdiction in not inhibiting himself from the cases against petitioner pending before the Sandiganbayan?

Petitioner submits that it was erroneous for Justice Hernandez to deny the motions to inhibit himself under the second paragraph of Section 1 of Rule 137 of the Rules of Court, when in fact the basis for his disqualification was the latter's spousal relationship with Professor Hernandez, which situation was governed by the first paragraph of the said section. According to petitioner, while Professor Hernandez was not directly "pecuniarily interested" in the case, she was more than so interested in them because as an appointee of President Arroyo, she was receiving emoluments to monitor the progress of the cases and to see to it that the recommendations of the Feliciano Commission are fulfilled.

We deny the petition.

The rule on inhibition and disqualification of judges is laid down in Section 1, Rule 137 of the Rules of Court:

> Section 1. *Disqualification of judges*.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is

[9] *Id.* at 17.

the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

The Rules contemplate two kinds of inhibition: compulsory and voluntary. Under the first paragraph of the cited Rule, it is conclusively presumed that judges cannot actively and impartially sit in the instances mentioned. The second paragraph, which embodies voluntary inhibition, leaves to the sound discretion of the judges concerned whether to sit in a case for other just and valid reasons, with only their conscience as guide.[10]

In denying the motions for his inhibition, Justice Hernandez explained that petitioner failed to impute any act of bias or impartiality on his part, to wit:

> What can reasonably be gleaned from jurisprudence on this point of law is the necessity of proving bias and partiality under the second paragraph of the rule in question. The proof required needs to point to some act or conduct on the part of the judge being sought for inhibition. In the instant Motions, there is not even a single act or conduct attributed to Justice Hernandez from where a suspicion of bias or partiality can be derived or appreciated. In fact, it is oddly striking that the accused does not even make a claim or imputation of bias or partiality on the part of Justice Hernandez. Understandably, he simply cannot make such allegation all because there is none to be told. If allegations or perceptions of bias from the tenor and language of a judge is considered by the Supreme Court as insufficient to show prejudgment, how much more insufficient it becomes if there is absent any allegation of bias or partiality to begin with.[11]

We find the above explanation well-taken and thus uphold the assailed Resolution upon the grounds so stated. We have

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[10] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, G.R. No. 160966, October 11, 2005, 472 SCRA 355, 360-361, citing *Gochan v. Gochan*, 446 Phil. 433, 446 (2003) and *People v. Kho*,G.R. No.139381, April 20, 2001, 357 SCRA 290, 296.

[11] *Rollo*, p. 63.

ruled in *Philippine Commercial International Bank v. Dy Hong Pi*,[12] that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. Extrinsic evidence must further be presented to establish bias, bad faith, malice, or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. This Court has to be shown acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.

An allegation of prejudgment, without more, constitutes mere conjecture and is not one of the "just or valid reasons" contemplated in the second paragraph of Section 1, Rule 137 of the Rules of Court for which a judge may inhibit himself from hearing the case. The bare allegations of the judge's partiality, as in this case, will not suffice in the absence of clear and convincing evidence to overcome the presumption that the judge will undertake his noble role of dispensing justice in accordance with law and evidence, and without fear or favor. Verily, for bias and prejudice to be considered valid reasons for the involuntary inhibition of judges, mere suspicion is not enough.[13]

Petitioner contends that his motions were based on the second paragraph of Section 1, Rule 137, but a closer examination of the motions for inhibition reveals that petitioner undoubtedly invoked the second paragraph by underscoring the phrase, "for just or valid reasons other than those mentioned above." This was an express indication of the rule that he was invoking. Moreover, it was specifically stated in paragraph 7 of both motions that "*in accused's mind, such circumstances militates against the Hon. Justice Hernandez and constitutes a just and valid ground for his inhibition under the 2nd paragraph, Section 1 of Rule 137, in so far as the cases against accused are concerned.*"

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[12] G.R. No. 171137, June 5, 2009, 588 SCRA 612, 632.

[13] *Pagoda Philippines, Inc. v. Universal Canning, Inc.*, *supra* note 10, at 362.

Hence, there is no question that petitioner relied on the second paragraph of the Rule which contemplates voluntary inhibition as basis for his motions for inhibition.

And even if we were to assume that petitioner indeed invoked the first paragraph of Section 1, Rule 137 in his motions to inhibit, we should stress that marital relationship by itself is not a ground to disqualify a judge from hearing a case. Under the first paragraph of the rule on inhibition, "No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise...." The relationship mentioned therein becomes relevant only when such spouse or child of the judge is "**pecuniarily interested**" as heir, legatee, creditor or otherwise. Petitioner, however, miserably failed to show that Professor Carolina G. Hernandez is financially or pecuniarily interested in these cases before the Sandiganbayan to justify the inhibition of Justice Hernandez under the first paragraph of Section 1 of Rule 137.

WHEREFORE, the petition is *DENIED*. The Resolution dated May 4, 2006 of the Sandiganbayan in Criminal Case Nos. 25122-45 and Criminal Case Nos. 28022-23 is *AFFIRMED and UPHELD*.

With costs against petitioner.

SO ORDERED.

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

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[*] Designated as additional member per Special Order No. 885 dated September 1, 2010.

THIRD DIVISION

[G.R. No. 185378. September 27, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JENNEFER CARIN *y* DONOGA @ MAE-ANN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF PROHIBITED DRUG; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— In a prosecution for illegal sale of a prohibited drug, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the body or substance of the crime that establishes that a crime has actually been committed. Failure to comply with Section 21, paragraph (1) of Article II of R.A. No. 9165 and its implementing rules results, in certain cases such as in the present one, in failure to establish the existence of the crime. The nature of illegal drugs — "indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise" — requires that strict compliance with the proper procedure is enjoined. In the present case, the buy-bust team failed to follow the mandatory procedure.

2. ID.; ID.; WHILE LAPSES IN PROCEDURE AND NONCOMPLIANCE WITH THE STRICT DIRECTIVE UNDER SECTION 21 THEREOF ARE NOT NECESSARILY FATAL TO THE PROSECUTION'S CASE, JUSTIFIABLE GROUNDS THEREFOR MUST BE PROFFERED AND PROVEN AND CANNOT JUST BE MERELY PRESUMED TO EXIST.— While lapses in procedure and noncompliance with the strict directive under Section 21 of R.A. No. 9165 are not necessarily fatal to the prosecution's case, justifiable grounds therefor must thus be proffered and proven and cannot just be merely presumed to exist. In the present case, the prosecution was glaringly silent on its procedural lapses.

3. ID.; ID.; CHAIN OF CUSTODY; FAILURE OF THE PROSECUTION TO SHOW THAT THERE WAS NO BREACH IN THE CHAIN OF CUSTODY OF THE SPECIMEN SUFFICED TO MERIT ACQUITTAL.— Nagging doubt on the identity and integrity of the subject specimen is also mirrored in the testimony of PO3 Lagasca. He claimed that PO1 Alex Inopia made a request for drug test and for laboratory examination. xxx The letter-request for Laboratory Examination was, however, made not by PO1 Inopia but by the Chief of Drug Enforcement Unit SPO4 Arsenio A. Mangulabnan, which was delivered by Danilo G. Molina of MADAC. Molina's participation in the operation is not reflected in the records. Neither he nor Inopia took the witness stand. In *People v. Balagat* where the specimen examined by the forensic chemist was delivered by one who did not appear to have been part of the buy-bust team and did not take the witness stand, the Court found the prosecution's failure to show that there was no breach in the chain of custody of the specimen sufficed to merit appellant's acquittal.

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.*:

Jennefer Carin *y* Donoga (appellant) was charged before the Regional Trial Court (RTC) of Makati City for violation of Section 5, Article II of Republic Act (RA) No. 9165[1] allegedly committed as follows:

That on or about the 27th day of November 2003, in the City of Makati Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously without being authorized by law, sell,

[1] Otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," which took effect on July 4, 2002.

distribute and transport zero point zero two (0.02) grams of Methylamphetamine Hydrochloride (*shabu*) which is a dangerous drug in consideration of one pc. (sic) one hundred (₱100.00) pesos.

CONTRARY TO LAW.[2]

From the evidence for the prosecution consisting of documentary evidence and the testimonies of witnesses PO3 Jay Lagasca (PO3 Lagasca), Ruel Mergal (Mergal) and Edgardo Lumawag (Lumawag), the following version is culled:

On the information of a confidential informant that appellant was selling *shabu* every afternoon "at Davila Street," the Makati City Anti-Drug Abuse Council (MADAC) coordinated with the Anti-Illegal Drug Special Operation Task Force (AIDSOTF) and the Philippine Drug Enforcement Agency (PDEA) to conduct a buy-bust operation. A joint task force appointed PO3 Lagasca as team leader, "MADAC Operative" Mergal as poseur-buyer, and "MADAC Operative" Lumawag as back-up arresting officer. With a ₱100.00 bill on which "AAM" representing the initials of Drug Enforcement Unit (DEU) Chief SPO4 Arsenio M. Mangulabnan was marked,[3] the team and the confidential informant walked toward appellant's residence at Davila Street, Barangay Santa Cruz, Makati City at 4:00 p.m. of November 27, 2003.[4]

After waiting at the street for five minutes, appellant "came out" upon which she was introduced by the informant to Mergal. Told that Mergal wanted to buy *shabu*, appellant "went inside the street" and "*baka po [pumasok] sa bahay.*"[5] Appellant returned after two minutes and handed Mergal a plastic sachet of white crystalline substance. Mergal in turn gave her the marked bill and executed the pre-arranged signal[6] which drew PO3 Lagasca and Lumawag to approach them and arrest her.

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[2] Records, p. 1.

[3] "AAM" was used instead of "AMM."

[4] CA *rollo*, pp. 47-48, 88.

[5] TSN, Oct. 28, 2004, p. 9.

[6] *Id.* at 48.

Lumawag recovered the marked bill from appellant's left hand and, on PO3 Lagasca's instruction, Mergal marked on the plastic sachet "JCD" representing appellant's initials.[7]

The seized item was submitted for laboratory examination and found positive for *shabu*.[8] A drug test conducted on the urine sample of appellant also turned positive for the presence of *shabu*.[9]

Hence, the filing of the Information[10] against appellant.

Denying the charge against her, appellant, claiming that she was framed-up, gave the following version:

On November 27, 2003, at about 4:00 to 4:30 in the afternoon, as she was washing clothes beside her house which is located in a squatter's area "in the interior of Davila St.," two men in civilian clothes approached her and asked the whereabouts of her husband, to which she replied that he was at work. They then asked her if they could interrogate her outside, to which she replied that they could interrogate her right there and then.

One of the two men at once drew a gun from his waistline and pointed it at her, handcuffed and dragged her outside the squatters' compound and boarded her inside a white Toyota Revo where a number of MADAC operatives were laughing. They proceeded to South Avenue and stopped at the Makati Public Safety Authority (MAPSA) Office where one of the men alighted from the vehicle, went inside the office, and returned with a plastic sachet of *shabu* which he said was what they had bought from her.

She was thereafter brought to the DEU where she was questioned in the course of which an investigator produced a

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[7] "JCD" was used instead of "JDC," *supra*. See also TSN, Oct 28, 2004, pp. 8-12.

[8] Records, p. 11.

[9] *Id.* at 121.

[10] *Supra* note 2.

One Hundred Peso bill and the man who was interrogating her wrote something thereon.[11]

By Decision[12] of May 12, 2006, Branch 64 of the Makati City RTC convicted appellant, disposing as follows:

> WHEREFORE, in view of the foregoing, judgment is rendered finding the accused JENNEFER CARIN *y* DONOGA, guilty beyond reasonable doubt of the charge for violation of Section 5, Art. II, RA 9165, and sentencing her to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
>
> The period during which the accused is detained shall be considered in her favor pursuant to existing rules.
>
> The Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency (PDEA) the one piece of plastic sachet of *shabu* weighing 0.02 gram subject matter of this case for said agency's appropriate disposition.
>
> SO ORDERED.

In convicting appellant, the trial court relied on the presumption of regularity in the performance of official functions of the police officers and discredited appellant's defense of frame-up.[13]

The Court of Appeals *affirmed* appellant's conviction by Decision[14] of June 27, 2008. Hence, the present appeal.

Both parties in their manifestations before this Court adopted their respective Briefs filed before the appellate court in lieu of Supplemental Briefs.

In her Brief,[15] appellant, contending that the prosecution failed to prove her guilt beyond reasonable doubt, raises, among other

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[11] CA *rollo*, p. 89.

