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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.C. No. 7907. December 15, 2010]

SPOUSES VIRGILIO and ANGELINA ARANDA, *petitioners, vs.* **ATTY. EMMANUEL F. ELAYDA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DUTY TO CLIENT; A LAWYER IS DUTY BOUND TO UPHOLD AND SAFEGUARD THE INTEREST OF HIS CLIENTS.— [I]t is clear that Atty. Elayda is duty bound to uphold and safeguard the interests of his clients. He should be conscientious, competent and diligent in handling his clients' cases. Atty. Elayda should give adequate attention, care, and time to all the cases he is handling. As the spouses Aranda's counsel, Atty. Elayda is expected to monitor the progress of said spouses' case and is obligated to exert all efforts to present every remedy or defense authorized by law to protect the cause espoused by the spouses Aranda. Regrettably, Atty. Elayda failed in all these. Atty. Elayda even admitted that the spouses Aranda never knew of the scheduled hearings because said spouses never came to him and that he did not know the spouses' whereabouts. While it is true that communication is a shared responsibility between a counsel and his clients, it is the counsel's primary duty to inform his clients of the status of their case and the orders which have been issued by the court. He cannot simply wait for his clients to make an inquiry about the developments in their case. Close coordination between counsel and client is

necessary for them to adequately prepare for the case, as well as to effectively monitor the progress of the case. Besides, it is elementary procedure for a lawyer and his clients to exchange contact details at the initial stages in order to have constant communication with each other. Again, Atty. Elayda's excuse that he did not have the spouses Aranda's contact number and that he did not know their address is simply unacceptable.

2. ID.; ID.; ID.; ID.; RESPONDENT LAWYER WAS REMISS IN HIS DUTIES AND RESPONSIBILITIES AS A MEMBER OF THE LEGAL PROFESSION; HIS CONDUCT SHOWS THAT HE NOT ONLY FAILED TO EXERCISE DUE DILIGENCE IN HANDLING HIS CLIENTS' CASE BUT IN FACT ABANDONED HIS CLIENTS' CAUSE.— [T]his Court will not countenance Atty. Elayda's explanation that he cannot be faulted for missing the February 14, 2006 hearing of the spouses Aranda's case. The Court quotes with approval the disquisition of Investigating Commissioner Pizarras: Moreover, his defense that he cannot be faulted for what had happened during the hearing on February 14, 2006 because he was just at the other branch of the RTC for another case and left a message with the court stenographer to just call him when [the spouses Aranda] come, is lame, to say the least. In the first place, the counsel should not be at another hearing when he knew very well that he has a scheduled hearing for the [spouses Aranda's] case at the same time. His attendance at the hearing should not be made to depend on the whether [the spouses Aranda] will come or not. The Order submitting the decision was given at the instance of the other party's counsel mainly because of his absence there. Again, as alleged by the [the spouses Aranda] and as admitted by [Atty. Elayda] himself, he did not take the necessary remedial measure in order to ask that said Order be set aside. It is undisputed that Atty. Elayda did not act upon the RTC order submitting the spouses Aranda's case for decision. Thus, a judgment was rendered against the spouses Aranda for a sum of money. Notice of said judgment was received by Atty. Elayda who again did not file any notice of appeal or motion for reconsideration and thus, the judgment became final and executory. Atty. Elayda did not also inform the spouses Aranda of the outcome of the case. The spouses Aranda came to know of the adverse RTC judgment, which by then had already become final and executory, only when a writ

of execution was issued and subsequently implemented by the sheriff. Evidently, Atty. Elayda was remiss in his duties and responsibilities as a member of the legal profession. His conduct shows that he not only failed to exercise due diligence in handling his clients' case but in fact abandoned his clients' cause. He proved himself unworthy of the trust reposed on him by his helpless clients. Moreover, Atty. Elayda owes fealty, not only to his clients, but also to the Court of which he is an officer.

3. ID.; ID.; ID.; ID.; WHENEVER A LAWYER ACCEPTS A CASE, IT DESERVES HIS FULL ATTENTION, DILIGENCE, SKILL AND COMPETENCE, REGARDLESS OF ITS IMPORTANCE AND WHETHER OR NOT IT IS FOR A FEE OR FREE.— [I]t must be stressed that whenever a lawyer accepts a case, it deserves his full attention, diligence, skill and competence, regardless of its importance and whether or not it is for a fee or free. Verily, in *Santiago v. Fojas*, the Court held: Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

APPEARANCES OF COUNSEL

Viray Rongcal Beltran Yumul Viray Law Office for petitioner.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The instant case stemmed from an administrative complaint filed by the spouses Virgilio and Angelina Aranda (spouses Aranda) before the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline, charging their former counsel, Atty. Emmanuel F. Elayda (Atty. Elayda), with gross negligence or gross misconduct in handling their case. The spouses Aranda were the defendants in Civil Case No. 232-0-01, entitled *Martin V. Guballa v. Spouses Angelina and Virgilio Aranda*, filed before the Regional Trial Court (RTC) of Olongapo City, Branch 72.

In the Complaint dated August 11, 2006,[1] the spouses Aranda alleged that Atty. Elayda's handling of their case was "sorely inadequate, as shown by his failure to follow elementary norms of civil procedure and evidence,"[2] to wit:

> 4. That on February 14, 2006 hearing of the said case, the case was ordered submitted for decision [the spouses Aranda] and [Atty. Elayda] did not appear; certified copy of the order is attached as Annex "C";
>
> 5. That the order setting this case for hearing on February 14, 2006 was sent only to [Atty. Elayda] and no notice was sent to [the spouses Aranda] that is they were unaware of said hearing and [Atty. Elayda] never informed them of the setting;
>
> 6. That despite receipt of the order dated February 14, 2006, [Atty. Elayda] never informed them of such order notwithstanding the follow-up they made of their case to him;
>
> 7. That [Atty. Elayda] did not lift any single finger to have the order dated February 14, 2006 reconsidered and/or set aside as is normally expected of a counsel devoted to the cause of his client;
>
> 8. That in view of the inaction of [Atty. Elayda] the court naturally rendered a judgment dated March 17, 2006 adverse to [the spouses Aranda] which copy thereof was sent only to [Atty. Elayda] and [the

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

[2] *Id.* at 3.

spouses Aranda] did not receive any copy thereof, certified xerox copy of the decision is attached as Annex "D";

9. That they were totally unaware of said judgment as [Atty. Elayda] had not again lifted any single finger to inform them of such adverse judgment and that there is a need to take a remedial recourse thereto;

10. That [Atty. Elayda] did not even bother to file a notice of appeal hence the judgment became final and executory hence a writ of execution was issued upon motion of the plaintiff [Martin Guballa] in the said case;

11. That on July 18, 2006 Sheriff IV Leandro R. Madarag implemented the writ of execution and it was only at this time that [the spouses Aranda] became aware of the judgment of the Court, certified xerox copy of the writ of execution is attached as Annex "E";

12. That on July 19, 2006, they wasted no time in verifying the status of their case before Regional Trial Court, Branch 72, Olongapo City and to their utter shock, dismay and disbelief, they found out that they have already lost their case and worst the decision had already become final and executory;

13. That despite their plea for a reasonable period to take a remedial recourse of the situation (the Sheriff initially gave them fifteen (15) days), Sheriff Madarag forcibly took possession and custody of their Mitsubishi Pajero with Plate No. 529;

14. That they were deprived of their right to present their evidence in the said case and of their right to appeal because of the gross negligence of respondent."[3]

In its Order[4] dated August 15, 2006, the IBP Commission on Bar Discipline directed Atty. Elayda to submit his Answer to the complaint with a warning that failure to do so will result in his default and the case shall be heard *ex parte*.

Atty. Elayda filed his Answer[5] dated September 1, 2006, in which he narrated:

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[3] *Id.* at 1-3.

[4] *Id.* at 39.

[5] *Id.* at 40-43.

7. That this case also referred to [Atty. Elayda] sometime December 2004 after the [spouses Aranda] and its former counsel failed to appear in court on February 7, 2005;

8. That from December 2004, the [spouses Aranda] did not bother to contact [Atty. Elayda] to prepare for the case and in fact on May 30, 2005, [Atty. Elayda] had to ask for postponement of the case for reason that he still have to confer with the [spouses Aranda] who were not around;

9. That contrary to the allegations of the [spouses Aranda], there was not a single instance from December 2004 that the [spouses Aranda] called up [Atty. Elayda] to talk to him regarding their case;

10. That the [spouses Aranda] from December 2004 did not even bother to follow up their case in court just if to verify the status of their case and that it was only on July 19, 2006 that they verified the same and also the only time they tried to contact [Atty. Elayda];

11. That the [spouses Aranda] admitted in their Complaint that they only tried to contact [Atty. Elayda] when the writ of execution was being implemented on them;

12. That during the scheduled hearing of the case on February 14, 2006, [Atty. Elayda] was in fact went to RTC, Branch 72, Olongapo City and asked Mrs. Edith Miano to call him in Branch 73 where he had another case if the [spouses Aranda] show up in court so that [Atty. Elayda] can talk to them but obviously the [spouses Aranda] did not appear and Mrs. Miano did not bother to call [Atty. Elayda];

13. That [Atty. Elayda] was not at fault that he was not able to file the necessary pleadings in court because the [spouses Aranda] did not get in touch with him;

14. That [Atty. Elayda] cannot contact the [spouses Aranda] for the latter failed to give their contact number to [Atty. Elayda] nor did the [spouses Aranda] go to his office to leave their contact number;

14. That the [spouses Aranda] were negligent in their "I don't care attitude" towards their case and for this reason that they alone should be blamed for what happened to their case x x x."

At the mandatory conference hearing held on March 14, 2007, all the parties appeared with their respective counsels. The parties were then given a period of 10 days from receipt of the order

within which to submit their position papers attaching therewith all documentary exhibits and affidavits of witnesses, if any.

After the submission of the parties' position papers, Investigating Commissioner Jordan M. Pizarras came out with his Decision[6] finding Atty. Elayda guilty of gross negligence, and recommending his suspension from the practice of law for a period of six months, thus:

> WHEREFORE, premises considered, respondent Atty. Emmanuel F. Elayda is suspended from the practice of law for a period of six months, which shall take effect from the date of notice of receipt of the finality of this DECISION. He is sternly WARNED that a repetition of the same or similar acts will merit a more severe penalty.[7]

Thereafter, the IBP Board of Governors passed Resolution No. XVIII-2008-128[8] dated March 6, 2008, adopting and approving Investigating Commissioner Pizarras' report, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and in view of respondent's negligence and unmindful of his sworn duties to his clients, Atty. Emmanuel F. Elayda is hereby **SUSPENDED** from the practice of law for six (6) months with **Warning** that a repetition of the same or similar acts will merit a more severe penalty.[9]

Aggrieved, Atty. Elayda filed with this Court a Petition for Review maintaining that he was not negligent in handling the spouses Aranda's case as to warrant suspension, which was too harsh a penalty under the circumstances.

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[6] *Id.* at 116-124.

[7] *Id.* at 124.

[8] *Id.* at 114-115.

[9] *Id.* at 114.

After a careful review of the records of the instant case, this Court finds no cogent reason to deviate from the findings and the conclusion of the IBP Board of Governors that Atty. Elayda was negligent and unmindful of his sworn duties to his clients.

In *Abay v. Montesino*,[10] this Court held:

> The legal profession is invested with public trust. Its goal is to render public service and secure justice for those who seek its aid. Thus, the practice of law is considered a privilege, not a right, bestowed by the State on those who show that they possess and continue to possess the legal qualifications required for the conferment of such privilege.
>
> Verily, lawyers are expected to maintain at all times a high standard of legal proficiency and of morality – which includes honesty, integrity and fair dealing. They must perform their four-fold duty to society, the legal profession, the courts and their clients in accordance with the values and norms of the legal profession, as embodied in the Code of Professional Responsibility. Any conduct found wanting in these considerations, whether in their professional or private capacity, shall subject them to disciplinary action. In the present case, the failure of respondent to file the appellant's brief was a clear violation of his professional duty to his client.[11]

The Canons of the Code of Professional Responsibility provide:

> CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.
>
> CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> x x x x x x x x x
>
> Rule 18.02 – A lawyer shall not handle any legal matter without adequate preparation.
>
> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[10] 462 Phil. 496 (2003).

[11] *Id.* at 503-504.

> Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

CANON 19 – A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

From the foregoing, it is clear that Atty. Elayda is duty bound to uphold and safeguard the interests of his clients. He should be conscientious, competent and diligent in handling his clients' cases. Atty. Elayda should give adequate attention, care, and time to all the cases he is handling. As the spouses Aranda's counsel, Atty. Elayda is expected to monitor the progress of said spouses' case and is obligated to exert all efforts to present every remedy or defense authorized by law to protect the cause espoused by the spouses Aranda.

Regrettably, Atty. Elayda failed in all these. Atty. Elayda even admitted that the spouses Aranda never knew of the scheduled hearings because said spouses never came to him and that he did not know the spouses' whereabouts. While it is true that communication is a shared responsibility between a counsel and his clients, it is the counsel's primary duty to inform his clients of the status of their case and the orders which have been issued by the court. He cannot simply wait for his clients to make an inquiry about the developments in their case. Close coordination between counsel and client is necessary for them to adequately prepare for the case, as well as to effectively monitor the progress of the case. Besides, it is elementary procedure for a lawyer and his clients to exchange contact details at the initial stages in order to have constant communication with each other. Again, Atty. Elayda's excuse that he did not have the spouses Aranda's contact number and that he did not know their address is simply unacceptable.

Furthermore, this Court will not countenance Atty. Elayda's explanation that he cannot be faulted for missing the February 14, 2006 hearing of the spouses Aranda's case. The Court quotes with approval the disquisition of Investigating Commissioner Pizarras:

Moreover, his defense that he cannot be faulted for what had happened during the hearing on February 14, 2006 because he was just at the other branch of the RTC for another case and left a message with the court stenographer to just call him when [the spouses Aranda] come, is lame, to say the least. In the first place, the counsel should not be at another hearing when he knew very well that he has a scheduled hearing for the [spouses Aranda's] case at the same time. His attendance at the hearing should not be made to depend on the whether [the spouses Aranda] will come or not. The Order submitting the decision was given at the instance of the other party's counsel mainly because of his absence there. Again, as alleged by the [the spouses Aranda] and as admitted by [Atty. Elayda] himself, he did not take the necessary remedial measure in order to ask that said Order be set aside.[12]

It is undisputed that Atty. Elayda did not act upon the RTC order submitting the spouses Aranda's case for decision. Thus, a judgment was rendered against the spouses Aranda for a sum of money. Notice of said judgment was received by Atty. Elayda who again did not file any notice of appeal or motion for reconsideration and thus, the judgment became final and executory. Atty. Elayda did not also inform the spouses Aranda of the outcome of the case. The spouses Aranda came to know of the adverse RTC judgment, which by then had already become final and executory, only when a writ of execution was issued and subsequently implemented by the sheriff.

Evidently, Atty. Elayda was remiss in his duties and responsibilities as a member of the legal profession. His conduct shows that he not only failed to exercise due diligence in handling his clients' case but in fact abandoned his clients' cause. He proved himself unworthy of the trust reposed on him by his helpless clients. Moreover, Atty. Elayda owes fealty, not only to his clients, but also to the Court of which he is an officer.[13]

On a final note, it must be stressed that whenever a lawyer accepts a case, it deserves his full attention, diligence, skill and

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[12] *Rollo,* p. 122.

[13] *Abiero v. Juanino,* 492 Phil. 149, 158 (2005).

competence, regardless of its importance and whether or not it is for a fee or free.[14] Verily, in *Santiago v. Fojas*,[15] the Court held:

> Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[16]

WHEREFORE, the resolution of the IBP Board of Governors approving and adopting the Decision of the Investigating Commissioner is hereby *AFFIRMED.* Accordingly, respondent *ATTY. EMMANUEL F. ELAYDA* is hereby *SUSPENDED* from the practice of law for a period of *SIX (6) MONTHS,* with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Elayda's personal record with the Office of the Bar Confidant and be furnished to all chapters of the Integrated Bar of the Philippines and to all the courts in the country for their information and guidance.

SO ORDERED.

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

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[14] *Jardin v. Villar, Jr.*, 457 Phil. 1, 9 (2003).

[15] Adm. Case No. 4103, September 7, 1995, 248 SCRA 68.

[16] *Id.* at 73-74.

SECOND DIVISION

[A.M. No. P-07-2383. December 15, 2010]

CRISPIN SARMIENTO, *complainant, vs.* **LUISITO P. MENDIOLA, Sheriff III, Metropolitan Trial Court, Branch 20, Manila,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SHERIFFS; SIMPLE MISCONDUCT; THE SHERIFF CANNOT AND SHOULD NOT BE THE ONE TO DETERMINE WHICH PROPERTY TO LEVY IF THE JUDGMENT OBLIGOR CANNOT IMMEDIATELY PAY BECAUSE IT IS THE JUDGMENT OBLIGOR WHO IS GIVEN THE OPTION WHICH PROPERTY OR PART THEREOF MAY BE LEVIED.— It is a basic principle of law that money judgments are enforceable only against property unquestionably belonging to the judgment debtor. In the execution of a money judgment, the sheriff must first make a demand on the obligor for payment of the full amount stated in the writ of execution. Property belonging to third persons cannot be levied upon. Moreover, the levy upon the properties of the judgment obligor may be had by the executing sheriff if the judgment obligor cannot pay all or part of the full amount stated in the writ of execution. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode acceptable to the judgment obligee, the judgment obligor is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment. Therefore, the sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given

the option to choose which property or part thereof may be levied upon to satisfy the judgment. Since Crispin is not the owner of the subject vehicle that respondent levied on, it was improper for respondent to have enforced the writ of execution on a property that did not belong to Crispin, the judgment debtor/obligor. Respondent evidently failed to perform his duty with utmost diligence.

2. ID.; ID.; ID.; ID.; IMPORTANT ROLE OF SHERIFFS IN THE ADMINISTRATION OF JUSTICE, EMPHASIZED; DUTIES AND RESPONSIBILITIES; EXPOUNDED.— It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the judgment. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom. Thus, sheriffs play an important part in the administration of justice. In view of their exalted position, their conduct should be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v. Luna,* we ruled that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities. They must always hold inviolate and invigorate the tenet that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any suspicion that may taint the judiciary. They must be circumspect and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking officers of the court entrusted with a fiduciary role. They play an important part in the administration of justice and are called upon to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything less is unacceptable. This is because in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence their conduct should be

geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel.