[12] *Id.* at 46-51.

[13] *Id.* at 19.

[14] Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon R. Garcia, *supra* at 85-94.

[15] *Id.* at 32-45.

things, the operatives' failure to observe proper procedure in the conduct of the operation.[16]

The Court finds that, indeed, the prosecution failed to show that the police complied with Section 21, paragraph (1) of Article II of R.A. 9165[17] and with the chain of custody requirement under the Act. Thus, PO3 Lagasca admitted on cross-examination:

ATTY REGALA:

Q: Now, Mr. Witness, as team leader, you would know for a fact that in [an] operation like this, photographs are supposed to be taken in the presence of the suspect. **Do you have any photograph, Mr. Witness, to show to the Court that you indeed abide[d] with the rule in conducting a narcotics operation?**

A: **None, sir.**[18] (emphasis supplied)

In a prosecution for illegal sale of a prohibited drug, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the body or substance of the crime that establishes that a crime has actually been committed.[19] Failure to comply with Section 21, paragraph (1) of Article II of R.A. No. 9165 and its implementing rules results,

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[16] *Id.* at 37-39.

[17] (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)

[18] TSN, August 8, 2005, pp. 28-29.

[19] *People v. Pagaduan*, G.R. No. 179029, August 12, 2010. See also *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266.

in certain cases such as in the present one, in failure to establish the existence of the crime.[20]

The nature of illegal drugs — "indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise" — requires that strict compliance with the proper procedure is enjoined.[21] In the present case, the buy-bust team failed to follow the mandatory[22] procedure.

In another vein, even the version of prosecution witness PO3 Lagasca does not jibe with prosecution witness Mergal's.

PO3 LAGASCA:

Q: You also testified, Mr. Witness, that when the transaction was ongoing, you saw the accused entered her house?

A: Yes, sir.

Q: When she returned, she allegedly handed the *shabu* to your poseur buyer. Am I correct?

A: **No, sir. I just saw them exchanging something.**

Q: When you approached the suspect and arrested her, what was recovered?

A: Eduardo Lumawag was able to recover from the left hand of the accused the buy bust money, sir.

Q: Now, Mr. Witness, are you familiar with the [concept] of hot pursuit or search incidental to lawful arrest?

A: Yes, sir.

Q: Did you conduct search at the residence of *alias* Mae-Ann considering that you saw her entered (sic) her house getting something?

A: We did not enter the house, sir.

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[20] *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[21] *People v. Pagaduan*, *supra* note 19.

[22] *Id.*

Q: Why did you not enter the house, there must be a truckload of *shabu* inside the house?

A: Because when we arrested the accused, she got hysterical.

Q: Despite *alias* Mae-Ann becoming hysterical, as a police officer, would it not be right for you to conduct the search? Just to find out or make sure?

A: We were not able to do that sir, because there were already people coming.[23] (emphasis and underscoring supplied)

Thus, from the immediately-quoted testimony of PO3 Lagasca, he claimed to have seen appellant enter her house. But even Mergal who, together with the alleged informant, directly negotiated with appellant, did not categorically state that appellant entered her house; he merely said "*baka . . . pumasok sa bahay.*"

Parenthetically, also from the above-quoted testimony, it is odd why despite PO3 Lagasca's claim that he saw appellant enter her house (from where she is claimed to have secured the plastic sachet), the team did not search her house. His justification therefor is too shallow to merit credence, given his experience in conducting operations against violations of R.A. No. 9165.

While lapses in procedure and noncompliance with the strict directive under Section 21 of R.A. No. 9165 are not necessarily fatal to the prosecution's case,[24] justifiable grounds therefor must thus be proffered and proven and cannot just be merely presumed to exist.[25] In the present case, the prosecution was glaringly silent on its procedural lapses.

Nagging doubt on the identity and integrity of the subject specimen is also mirrored in the testimony of PO3 Lagasca. He claimed that PO1 Alex Inopia made a request for drug test and for laboratory examination, *viz*:

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[23] TSN, August 8, 2005, pp. 29-32.

[24] *People v. Pagaduan, supra* note 19.

[25] *Id.* See also *People v. Almorfe*, G.R. No. 181831, March 29, 2010, and *People v. de Guzman*, G.R. No. 186498, March 26, 2010.

PROSECUTOR BAGAOISAN:

Q: After the arrest of the accused, what happened next, Mr. Witness?

PO3 LAGASCA:

A: **We** brought the suspect together with the confiscated item to the office of AIDSOTF, sir.

Q: What happened at the office of AIDSOTF?

A: The accused was investigated, sir.

Q: What happened, Mr. Witness after the investigation was conducted?

A: **PO1 Alex Inopia** made a request for drug test and a request for laboratory examination, sir.

Q: What happened after the preparation of those requests you mentioned?

A: **We** brought the accused together with the item confiscated to the SPD Crime Laboratory, sir.

Q: What happened after you brought the item and the accused at (sic) the PNP Crime laboratory?

A: We filed a case against the accused the following day, sir.[26] (emphasis and underscoring supplied)

The letter-request for Laboratory Examination was, however, made not by PO1 Inopia but by the Chief of Drug Enforcement Unit SPO4 Arsenio A. Mangulabnan, which was delivered by Danilo G. Molina of MADAC.[27] Molina's participation in the operation is not reflected in the records. Neither he nor Inopia took the witness stand.[28]

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[26] TSN, August 8, 2005, pp. 22-23.

[27] *Vide* the Camp Crame, Quezon City Crime Laboratory Certification that the specimen was submitted by a certain Danilo G. Molina (Molina) of MADAC. Records, pp. 9-11.

[28] CA *rollo,* p. 86.

In *People v. Balagat*[29] where the specimen examined by the forensic chemist was delivered by one who did not appear to have been part of the buy-bust team and did not take the witness stand, the Court found the prosecution's failure to show that there was no breach in the chain of custody of the specimen sufficed to merit appellant's acquittal.

The foregoing observations leave it unnecessary for the Court to still pass on appellant's defenses of denial and frame-up even if they are inherently weak and commonly proffered in cases for violation of R.A. No. 9165.

WHEREFORE, the Decision of the Court of Appeals dated June 27, 2008 in CA-G.R. CR.-H.C. No. 02343 is *REVERSED* and *SET ASIDE*. Appellant, Jennefer Carin *y* Donoga, is *ACQUITTED* of the crime charged.

Let a copy of this Decision be furnished the Director of the Correctional Institute for Women, Mandaluyong City who is *ORDERED* to cause the immediate release of appellant, Jennefer Carin *y* Donoga, unless she is being held for some other lawful cause, and to inform this Court of action taken within five days.

SO ORDERED.

Peralta,[*] *Bersamin, Villarama, Jr.*, and *Sereno, JJ.*, concur.

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[29] G.R. No. 177163, April 24, 2009, 586 SCRA 640, 645-646.

[*] Additional member per Special Order No. 885 dated September 1, 2010 in lieu of Associate Justice Arturo D. Brion.

THIRD DIVISION

[G.R. No. 186232. September 27, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELPIDIO PAROHINOG ALEJANDRO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; CARNAL KNOWLEDGE; ESTABLISHED IN CASE AT BAR.— We disagree with appellant's contention that the prosecution failed to establish carnal knowledge during the first rape. The prosecution sufficiently established the following: *first*, aside from appellant, AAA was only with her two (2) younger brothers in the house that night; *second*, appellant lied down beside AAA and began touching her private parts despite her resistance; *third*, as AAA continued to struggle, appellant boxed her on the right eye rendering her unconscious; and *fourth*, when she regained consciousness the following morning, she felt pain in her vagina when she urinated and saw traces of blood in her urine. The combination of these circumstances establishes beyond moral certainty that AAA was raped while she was in a state of unconsciousness and that appellant was the one responsible for defiling her. These circumstances constitute an unbroken chain of events which inevitably points to appellant, to the exclusion of all others, as the guilty person, *i.e.*, they are consistent with each other, consistent with the hypothesis that appellant is guilty of the rape that occurred on January 6, 1997 and at the same time inconsistent with any other hypothesis.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; DATE OF THE CRIME; DETERMINATIVE FACTOR IN THE RESOLUTION OF THE QUESTION INVOLVING A VARIANCE BETWEEN ALLEGATION AND PROOF IN RESPECT OF THE DATE OF THE CRIME IS THE ELEMENT OF SURPRISE ON THE PART OF THE ACCUSED AND HIS COROLLARY INABILITY TO DEFEND HIMSELF; CASE AT BAR.— The determinative

factor in the resolution of the question involving a variance between allegation and proof in respect of the date of the crime is the element of surprise on the part of the accused and his corollary inability to defend himself properly. Appellant, after the prosecution has finished its case, entered upon his defense and testified on his behalf and was given the chance to present evidence with regard to every detail concerning which the prosecution's witnesses had offered their testimony which includes the rape incident that occurred in July 1997 and not July 1998. There can be no surprise to speak of when it turned out that the second incident happened in 1997 since appellant was given the opportunity to refute said claim.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONY OF A RAPE VICTIM ARE INCONSEQUENTIAL WHEN THEY REFER TO MINOR DETAILS THAT HAVE NOTHING TO DO WITH THE ESSENTIAL FACT OF THE COMMISSION OF THE CRIME.— This Court recognizes the fact that AAA's testimony is not flawless. However, it is but ordinary for a witness, a rape victim no less, to have some inconsistencies in her statements since not only had the rapes occurred four or five years prior to her testimony but her testimony pertains to facts and details of shameful events that she would rather forget. Truly, if not for the motivation to seek justice for the molestations she had gone through, AAA would choose to bury those details in the deepest recesses of her memory. Moreover, inconsistencies may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of the testimony and the manner in which a witness answers questions. Likewise, inconsistencies in the testimony of a rape victim are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime — carnal knowledge through force or intimidation.

4. ID.; ID.; ID.; ALIBI AND DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION THAT IS CATEGORICAL, CONSISTENT AND WITHOUT ANY SHOWING OF ILL-MOTIVE ON THE PART OF THE WITNESS.— [A]ppellant failed to sufficiently show any reversible error committed by the CA in affirming his conviction for all five counts of rape. Besides, he only proffered unsubstantiated defenses of alibi

and denial *vis-à-vis* the positive and unequivocal identification of AAA that he is the perpetrator. It is doctrinally settled that alibi and denial are worthless and cannot prevail over positive identification that is categorical, consistent and without any showing of ill-motive on the part of the witness. Appellant's bare denial amounted to nothing more than negative and self-serving evidence unworthy of weight in law. His defense of alibi will not prosper either since he failed to prove that he was at some other place at the time the crime was committed and that it was physically impossible for him to be at the *locus criminis* at the time.

5. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; QUALIFYING CIRCUMSTANCES; MINORITY AND RELATIONSHIP; WITH THE CONCURRENCE THEREOF, RAPE CASES IN CASE AT BAR ARE CONSIDERED HEINOUS CRIMES.— With the concurrence of the qualifying circumstances of minority of the victim and relationship to the offender, the instant rape cases are considered heinous crimes and would have been punishable by death.

6. ID.; ID.; ID.; PENALTY; IMPOSITION OF THE PENALTY OF *RECLUSION PERPETUA*, INSTEAD OF DEATH, FOR EACH COUNT OF QUALIFIED RAPE, PROPER.— [I]n light of R.A. No. 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, the CA's imposition of the penalty of *reclusion perpetua*, instead of death, for each count of qualified rape, on appellant, without eligibility for parole under the Indeterminate Sentence Law, is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

The instant appeal assails the Decision[1] dated October 15, 2008 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00261-MIN affirming with modification the April 15, 2003 Decision[2] of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, convicting appellant of five (5) counts of rape.

In five (5) Informations all dated August 16, 2001, appellant Elpidio Parohinog Alejandro was charged for the rape of AAA,[3] his daughter, as follows:

Criminal Case No. 2804

That sometime in January 6, 1997 at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his thirteen (13) year old daughter.[4]

Criminal Case No. 2805

That sometime on the third week of July 1998, at Poblacion II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation,

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[1] *Rollo*, pp. 4-14. Penned by Associate Justice Edgardo T. Lloren, with Associate Justices Edgardo A. Camello and Jane Aurora C. Lantion, concurring.

[2] Records, Vol. I, pp. 88-134. Penned by Judge German M. Malcampo.

[3] Pursuant to the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, and Section 44 of Republic Act No. 9262 otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" the real names and personal circumstances of the victims as well as any other information tending to establish or compromise their identities or those of their immediate family or household members are withheld. Fictitious initials and appellations are used instead to represent them.