3. ID.; ID.; ID.; ID.; MISCONDUCT; DEFINED; IMPOSABLE PENALTY.— In *Office of the Court Administrator v. Judge Fernandez*, the Court defined "misconduct" as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose. We agree with the OCA's finding that respondent is guilty of simple misconduct. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Since this is respondent's first offense, we find the OCA's recommendation imposing a fine of ₱10,000 to be in order.

D E C I S I O N

CARPIO, *J.*:

The Case

A sheriff performs a sensitive role in the dispensation of justice. He is duty-bound to know the basic rules in the implementation of a writ of execution and be vigilant in the exercise of that authority.

The Facts

Crispin Sarmiento (Crispin) was charged with eight counts of violation of Batas Pambansa Blg. 22 before the Metropolitan Trial Court of Manila, Branch 20 (MeTC-Br. 20), docketed as Criminal Case Nos. 345095-102-CR. On 22 September 2003, he was acquitted of the charges for failure of the prosecution to

prove his guilt.[1] However, upon the prosecution's manifestation and motion that the decision did not mention any civil liability that was impliedly instituted in the criminal action, the trial court amended its decision on 3 February 2004 ordering Crispin to pay the private complainants, spouses Daniel and Blesilda Inciong (spouses Inciong), the amount of ₱295,000 as actual damages plus legal interest of 12% per annum to be reckoned from the filing of the case.[2] After the decision became final and executory, the spouses Inciong filed a motion for writ of execution which motion was granted in the Order dated 18 April 2006.[3] A writ of execution was issued on 8 August 2006.[4]

On 24 August 2007, Crispin filed a Verified Complaint against respondent Luisito P. Mendiola (respondent), Sheriff III of the MeTC-Br. 20, charging the latter with Grave Misconduct, Manifest Partiality, Abuse of Authority, Oppression, Usurpation and Violation of Section 3(e) of Republic Act No. 3019 (RA 3019), otherwise known as the Anti-Graft and Corrupt Practices Act. Crispin alleged that on 12 February 2007, respondent and his companion, Claro Bacolod, a policeman employed in the Warrant Section of the Manila Police Department, forcibly took the Mercedes Benz of his brother, Tirso Sarmiento (Tirso), without presenting any writ of execution from the court. Crispin allegedly explained to them that he is not the owner of the vehicle but a mere caretaker. He showed to them the Deed of Sale of the subject vehicle executed on 24 January 2007 between the seller, Efren Panganiban (Efren), and the buyer, Tirso. He asserted that respondent's levy of the subject vehicle was illegal since a sheriff is not authorized to attach property not belonging to the judgment debtor.

In his Comment, respondent denied the charges. He alleged that he showed to Crispin the copy of the Order dated 18 April 2006 granting the issuance of the writ of execution and a Notice

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[1] Annex "A" of the respondent's Comment.

[2] Annex "B" of the respondent's Comment.

[3] Annex "C" of the respondent's Comment.

[4] Annex "D" of the respondent's Comment.

of Levy Upon Personal Property but Crispin refused to acknowledge these documents. Respondent further averred that he went to the house of Efren, the alleged seller, prior to the implementation of the writ of execution and he was assured by the latter's son that the car was already sold to Crispin about two or three years ago. Respondent contended that if Tirso was indeed the owner, then he should have been the one to have filed the instant administrative case. Respondent pointed out that he was not remiss in his duties as a court personnel and did not violate RA 3019 because he acted in good faith during the implementation of the writ of execution.

OCA Report and Recommendation

The Office of the Court Administrator (OCA) found respondent guilty of Simple Misconduct. An examination of the records would show that respondent levied upon the subject vehicle despite the fact that its ownership belonged to Crispin's brother as evidenced by the Deed of Sale executed on 24 January 2007, a month before the implementation of the writ of execution on 12 February 2007. Respondent failed to present evidence to bolster his claim that the subject vehicle was sold to Crispin.

The OCA opined that the court, in issuing a writ of execution, may enforce its authority only on the properties of the judgment debtor and the respondent must only subject to execution property belonging to the judgment debtor. If he levies on the properties of third persons in which the judgment debtor has no interest, he is acting beyond the limits of his authority. Thus, as found by the OCA, respondent's transgression constitutes simple misconduct which is classified as a less grave offense under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases where the penalty is suspension of one month and one day to six months, for the first offense and, dismissal from the service, for the second offense. Since this is respondent's first offense, the OCA recommended that respondent be fined ₱10,000.

The Court's Ruling

As admitted by respondent in his Comment, he levied a 1984 model Mercedes Benz with plate number PKY 703 but Crispin refused to hand the key of the car thus prompting him to engage the services of a wrecker to tow and bring the car to the court compound. He claims he acted in good faith and only performed his official duty in implementing the writ of execution.

We do not agree.

Sheriff Clavier M. Cachombo, Jr. (Clavier) was the one who first implemented the writ of execution on the same Mercedes Benz with plate number PKY 703. Apparently, respondent failed to read thoroughly the Sheriff's Partial Return dated 15 September 2006[5] which was annexed in his Comment. It was stated therein that "upon verification with the Land Transportation Office, it was found out that the said motor vehicle was registered under the name of Efren Panganiban since June 2002 and until March 31, 2006 in San Juan, Metro Manila and was never registered under the name of the defendant." Thus, the service of the writ of execution was temporarily held in abeyance until such time that any property of the defendant, complainant in this administrative case, had been positively identified. Clearly, respondent should have refrained from implementing the writ of execution on the same vehicle.

Respondent claims the son of the registered owner of the subject vehicle assured him that the car was sold to Crispin, but respondent failed to present concrete evidence to prove his claim. Moreover, the Deed of Sale presented by Crispin showed that Efren sold the subject vehicle to Tirso and not to Crispin. This clearly shows that the subject vehicle did not belong to Crispin.

It is a basic principle of law that money judgments are enforceable only against property unquestionably belonging to the judgment debtor. In the execution of a money judgment,

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[5] Annex "E" of the respondent's Comment.

the sheriff must first make a demand on the obligor for payment of the full amount stated in the writ of execution. Property belonging to third persons cannot be levied upon.[6] Moreover, the levy upon the properties of the judgment obligor may be had by the executing sheriff if the judgment obligor cannot pay all or part of the full amount stated in the writ of execution. If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode acceptable to the judgment obligee, the judgment obligor is given the option to immediately choose which of his property or part thereof, not otherwise exempt from execution, may be levied upon sufficient to satisfy the judgment. If the judgment obligor does not exercise the option immediately, or when he is absent or cannot be located, he waives such right, and the sheriff can now first levy his personal properties, if any, and then the real properties if the personal properties are insufficient to answer for the judgment.[7]

Therefore, the sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given the option to choose which property or part thereof may be

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[6] *Teodosio v. Somosa*, A.M. No. P-09-2610 (Formerly A.M. OCA IPI No. 09-3072-P), 13 August 2009, 595 SCRA 539, 557-558.

[7] Section 9 (b) of Rule 39 provides:

Sec. 9. *Execution of judgments for money, how enforced.* -

x x x x x x x x x

(b) *Satisfaction by levy*. - If the judgment obligor cannot pay all or part of the obligation in cash, certified bank check or other mode of payment acceptable to the judgment obligee, the officer shall levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution giving the latter the option to immediately choose which property or part thereof may be levied upon, sufficient to satisfy the judgment. If the judgment obligor does not exercise the option, the officer shall first levy on the personal properties, if any, and then on the real properties if the personal properties are insufficient to answer for the judgment.

The sheriff shall sell only a sufficient portion of the personal or real property of the judgment obligor which has been levied upon.

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levied upon to satisfy the judgment. Since Crispin is not the owner of the subject vehicle that respondent levied on, it was improper for respondent to have enforced the writ of execution on a property that did not belong to Crispin, the judgment debtor/obligor. Respondent evidently failed to perform his duty with utmost diligence.

It is undisputed that the most difficult phase of any proceeding is the execution of judgment. The officer charged with this delicate task is the sheriff. The sheriff, as an officer of the court upon whom the execution of a final judgment depends, must necessarily be circumspect and proper in his behavior. Execution is the fruit and end of the suit and is the life of the judgment. He is to execute the directives of the court therein strictly in accordance with the letter thereof and without any deviation therefrom.[8]

Thus, sheriffs play an important part in the administration of justice. In view of their exalted position, their conduct should be geared towards maintaining the prestige and integrity of the court. In *Escobar Vda. de Lopez v. Luna*,[9] we ruled that sheriffs have the obligation to perform the duties of their office honestly, faithfully and to the best of their abilities. They must always hold inviolate and invigorate the tenet that a public office is a public trust. As court personnel, their conduct must be beyond reproach and free from any suspicion that may taint the judiciary. They must be circumspect and proper in their behavior. They must use reasonable skill and diligence in performing their official duties, especially when the rights of individuals may be jeopardized by neglect. They are ranking officers of the court entrusted with a fiduciary role. They play an important part in the administration of justice and are called upon to discharge their duties with integrity, reasonable dispatch, due care, and circumspection. Anything less is unacceptable. This is because

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[8] *Mariñas v. Florendo*, A.M. No. P-07-2304, 12 February 2009, 578 SCRA 502, 510-511.

[9] A.M. No. P-04-1786 (Formerly OCA I.P.I. No. 02-1341-P), 13 February 2006, 482 SCRA 265, 275-276.

in serving the court's writs and processes and in implementing the orders of the court, sheriffs cannot afford to err without affecting the efficiency of the process of the administration of justice. Sheriffs are at the grassroots of our judicial machinery and are indispensably in close contact with litigants, hence their conduct should be geared towards maintaining the prestige and integrity of the court, for the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel.

In *Office of the Court Administrator v. Judge Fernandez,*[10] the Court defined "misconduct" as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper, unlawful conduct motivated by a premeditated, obstinate or intentional purpose.

We agree with the OCA's finding that respondent is guilty of simple misconduct. Under Section 52, B(2), Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service, simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense. Since this is respondent's first offense, we find the OCA's recommendation imposing a fine of ₱10,000 to be in order.

WHEREFORE, we find respondent Luisito P. Mendiola, Sheriff III of the Metropolitan Trial Court of Manila, Branch 20, guilty of Simple Misconduct. We *FINE* him ₱10,000, with a warning that a repetition of the same or similar offense in the future shall be dealt with more severely.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[10] 480 Phil. 495, 500 (2004).

THIRD DIVISION

[A.M. No. P-10-2753. December 15, 2010]
(Formerly A.M. OCA IPI No. 09-3088-P)

DONNABELLE D. RUBEN, *complainant, vs.* **RAMIL L. ABON, UTILITY WORKER I,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISRESPECT TOWARDS THE RIGHT OF A CO-EMPLOYEE CONSTITUTES A VIOLATION OF THE PRESCRIBED NORMS OF CONDUCT FOR PUBLIC OFFICIALS AND EMPLOYEES.— [R]espondent's acts of disrespect towards the rights of complainant are contrary to law, good morals and good customs, which constitute a violation of the prescribed norms of conduct for public officials and employees that calls for disciplinary sanction. Respondent need[s] to be reminded that as court employee, his conduct must at all times be characterized by propriety and decorum. He is expected to be well-mannered in his actuations not only towards the transacting public, but also in his relationship with co-workers. Boorishness and belligerent behavior have no place in government service as its personnel are enjoined to act with self-restraint and civility at all times.

D E C I S I O N

CARPIO MORALES, *J.*:

By Affidavit-Complaint[1] dated February 20, 2009, Donnabelle D. Ruben (complainant), Clerk IV of the Office of the Clerk of Court (OCC), Regional Trial Court (RTC) of Bayombong, Nueva Vizcaya, charged Ramil L. Abon (respondent), Utility Worker I of the same office, with conduct unbecoming a court employee.

From the *rollo*, it is gathered that in the morning of February 3, 2009, while respondent and an officemate Hartly Fernandez

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

(Fernandez) were conversing, complainant heard respondent utter in the Ilocano dialect a comment which, when translated to English, means "there's a colleague here who stabs you at your back." Complainant at once inquired from respondent to whom he was referring, to which respondent answered that he was referring to her. At that instant, respondent asked complainant if she wanted to hear a voice record proving that she was trying to malign him. Respondent in fact started playing the voice record but stopped it after the first word and left the room, albeit he returned.

By complainant's claim, respondent shouted at her during the incident that occurred before he left the room, and when respondent returned, he was drunk and threatened her with a gun.

Respondent denied having shouted at complainant or being drunk when he returned to the office or having threatened her with a gun.[2]

The Office of the Court Administrator (OCA),[3] by Report of December 1, 2009, came up with the following findings, quoted *verbatim:*

Respondent Abon failed to rebut complainant's allegations that he shouted at her and drew and loaded his .45 caliber pistol in front of her. He claims that **he was with Fernandez** at the time he went back to the office after a few minutes, and that he immediately proceeded to his table which was about 7 meters away from the complainant, and near the table of **Clerk of Court Atty. Augusto Solonio, Jr., who was there seated**. Being charged with a serious offense, the natural course will be to prove one's innocence. But respondent did **not even bother to submit any affidavit** neither from the said **Fernandez** nor from the **Clerk of Court to buttress his allegations**. Instead, he offered empty denials that are self-serving and deserving scant consideration.

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[2] See Compliance (comment), *id.* at 16-18.

[3] Through then Court Administrator Jose P. Perez, now a Member of the Court, and then Deputy Court Administrator Jose Midas P. Marquez, now Court Administrator.

The Code of Conduct and Ethical Standards for Public Officers and Employees requires public employees to respect at all times the rights of others and to refrain from any acts contrary to good morals and good customs [citing Republic Act No. 6713, Sec. 4 (c)]. This, respondent miserably failed to observe. The rude and belligerent behavior exhibited by him against his woman co-employee, threatening her verbally and with a gun is indeed conduct unbecoming of a court employee and cannot be countenanced. His act was not only an assault upon a female co-employee but more so, upon the integrity and authority of the court.

The alleged settlement of the differences between complainant and respondent cannot absolve the latter from administrative liability. Respondent merely alleges the same in his Comment without any proof whatsoever, *i.e.*, written assent thereto of the complainant. His claim of a settlement is a lame attempt to escape from administrative liability, especially with the settled rule that the withdrawal of an administrative complaint or subsequent desistance by the complainant does not free the respondent from liability as the purpose of an administrative proceeding is to protect the public service, based on the time-honored principle that a public office is a public trust. The issue in administrative cases is whether or not the respondent has breached the norms and standards of service in the judiciary.

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Under the Implementing Rules of the Code of Conduct and Ethical Standards for Public Officials and Employees, any violation of the Code shall be punished with a fine not exceeding the equivalent of six (6) months salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense [citing Rule XI, Sec. 1 thereof]. As this is respondent's first administrative case, and since he has settled his differences with complainant, the imposition of one (1) month suspension without pay is in order.[4] (emphasis and underscoring supplied)

The OCA accordingly recommended as follows:

x x x Mr. Ramil L. Abon be **SUSPENDED** from office for one (1) month without pay, with a **STERN WARNING** that a repetition

[4] *Rollo*, pp. 28-30.

of the same, or the commission of a similar offense in the future, will be dealt with more severely.[5]

By Resolution[6] of January 13, 2010, the Court resolved:

(1) to *NOTE:* (a) the aforesaid First Indorsement; (b) the verified affidavit-complaint dated 20 February 2009 of Donnabelle D. Ruben charging Utility Worker I Ramil L. Abon x x x with conduct unbecoming a court employee, with enclosures; (c) the respondent's compliance-comment; x x x;

(2) to *RE-DOCKET* the instant administrative complaint as a regular administrative matter; and

(3) to require the parties to ***MANIFEST*** if they are willing to submit the case for decision/resolution on the basis of the records/ pleadings filed, within ten (10) days from notice hereof.

Complainant and respondent filed their separate Manifestations[7] dated February 19, 2010 informing the Court that they are submitting the case for decision/resolution on the basis of the records and pleadings filed.

The resolution of the case hinges on which of the parties' version should be believed.

The Court finds the evaluation and recommendation by the OCA well-taken. Indeed, while respondent mentioned Fernandez and the Clerk of Court to have been present at the incident that spawned the filing of the present complaint against him, he failed to get any of them to corroborate his claim. Absent any showing of ill motive on complainant's part to falsely charge respondent, her tale must be believed.

As detailed above then, respondent's acts of disrespect towards the rights of complainant are contrary to law, good morals and

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[5] *Id.* at 30.

[6] *Id.* at 31.

[7] *Id.* at 40, 45.

good customs, which constitute a violation of the prescribed norms of conduct for public officials and employees that calls for disciplinary sanction.

Respondent need to be reminded that as court employee, his conduct must at all times be characterized by propriety and decorum. He is expected to be well-mannered in his actuations not only towards the transacting public, but also in his relationship with co-workers. Boorishness and belligerent behavior have no place in government service as its personnel are enjoined to act with self restraint and civility at all times.[8]

WHEREFORE, this Court finds Ramil L. Abon, Utility Worker I of the Office of the Clerk of Court, Regional Trial Court of Bayombong, Nueva Vizcaya, guilty of violation of the Code of Conduct and Ethical Standards for Public Officials and Employees[9] and is *SUSPENDED from office for one (1) month without pay*, with *STERN WARNING* that a repetition of the same or commission of a similar offense in the future will be dealt with more severely.

SO ORDERED.

Bersamin, Villarama, Jr., Mendoza,[*] and *Sereno, JJ.,* concur.

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[8] See *Dalmacio-Joaquin v. Dela Cruz*, A.M. No. P-07-2321 [formerly OCA I.P.I. No. 07-2492-P], April 24, 2009, 586 SCRA 344, 351.

[9] Republic Act No. 6713.

[*] In lieu of Associate Justice Arturo D. Brion per Special Order No. 921, dated December 13, 2010.