[4] Records, Vol. I, p. 1.

did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fourteen (14) year old daughter.[5]

Criminal Case No. 2806

That sometime on the first week of September 1999, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his fifteen (15) year old daughter.[6]

Criminal Case No. 2807

That on or about 3:00 o'clock (sic) in the afternoon of April 1, 2000, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his sixteen (16) year old daughter.[7]

Criminal Case No. 2808

That on or about 4:30 o'clock (sic) in the afternoon of February 14, 2001, at Barurao II, Municipality of Lebak, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd and unchaste design, and by means of force and intimidation, did then and there, wil[l]fully, unlawfully and feloniously, lie and succeeded in having carnal knowledge of one [AAA], his seventeen (17) year old daughter.[8]

Subsequently, all five Informations were consolidated for joint trial. When arraigned on November 12, 2001, appellant pleaded not guilty to all charges.[9] Trial on the merits ensued.

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[5] Records, Vol. II, p. 1.

[6] Records, Vol. III, p. 1.

[7] Records, Vol. IV, p. 1.

[8] Records, Vol. V, p. 1.

[9] Records, Vol. I, p. 32.

The prosecution presented the testimonies of five witnesses: private complainant AAA, BBB, AAA's mother, Teofilo Sanchez, Dr. Johnny Y. Tan and PO1 Mary Grace T. Salvio. On the basis of the evidence for the prosecution, the rape incidents occurred as follows:

In the evening of January 6, 1997, AAA, thirteen (13) years old at that time and in first year high school, and her two younger brothers were sleeping in their house in Lebak, Sultan Kudarat, while their father, appellant herein, was out having a drinking spree. At that time, BBB was in Cotabato where she took her oath as teacher. Around 11:30 p.m., AAA was awakened when she felt someone was touching her private parts. Thereafter, she realized that it was appellant. She tried to resist but appellant boxed her on the right eye rendering her unconscious. She only regained consciousness the following morning. When she urinated that morning, she felt pain in her vagina and noticed traces of blood in her urine. She however did not report the incident to anybody because appellant threatened her that it will be embarrassing on her part.

In the third week of July 1997, at around 2:30 in the afternoon, AAA, then fourteen (14) years old and in second year high school, was sleeping inside the room of their house. At that time, BBB was in school and AAA's brothers were out of the house. She was then awakened by the noise of the *trisikad* of appellant being parked outside their house. Appellant then entered the room and lied down beside her. She tried to resist but appellant pulled her hair and prevented her from shouting. Appellant then removed his pants and AAA's panty and then inserted his penis into her vagina while mounting on top of her. AAA pleaded him to stop but her plea fell on deaf ears. After satisfying his beastly desire, appellant told AAA not to tell anyone as it will cause the family embarrassment.

In the first week of September 1999, between 2:30 and 3:00 in the afternoon, while AAA's mother and brothers were in school, AAA, who was then fifteen (15) years old, was alone with appellant in their house. Appellant then ordered her to go upstairs to look for some clothes to which she obliged. He then

followed AAA to the room and prevented her from going out. Appellant then hugged her and attempted to touch her private parts. She tried to shout but appellant prevented her from doing so. He then laid her down on the floor, removed her shorts and panty, kissed her and then succeeded in inserting his penis into her vagina. Like the two previous incidents, she did not report to her mother what happened out of fear.

The fourth incident occurred on April 1, 2000 around 3:00 in the afternoon. AAA, who was sixteen (16) years old at that time, was again alone in the house while her mother and brothers were in school. When her father arrived, she tried to get out of the house to avoid him but he prevented her from leaving and ordered her to buy him a match. When AAA brought him the match, appellant pulled her inside the room and succeeded in removing her pants and panty. He then removed his own pants and again succeeded in inserting his penis into her vagina. Again, out of fear and shame, AAA chose to be quiet about the incident.

The last incident happened on February 14, 2001 around 4:00 p.m. AAA, then seventeen (17) years old, was fetched by appellant from school and was brought home so she could clean the house. Appellant then left but came back after a while and ordered her to stop cleaning. He then pulled her into the room and started hugging and kissing her. Appellant then laid her down on the floor, removed her shorts and panty, removed his own pants and again succeeded in inserting his penis into her vagina. Appellant thereafter left the house to fetch BBB and his two sons.

On May 8, 2001, AAA, accompanied by her maternal grandfather, left for General Santos City to study. As appellant was against her studying there, he decided to go to General Santos City himself to bring AAA home. Upon learning that her father was coming to fetch her, AAA decided to tell her granduncle, Teofilo Sanchez, Jr. (Teofilo) with whom she was staying, what appellant had been doing to her. Teofilo then hid her in another house in General Santos City. When appellant arrived on May 10, 2001, Teofilo told him that AAA was in Davao City for vacation. Failing to see AAA, appellant left for

Cotabato City. Teofilo thereafter called Rene Sanchez (Rene), AAA's uncle and BBB's brother, who is residing in Lebak, and told him what AAA confessed to him. After that phone call, Rene told BBB about the molestation AAA underwent in the hands of her father. BBB then went to General Santos City to fetch AAA and to hear the truth straight from her daughter.

When AAA and BBB reached Lebak on May 15, 2001, instead of going home, they proceeded to Rene's house. Around 4:00 in the afternoon, they went to the residence of Dr. Johnny Y. Tan, Lebak Municipal Health Officer, to have AAA examined.

The results of the medical examinations revealed the following:

1. Old healed, hymenal laceration located at 3 o'clock; 7 o'clock; [and] 11 o'clock position[s].
2. No vaginal discharges noted.[10]

Per Dr. Tan's account, the laceration "probably happened quite long before the examination" and "could have been caused by an object forcibly inserted into a small partially covered vaginal covering (sic) or probably by sexual intercourse."[11]

Around 10:00 p.m. that same night, AAA and BBB went to the Lebak Municipal Police Station. After investigation, PO1 Mary Grace T. Salvio of the Women and Children Complaint Desk took AAA's statement and prepared the criminal complaint against appellant. The following day, May 16, 2001, the complaint was filed with the Municipal Circuit Trial Court of Lebak-Kalamansig and the corresponding warrant of arrest was issued against appellant.[12] On May 17, 2001, appellant was arrested.[13]

During trial, AAA's birth certificate[14] which showed that she was born on May 25, 1983 and appellant is her father was

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[10] Exhibit "B", records, Vol. I, p. 8.

[11] TSN, June 20, 2002, pp. 8-9.

[12] Records, Volume I, p. 13.

[13] *Id.* at 14.

[14] Exhibit "D", records, Vol. I, p. 80.

presented as proof of her minority during the rape incidents as well as her relationship with appellant.

Appellant, as lone witness for the defense, denied the charges against him. He claimed that as *trisikad* driver, he was out of the house everyday from 6:30 a.m. until 6:00 p.m. Appellant testified that in the evening of January 6, 1997, it was the birthday of his youngest son and that they had visitors including the parents and siblings of his wife. He testified that his in-laws even stayed in their house until 11:00 p.m. that night. Appellant claimed that he cannot do what he is being accused of because he loves his children.

As to the July 1998 and September 1999 rape incidents, he denied the allegations against him and claimed that he was out of the house and was busy working.

As to the April 1, 2000 incident, appellant testified that the whole family went to the beach in Sodoy that day. He claimed that they left for the beach at 10:00 a.m. and returned home at 3:00 p.m. He denied that he molested AAA in the afternoon of said date.

As to the February 14, 2001 incident, appellant simply denied that he sexually molested AAA.

On April 15, 2003, the RTC promulgated a decision finding appellant guilty of five counts of rape, the *fallo* of which reads:

> WHEREFORE, upon all the foregoing considerations, the Court finds the accused, Elpidio P. Alejandro, guilty beyond reasonable doubt of five (5) counts of rape, as separately charged against him in Criminal Case Nos. 2804, 2805, 2806, 2807 and 2808.
>
> Accordingly, as mandated by law and existing jurisprudence, the Court hereby sentences the accused, ELPIDIO PAROHINOG ALEJANDRO:
>
> IN CRIMINAL CASE NO. 2804
>
> (a) – to suffer the extreme penalty of DEATH;
> (b) – to indemnify the private offended party, [AAA]:
> 1- the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as moral damages;

2- the amount of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
3- the amount of TWENTY-FIVE THOUSAND (₱25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2805

(a) – to suffer the extreme penalty of DEATH;
(b) – to indemnify the private offended party, [AAA]:
1- the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as moral damages;
2- the amount of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
3- the amount of TWENTY-FIVE THOUSAND (₱25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2806

(a) – to suffer the extreme penalty of DEATH;
(b) – to indemnify the private offended party, [AAA]:
1- the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as moral damages;
2- the amount of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
3- the amount of TWENTY-FIVE THOUSAND (₱25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2807

(a) – to suffer the extreme penalty of DEATH;
(b) – to indemnify the private offended party, [AAA]:
1- the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as moral damages;
2- the amount of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;

3- the amount of TWENTY-FIVE THOUSAND (₱25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IN CRIMINAL CASE NO. 2808

(a) – to suffer the extreme penalty of DEATH;
(b) – to indemnify the private offended party, [AAA]:
1- the amount of FIFTY THOUSAND (₱50,000.00) PESOS, as moral damages;
2- the amount of SEVENTY[-]FIVE THOUSAND (₱75,000.00) PESOS, by way of civil indemnity, consistent with the current prevailing jurisprudence;
3- the amount of TWENTY-FIVE THOUSAND (₱25,000.00) PESOS, as exemplary damages; and

to pay the costs.

IT IS SO ORDERED.[15]

With the imposition of the death penalty on appellant, the case was elevated to this Court on automatic review. Pursuant to the Court's ruling in *People v. Mateo,*[16] the case was transferred to the CA.

On October 15, 2008, the CA promulgated a decision affirming with modification the RTC decision and disposing as follows:

FOR REASONS STATED, the decision of the Regional Trial Court (Branch 19) of Isulan, Sultan Kudarat in Criminal Case Nos. 2804, 2805, 2806, 2807 and 2808 finding appellant Elpidio Parohinog Alejandro guilty beyond reasonable doubt of five (5) counts of rape is AFFIRMED WITH MODIFICATION. With respect to the death penalty, the same is reduced to *reclusion perpetua* without eligibility for parole in accordance with RA 9346. Hence, for each count of rape, he is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the offended party (to be identified through the Informations in this case) ₱75,000.00 as

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[15] Records, Volume I, pp. 131-134.

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

civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages pursuant to prevailing jurisprudence.

SO ORDERED.[17]

On March 23, 2009, the Court directed the parties to file their respective supplemental briefs if they desire.[18] Appellant and the Solicitor General[19] manifested that they are adopting their previous briefs filed before this Court when the case was elevated previously on automatic review. Thus, the errors raised in appellant's Brief[20] dated August 30, 2004 are now deemed adopted in this present appeal:

I.

THE TRIAL COURT ERRED IN FINDING THAT CARNAL KNOWLEDGE WAS SUFFICIENTLY ESTABLISHED IN CRIMINAL CASE NO. 2804.

II.

THE TRIAL COURT ERRED IN GIVING FULL CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT.

III.

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[21]

As to the first count, appellant argues that the prosecution failed to adduce evidence of carnal knowledge. He claims that AAA could not completely testify on, much less assume, what had transpired between the time when he allegedly boxed her and when she finally regained consciousness. Appellant also contends that AAA faltered in recounting events on the alleged rape particularly on the alleged threats he posed on her. He

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[17] *Rollo,* pp. 13-14.

[18] *Id.* at 20.

[19] *Id.* at 22-26.

[20] CA *rollo,* pp. 83-100.

[21] *Id.* at 94.

also points that it appears no one in AAA's family noticed any trace/indication that she indeed was punched which would have raised suspicion among the other family members. Appellant also assails AAA's credibility with regard to her testimony on the second count. Appellant points out that though the information clearly stated the second rape allegedly on July 1998, AAA's testimony brought confusion when it really happened – if it was on July 1998 or July 1997.

Appellant argues that the foregoing flaws in AAA's testimony took a toll on her credibility.

The appeal has no merit.

We disagree with appellant's contention that the prosecution failed to establish carnal knowledge during the first rape. The prosecution sufficiently established the following: *first*, aside from appellant, AAA was only with her two (2) younger brothers in the house that night; *second*, appellant lied down beside AAA and began touching her private parts despite her resistance; *third*, as AAA continued to struggle, appellant boxed her on the right eye rendering her unconscious; and *fourth*, when she regained consciousness the following morning, she felt pain in her vagina when she urinated and saw traces of blood in her urine.