FIRST DIVISION

[A.M. No. RTJ-06-2015. December 15, 2010]
(Formerly OCA I.P.I. No. 05-2348-RTJ)

ATTY. NORLINDA R. AMANTE-DESCALLAR, *petitioner, vs.* **HON. REINERIO (ABRAHAM) B. RAMAS,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; MAKING UNTRUTHFUL STATEMENTS IN THE CERTIFICATES OF SERVICE CONSTITUTES A LESS SERIOUS OFFENSE; PENALTY.— The Court has previously held that a judge's submission of false certificates of service seriously undermines and reflects on the honesty and integrity expected of an officer of the court. This is so because a certificate of service is not merely a means to one's paycheck but is an instrument by which the Court can fulfill the constitutional mandate of the people's right to a speedy disposition of cases. Under A.M. No. 01-8-10-SC, amending Rule 140 on the Discipline of Justices and Judges, making untruthful statements in the certificate of service is categorized as a less serious offense and punishable by suspension without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that this is Judge Ramas' second offense in his almost 12 years in the Judiciary, the Court adopts Justice Lopez's recommendation of imposing on the erring judge a fine in the amount of Fifteen Thousand Pesos (₱15,000.00).

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This case stemmed from Administrative Case No. 05-222-P instituted by Judge Reinerio (Abraham) B. Ramas (Judge Ramas) of the Regional Trial Court, Branch 18 (RTC-Branch 18) of Pagadian City, Zamboanga del Sur, against Atty. Norlinda R.

Amante-Descallar (Atty. Descallar), Clerk of Court of the same court, for Grave Misconduct. Atty. Descallar allegedly showed the unopened ballot boxes inside Judge Ramas' chambers to a certain Allan Singedas (Singedas). The ballot boxes were in Judge Ramas' custody in relation to Election Protest Case No. 0001-2K4 pending before his court.

In a Verified Comment/Counter-Complaint[1] dated August 11, 2005, Atty. Descallar vehemently denied the accusations against her and countercharged Judge Ramas of bringing home a complete set of computer, which was submitted as evidence in Criminal Case Nos. 5294 and 5295, entitled *People v. Tesoro, Jr.*, for Theft. She also accused Judge Ramas of dishonesty when the latter did not reflect in his Certificates of Service for May and June 2005 his absences on May 12 and 13, 2005; for several more days after promulgation of the decision in Election Protest Case No. 0001-2K4 on May 16, 2005; and from June 1 to 21, 2005.

On June 13, 2006, the Court Administrator submitted the following recommendations to this Court:

> Respectfully submitted for the consideration of the Honorable Court is our recommendation:
>
> 1. that the instant administrative complaint be REDOCKETED as a regular administrative matter;
>
> 2. that respondent judge be found guilty of SIMPLE MISCONDUCT for using and bringing a piece of evidence to his residence, and should be FINED in the amount of Eleven Thousand (₱11,000.00) Pesos with a STERN WARNING that a repetition of the same or a similar offense in the future will be dealt with more severely; and
>
> 3. that the charges of absenteeism and falsification of certificate of service for the months of May and June 2005 be REFERRED to a Justice of the Court of Appeals for investigation, report and recommendation.[2]

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[1] *Rollo,* pp. 1-19.

[2] *Id.* at 137-138.

In a Resolution[3] dated August 14, 2006, the Second Division of this Court adopted the foregoing recommendations of the Court Administrator. It referred the charges of absenteeism and falsification of certificates of service against Judge Ramas to Justice Renato C. Dacudao (Justice Dacudao) of the Court of Appeals, Manila, for investigation, report, and recommendation, to be completed within 60 days from receipt of the record.

On October 2, 2006, Justice Dacudao set[4] the case for hearing at his chambers on October 12 and 13, 2006, for the reception of Atty. Descallar's evidence; and on October 23 and 24, 2006, for the reception of Judge Ramas' evidence.

Atty. Descallar, along with her counsel and husband Atty. Romeo Y. Descallar, and witness Atty. Vicente Madarang Cerilles (Atty. Cerilles), testified during the hearings held on October 12 and 13, 2006. Judge Ramas failed to appear on said dates. Instead, he filed a Motion to Admit Memorandum with his Memorandum appended thereto.

In his testimony,[5] Atty. Cerilles claimed to know Judge Ramas very well since the latter is his godfather and wedding sponsor. Atty. Cerilles admitted that he had many pending cases before Judge Ramas' sala, including Criminal Case No. 04-7003, entitled *People v. Dizon*, for Slight Illegal Detention, which involved his grandnephews. On May 12, 2005, Atty. Cerilles went to the RTC-Branch 18 to find out if his grandnephews' Urgent Motion for Reinvestigation could be heard. However, upon inquiry, he was told that Judge Ramas was not around because his estranged wife arrived. When Atty. Cerilles returned to the RTC-Branch 18 the following day, May 13, 2005, he was informed that Judge Ramas was still absent.

Atty. Descallar testified[6] that Judge Ramas failed to indicate his absences on May 12, 13, 24, and 27 to 30, 2005, and June 1

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[3] *Id.* at 139.

[4] *Id.* at 142-143.

[5] *Id.* at 246-250; TSN, October 12, 2006, pp. 7-17.

[6] TSN, October 13, 2006.

to 21, 2005 in his Certificates of Service for the months of May and June 2005. The absence of Judge Ramas can be gleaned from the court calendar of hearings and his failure to attend the raffle of cases done every Thursday of the week. Also, the Omnibus Order[7] dated May 23, 2005 issued by Judge Ramas manifested his momentary desistance from performing judicial functions from May 24, 2005 onwards, to wit:

> In view of the precarious situation with which the undersigned presiding judge has been despicably subjected to, which incidentally has been caused by a detestable betrayal, his continued active participation in the administration of justice would be far too risky - for him, for the Court and for the entire judiciary.
>
> Upon such ground, he has to momentarily cease from performing judicial functions until after the present and real threat on his own life shall have been properly resolved.

Atty. Descallar was not able to finish her testimony on October 12, 2006, and she asked for continuance as her testimony would still cover several documents.

Judge Ramas refuted the charges against him in his Memorandum,[8] in which he averred that:

> On May 12, 2005, he was late in coming to the office because he has to make the draft decision of the much awaited election protest case at home. It was very lengthly as it involved several precincts. In fact, on the same date, May 12, 2005, he was still able to officiate a marriage.
>
> On May 13, 2005, the undersigned did go to the office and issued an order setting the promulgation of the decision to May 16, 2005. Such order is a part of the record of Election Protest Case No. 0001-2K4.
>
> If her only evidence of my absences on those days (May 12 & 13, 2005) was the Affidavit of Atty. Vicente M. Cerilles then surely it would not be sufficient. Atty. Cerilles has no knowledge whether or not I reported to office after he left.

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[7] *Rollo*, p. 456.

[8] *Id.* at 400-401.

My good complainant should have extended her understanding that making a decision, especially of a much controversial case, entails a very careful evaluation of all evidences at hand. She knows that volumes upon volumes of records have to be seriously scrutinized. The 8-12 and 1-5 official office hours would not be enough, hence, the Judge even has to utilize all his waking hours just to comply with the mandate of the law that Election Protest Case should be disposed of in the earliest possible time as it partakes the nature more important than a criminal case.

The undersigned submits that he has rendered services for the month of May 2005, in accordance with law.

On May 16, 2005, the decision in Election Protest Case No. 0001-2K4 was promulgated. The undersigned wore a bullet proof vest when the decision was read. Threats in Pagadian City and Zamboanga del Sur could just not be taken lightly. Under tight security escorts, the undersigned had to stay in a safehouse. Meanwhile, masked riders passed by his residence even in the wee hours of the night.

It was not cowardice to shy away from imminent danger [;] it was the best thing to do under the circumstances. He was betrayed by his own Clerk of Court. Such betrayal is the subject of the Administrative Complaint (AM No. P-06-2149, for Gross Misconduct). x x x.

x x x x x x x x x

On May 23, 2005, the undersigned issued an Omnibus Order expressing his intention to momentarily cease hearing cases until after the threat on his life is resolved. Every now and then he reports to the office and continued to exercise administrative functions. Fortunately, the person hired to execute him was discovered to be a distant relative, a hatchet man of the dreaded Kuratong Baleleng Gang, and after negotiations, the contract was called off. He then continued his usual judicial and administrative functions.

To prove that the threats to the life of the herein respondent was indeed real, on November 19, 2005, the brother of the protestant, Sultan Abdul Marcaban, the strongest supporter of the protestant, together with five (5) of his escorts were ambushed and brutally killed.

Clearly, it is not difficult to see that the complainant was motivated with the desire to get even with your respondent after the filing of

the administrative case against her. Such spite and anger only serve as factors that work against her.

Under his oath as a judge, he has rendered service for the month of June 2005. The self-serving and ill-motivated declaration of the Clerk of Court cannot be made basis to find him absent.

In a letter dated October 16, 2006,[9] Atty. Descallar requested for the transfer of the investigation to the Court of Appeals, Cagayan de Oro City, because of financial constraints. She was not financially prepared to attend the hearings in Manila, and she had to resort to borrowing money from her relatives to defray her expenses. Cagayan de Oro City is more accessible to the parties and the travel thereto more economical.

The request was granted by then Court Administrator Christopher O. Lock (Court Administrator Lock) in a Memorandum[10] dated November 16, 2006. Court Administrator Lock believed that the administration of justice would be better served by the transfer since it would minimize Judge Ramas' absence from his regular station considering the proximity of Pagadian City to Cagayan de Oro City. Thus, Court Administrator Lock recommended:

In view of the foregoing, respectfully submitted for the consideration of the Honorable Court recommending that:

a) The letter dated October 16, 2006 of Atty. Norlinda R. Amante-Descallar be NOTED;

b) The Justice Renato C. Dacudao be RELIEVED of his authority to conduct an investigation on the instant matter; and

c) The subject administrative matter be REFERRED to the Executive Justice of the Court of Appeals, Cagayan de Oro Station, for raffling among the justices thereat, for investigation, report and recommendation on the charges of absenteeism and falsification of the certificate of service for the months of May and June 2005 against respondent within sixty (60) days from receipt of the records.

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[9] *Id.* at 499-500.

[10] *Id.* at 773-774.

The Court approved Court Administrator Lock's recommendation in a Resolution dated February 28, 2007. Per raffle dated March 22, 2007, the case was assigned to Justice Mario Lopez (Justice Lopez) of the Court of Appeals, Cagayan de Oro City.

Upon receipt of the records of the case, Justice Lopez set the case for continuance of hearing and reception of evidence on May 7, 8, and 22, 2007 at 2:00 p.m. at the Hearing Room, Court of Appeals, YMCA Building, Cagayan de Oro City.

Only Atty. Descallar and her counsel appeared at the hearing held on May 7, 2007. During said hearing, Justice Lopez denied Judge Ramas' Motion for Judgment on the Pleadings since the investigation is an administrative matter and not an action governed by the Rules of Court. Justice Lopez also noted Judge Ramas' manifestation, in which the latter waived his rights to cross-examine Atty. Descallar and to present evidence in his defense.

The hearings for the reception of Atty. Descallar's evidence proceeded. Atty. Descallar submitted several documents to prove that Judge Ramas was absent on May 12, 13, 24, and 27 to 30, 2005, and June 1 to 21, 2005, including documents that were not acted upon due to the absence of Judge Ramas.

On July 31, 2007, Justice Lopez submitted his Report,[11] with the following findings and recommendation –

> IN VIEW OF THE FOREGOING, the undersigned Investigating Justice finds respondent Judge Reinerio (Abraham) Ramas of Branch 18, Regional Trial Court, Pagadian City GUILTY of untruthful statements in his Certificate of Service, and recommends that respondent judge be FINED in the amount of Fifteen Thousand Pesos (₱15,000.00) with a WARNING that a repetition of the same offense shall be dealt with more severely.[12]

Justice Lopez's Report was noted by the Court in a Resolution dated October 1, 2007.

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[11] *Id.* at 782-794.

[12] *Id.* at 794.

After reviewing the Report, the Court agrees with Justice Lopez's conclusion that Judge Ramas is guilty of declaring untruthful statements in his Certificates of Service for May and June 2005. As Justice Lopez detailed in his Report:

> By his own admission, beginning 23 May 2005, when respondent Judge issued an Order that "he has to momentarily cease from performing judicial functions until after the present and real threat on his own life shall have been properly resolved", he reported for work intermittently or did not report at all. x x x
>
> x x x x x x x x x
>
> Based on records, he only reported for work on May 12, 2005 to solemnize marriage; May 13, 2005 to issue an Order setting the date of promulgation of the Election Protest No. 0001-2K4 on 16 May 2005; and June 8, 2005 to sign his Certificate of Service for the month of May. For the period of May 24, 27 until June 7 and 9 until 20, there is no showing that he reported for duty and performed his judicial functions. There were no evidence, documentary or otherwise, adduced by the respondent judge to prove that he had rendered services for the said period in compliance with his Certification of Service for the months of May and June.[13]

Judge Ramas cannot escape liability by raising the defense of threat to his life to justify his absences on May 24, May 27 to June 7, and June 9 to June 20, 2005. The Court quotes with approval Justice Lopez's commentary on this regard:

> Indeed, there may be threats to his life as alleged and indicated in his Order, and which claim was not refuted by the complainant. But such threats do not justify his cessation from performing judicial functions. Threats are concomitant peril in public office especially in the judiciary, where magistrates decide and determine sensitive issues that normally generate or provoke reprisals from losing litigants. This is a consequence that judges should be prepared of. Their exalted position entails a great responsibility unyielding to one's personal convenience.
>
> To be sure, "*it was not cowardice to shy away from imminent danger [;] it was the best thing to do under the circumstances*." But then, the most prudent thing that respondent judge should have

[13] *Id.* at 792-793.

done was to secure protection from local police force or from the Supreme Court. Respondent judge may had also requested from the Supreme Court to hold office elsewhere, or change of venue, whichever is appropriate under the circumstances, but not *motu proprio* issue an Order for him to desist temporarily from performing judicial functions. At the very least, he could have filed a leave of absence informing the Supreme Court of his predicament, thereby not subjecting his actions in serious doubts for dereliction of duty. It must be stressed that judges should be imbued with a lofty sense of responsibility in the discharge of their duties for the proper administration of justice. One who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him, for his private as well as his official conduct which must at all times be free from the appearance of propriety. Respondent judge was oblivious of the demands of his official duties which require sacrifice of one's personal interest and convenience for the public good.[14]

All told, the Court views Judge Ramas' conduct as inexcusable.

Judge Ramas is presumed to be aware of his duties and responsibilities under the Code of Judicial Conduct. Canon 3 generally mandates that a judge should perform official duties honestly, and with impartiality and diligence. Rule 3.01 requires that a judge be faithful to the law and maintain professional competence, while Rule 3.09 commands a judge to observe high standards of public service and fidelity at all times. Judge Ramas irrefragably failed to observe these standards by making untruthful statements in his Certificates of Service to cover up his absences.

The Court has previously held that a judge's submission of false certificates of service seriously undermines and reflects on the honesty and integrity expected of an officer of the court. This is so because a certificate of service is not merely a means to one's paycheck but is an instrument by which the Court can fulfill the constitutional mandate of the people's right to a speedy disposition of cases.[15]

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[14] *Id.* at 793.

[15] *Bolalin v. Judge Occiano*, 334 Phil. 178, 185 (1997).

Under A.M. No. 01-8-10-SC, amending Rule 140 on the Discipline of Justices and Judges, making untruthful statements in the certificate of service is categorized as a less serious offense and punishable by suspension without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. Considering that this is Judge Ramas' second offense in his almost 12 years in the Judiciary, the Court adopts Justice Lopez's recommendation of imposing on the erring judge a fine in the amount of Fifteen Thousand Pesos (₱15,000.00).

WHEREFORE, Judge Reinerio (Abraham) B. Ramas is hereby found *GUILTY* of making untruthful statements in his Certificates of Service for the months of May and June 2005 and is hereby *FINED* in the amount of Fifteen Thousand Pesos (₱15,000.00), with a *WARNING* that a repetition of the same or similar infraction shall be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 149261. December 15, 2010]

AZUCENA B. CORPUZ, *petitioner, vs.* **ROMAN G. DEL ROSARIO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; DEFINED AND EXPLAINED.— "Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof." A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It "need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt." A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of criminal information against the respondent since the determination of the existence of a probable cause is the function of the prosecutor.

2. ID.; ID.; ID.; ID.; PROBABLE CAUSE FOR LIBEL EXISTS WHEN ALL THE ELEMENTS WERE ESTABLISHED.— [W]e find that in arriving at their unanimous conclusion that probable cause for libel exists, the prosecutor and the Secretary of Justice had clearly determined and carefully deliberated on the factual and legal antecedents of the case. The resolution of the prosecutor as sustained by the Secretary of Justice and the CA shows that it squarely addressed and took into consideration all the arguments and evidence submitted. The evidence before the prosecutor served as basis in arriving at her findings of fact. As defined in Article 353 of the Revised Penal Code, the crime of libel has the following elements: 1. imputation of a crime, vice or defect, real or imaginary or any act, omission, condition, status or circumstance; 2. the

imputation must be malicious; 3. it must be given publicity; and 4. the victim must be identifiable. As extant from the resolution of the prosecutor, the presence of these elements was duly established during the preliminary investigation stage clearly showing *prima facie* a well-founded belief that a crime of libel has been committed and that petitioner probably committed it. It must be stressed that an accusation is not synonymous with guilt. That is why a trial has to follow, precisely to determine the guilt or innocence of the accused.

3. ID.; ID.; ID.; WHERE THE ISSUE IS EVIDENTIARY IN NATURE AND A MATTER OF DEFENSE, THE RESOLUTION OF WHICH IS NOT PROPER AT THE PRELIMINARY INVESTIGATION LEVEL.— Petitioner further contends that the memorandum is covered by the protective mantle of privileged communication under the first exception enumerated under Article 354, *viz*: 1. A private communication made by any person to another in the performance of any legal, moral or social duty. Petitioner's argument is essentially evidentiary in nature and a matter of defense that must be presented and heard during the trial of the criminal case. Whether the subject memorandum is a privileged communication is a question which requires an examination of the parties' evidence. Being a matter of defense, the tenability of her challenge needs to be tested in the crucible of a full-blown trial where she can prove her innocence if her defense be indeed true than at the preliminary investigation level. It must be stressed that this Court cannot assess the merit of the said claim as it is not a trier of facts.

APPEARANCES OF COUNSEL

Renato S. Corpuz for petitioner.
Candido G. Del Rosario for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

It is a rule too firmly established that the "determination of probable cause for the filing of an 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."[1] "Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that the full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation."[2]

Challenged in the present petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision[3] dated July 27, 2001 of the Court of Appeals (CA) in CA- G.R. SP No. 56434 denying petitioner's petition for *certiorari*.

The controversy has its root in an affidavit-complaint[4] filed with the City Prosecutor's Office of Makati City by Assistant Solicitor General Roman G. del Rosario accusing herein petitioner Assistant Solicitor General Azucena B. Corpuz for Libel. In said complaint, respondent claimed that petitioner's June 13, 1997 memorandum was maliciously issued without any good intention but to discredit and cause dishonor to his good name as a government employee. He insisted that the import of the memorandum affected his credibility and the performance of his official functions as Assistant Solicitor General among others.

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[1] *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[2] *Metropolitan Bank and Trust Co. v. Tonda*, 392 Phil. 797, 814 (2000).

[3] *Rollo*, pp. 33-41; penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Conchita Carpio Morales (now a Member of this Court) and Rebecca De Guia Salvador.

[4] *Id.* at 50-54.

After the preliminary investigation, Investigating Prosecutor Filipinas Z. Aguilar-Ata (Prosecutor Ata) issued on November 21, 1997, a Resolution making the following findings and recommendation:

> We find the words "x x x, there is no such thing as '*palabra de honor* as far as ASG del Rosario is concerned,' x x x contained in the memorandum dated June 13, 1997 issued by respondent, defamatory as it imputes a kind of defect on complainant's part which tends to discredit his integrity as an Assistant Solicitor General and the other functions he [holds]. Malice is thus presumed from the defamatory imputation. Moreover, the respondent's disposition of having addressed the Memorandum not only to the Solicitor General but to all Assistants [sic] Solicitor[s] General reveals the absence of good intention on her part in making the imputation. There was, therefore, undue publication of the libelous Memorandum as in fact, the same was received and read by the officers concerned.
>
> In fine, the evidence has sufficiently established a probable cause to indict respondent with the crime of libel, and accordingly, [the] undersigned respectfully recommends that the corresponding information be filed in Court.[5]

What transpired then were the following events and proceedings. On December 8, 1997, the City Prosecutor's Office of Makati City approved the Resolution of Prosecutor Ata. Accordingly, an Information for libel was filed against petitioner with the Regional Trial Court (RTC) of Makati City. Petitioner's appeal from the prosecutor's resolution was not given due course by NCR Regional Prosecutor/Chief State Prosecutor Jovencito R. Zuño on March 10, 1998.[6] Her motion for reconsideration was likewise denied on September 8, 1998.[7] Petitioner appealed to the Department of Justice (DOJ) assailing the resolution of the City Prosecutor's Office of Makati City. On August 17, 1999, the DOJ Secretary considered the appeal as a second motion for reconsideration and resolved to deny the appeal with finality.[8]

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[5] *Id.* at 103.

[6] *Id.* at 106.

[7] *Id.* at 109.

[8] *Id.* at 285.

Petitioner then elevated the matter via a petition for *certiorari* before the CA contending that the public prosecutors gravely abused their discretion in finding a *prima facie* case of libel against her and exceeded their jurisdiction when her appeal from the resolution of the City Prosecutor's Office of Makati City was not given due course.

Ruling of the Court of Appeals

On July 27, 2001, the CA issued its herein assailed Decision[9] denying the petition. It found that the petitioner failed to clearly show exceptional circumstances to justify her resort to the extraordinary remedy of the writ of *certiorari.* The appellate court likewise found petitioner's assertions that the memorandum is a privileged communication which was issued without malice are matters of defense which should be properly discussed during trial. The CA disposed the matter in this wise:

> WHEREFORE, finding no grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of public respondents, the Petition is DENIED.
>
> SO ORDERED.[10]

The unsuccessful quest by petitioner to reverse the resolutions of the City Prosecutor's Office of Makati City, the Chief State Prosecutor, the DOJ Secretary and the CA did not hamper her struggle. Petitioner is now before us *via* the instant recourse ascribing to the CA the following assignment of errors:

> 1. (In) concluding that the findings of the Makati City Prosecutor in the preliminary investigation are essentially factual in nature, and that in assailing such findings petitioner is raising questions of fact;
>
> 2. (In) holding that petitioner's arguments that subject memorandum is a privileged communication and that there is absence of malice in the issuance thereof being matters of defense should be resolved by the trial court, and

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[9] *Id.* at 33-41.

[10] *Id.* at 40.

3. (In) ruling that the extraordinary writ of *certiorari* is not available since other remedies are obtainable with the trial court.[11]

Per directive[12] of the Court, respondent filed his Comment[13] to the Petition on December 12, 2001. On January 30, 2002, the Court required petitioner to file her reply,[14] which she complied with on April 30, 2002.[15] Pursuant to our Resolution[16] dated June 3, 2002 the parties submitted their respective memoranda.

Significantly, in her Reply,[17] petitioner made an absolute turnaround and manifested that she is not assailing in the instant petition the following findings of the Prosecutor: First, that malice is presumed from the defamatory imputation. Second, that the subject memorandum was addressed not only to the Solicitor General but also to all the Assistant Solicitors General who received and read them. Third, that the words "there is no such thing as '*palabra de honor*' as far as ASG del Rosario is concerned" imputes a kind of defect on respondent tending to discredit his integrity as an Assistant Solicitor General and the other functions he holds.

Petitioner expressly concedes that the main issue in the present petition is whether the CA correctly ruled that no grave abuse of discretion was committed by the Assistant City Prosecutor in concluding that her findings have *prima facie* established the elements of libel despite their not being in accordance with law and jurisprudence on the matter.

Petitioner avers that there are no findings of facts to support the conclusion that the elements of libel exist. She also points

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[11] *Id.* at 20.

[12] See Minute Resolution dated October 22, 2001, *id.* at 287.

[13] *Id.* at 288-305.

[14] See Minute Resolution dated January 30, 2002, *id.* at 347.

[15] *Id.* at 351-371.

[16] *Id.* at 373-374.

[17] *Id.* at 351-371.

out that the findings of the prosecutor are not sufficient to constitute probable cause.

Our Ruling

The contentions of petitioner are devoid of merit.

We have examined the records of the case and have found no such error much less abuse of discretion committed by the prosecutor and the CA justifying a reversal of their resolutions since their unanimous findings of probable cause for libel against petitioner are based on law, jurisprudence and evidence on records.

"Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof."[18] A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and was committed by the suspect. It "need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt and definitely, not on evidence establishing absolute certainty of guilt."[19] A prosecutor alone determines the sufficiency of evidence that will establish probable cause justifying the filing of criminal information against the respondent since the determination of the existence of a probable cause is the function of the prosecutor. Judicial review is allowed only where respondent has clearly established that the prosecutor committed grave abuse of discretion.[20]

"Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary or capricious exercise of power

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[18] *Sarigumba v. Sandiganbayan*, 491 Phil. 704, 719 (2005).

[19] *Webb v. Hon. De Leon*, 317 Phil. 758, 789 (1995).

[20] *Glaxosmithkline Philippines Inc. v. Khalid Mehwood Malik*, G.R. No. 166924, August 17, 2006, 499 SCRA 268, 272-273.

that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law."[21] Petitioner miserably failed to establish the existence of any of these exceptional circumstances to warrant further calibration of the parties' evidence presented during the preliminary investigation.

Contrary to petitioner's contention, we find that in arriving at their unanimous conclusion that probable cause for libel exists, the prosecutor and the Secretary of Justice had clearly determined and carefully deliberated on the factual and legal antecedents of the case. The resolution of the prosecutor as sustained by the Secretary of Justice and the CA shows that it squarely addressed and took into consideration all the arguments and evidence submitted. The evidence before the prosecutor served as basis in arriving at her findings of fact.

As defined in Article 353 of the Revised Penal Code, the crime of libel has the following elements:

1. imputation of a crime, vice or defect, real or imaginary or any act, omission, condition, status or circumstance;
2. the imputation must be malicious;
3. it must be given publicity; and
4. the victim must be identifiable.

As extant from the resolution of the prosecutor, the presence of these elements was duly established during the preliminary investigation stage clearly showing *prima facie* a well-founded belief that a crime of libel has been committed and that petitioner probably committed it. It must be stressed that an accusation is not synonymous with guilt. That is why a trial has to follow, precisely to determine the guilt or innocence of the accused.

Petitioner further contends that the memorandum is covered by the protective mantle of privileged communication under the first exception enumerated under Article 354, *viz*:

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[21] *Badiola v. Court of Appeals*, G.R. No. 170691, April 23, 2008, 552 SCRA 562, 581.

1. A private communication made by any person to another in the performance of any legal, moral or social duty.

Petitioner's argument is essentially evidentiary in nature and a matter of defense that must be presented and heard during the trial of the criminal case. Whether the subject memorandum is a privileged communication is a question which requires an examination of the parties' evidence. Being a matter of defense, the tenability of her challenge needs to be tested in the crucible of a full-blown trial where she can prove her innocence if her defense be indeed true than at the preliminary investigation level. It must be stressed that this Court cannot assess the merit of the said claim as it is not a trier of facts.

All told, the undisputed facts of the case negate any showing of grave abuse of discretion or manifest error on the part of the public officers concerned considering their finding of probable cause to indict petitioner is supported by the evidence on record. "[C]ourts should give credence, in the absence of a clear showing of arbitrariness, to the findings and determination of probable cause by prosecutors in a preliminary investigation."[22]

WHEREFORE, the instant petition is hereby *DENIED.* The Decision dated July 27, 2001 of the Court of Appeals in CA-G.R. SP No. 56434 is *AFFIRMED.*

SO ORDERED.

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

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[22] *Pono v. National Labor Relations Commission*, 341 Phil. 615, 620 (1997), citing *Hon. Drilon v. Court of Appeals*, 327 Phil. 916, 927 (1996).

FIRST DIVISION

[G.R. No. 149433. December 15, 2010]

THE COCA-COLA EXPORT CORPORATION, *petitioner, vs.* **CLARITA P. GACAYAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RECKONING DATE OF THE 60-DAY PERIOD TO FILE THE PETITION; CASE AT BAR.— The Court, however, takes note that further amendments were made on the reglementary period for filing a petition for *certiorari* under Rule 65. On September 1, 2000, Supreme Court Circular No. 56-2000 took effect. The latest amendment of Section 4, Rule 65 of the 1997 Rules of Civil Procedure reads: SEC. 4. *When and where petition filed*. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.** x x x From the foregoing, it is clear that the 60-day period to file a petition for *certiorari* should be reckoned from the date of receipt of the notice of the denial of the motion for reconsideration or new trial, if one was filed. x x x Given the above, respondent had a fresh 60-day period from August 10, 1998, the date she received a copy of the NLRC Resolution dated June 19, 1998, denying her motion for reconsideration. Accordingly, respondent had 60 days from August 10, 1998 within which to file the petition for *certiorari*. Thus, when respondent filed the petition with the Court of Appeals on October 2, 1998, said petition was seasonably filed within the reglementary period provided by the latest amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE MUST BE CLEARLY ESTABLISHED TO BE A VALID GROUND FOR DISMISSAL.— It bears emphasizing that the right of an employer to dismiss its

employees on the ground of loss of trust and confidence must not be exercised arbitrarily. For loss of trust and confidence to be a valid ground for dismissal, it must be substantial and founded on clearly established facts. Loss of confidence must not be used as a subterfuge for causes which are improper, illegal or unjustified; it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith. Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer. Thus, when the breach of trust or loss of confidence theorized upon is not borne by clearly established facts, as in the instant case, such dismissal on the ground of loss and confidence cannot be countenanced.

3. ID.; ID.; ID.; EMPLOYEE'S ACT OF SUBMITTING TAMPERED RECEIPTS TO SUPPORT CLAIM FOR REIMBURSEMENT COULD NOT BE CONSIDERED SERIOUS MISCONDUCT IF NOT DONE WITH WRONGFUL INTENT.— In the instant case, it was only in the Reply to Respondent's Comment dated October 11, 2002, that petitioner made mention of another ground for the dismissal of respondent, that of serious misconduct, when she submitted altered or tampered receipts to support her claim for reimbursement. Such allegation appears to be a mere afterthought, being tardily raised only in the Reply. x x x [T]he alleged infractions of respondent could hardly be considered serious misconduct. It is well to stress that in order to constitute serious misconduct which will warrant the dismissal of an employee, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been done with wrongful intent. Such is, however, lacking in the instant case.

4. ID.; ID.; ID.; ID.; DISMISSAL IS TOO HARSH A PENALTY FOR EMPLOYEE'S ACT OF SUBMITTING ALTERED RECEIPTS TO SUPPORT CLAIM FOR REIMBURSEMENT; REASONS.— While this Court does not condone respondent's act of submitting altered and/or tampered receipts to support her claim for reimbursement, we nevertheless agree with the finding of the Court of Appeals

that, under the attendant facts, the dismissal meted out on respondent appears to be too harsh a penalty. x x x In the instant case, petitioner alleged that under its rules and regulations, respondent's submission of fraudulent items of expense is punishable by dismissal. However, petitioner's rules cannot preclude the State from inquiring whether the strict and rigid application or interpretation thereof would be harsh to the employee. Even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employ. Respondent had no previous record in her 9½ years of service; this would have been her first offense. Respondent had also been a recipient of various commendations attesting to her competence and diligence in the performance of her duties, not only from petitioner, but also from petitioner's counterparts in Poland and Thailand. Respondent also countered that she acted in good faith and with no wrongful intent when she submitted the receipts in support of her claim for reimbursement of meal allowance. According to respondent, only the dates or items were altered on the receipts. She did not claim more than what was allowed as meal expense for the days that she rendered overtime work. She believed that the submission of receipts was simply for records-keeping, since she actually rendered overtime work on the dates that she claimed for meal allowance. All told, this Court holds that the penalty of dismissal imposed on respondent is unduly oppressive and disproportionate to the infraction which she committed. A lighter penalty would have been more just.

5. ID.; ID.; ID.; RELIEFS GRANTED TO AN ILLEGALLY DISMISSED EMPLOYEE.— Under Article 279 of the Labor Code, 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. After a finding of illegal dismissal herein, we apply the foregoing provision entitling respondent Clarita P. Gacayan to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances and other

> benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of her reinstatement. Thus, the award of backwages by the Court of Appeals is in order. However, the Court of Appeals' period of computation of the award of backwages must be modified. x x x In line with Article 279 of the Labor Code and prevailing jurisprudence, the award of backwages should be modified in the sense that backwages should be computed from the time the compensation was not paid up to the time of reinstatement.

APPEARANCES OF COUNSEL

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Palma Tolete Villamil Raagas Basbas & Cruz Law Office for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* filed by petitioner The Coca Cola Export Corporation against respondent Clarita P. Gacayan, assailing the Decision[1] dated May 30, 2001 and the subsequent Resolution[2] dated August 9, 2001 of the Court of Appeals in CA-G.R. SP No. 49192. The Court of Appeals reversed and set aside the Resolutions dated April 14, 1998[3] and June 19, 1998[4] of the National Labor Relations Commission (NLRC), and ordered the immediate reinstatement of respondent to her former position or to a substantially equivalent position without loss of seniority rights and with full backwages.

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[1] *Rollo*, pp. 9-26; penned by Associate Justice Teodoro P. Regino with Associate Justices Delilah Vidallon-Magtolis and Josefina Guevara-Salonga, concurring.

[2] *Id.* at 27.

[3] *Id.* at 321-341.

[4] *Id.* at 356-357.

The attendant facts are as follows:

Petitioner The Coca Cola Export Corporation, duly organized and existing under the laws of the Philippines, is engaged in the manufacture, distribution and export of beverage base, concentrate, and other products bearing its trade name.

Respondent Clarita P. Gacayan began working with petitioner on October 8, 1985. At the time her employment was terminated on April 6, 1995, for alleged loss of trust and confidence, respondent was holding the position of Senior Financial Accountant.

Under petitioner's company policy, one of the benefits enjoyed by its employees was the reimbursement of meal and transportation expenses incurred while rendering overtime work. This reimbursement was allowed only when the employee worked overtime for at least four hours on a Saturday, Sunday or holiday, and for at least two hours on weekdays. The maximum amount allowed to be reimbursed was one hundred fifty (₱150.00) pesos. It was in connection with this company policy that petitioner called the attention of respondent and required her to explain the alleged alterations in three receipts which she submitted to support her claim for reimbursement of meal expenses, to wit: 1) McDonald's Receipt No. 875493 dated October 1, 1994 for ₱111.00;[5] 2) Shakey's Pizza Parlor Receipt No. 122658 dated November 20, 1994 for ₱174.06;[6] and 3) Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994 for ₱130.50.

On November 21, 1994, petitioner issued a memorandum[7] to respondent informing her of the alteration in the date of the McDonald's Receipt No. 875493, which she submitted in support of her claim for meal allowance allegedly consumed on October 1, 1994, and requiring her to explain the said alteration.

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[5] *Id.* at 139.

[6] *Id.* at 141.

[7] *Id.* at 142.

Respondent wrote her explanation on the same note and stated that the alteration may have been made by the staff from McDonald's as they sometimes make mistakes in issuing receipts. Respondent also narrated that her sister, Odette, sometimes buys food for her and that she is not quite sure if the receipt in question was the correct one which Odette gave her.

Upon verification with the Assistant Branch Manager of the McDonald's Makati Cinema Square outlet which issued the subject receipt, petitioner discovered that the date of issuance of the receipt was altered. The receipt was actually issued for a meal bought on October 2, 1994 and not on October 1, 1994.[8]

On December 9, 1994, petitioner sent another memorandum[9] to respondent and required her to explain in writing why her November 21, 1994 claim for reimbursement of meal expense should not be considered fraudulent since there was an alteration in the receipt which she submitted. The second receipt contained a handwritten alteration which read "1 PF extra mojos" which was superimposed on the computer generated print-out of the food item actually purchased.

On December 19, 1994, respondent submitted her explanation[10] and claimed that what she ordered for lunch was a "buddy pack and an extra mojos." Respondent explained that the delivery staff brought a wrong receipt as it did not correspond to the food that she actually ordered. Respondent added that she asked the delivery staff to alter the receipt thinking that he could just write the correct items ordered and sign the said receipt to authenticate the alterations made thereon. She further stated that there was no intention on her part to commit fraud since she was just avoiding the hassle of waiting for a replacement receipt.