The combination of these circumstances establishes beyond moral certainty that AAA was raped while she was in a state of unconsciousness and that appellant was the one responsible for defiling her. These circumstances constitute an unbroken chain of events which inevitably points to appellant, to the exclusion of all others, as the guilty person, *i.e.*, they are consistent with each other, consistent with the hypothesis that appellant is guilty of the rape that occurred on January 6, 1997 and at the same time inconsistent with any other hypothesis.[22]

As to appellant's argument that there was confusion as to when the second rape took place, whether it was in July 1998,

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[22] *People v. Villanueva*, G.R. No. 138364, October 15, 2003, 413 SCRA 431, 438; See also *People v. Mendoza*, G.R. Nos. 152589 & 152758, January 31, 2005, 450 SCRA 328.

as alleged in the information, or in July 1997, he refers to the following portion of AAA's testimony:

ATTY. RAMOS

Q – That incident that happened on the third week of July 1998, happened in the Poblacion?
A – Yes, sir.

Q – Can you still remember that you also testified that you transferred to Barorao on June 1998?
A – Yes, sir.

Q – And how come that the second incident happened in the poblacion?
A – The first week of July 1997 that was the second incident that happened and in June 1998 that was the time we transferred to Barorao, sir.

Q – The Information state that the incident happened in the third week of July 1998 and not 1997, or you could not remember whe[n] the second incident happened?
A – As I can recall I was in the Second Year and it was in the month of July, sir.

Q – As you could remember the second incident happened in 1997?
A – What I can remember I was in Second Year at that time during the first week.

Q – Not in the third week?
A – I wanted to correct my statement that it was in the third week of July and the first week of September that the incidents happened.

Q – But the second incident you could not remember what year was that?
A – I am sure that I was in the second year high school at that time, sir.[23]

x x x x x x x x x

When AAA was testifying on the first incident, she categorically stated that it occurred on January 6, 1997 when she was in first

[23] TSN, June 26, 2002, p. 6.

year high school. And based on the above-quoted testimony on the second incident, though she appeared unsure whether it occurred in 1997 or 1998, she was certain that it happened in the month of July when she was in second year high school. If in January 1997 AAA was in first year high school, the July when she was in second year high school is probably in 1997 considering that the school calendar starts in June and usually ends in March of the following calendar year.

It appearing that what has been proved – that the second incident occurred in July 1997 – is different from what was alleged in the information – that it occurred in July 1998 – appellant should have made a timely objection on such variance instead of using it to impeach AAA's credibility to gain his acquittal. As ruled by this Court in *People v. Rivera,*[24] citing *United States v. Bungaoil*:[25]

> The Court, in *U.S. vs. Bungaoil*, where the information alleged that the therein accused stole a cow in February, 1915, whereas the evidence at the trial established that it was stolen seven years earlier in 1908, pointed out through the late Justice Moreland that "a variance between the allegations of the information and the evidence of the prosecution with respect to the time when the crime was committed would not result in an acquittal of the accused; but if the accused interposed timely objection to such variance and showed that it was prejudicial to his interests in that it deceived him and prevented him from having a fair opportunity to defend himself, the trial court might grant an adjournment for such time as would enable the defendant to meet the change in date which was the cause of his surprise," and that the accused must take advantage of the variance "some time during the trial by appropriate objection and satisfy the trial court that he had been prejudiced by reason thereof" so that the trial court may "take such measures (as an adjournment) as would give the defendant an opportunity to produce such witnesses or evidence as the variance x x x made necessary."[26]

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[24] No. L-27825, June 30, 1970, 33 SCRA 746.

[25] 34 Phil. 835 (1916).

[26] *People v. Rivera*, *supra* note 24, at 752-753.

The determinative factor in the resolution of the question involving a variance between allegation and proof in respect of the date of the crime is the element of surprise on the part of the accused and his corollary inability to defend himself properly.[27] Appellant, after the prosecution has finished its case, entered upon his defense and testified on his behalf and was given the chance to present evidence with regard to every detail concerning which the prosecution's witnesses had offered their testimony which includes the rape incident that occurred in July 1997 and not July 1998. There can be no surprise to speak of when it turned out that the second incident happened in 1997 since appellant was given the opportunity to refute said claim.

This Court recognizes the fact that AAA's testimony is not flawless. However, it is but ordinary for a witness, a rape victim no less, to have some inconsistencies in her statements since not only had the rapes occurred four or five years prior to her testimony but her testimony pertains to facts and details of shameful events that she would rather forget. Truly, if not for the motivation to seek justice for the molestations she had gone through, AAA would choose to bury those details in the deepest recesses of her memory. Moreover, inconsistencies may be attributed to the well-known fact that a courtroom atmosphere can affect the accuracy of the testimony and the manner in which a witness answers questions.[28] Likewise, inconsistencies in the testimony of a rape victim are inconsequential when they refer to minor details that have nothing to do with the essential fact of the commission of the crime — carnal knowledge through force or intimidation.[29]

Thus, appellant failed to sufficiently show any reversible error committed by the CA in affirming his conviction for all five

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[27] *People v. Bugayong*, G.R. No. 126518, December 2, 1998, 299 SCRA 528, 538.

[28] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 184, citing *People v. Perez*, 337 Phil. 244, 250-251 (1997).

[29] *People v. Biong*, G.R. Nos. 144445-47, April 30, 2003, 402 SCRA 366, 377, citing *People v. Cula*, G.R. No. 133146, March 28, 2000, 329 SCRA 101, 112.

counts of rape. Besides, he only proffered unsubstantiated defenses of alibi and denial *vis-à-vis* the positive and unequivocal identification of AAA that he is the perpetrator. It is doctrinally settled that alibi and denial are worthless and cannot prevail over positive identification that is categorical, consistent and without any showing of ill-motive on the part of the witness. Appellant's bare denial amounted to nothing more than negative and self-serving evidence unworthy of weight in law. His defense of alibi will not prosper either since he failed to prove that he was at some other place at the time the crime was committed and that it was physically impossible for him to be at the *locus criminis* at the time.[30]

With the concurrence of the qualifying circumstances of minority of the victim and relationship to the offender, the instant rape cases are considered heinous crimes and would have been punishable by death. However, in light of R.A. No. 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty, the CA's imposition of the penalty of *reclusion perpetua*, instead of death, for each count of qualified rape, on appellant, without eligibility for parole under the Indeterminate Sentence Law, is in order.

As to damages, we likewise uphold the CA's award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages for each count of rape. We however modify the award of exemplary damages and increase it from ₱25,000.00 to ₱30,000.00 following current jurisprudence.[31]

WHEREFORE, in view of the foregoing, the October 15, 2008 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00261-MIN is *AFFIRMED with MODIFICATION* in that the exemplary damages awarded to AAA is increased to ₱30,000.00 for each count of rape.

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[30] *People v. Moreno,* G.R. No. 140033, January 25, 2002, 374 SCRA 667, 679.

[31] *People v. Llanas, Jr.,* G.R. No. 190616, June 29, 2010, p. 11, citing *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 821 & *People v. Perez*, G.R. No. 189303, October 13, 2009, 603 SCRA 689, 691.

With costs against the accused-appellant.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186470. September 27, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **WILLIE MIDENILLA *y* ALABOSO, RICKY DELOS SANTOS *y* MILARPES and ROBERTO DELOS SANTOS *y* MILARPES,** *accused,* **RICKY DELOS SANTOS *y* MILARPES and ROBERTO DELOS SANTOS *y* MILARPES,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN APPRECIATING THE TESTIMONY OF WITNESSES GIVEN DURING TRIAL, CONSIDERABLE WEIGHT IS GIVEN TO THE FINDINGS OF THE TRIAL COURT; REASONS.— In appreciating testimony given during trial, considerable weight is given to the findings of the trial court. Thus in *People v. Portugal,* this Court held: Just as often, the Court has relied on the observations of trial courts in the appreciation of testimony, said courts having been given the opportunity, not equally enjoyed by the appellate courts, to observe at first hand the demeanor of the witness on the stand, they, therefore, are in a better position to form accurate impressions and conclusions. Although not constrained to blindly accept the findings of fact of trial courts, appellate

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[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth. In the case at bar, we find no compelling reason to reverse the findings of fact of the trial court. There is no showing in the records and transcripts of any glaring inconsistencies in the version of the prosecution. The testimony of PO1 Ugot was believable, frank, and clear in detailing the events that led to the buy-bust operation and what transpired during and after the arrests.

2. ID.; ID.; ALIBI; WHAT MUST BE ESTABLISHED TO PROSPER AS A DEFENSE.— For the defense of alibi to prosper, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission. In *People v. Francisco,* this Court held: x x x For the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that (1) the accused was somewhere else when the offense was committed, and (2) it was physically impossible for the accused to have been present at the scene of the crime or its immediate vicinity at the time of its commission. The Supreme Court has ruled where there is even the least chance for the accused to be present at the crime scene, the alibi will not hold. The story of the defense in this case does not prove such physical impossibility. The accused-appellants merely presented a narrative that they were apprehended and dragged by the police officers for no reason at all. They feigned ignorance of the incident leading to their arrest but could not show any ill-motive, malice or any post-apprehension corruption or extortion on the part of the police officers. All they presented was bare denial of being engaged in illegal drug trading and possession of *shabu* at the time of the buy-bust operation.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In every case of illegal sale of dangerous drugs, the prosecution is obliged

to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. In order to properly establish the *corpus delicti* in drug cases, the prosecution must show, through an unbroken chain of custody, that the dangerous drug presented to the trial court as evidence is indeed the one/s seized from the accused.

4. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY; PROPERLY ESTABLISHED IN CASE AT BAR; FAILURE TO STRICTLY COMPLY WITH SECTION 21(1) IS NOT FATAL.— [T]he chain of custody of the seized items was properly established by the prosecution. There is no doubt that the items seized from the accused-appellants at the scene of the crime were also the items marked by the arresting officers, turned over to the investigator, marked again, sent to the Crime Laboratory, and returned after yielding positive results for Methylamphetamine Hydrochloride. It is evident that although the arresting officers failed to strictly comply with Section 21 (1) of RA No. 9165 by failing to photograph the seized items at the scene of the crime, the evidentiary value of the items was adequately preserved. The seized items were properly marked at the scene of the crime, marked again prior to submission for laboratory examination and duly identified as the same specimen tested and presented as evidence in court. The chain of custody was therefore adequately shown by the prosecution and hence, we find no reason to reverse the conviction of the accused-appellants.

5. ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY.— As to the penalty imposed on accused-appellants, we hold that the CA correctly sentenced accused-appellant Ricky Delos Santos to an indeterminate prison term of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FIFTEEN (15) YEARS, as maximum, and to pay a fine of FOUR HUNDRED

THOUSAND PESOS (₱400,000.00), as provided under Section 11, Article II, RA No. 9165; and accused-appellants Ricky Delos Santos and Roberto Delos Santos to life imprisonment and a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), as provided under Section 5, Article II, RA No. 9165.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

On appeal is the Decision[1] dated August 27, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02741 which affirmed with modification the Joint Decision[2] dated March 26, 2007 of the Regional Trial Court (RTC), Caloocan City, Branch 127 finding appellants Ricky Delos Santos *y* Milarpes guilty beyond reasonable doubt of violating Sections 5[3] and 11[4] of Article II,

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[1] *Rollo*, pp. 2-15. Penned by Associate Justice Pampio A. Abarintos, with Associate Justices Edgardo F. Sundiam and Apolinario D. Bruselas, Jr., concurring.

[2] CA *rollo*, pp. 21-38. Penned by Judge Victoriano B. Cabanos.

[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit

or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[4] SEC. 11. *Possession of Dangerous Drugs*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

(1) 10 grams or more of opium;
(2) 10 grams or more of morphine;
(3) 10 grams or more of heroin;
(4) 10 grams or more of cocaine or cocaine hydrochloride;
(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";
(6) 10 grams or more of marijuana resin or marijuana resin oil;
(7) 500 grams or more of marijuana; and
(8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or "ecstasy," paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Republic Act (RA) No. 9165[5] or The Comprehensive Dangerous Drugs Act of 2002, and Roberto Delos Santos *y* Milarpes guilty beyond reasonable doubt of violating Section 5, Article II of the same law.