Petitioner then referred respondent's explanation to the Assistant Manager of the Shakey's Pizza Parlor which issued

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[8] *Id.* at 144.

[9] *Id.* at 145.

[10] *Id.* at 146.

the subject receipt. Upon verification,[11] it was discovered that the receipt was actually for three orders of Bunch of Lunch, and not for Buddy Pack which has an item code of CH5, not BP, as claimed by respondent. The Assistant Manager also denied respondent's claim that it was their representative, specifically their delivery staff, who made the alteration on the receipt.[12]

On January 3, 1995, petitioner sent respondent a letter[13] directing her to explain why she should not be subjected to disciplinary sanctions for violating Section II, No. 15, paragraph (d) of the company's rules and regulations which punishes with dismissal the submission of any fraudulent item of expense.

Consequently, respondent submitted her explanation[14] on January 4, 1995, and denied any personal knowledge in the commission of the alterations in the subject receipts. Respondent asserted that she did not notice the alteration in the McDonald's receipt since she "did not give close attention to it." She further stated that her sister's driver/messenger may have caused the alteration, but she could not be certain about it. With regard to the Shakey's receipt, respondent maintained that what she ordered was a buddy pack with extra mojos.

On January 12, 1995, petitioner sent respondent a memorandum[15] inviting her to a hearing and formal investigation on January 17, 1995, to give her an opportunity to explain the issues against her. Respondent was also advised that she was free to bring along a counsel of her choice.

On January 17, 1995, respondent appeared at the hearing. She was reminded of her right to have her own lawyer present at the proceedings of the investigation and was extensively questioned regarding the alterations on the McDonald's and

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[11] *Id.* at 147.

[12] *Id.* at 148.

[13] *Id.* at 149-150.

[14] *Id.* at 115.

[15] *Id.* at 152.

Shakey's Pizza Parlor receipts which she submitted in support of her claim for reimbursement of meal expenses.[16]

On January 19, 1995, petitioner notified[17] respondent that the continuation of the investigation was set on January 23, 1995 for the presentation of the delivery personnel of Shakey's Pizza Parlor. Petitioner also informed respondent of a third receipt with an alteration which she submitted in support of her claim for reimbursement for meal allowance - Shakey's Pizza Parlor Receipt No. 41274 dated July 19, 1994,[18] which contained an annotation "w/ CAV 50% only – ₱130.50." Such annotation meant that respondent was claiming only half of the total amount indicated in the receipt as the said meal was supposedly shared with another employee, Corazon A. Varona. Said employee, however, denied that she ordered and shared the food covered by the receipt in question.[19]

Upon verification by petitioner with the restaurant supervisor of the Las Piñas branch of the Shakey's Pizza Parlor which issued the subject receipt, it was discovered that said receipt was issued for food purchased on July 17, 1994 and not for July 19, 1994,[20] as claimed by respondent.

Respondent did not attend the January 23, 1995 hearing, citing her doctor's advice[21] to rest since she was suffering from "severe mixed migraine and muscle contraction headache." Respondent also complained of the alleged partiality of the investigating committee against her.

At the said hearing, the delivery personnel of Shakey's Pizza Parlor was presented. He maintained that what he delivered to

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[16] *Id.* at 153-160.

[17] *Id.* at 161.

[18] *Id.* at 162.

[19] *Id.* at 163.

[20] *Id.* at 164.

[21] *Id.* at 119.

respondent was her order for three Bunch of Lunch packs and not one order of Buddy Pack with extra mojos.[22]

On January 24, 1995, respondent filed an application for leave[23] from January 13, 1995 up to February 3, 1995. Again on January 31, 1995, respondent filed another application for leave[24] for the period February 6, 1995 to February 24, 1995.

On February 23, 1995, petitioner sent another notice[25] to respondent informing her of the re-setting of the continuation of the formal investigation on March 15, 1995. Respondent was also advised that the said scheduled hearing was her last opportunity to fully explain her side, and that she had the option of bringing a lawyer at the hearing.

Respondent did not attend the March 15, 1995 hearing. Petitioner then concluded the formal investigation.

Thereafter, in a letter[26] dated April 4, 1995, petitioner dismissed respondent for fraudulently submitting tampered and/or altered receipts in support of her petty cash reimbursements in gross violation of the company's rules and regulations.

On June 6, 1995, respondent filed a complaint[27] for illegal dismissal, non-payment of service incentive leave, sick leave and vacation leave with prayer for reinstatement, payment of backwages as well as for damages and attorney's fees, against petitioner with the NLRC, docketed as NLRC-NCR Case No. 00-06-04000-95. After the mandatory conciliation proceedings failed, the parties were required to submit their respective position papers.

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[22] *Id.* at 166-167.

[23] *Id.* at 117.

[24] *Id.* at 118.

[25] *Id.* at 168.

[26] *Id.* at 169-170.

[27] *Id.* at 88-89.

In her position paper, respondent averred that, assuming *arguendo* that she altered the receipts in question, dismissal was too harsh a penalty for her considering that: "(a) it was her first offense in her 9 ½ years of service; (b) the offense imputed was minor, as only the dates and items, not the amounts, were altered or the amounts involved were very minimal; (c) the company did not suffer material damage, as she was really entitled to the ₱150.00 allowance even without accompanying receipt; and (d) respondent acted without malice, as she really rendered (unpaid) overtime work on those three dates."[28]

On the other hand, petitioner maintained in its position paper that respondent was dismissed for cause, that of "tampering official receipts to substantiate her claim for (meal) reimbursement which reflects her questionable integrity and honesty."[29] Petitioner added that in terminating the services of an employee for breach of trust, "it is enough that the misconduct of the employee tends to prejudice the employer's interest since it would be unreasonable to require the employer to wait until he is materially injured before removing the cause of the impending evil."[30]

In a Decision[31] dated June 17, 1996, Labor Arbiter Ramon Valentin C. Reyes ruled in favor of petitioner and dismissed respondent's complaint for lack of merit. The relevant portions of the Decision read:

[T]he termination of complainant is clearly valid.

Respondent [herein petitioner] complied with the notice requirement strictly to the letter. Complainant [herein respondent] was given the first notice which the Supreme Court amply termed in the foregoing jurisprudence as the "proper charge". This Office further notes that more than one notice was given to the complainant [respondent]. In fact, complainant [respondent] was repeatedly directed to answer the charges against her. As she in fact did.

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

[29] *Id.* at 121.

[30] *Id.*

[31] *Id.* at 266-289.

x x x x x x x x x

It was only after the evidence against complainant [respondent] was received and her fraudulent participation morally ascertained that respondent [petitioner] finally decided to terminate his (sic) services. And after arriving at a conclusion, complainant [respondent] was consequently informed of her termination which was the sanction imposed on her.

Again, following the yardstick laid down by the Tiu doctrine cited above, the procedure in terminating complainant [respondent] was definitely followed. Her termination is therefore valied (sic) and must be upheld for all intents and purposes.

x x x x x x x x x

Going now to the substantive aspect of complainant's [respondent's] termination, this Office likewise finds that there existed just cause to terminate her services.

Complainant [Respondent] was terminated for repeatedly submitting fraudulent items of expense, clearly in violation of respondent's [petitioner's] company rules and regulations which consequently resulted in loss of trust and confidence.[32]

Undaunted, respondent appealed the Labor Arbiter's decision to the NLRC.

In a Resolution[33] dated April 14, 1998, the NLRC affirmed the ruling of the Labor Arbiter, thus:

After a careful review of the evidences presented before Us, including the jurisprudence cited, We decided to look deeper into what led or motivated herein complainant [respondent] to do as she did.

It had been established that three (3) receipts were altered/tampered with and were subsequently submitted by complainant [respondent] to the company so that she could claim her allowed meal allowance of ₱150.00 per meal on days she rendered overtime work. Complainant [Respondent] admitted the alterations were done by her but she was quick to retort and tries to justify why she should not be held guilty of a fraudulent act.

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[32] *Id.* at 282-284.

[33] *Id.* at 321-341.

As if the company owes her so much for rendering overtime work gratuitously, she now tries to "collect", so to speak, from the company by way of emphasizing the benefits it gets from her (in terms of the alleged savings of about more than ₱900.00, had it paid her overtime pay and basic and premium pay). She now hastens to conclude that since the company had greatly benefitted from her overtime services, she did not violate company rules and regulations when she tampered the receipts which she attached as her justification for reimbursement for meal allowance.

This line of reasoning is absurd, if not utterly dangerous. Admitting the commission of the act but at the same breath denying any fraudulent intent is inconsistent. Under no circumstances was her misconduct excusable. Here the amount becomes immaterial, her position irrelevant. As correctly ruled by the Labor Arbiter *a quo*, the disciplinary action taken by respondent company [petitioner] on complainant [respondent] applies to all employees regardless of rank. We also agree with the findings of the Labor Arbiter below that complainant [respondent] was afforded due process.

In fine, in the absence of showing that the decision was rendered whimsically and capriciously, We Affirm.

WHEREFORE, in the light of the foregoing, the assailed Decision dated 17 June 1996 is hereby AFFIRMED.[34]

Respondent filed a Motion for Reconsideration which was denied in the Resolution[35] dated June 19, 1998.

Aggrieved, respondent elevated the case to the Court of Appeals *via certiorari* in CA-G.R. SP No. 49192.

As stated at the threshold hereof, the Court of Appeals, in its assailed Decision dated May 30, 2001, reversed and set aside the Resolutions dated April 14, 1998 and June 19, 1998 of the NLRC. The Court of Appeals ruled that the penalty of dismissal imposed on respondent was too harsh and further directed petitioner to immediately reinstate respondent to her former position, if possible, or a substantially equivalent position without

[34] *Id.* at 339-341.

[35] *Id.* at 356-357.

loss of seniority rights and with full backwages. The Court of Appeals ratiocinated thus:

We consider the penalty of dismissal imposed on the petitioner to be too harsh.

Petitioner [Respondent] has held an unblemished record for nine-and-a-half (9 ½) years and the respondent company [petitioner], in the same period, found her performance satisfactory, as evidenced by the promotions she received over the years and her being tasked to train in other countries. The offenses she allegedly committed did not cause any prejudice or loss to the company since the amounts were actually due her as part of her compensation for overtime. On the other hand, petitioner [respondent] sufficiently explained that in submitting the falsified receipts, she was acting on the belief that the said requirement was merely for record-keeping purposes for she was already entitled to the money equivalent thereof as consideration for services already rendered. Hence, the presence of good faith on the part of petitioner [respondent], her long years of exemplary service and the absence of loss on the part of the employer, taken together, justify the application of *Yap vs. NLRC*, supra. In the aforecited case, the Supreme Court considered the employee's long years of unblemished service, the return of the funds borrowed from the employer and the employee's lack of intent to deviate from the rules, as circumstances justifying the award of separation pay, in lieu of reinstatement. Considering however, that there was no evidence of strained relations between the parties in the case at bench precluding a harmonious working relationship should reinstatement be decreed, then the reinstatement of petitioner [respondent] is proper. With respect to the allegation of dishonesty on the part of private respondent, the Court considers the "ignominy and mental torture" suffered by petitioner throughout the proceedings, in view of her high position with respondent company, to be practically punishment for said misdeed. (*Philippine Airlines vs. Philippine Air Lines Employees Association, supra.*)

Finally, the private respondent [petitioner] raised in issue the timeliness of the filing of the herein petition. Based on their computation, the petition was only filed four days after [the] sixty-day period prescribed in the Section 4, Rule 65 of the Rules of Court. Considering however, that jurisprudence is replete with instances where the Supreme Court has relaxed the technical rules

in the exercise of equity jurisdiction when there are strong considerations of substantial justice that are manifest in the petition, (*Soriano vs. Court of Appeals*, 222 SCRA 545, 553 [1993]; *Orata vs. Intermediate Appellate Court*, 185 SCRA 148, 152 [1990]; *Laginlin vs. Workmen's Compensation Commission*, 159 SCRA 91, 96 [1988]; and, *Serrano vs. Court of Appeals*, 139 SCRA 179, 186 [1985]). Our finding that there was grave abuse of discretion in the issuance of the assailed resolutions of public respondent merit the allowance of the herein petition.

WHEREFORE, the petition is **GRANTED** and the Resolutions, dated April 14, 1998 and June 19, 1998, both issued by public respondent NLRC, are hereby **SET ASIDE**. Private respondent [Petitioner] Coca Cola Export Corporation is hereby directed to immediately reinstate petitioner [respondent] to her former position, if possible, otherwise, to a substantially equivalent position without loss of seniority rights and with full backwages, based on her last monthly salary, to be computed from the date of her dismissal from the service up to the date of finality of this decision, without any qualifications or deductions. No costs.[36]

Its motion for reconsideration having been denied by the Court of Appeals in its second impugned Resolution dated August 9, 2001, petitioner is now before us *via* the present recourse with the following assignment of errors:

I

BY BEING TOO LIBERAL IN FAVOR OF THE RESPONDENT, THE COURT OF APPEALS HAD DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW.

II

IN DOING SO, THE COURT OF APPEALS DEVIATED FROM ESTABLISHED DOCTRINES LONG SETTLED BY CONSISTENT JURISPRUDENCE ENUNCIATED BY THIS HONORABLE COURT.

On the procedural issue, petitioner asserts that the Court of Appeals should have dismissed outright the petition for *certiorari* for being filed out of time and for failure to comply with the

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

requirements set forth in Rule 42 of the Rules of Civil Procedure mandating that the petition be accompanied by clear copies of "all pleadings and other material portions of the record as would support the material allegations of the petition."

Moreover, petitioner contends that the Court of Appeals gave due course to respondent's petition purely on the basis of liberality, and that it anchored its decision on the general principle that doubts must be interpreted in favor of labor.

In her Comment dated February 10, 2002, respondent alleges that the Court of Appeals correctly gave due course to her petition as it was actually filed on time. Respondent states that when her petition was still pending with the Court of Appeals, Section 4, Rule 65 of the Rules of Court was amended by Supreme Court Resolution A.M. No. 00-2-03-SC, which took effect on September 1, 2000, whereby the 60-day period within which to file a petition for *certiorari* shall now be counted from receipt of the notice of the denial of the motion for reconsideration. According to respondent, she received the Order denying her motion for reconsideration on August 10, 1998, thus, her filing of the petition with the Court of Appeals on October 2, 1998, was well within the 60-day period.

The Court agrees with respondent.

At the time of the filing of the petition for *certiorari* before the Court of Appeals on September 1, 1998, Supreme Court Circular No. 39-98, which amended Section 4, Rule 65 of the 1997 Rules of Civil Procedure, had already taken effect on September 1, 1998, after publication in several newspapers of general circulation. The amended provision reads:

SEC. 4. *Where and when petition to be filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the

Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.

If the petitioner had filed a motion for new trial or reconsideration in due time after notice of said judgment, order or resolution, the period herein fixed shall be interrupted. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of such denial. No extension of time to file the petition shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days. (Emphasis supplied.)

The records of the instant case show that respondent timely filed on June 8, 1998, a motion for reconsideration of the NLRC Resolution dated April 14, 1998, which respondent received on May 28, 1998. A copy of the Resolution dated June 19, 1998 on the denial of the said motion for reconsideration was received by respondent on August 10, 1998. Applying the aforequoted amendment to the given set of dates, 11 days had already elapsed from the date when respondent received the NLRC Resolution dated June 19, 1998. Thus, respondent had a remaining period of 49 days reckoned from August 11, 1998 or until September 28, 1998 within which to file the petition for *certiorari*.

The Court, however, takes note that further amendments were made on the reglementary period for filing a petition for *certiorari* under Rule 65. On September 1, 2000, Supreme Court Circular No. 56-2000[37] took effect. The latest amendment of Section 4, Rule 65 of the 1997 Rules of Civil Procedure reads:

SEC. 4. *When and where petition filed*. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not,**

[37] Per Supreme Court *En Banc* Resolution dated August 1, 2000 in A.M. No. 00-2-03-SC.

the sixty (60) day period shall be counted from notice of the denial of the said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in the aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis supplied.)

From the foregoing, it is clear that the 60-day period to file a petition for *certiorari* should be reckoned from the date of receipt of the notice of the denial of the motion for reconsideration or new trial, if one was filed.

In a number of cases,[38] this Court applied retroactively Circular No. 56-2000. We ruled that a petition for *certiorari* which had been filed past the 60-day period under Section 4 of Rule 65, as amended by Circular No. 39-98, was deemed seasonably filed provided it was filed within the 60-day period counted from the date of receipt of the notice of the denial of the motion for reconsideration or new trial.

Instructive on this point is the discussion of the Court in *Narzoles v. National Labor Relations Commission*,[39] *viz*:

The Court has observed that Circular No. 39-98 has generated tremendous confusion resulting in the dismissal of numerous cases

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[38] *Lascano v. Universal Steel Smelting Co., Inc.*, G.R. No. 146019, June 8, 2004, 431 SCRA 248; *Ong v. Mazo*, G.R. No. 145542, June 4, 2004, 431 SCRA 56; *Webb v. Secretary of Justice*, 455 Phil. 307 (2003); *Unity Fishing Development Corporation v. Court of Appeals*, 403 Phil. 876 (2001).

[39] 395 Phil. 758, 763-765 (2000).

for late filing. This may have been because, historically, *i.e.*, even before the 1997 revision to the Rules of Civil Procedure, a party had a fresh period from receipt of the order denying the motion for reconsideration to file a petition for *certiorari*. Were it not for the amendments brought about by Circular No. 39-98, the cases so dismissed would have been resolved on the merits. Hence, the Court deemed it wise to revert to the old rule allowing a party a fresh 60-day period from notice of the denial of the motion for reconsideration to file a petition for *certiorari*. Earlier this year, the Court resolved, in A.M. No. 00-2-03-SC, to further amend Section 4, Rule 65 x x x.

x x x x x x x x x

The latest amendments took effect on September 1, 2000, following its publication in the Manila Bulletin on August 4, 2000 and in the Philippine Daily Inquirer on August 7, 2000, two newspapers of general circulation.

In view of its purpose, the Resolution further amending Section 4, Rule 65 can only be described as curative in nature, and the principles governing curative statutes are applicable.

Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive.

Accordingly, while the Resolution states that the same "shall take effect on September 1, 2000, following its publication in two (2) newspapers of general circulation," its retroactive application cannot be denied. In short, the filing of the petition for *certiorari* in this Court on 17 December 1998 is deemed to be timely, the same having been made within the 60-day period provided under the curative Resolution. We reach this conclusion bearing in mind that the substantive aspects of this case involves the rights and benefits, even the livelihood, of petitioner-employees.

Given the above, respondent had a fresh 60-day period from August 10, 1998, the date she received a copy of the NLRC Resolution dated June 19, 1998, denying her motion for reconsideration. Accordingly, respondent had 60 days from August 10, 1998 within which to file the petition for *certiorari*. Thus, when respondent filed the petition with the Court of Appeals on October 2, 1998, said petition was seasonably filed within the reglementary period provided by the latest amendment to Section 4, Rule 65 of the 1997 Rules of Civil Procedure.

We now proceed to the main issue for resolution in this case, which is whether the Court of Appeals committed a reversible error in reversing and setting aside the Resolutions dated April 14, 1998 and June 19, 1998 of the NLRC.

According to the petitioner, respondent's repeated submission of altered or tampered receipts to support her claim for reimbursement constitutes a betrayal of the employer's trust and confidence and a serious misconduct, thus, giving cause for the termination of her employment with petitioner.

Petitioner also questions the Court of Appeals' finding that the termination of respondent was too harsh. Petitioner maintains that respondent "had clearly been established to have authored and caused the submission of not only one but three different receipts which she intentionally altered to justify her claimed reimbursement," thus warranting her dismissal from the company.

We are not convinced.

The Labor Code mandates that before an employer may validly dismiss an employee from the service, the requirement of substantial and procedural due process must be complied with. Under the requirement of substantial due process, the grounds for termination of employment must be based on just or authorized causes. Article 282 of the Labor Code enumerates the just causes for the termination of employment, thus:

ART. 282. *Termination by employer*. - An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

In termination cases, the burden of proof rests on the employer to show that the dismissal was for just cause. Otherwise, an employee who is illegally dismissed "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."[40]

After examining the records of the case, this Court finds that respondent's dismissal from employment was not grounded on any of the just causes enumerated under Article 282 of the Labor Code.

At the outset, it is important to note that the term "trust and confidence" is restricted to managerial employees.[41] In *Samson v. National Labor Relations Commission*,[42] the Court, citing Section 2(b), Rule I, Book III of the Omnibus Rules Implementing the Labor Code, enumerated the conditions for one to be properly considered a managerial employee:

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[40] Labor Code, Article 279.

[41] *Dela Cruz v. National Labor Relations Commission*, 335 Phil. 932, 943 (1997).

[42] 386 Phil. 669, 687 (2000).

(1) Their primary duty consists of the management of the establishment in which they are employed or of a department or sub-division thereof;

(2) They customarily and regularly direct the work of two or more employees therein; [and]

(3) They have the authority to hire or fire other employees of lower rank; or their suggestions and recommendations as to the hiring and firing and as to the promotion or any other change of status of other employees are given particular weight.

In the instant case, respondent was the Senior Financial Accountant with the Job Description of a Financial Project Analyst. Respondent, among others, "provides support in the form of financial analyses and evaluation of alternative strategies or action plans to assist management in strategic and operational decision-making, x x x liaises with the Bottler to comply with Corporate Bottler financial reporting requirements and to ensure Bottler's plans are aligned with TCCEC's, x x x and assists management on various initiatives on *ad hoc* basis."[43]

In *Nokom v. National Labor Relations Commission*,[44] this Court set the guidelines for the application of the doctrine of loss of confidence –

(a) Loss of confidence should not be simulated;

(b) It should not be used as a subterfuge for causes which are improper, illegal or unjustified;

(c) It may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and

(d) It must be genuine, not a mere afterthought to justify earlier action taken in bad faith.

In the instant case, the basis for terminating the employment of respondent was for gross violation of the company's rules and

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[43] *Rollo*, p. 196.

[44] 390 Phil. 1228, 1244 (2000), citing *Vitarich Corporation v. National Labor Relations Commission*, 367 Phil. 1, 12 (1999).

regulations, as specified in the termination letter dated April 4, 1998, to wit:

> Based on the facts gathered during the investigation *vis-a-vis* (sic) the contradictory explanations you have given when you testified, the testimony of the person who delivered the Shakey's products you ordered as well as McDonald's and Shakey's certifications to the effect that the items and the dates appearing on the receipt/invoices issued to you were the actual items and dates of said invoices and that the alteration on the face of said invoice were not done at their respective establishments or by any of their employees, morally convinced us that you were the one who caused such alterations for personal gain. You have thereby knowingly, willingly, deliberately and fraudulently submitted tampered and/or altered receipts to support your petty cash reimbursements in gross violation of the company's rules and regulations which punishes with immediate dismissal the "fraudulent submission of any item of expense" (Rule II, No 15(d).[45]

Evidently, no mention was made regarding petitioner's alleged loss of trust and confidence in respondent. Neither was there any explanation nor discussion of the alleged sensitive and delicate position of respondent requiring the utmost trust of petitioner.

It bears emphasizing that the right of an employer to dismiss its employees on the ground of loss of trust and confidence must not be exercised arbitrarily. For loss of trust and confidence to be a valid ground for dismissal, it must be substantial and founded on clearly established facts. Loss of confidence must not be used as a subterfuge for causes which are improper, illegal or unjustified; it must be genuine, not a mere afterthought, to justify earlier action taken in bad faith. Because of its subjective nature, this Court has been very scrutinizing in cases of dismissal based on loss of trust and confidence because the same can easily be concocted by an abusive employer.[46] Thus, when the breach of trust or loss of confidence theorized upon is not borne

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[45] *Rollo*, p. 170.

[46] *Labor v. National Labor Relations Commission*, G.R. No. 110388, September 14, 1995, 248 SCRA 183, 199-200.

by clearly established facts, as in the instant case, such dismissal on the ground of loss and confidence cannot be countenanced.

In the instant case, it was only in the Reply to Respondent's Comment[47] dated October 11, 2002, that petitioner made mention of another ground for the dismissal of respondent, that of serious misconduct, when she submitted altered or tampered receipts to support her claim for reimbursement. Such allegation appears to be a mere afterthought, being tardily raised only in the Reply.

In *Marival Trading, Inc. v. National Labor Relations Commission*,[48] we held, thus:

> Misconduct has been defined as improper or wrong conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful character, and implies wrongful intent and not mere error of judgment. The misconduct to be serious must be of such grave and aggravated character and not merely trivial and unimportant. Such misconduct, however serious, must nevertheless be in connection with the employee's work to constitute just cause for his separation. Thus, for misconduct or improper behavior to be a just cause for dismissal, (a) it must be serious; (b) must relate to the performance of the employee's duties; and (c) must show that the employee has become unfit to continue working for the employer. Indeed, an employer may not be compelled to continue to employ such person whose continuance in the service would be patently inimical to his employer's business.[49]

In this light, the alleged infractions of respondent could hardly be considered serious misconduct. It is well to stress that in order to constitute serious misconduct which will warrant the dismissal of an employee, it is not sufficient that the act or conduct complained of has violated some established rules or policies. It is equally important and required that the act or conduct must have been done with wrongful intent. Such is, however, lacking in the instant case.

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[47] *Rollo,* pp. 511-527.

[48] G.R. No. 169600, June 26, 2007, 525 SCRA 708.

[49] *Id.* at 726-727.

While this Court does not condone respondent's act of submitting altered and/or tampered receipts to support her claim for reimbursement, we nevertheless agree with the finding of the Court of Appeals that, under the attendant facts, the dismissal meted out on respondent appears to be too harsh a penalty.

The employer's right to conduct the affairs of its business, according to its own discretion and judgment, is well-recognized. An employer has a free reign and enjoys wide latitude of discretion to regulate all aspects of employment, including the prerogative to instill discipline in its employees and to impose penalties, including dismissal, upon erring employees. This is a management prerogative, where the free will of management to conduct its own affairs to achieve its purpose takes form. The only criterion to guide the exercise of its management prerogative is that the policies, rules and regulations on work-related activities of the employees must always be fair and reasonable and the corresponding penalties, when prescribed, commensurate to the offense involved and to the degree of the infraction.[50]

As respondent's employer, petitioner has the right to regulate, according to its discretion and best judgment, work assignments, work methods, work supervision, and work regulations, including the hiring, firing and discipline of its employees. Indeed, petitioner has the management prerogative to discipline its employees, like herein respondent, and to impose appropriate penalties on erring workers pursuant to company rules and regulations.[51] This Court upholds these management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements.[52]

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[50] *St. Michael's Institute v. Santos*, 422 Phil. 723, 732-733 (2001).

[51] *Deles, Jr. v. National Labor Relations Commission*, 384 Phil. 271, 281-282 (2000).

[52] *Challenge Socks Corporation v. Court of Appeals*, G.R. No. 165268, November 8, 2005, 474 SCRA 356, 362-363.

In the instant case, petitioner alleged that under its rules and regulations, respondent's submission of fraudulent items of expense is punishable by dismissal. However, petitioner's rules cannot preclude the State from inquiring whether the strict and rigid application or interpretation thereof would be harsh to the employee. Even when an employee is found to have transgressed the employer's rules, in the actual imposition of penalties upon the erring employee, due consideration must still be given to his length of service and the number of violations committed during his employ.[53] Respondent had no previous record in her 9½ years of service; this would have been her first offense. Respondent had also been a recipient of various commendations attesting to her competence and diligence in the performance of her duties, not only from petitioner, but also from petitioner's counterparts in Poland[54] and Thailand.[55] Respondent also countered that she acted in good faith and with no wrongful intent when she submitted the receipts in support of her claim for reimbursement of meal allowance. According to respondent, only the dates or items were altered on the receipts. She did not claim more than what was allowed as meal expense for the days that she rendered overtime work. She believed that the submission of receipts was simply for records-keeping, since she actually rendered overtime work on the dates that she claimed for meal allowance. All told, this Court holds that the penalty of dismissal imposed on respondent is unduly oppressive and disproportionate to the infraction which she committed. A lighter penalty would have been more just.

As correctly held by the Court of Appeals, by mandate of the law itself, the provisions of the Labor Code are to be construed

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[53] *Philippine Long Distance Telephone Company v. National Labor Relations Commission*, 362 Phil. 352, 358 (1999).

[54] *Rollo*, p. 111.

[55] *Id.* at 113.

liberally in favor of labor. Thus, in *Fujitsu Computer Products Corporation of the Phils. v. Court of Appeals*,[56] we held:

> The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay-off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood. The Constitution does not condone wrongdoing by the employee; nevertheless, it urges moderation of the sanction that may be applied to him. Where a penalty less punitive would suffice, whatever missteps may have been committed by the worker ought not be visited with a consequence so severe as dismissal from employment. Indeed, the consistent rule is that if doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause.

Under Article 279 of the Labor Code, 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.

After a finding of illegal dismissal herein, we apply the foregoing provision entitling respondent Clarita P. Gacayan to reinstatement without loss of seniority rights and other privileges and full backwages, inclusive of allowances and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of her reinstatement. Thus, the award of backwages by the Court of Appeals is in order. However,

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[56] 494 Phil. 697, 728 (2005), citing *Maglutac v. National Labor Relations Commission*, G.R. No. 78345, September 21, 1990, 189 SCRA 767, 778; *Austria v. National Labor Relations Commission*, 371 Phil. 340, 361 (1999); *Asuncion v. National Labor Relations Commission*, 414 Phil. 329, 341-342 (2001).

the Court of Appeals' period of computation of the award of backwages must be modified. The Court of Appeals ruled that:

> WHEREFORE, the petition is **GRANTED** and the Resolutions, dated April 14, 1998 and June 19, 1998, both issued by public respondent NLRC, are hereby **SET ASIDE**. [Petitioner] Coca Cola Export Corporation is hereby directed to immediately reinstate [respondent] to her former position, if possible, otherwise, to a substantially equivalent position without loss of seniority rights and with full backwages, based on her last monthly salary, to be computed from the date of her dismissal from the service up to the date of finality of this decision, without any qualifications or deductions. No costs.[57]

In line with Article 279 of the Labor Code and prevailing jurisprudence,[58] the award of backwages should be modified in the sense that backwages should be computed from the time the compensation was not paid up to the time of reinstatement.

WHEREFORE, the petition is hereby *DENIED.* The Decision dated May 30, 2001 and subsequent Resolution dated August 9, 2001 of the Court of Appeals are hereby *AFFIRMED WITH MODIFICATION* that backwages be awarded from the time the compensation was not paid up to the time of her actual reinstatement.

SO ORDERED.

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

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[57] *Rollo,* p. 25.

[58] *Cocomangas Hotel Beach Resort v. Visca*, G.R. No. 167045, August 29, 2008, 563 SCRA 705, 722; *Marival Trading, Inc. v. National Labor Relations Commission*, *supra* note 48 at 731-732; *Kay Products, Inc. v. Court of Appeals*, 502 Phil. 783, 797-798 (2005).

[*] Per Raffle dated December 15, 2010.

FIRST DIVISION

[G.R. No. 152086. December 15, 2010]

FEDERICO SORIANO, CIPRIANO BAUTISTA, JOSE TORALBA, CILODONIO TANTAY, MARIANO BRAVO, ROLANDO TORALBA, FAUSTINO BRAVO, CRISTINA TORALBA, BENJAMIN LACAYANGA, ROSALIA TANTAY, GABRIEL DELA VEGA, ROGELIO BRAVO, and ROMEO TANTAY, represented by their Attorney-in-Fact, TEODORICO GAMBA, *petitioners, vs.* **ANA SHARI B. BRAVO, REBECCA BENITO, JOHN MEJIA, MILA BRAVO, BENITO BRAVO, ERNESTO BRAVO, JOSE ISRAEL BRAVO, JUANA BRAVO, DARAB CENTRAL, and the HON. COURT OF APPEALS, FORMER FIFTH DIVISION,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); A CASE INVOLVING THE RIGHTS AND OBLIGATIONS OF LANDLORDS AND AGRICULTURAL TENANTS/LESSEES FALLS WITHIN THE JURISDICTION OF THE DARAB.— The material allegations and reliefs sought in respondents' Complaint essentially established a case involving the rights and obligations of respondents and defendants as landlords and agricultural tenants/lessees, respectively, taking into account their Compromise Agreement; as well as the fixing and collection of lease rentals. The DARAB properly took cognizance of the case as it constituted agrarian disputes, well-within the jurisdiction of the DARAB under Rule II, Section 1, paragraphs (a) and (b) of the 1994 DARAB Rules.

2. ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE DARAB.— As the Court had so often stressed, findings of the DARAB are entitled to great weight, *nay*, finality, considering that the findings of the Boards are unquestionably factual issues that have been discussed and ruled upon by them

and affirmed by the Court of Appeals. The Court cannot depart from such findings. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.

APPEARANCES OF COUNSEL

Releth M. Madeja for petitioners.
Pedro R. Vinoya for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Decision[1] dated September 24, 2001 of the Court Appeals in CA-G.R. SP No. 63197, affirming *in toto* the Decision[2] dated May 6, 1998 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case Nos. 5195 to 5216, which, in turn, affirmed *in toto* the Decision[3] dated February 23, 1996 of Provincial Agrarian Reform Adjudicator (PARAD) Domiciano L. Placido (Placido) of Pangasinan in DARAB Case Nos. 01-689 to 710-WP-'95. PARAD Placido adjudged, among other things, that the subject properties are exempt from the coverage of the operation land transfer (OLT) program of the Government under Presidential Decree No. 27, otherwise known as the Tenants

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[1] *Rollo*, pp. 86-101; penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eubulo G. Verzola and Marina L. Buzon, concurring.

[2] *Id*. at 73-82; signed by Department of Agrarian Reform (DAR) Undersecretary and DAR Adjudication Board (DARAB) Vice Chairman Lorenzo R. Reyes, DAR Undersecretary and DARAB Member Artemio A. Adasa, Jr., DAR Assistant Secretary and DARAB Member Augusto P. Quijano, and DAR Assistant Secretary and DARAB Member Sergio B. Serrano; DAR Secretary and DARAB Chairman Ernesto D. Garilao and DAR Undersecretary and Member Hector D. Soliman did not take part.

[3] *Id.* at 44-69.

Emancipation Decree, and Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL).

At the center of the controversy are agricultural lands located at Nalsian Norte (formerly San Julian) and Malasiqui, Pangasinan, with a total land area of 24.5962 hectares (subject properties). The subject properties were originally owned by spouses Patricio Posadas and Josefa Quintana (spouses Posadas).[4] Upon the spouses Posadas' demise, the subject properties were subdivided, distributed, and transferred – by extrajudicial settlement and/or sale – to their heirs.[5] After several transfers, the subject properties were eventually registered in the names of the following:

LOT NO.	REGISTERED LANDOWNERS	TCT NO.	AREA (hectares)
1	Virginia P. Llamas and Josefino P.Llamas	157111	1.4844
2	Renato P. Posadas	157976	1.5292
3	Lourdes P. Cipriano	179246	1.7086
4	Ernesto S. Bravo and Jose Israel S. Bravo	180617	5.0741
5	Sonia P. Llamas and Roberto P. Llamas	157112	3.1510
6	Lamberto P. Llamas (1/2), Carlos S. Llamas, and Shirley Leah S. Llamas	161738	2.7021
7	Carlos P. Cipriano	176249	3.2290
8	Remegio P. Cipriano	179236	1.2106
9	Ernesto S. Bravo and Jose Israel S. Bravo	180618	1.0752
10	Blanca P. Llamas and Alfonso P. Llamas	157113	1.5136
11	Renato P. Posadas	157978	1.9184[6]
		TOTAL	24.5962

Of the 11 subject properties, only the ownership of Lots 4 and 9 still remains with the registered owners, respondents Ernesto S. Bravo and Jose Israel S. Bravo. The rest of the

[4] *Id.* at 63.

[5] *Id.* at 63-65.