On September 26, 2003, accused-appellant, Ricky Delos Santos also known as "Hika" was charged with the crime of Violation of Section 11, Article II, of RA No. 9165 in an Information which alleged:

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams;

(2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[5] AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

That on or about the 24th day of September, 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Six (6) heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE having a corresponding weight as follows:

B-("RICKY DM-1") 0.02 gram	E-("RICKY DM-4") 0.03 gram
C-("RICKY DM-2") 0.03 gram	F-("RICKY DM-5") 0.02 gram
D-("RICKY DM-3") 0.04 gram	G-("RICKY DM-6") 0.03 gram

knowing the same to be a dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.[6]

On the same date, accused-appellants Ricky Delos Santos also known as "Hika" and Roberto Delos Santos also known as "Obet" were charged with the crime of Violation of Section 5, Article II, RA No. 9165 committed as follows:

That on or about the 24th day of September, 2003, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together and mutually aiding with one another, without the authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO1 RONNEL UGOT, who posed as buyer, one (1) heat-sealed transparent plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE weighing 0.05 gram knowing the same to be a dangerous drug under the provisions of the above-cited law.

CONTRARY TO LAW.[7]

On December 1, 2003, accused-appellants duly assisted by their counsel pleaded not guilty[8] to the charges against them.

The prosecution presented the facts as follows.

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[6] CA *rollo*, p. 11.

[7] *Id.* at 12.

[8] Records, pp. 69-70.

On September 24, 2003, at 5:00 in the afternoon while PO1 Ronel L. Ugot was on duty, an informant reported to SPO1 Wilson Gamit that, two (2) brothers known by their *aliases* as "Obet" and "Hika" were engaged in selling illegal drugs. SPO1 Gamit reported the matter to their Chief, Cesar G. Cruz who in turn immediately formed a buy-bust team. The team was composed of PO1 Ugot, SPO1 Rodrigo Antonio, PO2 Ferdinand Modina, PO1 Ronald Allan Mateo, PO2 Rolly Jones Montefrio, PO1 Borban Paras, PO3 Fernando Moran and SPO1 Gamit. PO1 Ugot was the designated poseur-buyer. PO1 Ugot received a one hundred peso bill from SPO3 Benjar Matining to be used as marked money. SPO1 Gamit was the team leader. PO1 Ugot's backups were PO1 Mateo and PO1 Paras. PO1 Mateo was tasked to recite the rights of the person to be arrested.[9]

The team, together with the informant, was dispatched at 6 o'clock in the evening and they proceeded to 3rd Avenue, Caloocan City. Upon arrival thereat, the informant pointed Obet and Hika to PO1 Ugot. From their location, PO1 Ugot saw Willie Midenilla approach Obet and Hika. PO1 Ugot was approaching Obet and Hika when Obet asked PO1 Ugot "*Pre, iiskor ka ba*?" PO1 replied "yes, *piso*" and simultaneously handed over the money. Obet received the money and gave it to Hika saying "Hika, *piso lang daw*." Hika took the money and put it in his right pocket. Thereafter, Hika took out a plastic sachet and gave the same to Obet. In turn, Obet gave the plastic sachet to PO1 Ugot.[10]

After receiving the plastic sachet from Obet, PO1 Ugot saw Midenilla receive a plastic sachet and aluminum foil from Hika. At that instance, PO1 Ugot gave the pre-arranged signal to his backup. PO1 Ugot held Hika and Obet while the other members of the buy-bust team came running towards them. Midenilla tried to flee but he was caught by PO1 Paras.[11]

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[9] TSN, June 22, 2004, pp. 3-6.

[10] *Id.* at 7-8.

[11] *Id.* at 9.

PO1 Ugot recovered the buy-bust money from Hika and held on to the plastic sachet given to him and marked both with "Ricky/Roberto DM (buy bust)."[12] He also informed PO1 Paras that Hika had more *shabu* in his possession. PO1 Paras recovered six more plastic sachets of *shabu* from Hika. PO1 Mateo placed the markings "RICKY DM-1 to RICKY DM-6" on the sachets recovered from Hika. On the other hand, PO1 Paras recovered from Midenilla three plastic sachets of *shabu* which were marked in evidence as Exhibits C-9, C-11 and C-12 with two strips of aluminum foil marked in evidence as Exhibits C-13 and C-14.[13]

After PO1 Mateo informed Hika, Obet and Midenilla of their constitutional rights, they were brought to the office of the Station Anti-Illegal Drugs (SAID). At the SAID office, the team turned-over the seized items to PO2 Randulfo Hipolito, the investigator on duty. PO2 Hipolito requested the crime laboratory to determine whether the seized plastic sachets contained *shabu* and whether the hands of PO1 Ugot, Obet and Hika would indicate the presence of ultraviolet fluorescent powder. The result of the examination on the seized plastic sachets confirmed its contents to be methylamphetamine hydrochloride. PO1 Ugot, Obet, and Hika also tested positive for ultraviolet fluorescent powder. PO1 Ugot identified Hika as appellant Ricky Delos Santos, while Obet was identified as appellant Roberto Delos Santos.[14] Meanwhile, accused Willie Midenilla jumped bail and remains at large.

The defense presented the facts as follow.

According to accused-appellant Roberto Delos Santos, he is the brother of Ricky Delos Santos but never knew Willie Midenilla. He was arrested on September 24, 2003 at around 5:00 p.m. and not 8:00 p.m. as claimed by the police officers.

At 5:00 p.m. of September 24, 2003, Roberto was at the video "carrera" shop watching together with several other spectators, among whom was Danny Kangkong. Suddenly, a

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[12] *Id.* at 11.

[13] *Id.* at 10; TSN, October 13, 2005, p. 7.

[14] *Id.* at 11-14.

tricycle and an owner-type jeep parked infront of the video "carrera" shop. The passengers of the said vehicles alighted and proceeded to where Roberto and his companions were. The other persons present thereat scampered away but Roberto just remained standing in his place.

The passengers of the vehicle who parked infront of the video "carrera" shop told the remaining five to six persons inside, "*Walang tatakbo steady lang kayo.*" When frisked, nothing was found on the person of Roberto. Roberto then saw a plastic sachet fall from the pocket of one of those who were resisting and complaining against the frisking. The said person was handcuffed by one of the passengers of the vehicle whom he later identified to be a policeman.

Roberto was surprised when he saw his younger brother Ricky being brought out of their house by policemen. He approached them and asked why they were taking his brother. The policemen replied that they will just conduct an investigation on his brother, so, together with that person from whom the plastic sachet fell, Ricky was made to board a vehicle bound for the police station. Roberto also voluntarily went with them.

Roberto's mother and wife, upon seeing what happened, also went inside the vehicle to accompany him and Ricky, who was afflicted with a lung disease. On their way to the police station, Roberto's mother suffered difficulty in breathing so Roberto requested the police officers to first bring his mother to the hospital. His mother was brought to the Caloocan Puericulture Center where they left his mother and wife. Thereafter, the rest proceeded to the police station where Ricky, Roberto and that person from whom the sachet fell were detained.

Roberto claimed that the appearance of white dots at the dorsal and palmar portion of his right hand was the result of his hands being squeezed by someone he does not know while at the police precinct. He was aware of the ultraviolet examination conducted by the crime laboratory when his hands were placed under the light which is blue in color.[15]

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[15] TSN, July 18, 2006, pp. 3-11, 15-18.

According to accused-appellant Ricky Delos Santos, he was sleeping in his room on September 24, 2003 at around 5:00 p.m. when suddenly he was awakened by the two policemen who were looking for "Ferdie Putol." Ricky told them that he does not know "Ferdie Putol." When he uttered those words, the policemen told him to just go with them. He refused and asked them if they have a warrant. The policemen just ignored his inquiry and forced him to go with them. Ricky informed the policemen that he has lung ailment but they just handcuffed him.

As they were going out of the house, Roberto, his brother, blocked their way. Roberto told the policemen, "Where will you bring my brother? He has a lung ailment." Roberto also asked if the policemen have a warrant of arrest.

While going out of the alley, Ricky's mother asked the policemen where they will bring her son and likewise inquired if they have a warrant of arrest. Their mother and his sister-in-law went with them. The policemen brought his brother Roberto to the Drug Enforcement Unit (DEU).

When Ricky was already onboard the owner-type jeep, his mother suffered a stroke. Roberto asked the policemen to first bring his mother to the hospital. Thereafter, the policemen brought Ricky and Roberto to the DEU where they were detained.[16]

Finding the testimonial and documentary evidence against the accused-appellants sufficient, the trial court declared them guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA No. 9165. Accused-appellant Ricky Delos Santos was sentenced to a prison term of twelve (12) years and one (1) day to seventeen (17) years with subsidiary imprisonment in case of insolvency pursuant to Section 11, Article II, RA No. 9165. Both accused-appellants Ricky and Roberto Delos Santos were also sentenced to life imprisonment and a fine of ₱500,000.00 as provided in Section 5, Article II, RA No. 9165.

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[16] TSN, November 28, 2006, pp. 3-7.

Maintaining their innocence, accused-appellants appealed the trial court's decision to the CA. However, accused Willie Midenilla jumped bail and to date has a standing warrant of arrest. Hence, his appeal to the CA was dismissed.[17] For the two remaining accused-appellants, the CA affirmed the trial court's decision with modification, to wit:

> IN LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The decision of the Regional Trial Court is hereby **AFFIRMED WITH MODIFICATION on the penalty imposed, to wit:**
>
> Accused-appellant Ricky Delos Santos (Crim. Case No. 69224) is hereby sentenced to suffer the **penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum to FIFTEEN (15) YEARS as maximum and to pay a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00),** as provided under Section 11, Article II, R.A. 9165; and
>
> Accused-appellants Ricky Delos Santos and Roberto Delos Santos (Crim. Case No. 69225) are hereby sentenced to suffer the penalty of life imprisonment and a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), as provided under Section 5, Article II, R.A. 9165.
>
> SO ORDERED.[18]

Accused-appellants are now before this Court contending that the trial court gravely erred in convicting them of the crimes charged in view of the failure of the prosecution to overthrow the constitutional presumption of innocence in their favor. They stress that their defense of alibi was sufficient to acquit them of the crimes charged. Although indeed the "weakest" of all defenses, alibi attains importance when the case of the prosecution is weak. They point out that their version of the facts culled from their respective testimonies clearly shows that they should be acquitted.

Further, accused-appellants argue that the police officers who apprehended them failed to comply with the requirements of

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[17] CA *rollo*, p. 47.

[18] *Rollo*, p. 14.

Section 21 (1) of RA No. 9165. They claim that the prosecution failed to prove that the apprehending officers conducted a physical inventory and photographed the confiscated items. In effect, they allege that the *corpus delicti* of the crime was not proven and hence, they should be acquitted.

On the other hand, the State represented by the Office of the Solicitor General (OSG) maintains that the trial court and the CA correctly found the accused-appellants guilty beyond reasonable doubt of the crimes charged and that such findings should be sustained by this Court. It is emphasized that as to the finding of facts, the version that the trial court accepted should be given due regard by the appellate courts. As a rule, the trial court's evaluation of the credibility of a testimony is generally accepted.[19]

As to the failure of the apprehending officers to strictly comply with the requirements of Section 21, Article II, RA No. 9165, the OSG argues that such is not fatal to the prosecution's case. It cites jurisprudence to the effect that non-compliance is not fatal as long as there is justifiable ground therefor and as long as the integrity and the evidentiary value of the seized items is properly preserved by the apprehending officers.[20]

The sole issue in this case is whether or not the prosecution has proven the guilt of the accused-appellants for illegal sale and possession of dangerous drugs beyond reasonable doubt.

We rule in the affirmative.

In appreciating testimony given during trial, considerable weight is given to the findings of the trial court. Thus in *People v. Portugal*,[21] this Court held:

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[19] CA *rollo*, p. 122.

[20] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842, citing *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633.

[21] G.R. No. 143030, March 12, 2002, 379 SCRA 212, 218.

Just as often, the Court has relied on the observations of trial courts in the appreciation of testimony, said courts having been given the opportunity, not equally enjoyed by the appellate courts, to observe at first hand the demeanor of the witness on the stand, they, therefore, are in a better position to form accurate impressions and conclusions.

Although not constrained to blindly accept the findings of fact of trial courts, appellate courts can rest assured that such facts were gathered from witnesses who presented their statements live and in person in open court. In cases where conflicting sets of facts are presented, the trial courts are in the best position to recognize and distinguish spontaneous declaration from rehearsed spiel, straightforward assertion from a stuttering claim, definite statement from tentative disclosure, and to a certain degree, truth from untruth.