[6] *Id.* at 65-66.

subject properties had again been sold and transferred to the other respondents, who have yet to secure certificates of title in their respective names. Thus, presently, the subject properties are actually owned by respondents, as follows:

LOT NO.	LANDOWNERS/RESPONDENTS	AREA (hectares)
1	Ernesto S. Bravo	1.4844
2	John B. Mejia	1.5292
3	Rebecca B. Benito and Emmanuel Benito	1.7086
4	Ernesto S. Bravo and Jose Israel S. Bravo	5.0741
5	Ana Shari B. Bravo	3.1510
6	Juana Bravo and Conrado Macaraeg	2.7021
7	Rebecca B. Benito and Emmanuel Benito	3.2290
8	Juana Bravo and Conrado Macaraeg	1.2106
9	Ernesto S. Bravo and Jose Israel S. Bravo	1.0752
10	Jose Israel S. Bravo	1.5136
11	John B. Mejia	1.9184
	TOTAL	24.5962[7]

Respondents' total landholdings are summarized below:

LANDOWNERS/RESPONDENTS	TOTAL LANDHOLDINGS (hectares)
Rebecca B. Benito and Emmanuel Benito	4.9376 (Lot 3 + Lot 7)
Ana Shari B. Bravo	3.1510 (Lot 5)
Ernesto S. Bravo	4.5591 (Lot 1 + ½ of Lot 4 + ½ of Lot 9)
Jose Israel S. Bravo	4.5883 (½ of Lot 4 + ½ of Lot 9 + Lot 10)
Juana Bravo and Conrado Macaraeg	3.9127 (Lot 6 + Lot 8)
John B. Mejia	3.4476 (Lot 2 + Lot 11)[8]

[7] *Id.* at 66-67 and 74-75.

[8] *Id.* at 75.

A portion of the subject properties was planted with rice while the rest was planted with mangoes. Eventually, respondents decided to relocate their business, the St. Martin's Pharmaceuticals, Inc., to the subject properties; and to construct the Bravo Agro-Industrial Complex on the same properties, which would include a fruit processing factory, disposable syringe factory, botanical plantation for herbal medicines, integrated research and product development facility, and a fishpond and inland resort.

Pursuant to respondents' plans for the subject properties, respondent Ernesto S. Bravo entered into a Compromise Agreement on November 3, 1992 with the people cultivating the subject properties, namely, Salvador Bautista, Faustino Bravo, Mariano Bravo, Gabriel dela Vega, Juliana Gutierrez, Saturnino Idoz, Celistiano Manipon, Mauricia Rubio, Federico Soriano, Romeo Tantay, Teofilo Tantay, and Cristina Toralba (cultivators). The full text of the Compromise Agreement is reproduced below:

COMPROMISE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

We, Romeo Tantay, Gabriel [de la] Vega, Teofilo Tantay, Salvador Bautista, Celestiano Manipon, Faustino Bravo, Mariano Bravo, Federi[co] Soriano, Cristina [Toralba], Juliana Gutierrez, Mauricia Rubio, Saturnino Idoz, all of legal age, married, Filipinos and residents of Barangay Nalsian Norte, Malasiqui, Pangasinan otherwise known as the PARTY FOR THE FIRST PART and Ernesto S. Bravo otherwise known as the PARTY FOR THE SECOND PART, likewise a resident of Nalsian Norte have agreed and covenanted on the following terms and conditions involving a parcel of land/s under cultivations of the PARTY OF THE FIRST PART being owned by the PARTY OF THE SECOND PART hereunder stated, to wit:

1. That these parcels of land/s are located at Barangay Nalsian Norte, Malasiqui, Pangasinan.

2. That the party for the FIRST PART have agreed freely and voluntarily to the herein party for the Second Part, to construct bulding/s plant on the aforenamed landholdings;

3. That the herein of the party of the First Part shall be relocated on the same landholdings the site shall be determined on the plan and specifications to be produced by the herein party for the Second Part;

4. That the party for the First Part shall be entitled to individual homelot of TWO HUNDRED FORTY (240) Square meters more or less, given out of liberality by the herein party for the Second Part;

5. That both parties shall render mutual respect taking into considerations the rights and obligations of both parties;

6. That the party for the First Part shall enjoy security of tenure on their individual landholdings not affected by the establishment of plant or building/s, in the same manner the party for the Second Part shall have the right to eject any or all of the herein party for the First Part on the grounds authorized by law;

7. That the homelots given to the individual parties for the First Part shall be considered remuneration/payment on the portion of the subject landholding/s to be used in the establishment of plant/ building, a job generating project;

8. That the party for the Second Part bind himself and shall give priority to the party for the First Part to hire employees from the children of the party for the First Part;

9. That this shall be understood that these would-be employees must possess the necessary qualifications, industry and dedication to duty;

10. That this compromise agreement is entered freely and voluntarily and not contrary to law, public order or public policy.

IN WITNESS WHEREOF, we shall hereunto set our hands this 3rd day of November 1992 at Malasiqui, Pangasinan.[9]

Relying on the Compromise Agreement, respondents began the development of the subject properties. They installed a signboard on the subject properties proclaiming that the "Bravo Agro-Industrial Complex" would soon rise on said site, and proceeded with the preparation for the construction of buildings thereon.

However, on July 10, 1995, respondents filed before the DARAB a Complaint for Ejectment, Collection of Unpaid Rentals, Recomputation of Rentals, Specific Performance and Damages,[10] which was docketed as DARAB Case Nos. 01-689

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[9] DAR records, pp. 72-73.

[10] *Id.* at 1-7.

to 710-WP-'95. Named as defendants in respondents' Complaint were the cultivators who signed the Compromise Agreement (with the exception of Juliana Gutierrez, Celestiano Manipon, and Mauricia Rubio), along with Rogelio Bravo, Honorato de Guzman, Lydia de Guzman, Rosita Gutierrez, Benjamin Lacayanga, Cecilio Mamaril, Eduardo Manipon, Leonardo Rosario, Luis Rosario, Teodoro Rosario, Joseph Tantay, Rosalia Tantay, and Rolando Toralba (hereinafter collectively called the "defendants").

Respondents alleged that the defendants in DARAB Case Nos. 01-689 to 710-WP-'95, upon the instigation of a cult leader, refused to comply with the Compromise Agreement. Instead of transferring and relocating their homes as stated in the Compromise Agreement, the defendants demanded that the Municipal Agrarian Reform Officer (MARO) of Malasiqui, Pangasinan, put the subject properties under the OLT program provided in the Tenants Emancipation Decree and CARL. The MARO already ruled that the subject properties were not covered by the OLT program because each of the respondents and their predecessors-in-interest did not own more than five hectares of the subject properties. Respondents further averred that since 1992, defendants had refused to pay lease rentals on the portions of rice lands they were tilling. Worse, defendants had also begun to till portions of the subject properties that were previously untenanted and already planted with mango trees. Based on these facts, respondents prayed for the DARAB to (1) order defendants to comply with the Compromise Agreement by transferring and relocating their homes to the lots provided by respondents; (2) order defendants to pay lease rentals on the portions of the ricelands they were tilling from 1992 to present; (3) eject defendants from the subject properties for their deliberate failure to pay lease rentals in violation of their obligations under Republic Act No. 3844, otherwise known as the Code of Agrarian Reforms; and (4) order defendants to pay respondents ₱500,000.00 moral damages, ₱500,000.00 exemplary damages, and ₱500,000.00 actual damages, plus attorney's fees.

Among the special and affirmative defenses raised by defendants in their Answer[11] are that respondents had no cause of action against defendants; the respondents failed to prove their title to the subject properties and registration of the same in their names; the subject properties were mainly planted with rice and only a negligible number of mango trees, which, at 15 to 18 years old, were already fruit-bearing; respondents' sign board confirmed the illegal conversion of the subject properties given the absence of the required application for conversion; the existence of the alleged Compromise Agreement was not established by respondents, and assuming that such Compromise Agreement did exist, it was illegal *per se* and void *ab initio*; respondents falsely promised to respect defendants' security of tenure, and respondents' true intention was to have defendants ejected through the instant case; it was the fundamental right of defendants, as tenant-farmers, to be freed from the bondage of the soil, and according to the Tenants Emancipation Decree, the Code of Agrarian Reforms, and the CARL, the subject properties are viable for coverage of the agrarian reform program; respondents had no authority to determine by themselves whether the subject properties were covered by the agrarian reform program; the opinion of the MARO of Malasiqui, Pangasinan, that the subject properties were not within the coverage of the agrarian reform laws, was still subject to review by higher DAR officials; defendants, who were tenant-farmers of respondent Ernesto S. Bravo's properties, had been religiously paying their lease rentals; in the event that the other respondents would be able to prove their ownership to the rest of the subject properties, defendants were willing and able to pay their lease rentals upon execution of a contract of lease between said respondents and defendants; defendants' non-payment of lease rentals to respondents (other than respondent Ernesto S. Bravo) was reasonable considering that defendants remitted said lease rentals to the true owners of the subject properties, the Llamas and Posadas; and computation of the lease rentals should be based on the actual harvest, and any sharing should be subject to the mandate of the Code of Agrarian Reforms, as amended.

[11] *Id.* at 21-30.

Thus, defendants prayed that the PARAD dismiss respondents' Complaint for lack of cause of action/merit; and order respondents to pay jointly and solidarily to defendants ₱1,000,000.00 as moral damages, ₱1,000.00 as nominal damages, ₱1,000,000.00 as exemplary damages, and ₱500,000.00 for actual damages.[12]

On February 23, 1996, PARAD Placido, "[a]fter going deeply into the roots of the controversy, making a searching examination of the facts, conducting an ocular inspection and investigation in the premises, carefully considering all the pleadings, weighing all [the] respective exhibits and evidences of the parties,"[13] rendered his Decision in DARAB Case Nos. 01-689 to 710-WP-'95, with the following decree:

WHEREFORE, judgment is hereby rendered:

1. Declaring defendants Saturnino Idos, Teofilo Tantay, Faustino Bravo, Mariano Bravo, Idelfonso Tantay, Pelagio Tantay and Cristina [Toralba] as agricultural lessees of the ricelands of [herein respondents] Ernesto Bravo and Jose Israel Bravo;

2. Confirming the findings of the Regional Investigator, Atty. Benigno C. Bulatao, DAR Regional Office, San Fernando, La Union, the parcels of land in question separately owned by the [respondents] none of whom owned more than five (5.0) hectares agricultural lands exempt from OLT coverage under P.D. No. 27 and R.A. No. 6657;

3. Declaring the parcels of land in question except the lands of [respondents] Ernesto Bravo and Jose Israel Bravo as mango orchard land;

4. Declaring the mango orchard land untenanted;

5. Ordering defendants Federico Soriano, Salvador Bautista, Eduardo Manipon, Rolando Torralba, Rosita Gutierrez, Rosalia Tantay, Gabriel dela Vega, Benjamin Lacayanga, Lydia de Guzman, Rogelio Bravo, Joseph Tantay, Romeo Tantay, Honorato de Guzman, Luis Rosario, Cecilio Mamaril, Leonardo Rosario and Teodoro Rosario not tenants in any parcels of land in question. They are [Agrarian Reform Beneficiaries Association (ARBA)] members-tenants on lands other than the parcels of land in question;

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[12] *Id.* at 21.

[13] *Rollo,* p. 61.

6. Dismissing all claims and counterclaims for not being supported by evidence.[14]

Defendants' appeal to the DARAB, docketed as DARAB Case Nos. 5195 to 5216, was unsuccessful. In its Decision dated May 6, 1998, the DARAB affirmed *in toto* PARAD Placido's Decision of February 23, 1996.

On the issue of whether the subject properties are within the coverage of the OLT program under the Tenants Emancipation Decree and CARL, the DARAB held:

Anent the first issue, it is beyond any iota of doubt that the subject landholdings are outside the coverage of Presidential Decree No. 27 and Republic Act No. 6657. Presidential Decree No. 27 is categorical and very clear in its provision on the retention limit allowed the landowner – the landowner can retain an area of up to seven (7) hectares. Republic Act No. 6657 is likewise very clear that the landowner's retention limit is up to five (5) hectares. The Board agrees with the MARO of the locality that the subject landholdings cannot be placed within the coverage of either of the laws relied upon by the defendants-appellants. The records show that as early as March 10, 1971, the heirs of the late Josefa Quintans (who died on July 12, 1958) subdivided the original 24.5962-hectare landholding into parcels, none of which exceeded seven (7) hectares (Exhibit "B" Extrajudicial Settlement of Estate with Renunciation and Quitclaim dated March 10, 1971). When Presidential Decree No. 27 became a law on October 21, 1972, the subdivided parcels fell outside the coverage of the Operation Land Transfer program pursuant to said Decree, being each less than seven (7) hectares. These landholdings were further subdivided and decreased in size until not one parcel became more than five hectares. Despite changes in ownership, none of the landholdings were ever consolidated under one proprietorship in areas of more than seven hectares during the implementation of the Operation Land Transfer program under Presidential Decree No. 27 nor areas of more than five (5) hectares during the implementation of Republic Act No. 6657. Presently, each of the plaintiffs-appellees does not own more than five (5) hectares of the subject landholdings. This fact is not disputed by

[14] *Id.* at 69.

the defendants-appellants. Consequently, neither Presidential Decree No. 27 nor Republic Act No. 6657 can be relied upon for the expropriation of these parcels.[15]

The DARAB also sustained the validity and legality of the Compromise Agreement in this wise:

As regards the issue of the validity and legality of the compromise agreement, the same does not deserve a prolonged discussion. It is beyond question that the defendants-appellants are bound by the said compromise agreement. The document was entered into by and between the parties without any vice of consent and was duly notarized. The compromise agreement is clearly a waiver of their rights over the subject landholding for it contains admissions and declarations against their interest. If the defendants-appellants contend that it was not so, thus, reneging on their own sworn admissions of the existence of the fact, then they must have perjured themselves when they voluntarily and knowingly stated under oath that they are relinquishing their right over the subject landholding. The Board will not allow such perfidy to prevail because a party to a litigation must always come to court with clean hands and in good faith. Defendants-appellants are bound by their own voluntary admissions and declarations against their own interest as appearing in the said compromise agreement and the Board will not allow them to turn their backs to it (*Dequito v. Llamas*, G.R. No. L-28090, September 4, 1975).

Defendants-appellants' act of entering into the said Compromise Agreement is a valid waiver of whatever rights they may have had over the subject landholdings. It is a settled rule in this jurisdiction that rights may be waived except: (1) when the waiver is contrary to law, public order, public policy, morals or good customs, and (2) when prejudicial to a third person with a right recognized by law (Article 6, New Civil Code of the Philippines). There being no showing at all that the above Compromise Agreement falls under any of the above stated exceptions, it follows that the defendants-appellants are bound by it and must consequently abide by the terms and conditions thereof.[16]

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

[16] *Rollo,* pp. 80-81.

The DARAB, in a Resolution[17] dated December 14, 2000, denied for lack of merit defendants' Motion for Reconsideration.

Undeterred, a Petition for Review of the DARAB judgment was filed before the Court of Appeals by defendants Faustino Bravo, Mariano Bravo, Rogelio Bravo, Gabriel dela Vega, Benjamin Lacayanga, Federico Soriano, Romeo Tantay, Rosalia Tantay, Cristina Toralba, and Rolando Toralba; who were joined by new parties Cipriano Bautista, Cilodonio Tantay, and Jose Toralba (hereinafter collectively called the "petitioners"), represented by their Attorney-in-Fact, Teodorico Gamba. Said petition was docketed as CA-G.R. SP No. 63197. Petitioners insisted that (1) it was the Office of the DAR Secretary, not the DARAB, which had jurisdiction to determine the properties falling within the coverage of the Tenants Emancipation Decree and CARL; (2) the Compromise Agreement, which the DARAB relied upon, was never executed and enforced; and (3) the DARAB failed to take cognizance of the tenancy issue upon which petitioners' right to be maintained in peaceful possession and cultivation of the subject property depended.

In its Decision dated September 24, 2001, the Court of Appeals found no merit in the petition, and affirmed *in toto* the DARAB Decision dated May 6, 1998.

The Court of Appeals recognized that the distribution of land under the Tenants Emancipation Decree, the CARL, and other special laws, is an administrative prerogative of the DAR Secretary. However, it should not be interpreted to preclude the PARAD, the DARAB, and their adjudicators from preliminarily ascertaining whether the questioned landholdings could be the subject of the Comprehensive Agrarian Reform Program (CARP). Stated differently, the DAR Secretary's exclusive authority to distribute lands is exercised only "upon proper and due CARP coverage." In the instant case, the MARO, the PARAD, and

[17] *Id.* at 85; signed by DAR Undersecretary and DARAB Vice Chairman Lorenzo R. Reyes, DAR Undersecretary and DARAB Member Federico A. Roblete, DAR Assistant Secretary and DARAB Member Augusto P. Quijano, and DAR Assistant Secretary and DARAB Member Edwin C. Sales, and DAR Assistant Secretary and DARAB Member Wilfredo M. Peñaflor.

the DARAB all found that the subject properties are outside the coverage of the Tenants Emancipation Decree and the CARL. The appellate court further held that based on the allegations in respondents' Complaint in DARAB Case Nos. 01-689 to 710-WP-'95, the instant case involved agrarian disputes and controversies, properly within the primary, original, and appellate jurisdiction of the DARAB and delegated jurisdiction of the Regional Agrarian Reform Adjudicator (RARAD) and the PARAD under Sections 1 and 2, respectively, of Rule II of the DARAB Revised Rules of Procedure.

The Court of Appeals agreed with the DARAB that the Compromise Agreement is valid and binding. Petitioners' act of entering into the said agreement is a valid waiver of their rights to the subject properties. The appellate court also pointed out that contrary to petitioners' assertion, the DARAB took cognizance of the tenancy issue. The DARAB adopted the findings of the PARAD as to who among the defendants in DARAB Case Nos. 01-689 to 710-WP-'95 were the agricultural lessees of the six-hectare rice lands. Besides, the issue on tenancy was closely intertwined with the issue on placing the subject properties within the coverage of the OLT program under the Tenants Emancipation Decree and the CARL.

Lastly, the Court of Appeals pronounced that the PARAD and the DARAB decisions were supported by substantial evidence, which must be respected in the absence of any material or substantial misapplication or misappreciation of facts.

On February 4, 2002, the Court of Appeals issued a Resolution[18] denying petitioners' Motion for Reconsideration as it found no cogent reason or justification to modify or recall the findings and conclusions in its earlier decision.

Hence, the instant petition in which petitioners raise the following Assignment of Errors:

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[18] *Rollo*, pp. 102-103; penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eubulo G. Verzola and Marina L. Buzon, concurring.