In the case at bar, we find no compelling reason to reverse the findings of fact of the trial court. There is no showing in the records and transcripts of any glaring inconsistencies in the version of the prosecution. The testimony of PO1 Ugot was believable, frank, and clear in detailing the events that led to the buy-bust operation and what transpired during and after the arrests.

On the other hand, the defense simply invoked alibi. For the defense of alibi to prosper, it must be proven by the accused that it was physically impossible for him to be at the scene of the crime or its vicinity at the time of its commission.[22] In *People v. Francisco*,[23] this Court held:

x x x For the defense of alibi to prosper, it must be established by positive, clear and satisfactory proof that (1) the accused was somewhere else when the offense was committed, and (2) it was physically impossible for the accused to have been present at the scene of the crime or its immediate vicinity at the time of its

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[22] *People v. Francisco*, G.R. No. 110873, September 23, 1999, 315 SCRA 114, 122.

[23] *Id.* at 125.

commission. The Supreme Court has ruled where there is even the least chance for the accused to be present at the crime scene, the alibi will not hold.

The story of the defense in this case does not prove such physical impossibility. The accused-appellants merely presented a narrative that they were apprehended and dragged by the police officers for no reason at all. They feigned ignorance of the incident leading to their arrest but could not show any ill-motive, malice or any post-apprehension corruption or extortion on the part of the police officers. All they presented was bare denial of being engaged in illegal drug trading and possession of *shabu* at the time of the buy-bust operation.

In every case of illegal sale of dangerous drugs, the prosecution is obliged to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[24]

In order to properly establish the *corpus delicti* in drug cases, the prosecution must show, through an unbroken chain of custody, that the dangerous drug presented to the trial court as evidence is indeed the one/s seized from the accused. In the case at bar, the prosecution established the following:

One of the arresting officers, PO1 Ronald Allan Mateo, positively testified that he confiscated six pieces of plastic sachets from accused Ricky Delos Santos.[25] Upon confiscating,

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[24] *People v. Guiara,* G.R. No. 186497, September 17, 2009, 600 SCRA 310, 322-323, citing *People v. Gonzales*, G.R. No. 143805, April 11, 2002, 380 SCRA 689, 697; *People v. Bongalon*, G.R. No. 125025, January 23, 2002, 374 SCRA 289, 307.

[25] TSN, February 7, 2006, p. 9.

he immediately marked the sachets with "RICKY DM-1" up to "RICKY DM-6."[26]

As for accused Roberto Delos Santos, PO1 Ronel Ugot testified that upon receiving one plastic sachet from Roberto and handing him the marked money, he gave the pre-arranged signal to his companions that the sale was consummated. He further testified that he held on to one (1) plastic sachet and also recovered the marked money from accused Roberto and immediately marked the seized items "Ricky/Roberto DM (buy bust)."[27]

Right after the operation, the police officers proceeded to the police station where PO1 Mateo turned over the six (6) plastic sachets recovered from accused Ricky and PO1 Ugot turned over the one plastic sachet recovered from accused Roberto to the investigator.[28]

The investigator, PO2 Randulfo Hipolito was presented in court by the prosecution but the defense agreed to stipulate on the substance of his testimony.[29] It was established that PO2 Hipolito, upon receiving the seized items from the arresting officers, made his own marking on the plastic sachets, then prepared a request[30] for laboratory examination and forwarded the specimens to the Crime Laboratory for chemical analysis.

P/Inspector Erickson Calabocal was the Forensic Chemical Officer of the Northern Police District Crime Laboratory Office. He was presented to testify on his participation in the custody of the seized items. However, both prosecution and defense agreed to stipulate on the substance of his testimony. As an expert witness in his field, P/Inspector Calabocal conducted a chemical analysis on the subject specimen per request for laboratory examination of the Chief, Cesar Gonzales Cruz,

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[26] *Id.* at 11.

[27] TSN, June 22, 2004, p. 11.

[28] *Supra* note 25, at 11-12.

[29] TSN, May 24, 2004, pp. 3-4.

[30] Exhibit "A", folder of exhibits, p. 3.

SAID-SOG. The result of his examination was embodied in his Physical Sciences Report[31] which disclosed that the subject specimens tested positive for Methylamphetamine Hydrochloride, a dangerous drug. He further testified that if needed, he could identify the subject drug as well as his report.[32]

Upon receiving the "positive" results[33] of the chemical analysis, investigator PO2 Hipolito prepared a referral slip[34] and the affidavit of the arresting officers. He likewise testified that, if needed, he can identify the specimen, the accused and the referral slip.

Clearly, the chain of custody of the seized items was properly established by the prosecution. There is no doubt that the items seized from the accused-appellants at the scene of the crime were also the items marked by the arresting officers, turned over to the investigator, marked again, sent to the Crime Laboratory, and returned after yielding positive results for Methylamphetamine Hydrochloride.

It is evident that although the arresting officers failed to strictly comply with Section 21 (1) of RA No. 9165 by failing to photograph the seized items at the scene of the crime, the evidentiary value of the items was adequately preserved. The seized items were properly marked at the scene of the crime, marked again prior to submission for laboratory examination and duly identified as the same specimen tested and presented as evidence in court. The chain of custody was therefore adequately shown by the prosecution and hence, we find no reason to reverse the conviction of the accused-appellants.

As to the penalty imposed on accused-appellants, we hold that the CA correctly sentenced accused-appellant Ricky Delos Santos to an indeterminate prison term of TWELVE (12) YEARS and ONE (1) DAY, as minimum, to FIFTEEN (15) YEARS, as

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[31] Exhibit "B", *id.* at 5.

[32] Records, pp. 90-91.

[33] *Supra* note 31.

[34] Exhibit "I", folder of exhibits, p. 11.

maximum, and to pay a fine of FOUR HUNDRED THOUSAND PESOS (₱400,000.00), as provided under Section 11, Article II, RA No. 9165; and accused-appellants Ricky Delos Santos and Roberto Delos Santos to life imprisonment and a fine of FIVE HUNDRED THOUSAND PESOS (₱500,000.00), as provided under Section 5, Article II, RA No. 9165.

WHEREFORE, the Court *DISMISSES* the appeal and *AFFIRMS* the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02741 dated August 27, 2008.

With costs against the accused-appellants.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 186738. September 27, 2010]

PRUDENTIAL BANK AND TRUST COMPANY (now BANK OF THE PHILIPPINE ISLANDS),[1] *petitioner, vs.* **LIWAYWAY ABASOLO,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LOANS; LENDER-BORROWER RELATIONSHIP; ABSENT IN CASE AT BAR.— In the absence of a lender-borrower relationship between petitioner and Liwayway, there is no

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[*] Designated additional member per Special Order No. 885 dated September 1, 2010.

[1] Prudential Bank and Trust Company was acquired by the Bank of Philippine Islands (BPI) on September 2005.

inherent obligation of petitioner to release the proceeds of the loan to her.

2. MERCANTILE LAW; BANKING LAWS; MANUAL OF REGULATIONS FOR BANKS; WELL-DEFINED LENDING POLICIES AND SOUND LENDING PRACTICES ARE ESSENTIAL IN ORDER FOR A BANKING INSTITUTION TO FUNCTION EFFECTIVELY AND MINIMIZE THE RISK INHERENT IN ANY EXTENSION OF CREDIT.— To a banking institution, well-defined lending policies and sound lending practices are essential to perform its lending function effectively and minimize the risk inherent in any extension of credit. Thus, Section X302 of the Manual of Regulations for Banks provides: — X-302. To ensure that timely and adequate management action is taken to maintain the quality of the loan portfolio and other risk assets and that adequate loss reserves are set up and maintained at a level sufficient to absorb the loss inherent in the loan portfolio and other risk assets, each bank shall establish a system of identifying and monitoring existing or potential problem loans and other risk assets and of evaluating credit policies *vis-à-vis* prevailing circumstances and emerging portfolio trends. Management must also recognize that loss reserve is a stabilizing factor and that failure to account appropriately for losses or make adequate provisions for estimated future losses may result in misrepresentation of the bank's financial condition.

3. ID.; ID.; ID.; ID.; BANK GUARANTEE, ESSENCE.— In order to identify and monitor loans that a bank has extended, a system of documentation is necessary. Under this fold falls the issuance by a bank of a guarantee which is essentially a promise to repay the liabilities of a debtor, in this case Corazon. It would be contrary to established banking practice if Mendiola issued a bank guarantee, even if no request to that effect was made.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; RELATIVITY OF CONTRACTS; STIPULATION *POUR AUTRUI*; A CLEAR AND DELIBERATE ACT OF CONFERRING A FAVOR UPON A THIRD PERSON MUST BE PRESENT IN ORDER TO PROVE THE CLAIM AGAINST THE CONTRACTING PARTIES.— The *principle of relativity of contracts* in Article 1311 of the Civil Code supports petitioner's

cause: Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent. If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. For Liwayway to prove her claim against petitioner, a clear and deliberate act of conferring a favor upon her must be present. A written request would have sufficed to prove this, given the nature of a banking business, not to mention the amount involved. Since it has not been established that petitioner had an obligation to Liwayway, there is no breach to speak of. Liwayway's claim should only be directed against Corazon. Petitioner cannot thus be held subsidiarily liable.

5. ID.; ID.; AGENCY; DOCTRINE OF APPARENT AUTHORITY; NOT APPLICABLE TO CASE AT BAR.— The trial Court's reliance on the *doctrine of apparent authority* – that the principal, in this case petitioner, is liable for the obligations contracted by its agent, in this case Mendiola, – does not lie. *Prudential Bank v. Court of Appeals* instructs: [A] banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and attempting to perpetuate fraud upon his principal or some person, for his own ultimate benefit. The *onus probandi* that attempt to commit fraud attended petitioner's employee Mendiola's acts and that he abused his authority lies on Liwayway. She, however, failed to discharge the onus. It bears noting that Mendiola was not privy to the approval or disallowance of Corazon's application for a loan nor that he would benefit by the approval thereof.

APPEARANCES OF COUNSEL

Benedicto Verzosa Felipe & Burkley Law Office for petitioner.
Nonia Dela Pena for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Leonor Valenzuela-Rosales inherited two parcels of land situated in Palanan, Sta. Cruz, Laguna (the properties), registered as Original Certificates of Title Nos. RO-527 and RO-528. After she passed away, her heirs executed on June 14, 1993 a Special Power of Attorney (SPA) in favor of Liwayway Abasolo (respondent) empowering her to sell the properties.[2]

Sometime in 1995, Corazon Marasigan (Corazon) wanted to buy the properties which were being sold for ₱2,448,960, but as she had no available cash, she broached the idea of first mortgaging the properties to petitioner Prudential Bank and Trust Company (PBTC), the proceeds of which would be paid directly to respondent. Respondent agreed to the proposal.

On Corazon and respondent's consultation with PBTC's Head Office, its employee, Norberto Mendiola (Mendiola), allegedly advised respondent to issue an authorization for Corazon to mortgage the properties, and for her (respondent) to act as one of the co-makers so that the proceeds could be released to both of them.

To guarantee the payment of the property, Corazon executed on August 25, 1995 a Promissory Note for ₱2,448,960 in favor of respondent.

By respondent's claim, in October 1995, Mendiola advised her to transfer the properties first to Corazon for the immediate processing of Corazon's loan application with assurance that the proceeds thereof would be paid directly to her (respondent), and the obligation would be reflected in a bank guarantee.

Heeding Mendiola's advice, respondent executed a Deed of Absolute Sale over the properties in favor of Corazon following

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[2] *Vide* SPA executed by the heirs of Leonor Valenzuela-Rosales also authorizing Liwayway to institute and represent them in any court litigation that may arise out of the transaction, records, p. 9.

which or on December 4, 1995, Transfer Certificates of Title Nos. 164159 and 164160 were issued in the name of Corazon.

Corazon's application for a loan with PBTC's Tondo Branch was approved on December 1995. She thereupon executed a real estate mortgage covering the properties to secure the payment of the loan. In the absence of a written request for a bank guarantee, the PBTC released the proceeds of the loan to Corazon.

Respondent later got wind of the approval of Corazon's loan application and the release of its proceeds to Corazon who, despite repeated demands, failed to pay the purchase price of the properties.

Respondent eventually accepted from Corazon partial payment in kind consisting of one owner type jeepney and four passenger jeepneys,[3] plus installment payments, which, by the trial court's computation, totaled ₱665,000.

In view of Corazon's failure to fully pay the purchase price, respondent filed a complaint for collection of sum of money and annulment of sale and mortgage with damages, against Corazon and PBTC (hereafter petitioner), before the Regional Trial Court (RTC) of Sta. Cruz, Laguna.[4]

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[3] The value of the vehicles as shown in the Acknowledgment Receipts and Delivery Receipts are as follows: (1) Owner-type Jeepney – ₱200,000.00, (2) Passenger Jeep A – ₱255,000.00, (3) Passenger Jeep B – ₱340,000.00, (4) Passenger Jeep C – ₱325,000.00 (mortgaged to Plaza Lending, Co.) and (5) Passenger Jeep D – ₱300,000.00.

[4] The complaint, Civil Case No. SC-3643, was entitled "*Liwayway Abasolo v. Corazon Marasigan, Prudential Bank and Trust Company and the Register of Deeds of Laguna.*" The title of the complaint does not indicate that Liwayway was prosecuting the case as attorney-in-fact of the Heirs of Leonor Valenzuela-Rosales, which is not in accordance with Section 3, Rule 3 of the Rules of Court reading:

Sec. 3. *Representatives as parties*. – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized

In her Answer,[5] Corazon denied that there was an agreement that the proceeds of the loan would be paid directly to respondent. And she claimed that the vehicles represented full payment of the properties, and had in fact overpaid ₱76,040.

Petitioner also denied that there was any arrangement between it and respondent that the proceeds of the loan would be released to her.[6] It claimed that it "may process a loan application of the registered owner of the real property who requests that proceeds of the loan or part thereof be payable directly to a third party [but] the applicant must submit a letter request to the Bank."[7]

On pre-trial, the parties stipulated that petitioner was not a party to the contract of sale between respondent and Corazon; that there was no written request that the proceeds of the loan should be paid to respondent; and that respondent received five vehicles as partial payment of the properties.[8]

Despite notice, Corazon failed to appear during the trial to substantiate her claims.

By Decision of March 12, 2004,[9] Branch 91 of the Sta. Cruz, Laguna RTC rendered judgment in favor of respondent and against Corazon who was made directly liable to respondent, and against petitioner who was made subsidiarily liable in the event that Corazon fails to pay. Thus the trial court disposed:

WHEREFORE, premises considered, finding the plaintiff has established her claim against the defendants, Corazon Marasigan

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by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (underscoring supplied)

The defendants never questioned the matter, however.

[5] Records, pp. 29-35.

[6] Bank's Answer With Counterclaim, *id.* at 36-41.

[7] *Id.* at 38.

[8] Pre-Trial Order, *id.* at 98.

[9] *Id.* at 221-226.

and Prudential Bank and Trust Company, judgment is hereby rendered in favor of the plaintiff ordering:

Defendant Corazon Marasigan to pay the plaintiff the amount of ₱1,783,960.00 plus three percent (3%) monthly interest per month from August 25, 1995 until fully paid. Further, to pay the plaintiff the sum equivalent to twenty percent five [*sic*] (25%) of ₱1,783,960.00 as attorney's fees.

Defendant Prudential Bank and Trust Company to pay the plaintiff the amount of ₱1,783,960.00 or a portion thereof plus the legal rate of interest per annum until fully paid **in the event that Defendant Corazon Marasigan fails to pay** the said amount or a portion thereof.

Other damages claimed not duly proved are hereby dismissed.

So Ordered.[10] (emphasis in the original; underscoring partly in the original, partly supplied)

In finding petitioner subsidiarily liable, the trial court held that petitioner breached its understanding to release the proceeds of the loan to respondent:

Liwayway claims that the bank should also be held responsible for breach of its obligation to directly release to her the proceeds of the loan or part thereof as payment for the subject lots. The evidence shows that her claim is valid. The Bank had such an obligation as proven by evidence. It failed to rebut the credible testimony of Liwayway which was given in a frank, spontaneous, and straightforward manner and withstood the test of rigorous cross-examination conducted by the counsel of the Bank. Her credibility is further strengthened by the corroborative testimony of Miguela delos Reyes who testified that she went with Liwayway to the bank for several times. In her presence, Norberto Mendiola, the head of the loan department, instructed Liwayway to transfer the title over the subject lots to Corazon to facilitate the release of the loan with the guarantee that Liwayway will be paid upon the release of the proceeds.

Further, Liwayway would not have executed the deed of sale in favor of Corazon had Norberto Mendiola did not promise and guarantee that the proceeds of the loan would be directly paid to her. Based on ordinary human experience, she would not have readily transferred

[10] *Id.* at 226.

the title over the subject lots had there been no strong and reliable guarantee. In this case, what caused her to transfer title is the promise and guarantee made by Norberto Mendiola that the proceeds of the loan would be directly paid to her.[11] (emphasis underscoring supplied)

On appeal, the Court of Appeals, by Decision of January 14, 2008,[12] **affirmed** the trial court's decision with modification on the amount of the balance of the purchase price which was reduced from ₱1,783,960 to ₱1,753,960. It disposed:

WHEREFORE, premises considered, the assailed Decision dated March 12, 2004 of the Regional Trial Court of Sta. Cruz, Laguna, Branch 91, is **AFFIRMED WITH MODIFICATION** as to the amount to be paid which is ₱1,753,960.00.

SO ORDERED.[13] (emphasis in the original; underscoring supplied)

Petitioner's motion for reconsideration having been denied by the appellate court by Resolution of February 23, 2009, the present petition for review was filed.

The only issue petitioner raises is whether it is subsidiarily liable.

The petition is meritorious.

In the absence of a lender-borrower relationship between petitioner and Liwayway, there is no inherent obligation of petitioner to release the proceeds of the loan to her.

To a banking institution, well-defined lending policies and sound lending practices are essential to perform its lending function effectively and minimize the risk inherent in any extension of credit.

Thus, Section X302 of the Manual of Regulations for Banks provides:

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[11] *Id.* at 224.

[12] Penned by Associate Justice Aurora Santiago-Lagman with the concurrence of Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., *rollo*, pp. 31-43.

[13] CA *rollo*, p. 117.

X-302. To ensure that timely and adequate management action is taken to maintain the quality of the loan portfolio and other risk assets and that adequate loss reserves are set up and maintained at a level sufficient to absorb the loss inherent in the loan portfolio and other risk assets, each bank shall establish a system of identifying and monitoring existing or potential problem loans and other risk assets and of evaluating credit policies *vis-à-vis* prevailing circumstances and emerging portfolio trends. Management must also recognize that loss reserve is a stabilizing factor and that failure to account appropriately for losses or make adequate provisions for estimated future losses may result in misrepresentation of the bank's financial condition.

In order to identify and monitor loans that a bank has extended, a system of documentation is necessary. Under this fold falls the issuance by a bank of a guarantee which is essentially a promise to repay the liabilities of a debtor, in this case Corazon. It would be contrary to established banking practice if Mendiola issued a bank guarantee, even if no request to that effect was made.

The *principle of relativity of contracts* in Article 1311 of the Civil Code supports petitioner's cause:

Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (underscoring supplied)

For Liwayway to prove her claim against petitioner, a clear and deliberate act of conferring a favor upon her must be present. A written request would have sufficed to prove this, given the nature of a banking business, not to mention the amount involved.

Since it has not been established that petitioner had an obligation to Liwayway, there is no breach to speak of. Liwayway's claim should only be directed against Corazon. Petitioner cannot thus be held subsidiarily liable.

To the Court, Liwayway did not rely on Mendiola's representations, even if he indeed made them. The contract for Liwayway to sell to Corazon was perfected from the moment there was a meeting of minds upon the properties-object of the contract and upon the price. Only the source of the funds to pay the purchase price was yet to be resolved at the time the two inquired from Mendiola. Consider Liwayway's testimony:

> Q: We are referring to the promissory note which you aforementioned a while ago, why did this promissory note come about?
>
> A: Because the negotiation was already completed, sir, and the deed of sale will have to be executed, I asked the defendant (Corazon) to **execute the promissory note first before I could execute a deed of absolute sale, for assurance that she really pay me,** sir.[14] (emphasis and underscoring supplied)

That it was on Corazon's execution of a promissory note that prompted Liwayway to finally execute the Deed of Sale is thus clear.

The trial Court's reliance on the *doctrine of apparent authority* – that the principal, in this case petitioner, is liable for the obligations contracted by its agent, in this case Mendiola, – does not lie. *Prudential Bank v. Court of Appeals*[15] instructs:

> [A] banking corporation is liable to innocent third persons where the representation is made in the course of its business by an agent acting within the general scope of his authority even though, in the particular case, the agent is secretly abusing his authority and

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[14] TSN, September 21, 1999, p. 23.

[15] G.R. No. 108957, June 14, 1993, 223 SCRA 350.

attempting to perpetuate fraud upon his principal or some person, for his own ultimate benefit.[16] (underscoring supplied)

The *onus probandi* that attempt to commit fraud attended petitioner's employee Mendiola's acts and that he abused his authority lies on Liwayway. She, however, failed to discharge the onus. It bears noting that Mendiola was not privy to the approval or disallowance of Corazon's application for a loan nor that he would benefit by the approval thereof.

Aside from Liwayway's bare allegations, evidence is wanting to show that there was collusion between Corazon and Mendiola to defraud her. Even in Liwayway's Complaint, the allegation of fraud is specifically directed against Corazon.[17]

IN FINE, Liwayway's cause of action lies against only Corazon.

WHEREFORE, the Decision of January 14, 2008 of the Court of Appeals, in so far as it holds petitioner, Prudential Bank and Trust Company (now Bank of the Philippine Islands), subsidiary liable in case its co-defendant Corazon Marasigan, who did not appeal the trial court's decision, fails to pay the judgment debt, is *REVERSED* and *SET ASIDE*. The complaint against petitioner is accordingly *DISMISSED*.

SO ORDERED.

Peralta,[*] *Bersamin, Villarama, Jr.,* and *Sereno, JJ.,* concur.

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[16] *Id.* at 357, quoting *McIntosh v. Dakota Trust Co.*, 52 ND 752, 204 NW 818, 40 ALR 1021.

[17] Records, p. 6.

[*] Additional member per Special Order No. 885 dated September 1, 2010.

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— No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniary interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record. *(Id.)*

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Doctrine of — Elements of laches are: (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complainant seeks a remedy; (2) delay in asserting the complainant's right, the complainant having had knowledge or notice, of defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred. (Heirs of Enrique Toring *vs.* Heirs of Teodosia Boquilaga, G.R. No. 163610, Sept. 27, 2010) p. 518

— Refers to the failure or neglect, for an unreasonable length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or

omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. *(Id.)*

LAGUNA LAKE DEVELOPMENT AUTHORITY (LLDA)

Powers — Include the power to impose a fine as a penalty in the exercise of its function as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region. (Public Hearing Committee of the Laguna Lake Dev't. Authority *vs*. SM Prime Holdings, Inc., G.R. No. 170599, Sept. 22, 2010) p. 324

— The intendment of the law is to clothe the LLDA not only with the express powers granted to it, but also those which are implied or incidental but necessary or essential for the full and proper implementation of its purposes and functions. *(Id.)*

MORTGAGES

Contract of mortgage — Stipulation forbidding mortgagor to sell property without the mortgagee's consent, while the loan is subsisting, contravenes public policy. (Sps. Vega *vs*. SSS, G.R. No. 181672, Sept. 20, 2010) p. 205

Foreclosure of mortgage — Third party-buyer of mortgaged property is bound by a registered mortgage. (Sps. Vega *vs*. SSS, G.R. No. 181672, Sept. 20, 2010) p. 205

Mortgage credit — Follows the property wherever it goes, even if its ownership changes. (Sps. Vega *vs*. SSS, G.R. No. 181672, Sept. 20, 2010) p. 205

MOTIONS

Motion for postponement — Grant or denial thereof is addressed to the sound discretion of the trial court; factors to consider. (Philippine American Life & General Ins. Co. *vs*. Enario, G.R. No. 182075, Sept. 15, 2010) p. 166

MURDER

Commission of — Civil liabilities of accused, cited. (Bug-atan *vs*. People, G.R. No. 175195, Sept. 15, 2010) p. 103

— Defined as the unlawful killing of a person which is not parricide or infanticide, provided treachery or evident premeditation, inter alia, attended the killing. *(Id.)*

— Imposable penalty. *(Id.)*

Multiple murder with double attempted murder — When committed; imposable penalty. (People *vs*. Barde, G.R. No. 183094, Sept. 22, 2010) p. 434

NATIONAL CONCILIATION AND MEDIATION BOARD

Who may file a notice or declare a strike or lockout or request preventive mediation — Any certified or duly recognized bargaining representative may file a notice or declare a strike or request for preventive mediation in cases of bargaining deadlocks and unfair labor practices. (Insular Hotel Employees Union-NFL *vs*. Waterfront Insular Hotel Davao, G.R. Nos. 174040-41, Sept. 22, 2010) p. 387

NATIONAL ECONOMY AND PATRIMONY

Economic nationalism — Ideals laid down by the Constitution, cited. (Representative Espina *vs*. Hon. Zamora, Jr., G.R. No. 143855, Sept. 21, 2010) p. 269

— The Constitution gives Congress the discretion to reserve to Filipinos certain areas of investments upon the recommendation of the NEDA. *(Id.)*

— The Constitution strikes a balance between protecting local business and allowing the entry of foreign investments and services. *(Id.)*

— While the Constitution mandates a bias in favor of Filipino goods, services, labor and enterprises, it also recognizes the need for business exchange with the rest of the world. *(Id.)*

NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE

Prohibited pleadings — Include a motion to dismiss on the ground of failure to comply with a condition precedent.

(Medline Management, Inc. *vs*. Roslinda, G.R. No. 168715, Sept. 15, 2010) p. 34

NEGOTIABLE INSTRUMENTS LAW

Antedated and postdated — The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. (San Miguel Corp. *vs*. Puzon, Jr., G.R. No. 167567, Sept. 22, 2010) p. 298

— The purpose to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. *(Id.)*

OMBUDSMAN

Jurisdiction — Determination of the existence or non-existence of probable cause will not be interfered with by the court; exceptions. (Brig. Gen. [Ret.] Ramiscal, Jr. *vs*. Sandiganbayan, G.R. Nos. 172476-99, Sept. 15, 2010) p. 69

Rules of procedure — Filing of a second motion for reconsideration questioning again the Ombudsman's finding of probable cause is not allowed. (Brig. Gen. [Ret.] Ramiscal, Jr. *vs*. Sandiganbayan, G.R. Nos. 172476-99, Sept. 15, 2010) p. 69

— The filing of a motion for reconsideration of the resolution finding probable cause cannot bar the filing of the corresponding information and the subsequent arraignment of the accused. *(Id.)*

OVERSEAS EMPLOYMENT

Money claims — Heirs of the deceased seafarer have the personality to file a claim for death benefits. (Medline Management, Inc. *vs*. Roslinda, G.R. No. 168715, Sept. 15, 2010) p. 34

— Prescriptive period for filing is three (3) years from the time the cause of action accrues, not one year from the date of the seafarer's return to the point of hire. *(Id.)*

— Rule construed liberally in favor of the seafarer but claims for compensation shall be denied if evidence presented negates compensability. *(Id.)*

— Within the original and exclusive jurisdiction of the National Labor Relations Commission. *(Id.)*

OWNERSHIP

Proof of ownership — Tax declaration does not prove ownership, but is an evidence of claim to possession of the land. (Heirs of Juanita Padilla *vs*. Magdua, G.R. No. 176858, Sept. 15, 2010) p. 140

— While tax declarations are not conclusive evidence of ownership, yet, when coupled with proof of actual possession, tax declaration and receipts are strong evidence of ownership. (Heirs of Enrique Toring *vs*. Heirs of Teodosia Boquilaga, G.R. No. 163610, Sept. 27, 2010) p. 518

PERJURY

Commission of — The willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. (Yu *vs*. Lim, G.R. No. 182291, Sept. 22, 2010) p. 421

PHILIPPINE NATIONAL POLICE, ESTABLISHMENT OF, UNDER A REORGANIZED DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND FOR OTHER PURPOSES (R.A. NO. 6975)

Application — Not proper absent administrative case against a PNP member in connection with the crime of which he was charged in court. (P/Chief Superintendent Calinisan *vs*. SPO2Roaquin, G.R. No. 159588, Sept. 15, 2010) p. 18

Sections 46 - 48 of — A discharged police officer is entitled, after his acquittal from the criminal charges against him, to reinstatement, back salaries, allowances and other benefits withheld from him. (P/Chief Superintendent Calinisan *vs*. SPO2Roaquin, G.R. No. 159588, Sept. 15, 2010) p. 18

PLEAS

Plea of guilty to a lesser offense — Approval of the plea bargaining agreement is not legally flawed even if the arraignment, plea bargaining and conviction occurred on a single day. (Bug-atan *vs*. People, G.R. No. 175195, Sept. 15, 2010) p. 103

— Introduction of evidence is no longer necessary after entering a plea of guilty. *(Id.)*

PRELIMINARY INVESTIGATION

Probable cause — Defined as such facts and circumstances that will engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof and should be held for trial. (San Miguel Corp. *vs*. Puzon, Jr., G.R. No. 167567, Sept. 22, 2010) p. 298

PRE-TRIAL

Failure to appear at the pre-trial — As the rule now stands, a default order is no longer issued, instead, the trial court may allow the plaintiff to proceed with his evidence ex parte and the court can decide the case based on the evidence presented by the plaintiff. (Philippine American Life & General Ins. Co. *vs*. Enario, G.R. No. 182075, Sept. 15, 2010) p. 166

— May only be excused for a valid cause. *(Id.)*

Significance of a pre-trial — Cited. (Philippine American Life & General Ins. Co. *vs*. Enario, G.R. No. 182075, Sept. 15, 2010) p. 166

PROSECUTION OF CIVIL ACTIONS

Prejudicial question — Civil case for annulment of marriage is not a prejudicial question to the crime of parricide. (Pimentel *vs*. Pimentel, G.R. No. 172060, Sept. 13, 2010) p. 1

— The elements thereof are: (1) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and

(2) the resolution of such issue determines whether or not the criminal action may proceed. *(Id.)*

PROSECUTION OF OFFENSES

Date of the crime — Determinative factor in the resolution of the question involving a variance between the allegation and proof in respect of the date of the crime is the element of surprise on the part of the accused and his corollary inability to defend himself properly. (People *vs*. Alejandro, G.R. No. 186232, Sept. 27, 2010) p. 570

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct — Defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence. (Echano, Jr. *vs*. Toledo, G.R. No. 173930, Sept. 15, 2010) p. 94

— Punishable by dismissal even for the first offense; claim of good faith will not be considered in the imposition of a penalty where the violation of the banking rules was willful and dishonest. *(Id.)*

— The element of corruption, clear intent to violate the law or flagrant disregard of established rules must be manifest. *(Id.)*

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. (People *vs*. Barde, G.R. No. 183094, Sept. 22, 2010) p. 434

(Bug-atan *vs*. People, G.R. No. 175195, Sept. 15, 2010) p. 103

Minority and relationship as special qualifying circumstances — With the concurrence of both circumstances, rape cases are considered heinous crimes. (People *vs*. Alejandro, G.R. No. 186232, Sept. 27, 2010) p. 570

Treachery — Appreciated when the attack was so swift and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or defend himself. (Bug-atan *vs*. People, G.R. No. 175195, Sept. 15, 2010) p. 103

QUIETING OF TITLE

Action to quiet title — A common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property. (Heirs of Enrique Toring *vs*. Heirs of Teodosia Boquilaga, G.R. No. 163610, Sept. 27, 2010) p. 518

RAPE

Commission of — Carnal knowledge, when duly established. (People *vs.* Alejandro, G.R. No. 186232, Sept. 27, 2010) p. 570

— Distinguished from acts of lasciviousness; in rape, there is the intent to lie with a woman which is absent in acts of lasciviousness. (Tibong *vs*. People, G.R. No. 191000, Sept. 15, 2010) p. 198

— Established when a man shall have carnal knowledge of a woman by means of force, threat or intimidation. (People *vs*. Olimba, G.R. No. 185008, Sept. 22, 2010) p. 468

— Imposable penalty. *(Id.)*

— Lust is no respecter of time and place and there is no rule that a woman can only be raped in seclusion. *(Id.)*

— Where a rape victim's testimony is corroborated by the physical findings of perpetration, there is sufficient basis for concluding that sexual intercourse did take place. (People *vs.* Alcazar, G.R. No. 186494, Sept. 15, 2010) p. 181

Prosecution of rape cases — Each and every charge of rape is a separate and distinct crime and that each of them must be proven beyond reasonable doubt. (People *vs*. Olimba, G.R. No. 185008, Sept. 22, 2010) p. 468

— Guiding principles in the determination of the innocence or guilt of the accused. *(Id.)*

(People *vs.* Alcazar, G.R. No. 186494, Sept. 15, 2010) p. 181

— No mother would subject her daughter to a public trial for rape, if said charges were not true. *(Id.)*

— Utmost care must be taken in the review of a decision involving a conviction of rape. *(Id.)*

— When a rape victim's testimony passes the test of credibility, the accused can be convicted on the basis thereof. (People *vs.* Olimba, G.R. No. 185008, Sept. 22, 2010) p. 468

Qualified rape — Imposable penalty. (People *vs.* Alejandro, G.R. No. 186232, Sept. 27, 2010) p. 570

— Liability for civil indemnity and moral damages. (People *vs.* Olimba, G.R. No. 185008, Sept. 22, 2010) p. 468

Statutory rape — Voluntary submission of the victim will not relieve the accused from criminal liability. (People *vs.* Alcazar, G.R. No. 186494, Sept. 15, 2010) p. 181

RECONSTITUTION OF TITLE

Action for — Nature and purpose. (Heirs of Enrique Toring *vs.* Heirs of Teodosia Boquilaga, G.R. No. 163610, Sept. 27, 2010) p. 518

— Requisites. *(Id.)*

REGIONAL TRIAL COURT

Jurisdiction — Includes all cases where the subject of litigation may not be estimated in terms of money or actions incapable of pecuniary estimation. (Heirs of Juanita Padilla *vs.* Magdua, G.R. No. 176858, Sept. 15, 2010) p. 140

— The Regional Trial Court has jurisdiction over certiorari petitions involving questions on the procurement and bidding process in infrastructure projects administered by the various procuring entities in the government. (Dimson [Manila], Inc. *vs.* Local Water Utilities Administration, G.R. No. 168656, Sept. 22, 2010) p. 309

RETAIL TRADE NATIONALIZATION ACT (R.A.NO. 1180)

Application — Covers the control and regulation of trade in the interest of the public welfare. (Representative Espina *vs*. Hon. Zamora, Jr., G.R. No. 143855, Sept. 21, 2010) p. 269

RULES OF PROCEDURE

Application — Strict compliance with the rule is indispensable for the orderly and speedy disposition of justice. (Dimarucot *vs*. People, G.R. No. 183975, Sept. 20, 2010) p. 218

SANDIGANBAYAN

Jurisdiction — Absent grave abuse of discretion, the Supreme Court will not interfere with the Sandiganbayan's jurisdiction and control over a case properly filed before it. (Brig. Gen. [Ret.] Ramiscal, Jr. *vs*. Sandiganbayan, G.R. Nos. 172476-99, Sept. 15, 2010) p. 69

— Includes violation of R.A. No. 3019 committed by a member of the Sangguniang Panlungsod. (People *vs*. Sandiganbayan [3rd Division], G.R. No. 169004, Sept. 15, 2010) p. 53

STATE, INHERENT POWERS OF

Police power — Tax and regulation as a form of police power, distinguished. (Chevron Phils., Inc. *vs*. Bases Conversion Dev't. Authority, G.R. No. 173863, Sept. 15, 2010) p. 84

SUPREME COURT

Administrative supervision over lower courts and their personnel — Covers administrative cases filed against a judge before he retired. (Reyes *vs*. Judge Duque, A.M. No.RTJ-08-2136, Sept. 21, 2010) p. 253

THEFT

Commission of — Elements. (San Miguel Corp. *vs*. Puzon, Jr., G.R. No. 167567, Sept. 22, 2010) p. 298

— Established, in the absence of evidence that the taking was employed with the use of force, violence, or intimidation. *(Id.)*

WAGES

Non-diminution rule — When applicable; exception. (Insular Hotel Employees Union-NFL *vs*. Waterfront Insular Hotel Davao, G.R. Nos. 174040-41, Sept. 22, 2010) p. 387

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Midenilla, G.R. No. 186470, Sept. 27, 2010) p. 570

(People *vs*. Barde, G.R. No. 183094, Sept. 22, 2010) p. 434

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Alejandro, G.R. No. 186232, Sept. 27, 2010) p. 570

(Bug-atan *vs*. People, G.R. No. 175195, Sept. 15, 2010) p. 103

— Positive and categorical declarations of prosecution witnesses deserve full faith and credence in the absence of ill motive. *(Id.)*

— The determination of the character of a witness is not a prerequisite to believe in his testimony. *(Id.)*

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