I. THE HONORABLE COURT OF APPEALS ERRED WHEN IT TOOK NO COGNIZANCE OF THE WANT OF JURISDICTION EXERCISED BY THE PROVINCIAL ADJUDICATOR AND THE PUBLIC RESPONDENT DARAB IN THE DETERMINATION OF THE LANDHOLDINGS COVERAGE UNDER PD NO. 27 AND/OR R.A. 6657[.]

II. THE HONORABLE COURT OF APPEALS ERRED WHEN IT FAILED TO APPRECIATE THE TENANCY ISSUE UPON WHICH PETITIONERS PREDICATE THEIR RIGHT TO SECURITY OF TENURE.[19]

The Court finds no merit in the instant petition.

I
THE JURISDICTION ISSUE

Section 50 of the CARL bestows upon the DAR quasi-judicial powers:

> SEC. 50. *Quasi-Judicial Powers of the DAR.* – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

In *Sta. Rosa Realty Development Corporation v. Amante*,[20] the Court pointed out that the jurisdiction of the DAR under the aforequoted provision is two-fold. The first is essentially executive and pertains to the enforcement and administration of the laws, carrying them into practical operation and enforcing their due observance, while the second is judicial and involves the determination of rights and obligations of the parties.

Jurisdiction over agrarian disputes lies with the DARAB. Section 3(d) of the CARL defines an *agrarian dispute* as follows:

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[19] *Id.* at 19.

[20] 493 Phil. 570, 606 (2005).

(d) *Agrarian dispute* refers to **any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture,** including disputes concerning farmworkers associations or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of such tenurial arrangements.

It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. (Emphasis supplied.)

At the time the present controversy arose, the conduct of proceedings before the Board and its adjudicators were governed by the DARAB New Rules of Procedures, which were adopted and promulgated on May 30, 1994, and came into effect on June 21, 1994 after publication (1994 DARAB Rules).[21] The 1994 DARAB Rules identified the cases over which the DARAB shall have jurisdiction, *viz*:

RULE II
JURISDICTION OF THE ADJUDICATION BOARD

SECTION 1. *Primary and Exclusive Original and Appellate Jurisdiction.* – The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate **all agrarian disputes** involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:

a) The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation and use of all agricultural lands covered by the CARP and other agrarian laws;

[21] The 1994 DARAB Rules were published in the Philippine Times Journal and the Philippine Star on June 6, 1994. They became effective 15 days thereafter. Said Rules were subsequently repealed/modified by the 2003 DARAB Rules and then the 2009 DARAB Rules.

b) The valuation of land, and the preliminary determination and payment of just compensation, fixing and collection of lease rentals, disturbance compensation, amortization payments, and similar disputes concerning the functions of the Land Bank of the Philippines (LBP);

c) The annulment or cancellation of lease contracts or deeds of sale or their amendments involving lands under the administration and disposition of the DAR or LBP;

d) Those case arising from, or connected with membership or representation in compact farms, farmers' cooperatives and other registered farmers' associations or organizations, related to lands covered by the CARP and other agrarian laws;

e) Those involving the sale, alienation, mortgage, foreclosure, pre-emption and redemption of agricultural lands under the coverage of the CARP or other agrarian laws;

f) Those involving the issuance, correction and cancellation of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

g) Those cases previously falling under the original and exclusive jurisdiction of the defunct Court of Agrarian Relations under Section 12 of Presidential No. 946, except sub-paragraph (Q) thereof and Presidential Decree No. 815.

It is understood that the aforementioned cases, complaints or petitions were filed with the DARAB after August 29, 1987.

Matters involving strictly the administrative implementation of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARP) of 1988 and other agrarian laws as enunciated by pertinent rules shall be the exclusive prerogative of and cognizable by the Secretary of the DAR.

h) And such other agrarian cases, disputes, matters or concerns referred to it by the Secretary of the DAR. (Emphasis supplied.)

SECTION 2. *Jurisdiction of the Regional and Provincial Adjudicator*. – The RARAD and the PARAD shall have concurrent original jurisdiction with the Board to hear, determine and adjudicate all agrarian cases and disputes, and incidents in connection therewith, arising within their assigned territorial jurisdiction.

On the other hand, cases involving agrarian law implementation fall within the jurisdiction of the DAR Secretary. DAR Administrative Order No. 6, series of 2000, otherwise known as the Rules of Procedure for Agrarian Law Implementation (ALI) Cases, were promulgated only on August 30, 2000, and became effective on September 15, 2000 after publication (2000 Rules for ALI Cases).[22] Rule I, Section 2 of said Rules delineates the jurisdiction of the DAR Secretary, thus:

SEC. 2. *Cases Covered* – These Rules shall govern cases falling within the exclusive jurisdiction of the DAR Secretary which shall include the following:

(a) Classification and identification of landholdings for coverage under the Comprehensive Agrarian Reform Program (CARP), including protests or oppositions thereto and petitions for lifting of coverage;

(b) Identification, qualification or disqualification of potential farmer-beneficiaries;

(c) Subdivision surveys of lands under CARP;

(d) Issuance, recall or cancellation of Certificates of Land Transfer (CLTs) and CARP Beneficiary Certificates (CBCs) in cases outside the purview of Presidential Decree (PD) No. 816, including the issuance, recall or cancellation of Emancipation Patents (EPs) or Certificates of Land Ownership Awards (CLOAs) not yet registered with the Register of Deeds;

(e) Exercise of the right of retention by landowner;

(f) Application for exemption under Section 10 of RA 6657 as implemented by DAR Administrative Order No. 13 (1990);

(g) Application for exemption pursuant to Department of Justice (DOJ) Opinion No. 44 (1990) as implemented by DAR Administrative Order No. 6 (1994);

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[22] The 2000 Rules for ALI Cases were published in The Philippine Star and The Malaya on August 30, 2000. They became effective 10 days thereafter. Said Rules were subsequently modified/repealed by DAR Administrative Order No. 3, series of 2003, otherwise known as the 2003 Rules of Procedure for ALI Cases.

(h) Application for exemption under DAR Administrative Order No. 9 (1993);

(i) Application for exemption under Section 1 of RA 7881, as implemented by DAR Administrative Order No. 3 (1995);

(j) Issuance of certificate of exemption for lands subject of Voluntary Offer to Sell (VOS) and Compulsory Acquisition (CA) found unsuitable for agricultural purposes pursuant to DAR Memorandum Circular No. 34 (1997);

(k) Application for conversion of agricultural lands to residential, commercial, industrial or other non-agricultural uses including protests or oppositions thereto;

(l) Right of agrarian reform beneficiaries to homelots;

(m) Disposition of excess area of the farmer-beneficiary's landholdings;

(n) Transfer, surrender or abandonment by the farmer-beneficiary of his farmholding and its disposition;

(o) Increase of awarded area by the farmer-beneficiary;

(p) Conflict of claims in landed estates and settlements; and

(q) Such other matters not mentioned above but strictly involving the administrative implementation of RA 6657 and other agrarian laws, rules and regulations as determined by the Secretary.

Rule I, Section 3 of the 2000 Rules for ALI Cases explicitly excludes from the application thereof cases that fall within the exclusive original jurisdiction of the DARAB.

In determining whether the DARAB or the DAR Secretary had jurisdiction over the subject matter of DARAB Case Nos. 01-689 to 710-WP-'95, the Court adverts to the following rules on jurisdiction which it had established in *Heirs of Julian dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*[23]:

It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject

[23] G.R. No. 162980, November 22, 2005, 475 SCRA 743.

matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action. The failure of the parties to challenge the jurisdiction of the DARAB does not prevent the court from addressing the issue, especially where the DARAB's lack of jurisdiction is apparent on the face of the complaint or petition.

Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss. Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. If the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB. The proceedings before a court or tribunal without jurisdiction, including its decision, are null and void, hence, susceptible to direct and collateral attacks.[24]

Guided accordingly by the foregoing jurisprudence, the Court turns to respondents' Complaint before the DARAB, wherein they alleged:

2. That the [herein respondents] are the owners of less than five (5) hectares each of the 26 hectares of land located at barangays Tomling and Nalsian, Malasiqui, Pangasinan, x x x.

3. That of the aforesaid 26 hectares of land, only about 6 hectares are tenanted by seven agricultural [lessees] namely defendants Gervacio Sergote, Anacleto Torralba, Saturnino Idos, Faustino Bravo, Mariano Bravo, Teofilo Tantay, Idelfonso Tantay and Pelagio Tantay;

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[24] *Id.* at 755-757.

4. That 20 hectares portion of the said 26 hectares is not tenanted and although it is planted to 456 mango trees, the areas in between the rows of mango trees have never been cultivated and planted to any crop;

x x x x x x x x x

6. That the [respondents] have decided to relocate the St. Martin's Pharmaceuticals, Inc. and to construct a BRAVO AGRO-INDUSTRIAL COMPLEX in the untenanted portions of the land in question x x x;

7. That in accordance with the relocation and development plans of the St. Martin's Pharmaceuticals, Inc. and the construction of the BRAVO AGRO-INDUSTRIAL COMPLEX, [respondents] and the defendants Teofilo Tantay, Celestino Manipon, Romeo Tantay, Gabriel dela Vega, Mariano Bravo, Cristina Torralba, Mauricio Rubio, Salvador Bautista, Faustino Bravo, Federico Soriano, Josefina Gutierrez, and Saturnino Idos executed their "Compromise Agreement" dated November 3, 1992 which provides for the relocation and transfer of their houses to a homelot of 240 square meters each within the land in question for them and their family to conveniently enjoy the benefits to be provided by the complex;

8. That the relocation of said defendants' houses will not affect in any manner the security of tenure of the tenants on the riceland portion of the land in question;

9. That in 1993, the [respondents], relying on the compromise agreement they have with the defendants, started the implementation of their aforestated projects by strategically placing the "BRAVO AGRO-INDUSTRIAL COMPLEX" sign board in the land in question and started making the needed concrete hollow blocks;

x x x x x x x x x

11. Specific Performance. That the defendants in violation of their compromise agreement and on the instigation of a cult leader refused to comply with their compromise agreement;

12. That instead of transferring and relocating their respective houses, the said defendants illegally demanded of the Municipal Agrarian Reform Officer of Malasiqui, Pangasinan, for the compulsory coverage of the land in question under the OLT program of the government under Pres. Decree No. 27 and Rep. Act. 6657 otherwise known as the Comprehensive Agrarian Reform Law of 1988;

13. That because the land in question is not coverable under the OLT provisions of P.D. No. 27 and R.A. No. 6657 as the sellers from whom the [respondents] acquired the lands in question did not have five (5) hectares each and the latter likewise did not have five (5) hectares each, the Municipal Agrarian Reform Officer of Malasiqui, Pangasinan did not place the lands in question under the coverage of the OLT program under P.D. No. 27 nor under R.A. No. 6657;

x x x x x x x x x

16. COLLECTION OF UNPAID RENTALS. That since the year 1992, the defendants have deliberately refused and still refuse to pay the lease rentals of their respective tillage on the riceland portions of the land in question;

x x x x x x x x x

29. That the defendants, in their illegal desire to convert the untenanted portions of the land in question as parts of their tillage, have unlawfully started plowing the untenanted surrounding areas and the areas in between the rows of mango fruit bearing trees in the mango orchard portion of the land in question.[25]

In sum, the material allegations in respondents' Complaint are: (1) that several of the defendants are the agricultural tenants/ lessees of respondents' rice lands; (2) that the defendants entered into a Compromise Agreement with respondents in which the former agreed to give up portions of the subject properties they were tilling in exchange for home lots also located on the subject properties; (3) that the Compromise Agreement shall not affect defendants' security of tenure; (4) that instigated by a cult leader, defendants refused to comply with the Compromise Agreement and, instead, demanded from the MARO that the subject properties be compulsorily placed under the land transfer program of the Government; (5) that the defendants have also refused to pay rent for the portion of the rice lands they were tilling; and (6) that the defendants have also begun cultivating portions of the subject properties which are untenanted and planted with mango trees. Based on these allegations, respondents sought the following reliefs:

[25] DAR records, pp. 3-7.

WHEREFORE, it is most respectfully prayed that an injunction order be issued against the defendants restraining them from performing farmworks on the non riceland portion of the land in question and restraining them from harvesting mango fruits from the mango trees in the mango orchard portion of the land in question and after due hearing judgment issue:

1. Ejecting the defendants from the land in question;
2. Ordering the defendants jointly and solidarily liable to [herein respondents'] attorneys to be proved hereinafter and pay [respondents] ₱500,000.00 moral damages and ₱500,00.00 Exemplary damages and ₱500,000.00 actual damages.
3. Ordering the defendants to pay the deliberately unpaid rentals of the lands in question since 1992 up to the present.
4. Making permanent the injunction order against the defendants;
5. Granting such other reliefs and remedies just and equitable in favor of the [respondents] under the premises.[26]

The material allegations and reliefs sought in respondents' Complaint essentially established a case involving the rights and obligations of respondents and defendants as landlords and agricultural tenants/lessees, respectively, taking into account their Compromise Agreement; as well as the fixing and collection of lease rentals. The DARAB properly took cognizance of the case as it constituted agrarian disputes, well-within the jurisdiction of the DARAB under Rule II, Section 1, paragraphs (a) and (b) of the 1994 DARAB Rules.

Moreover, even when respondents alleged in their Complaint that the subject properties are not subject to the OLT program under the Tenants Emancipation Decree and the CARL because each of the respondents does not own more than five hectares, said allegation was not fundamental in establishing respondents' causes of action against defendants. In fact, it was defendants who explicitly raised and discussed in their Position Paper before

[26] *Id.* at 2.

the DARAB the issue of whether the subject properties are covered by the Tenants Emancipation Decree and the CARL.[27] As part of their defense, defendants claimed that all of the subject properties, with a total area of 26 hectares,[28] are actually owned by respondent Ernesto S. Bravo alone, and are tenanted and planted with rice, corn, bananas, and root crops. They argued that under the Tenants Emancipation Decree, tenanted rice and corn lands in excess of the seven hectares a landowner is allowed to retain shall be awarded to the tenant-farmers.

It bears to reiterate that jurisdiction over the nature of the action cannot be made to depend upon the defenses set up in the court or upon a motion to dismiss for, otherwise, the question of jurisdiction would depend almost entirely on the defendant. Once jurisdiction is vested, the same is retained up to the end of the litigation.[29] Therefore, the DARAB was only exercising the jurisdiction vested upon it over DARAB Case Nos. 01-689 to 710-WP-'95 when it directly addressed the issue raised by defendants themselves, and adjudged that the subject properties are not subject to the OLT program under the Tenants Emancipation Decree and the CARL since respondents each owned an area well-within the retention limits allowed landowners by said agrarian laws.

Incidentally, the DARAB also took into consideration and only stayed consistent with an earlier finding by the MARO that the subject properties are not within the coverage of the OLT program of the Government. And while it is true that the MARO's ruling may still be appealed to higher DAR officials, petitioners failed to present any proof that such appeal had indeed been taken or that the said ruling had already been reversed.

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[27] *Id.* at 208-210.

[28] The total land area of the subject properties actually measures only 24.5962 hectares.

[29] *Heirs of Rafael Magpily v. De Jesus*, 511 Phil. 14, 21 (2005).

II
THE TENANCY ISSUE

A reading of the decisions of the PARAD, the DARAB, and the Court of Appeals easily belies petitioners' contention that the tenancy issue was not appreciated. Based on the pleadings and evidence submitted by the parties, the PARAD found, and the DARAB and the Court of Appeals affirmed, that (1) merely six hectares of the subject properties are planted with rice, while the rest are planted with mango trees; (2) just the six hectares of rice lands are tenanted; (3) only the defendants Saturnino Idos, Teofilo Tantay, Faustino Bravo, Mariano Bravo, Idelfonso Tantay, Pelagio Tantay and Cristina Toralba, are the agricultural lessees of the rice lands; (4) the other defendants are ARBA members and agricultural lessees/tenants of lands not part of the subject properties; and (5) the recognized agricultural lessees of the rice lands have validly waived their rights to their respective landholdings by voluntarily executing the Compromise Agreement with respondent Ernesto S. Bravo.

As the Court had so often stressed, findings of the DARAB are entitled to great weight, *nay*, finality, considering that the findings of the Boards are unquestionably factual issues that have been discussed and ruled upon by them and affirmed by the Court of Appeals. The Court cannot depart from such findings. Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified, or reversed.[30]

WHEREFORE, in view of all the foregoing, the present petition is *DENIED.* The Decision dated September 24, 2001 of the Court Appeals in CA-G.R. SP No. 63197, affirming *in toto* the Decision dated May 6, 1998 of the DARAB in DARAB Case Nos. 5195 to 5216, which, in turn, affirmed *in toto* PARAD

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[30] *Hilaria Ramos vda. de Brigino v. Ramos*, G.R. No. 130260, February 6, 2006, 481 SCRA 546, 555.

Placido's Decision dated February 23, 1996 in DARAB Case Nos. 01-689 to 710-WP-'95, is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 152423. December 15, 2010]

SPOUSES MARCOS R. ESMAQUEL and VICTORIA SORDEVILLA, *petitioners, vs.* **MARIA COPRADA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; NATURE, EXPLAINED.— In unlawful detainer cases, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, defendant's possession became illegal when the plaintiff demanded that defendant vacate the subject property due to the expiration or termination of the right to possess under their contract, and defendant refused to heed such demand. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties

involving title to the property. Since the issue of ownership was raised in the unlawful detainer case, its resolution boils down to which of the parties' respective evidence deserves more weight.

2. ID.; ID.; ID.; CERTIFICATE OF TITLE, GIVEN MORE EVIDENTIARY WEIGHT THAN BARE CLAIM OF ORAL SALE.— In the present case, respondent failed to present evidence to substantiate her allegation that a portion of the land was sold to her in 1962. In fact, when petitioners sent a letter to the respondent, demanding her to vacate the subject property, the respondent, in reply to the said letter, never mentioned that she purchased the subject land in 1962. If the sale really took place, the respondent should have immediately and categorically claimed that in her letter response. Clearly therefore, respondent's submission that there was an oral sale is a mere afterthought. On the other hand, it is undisputed that the subject property is covered by Transfer Certificate of Title No. T-93542, registered in the name of the petitioners. As against the respondent's unproven claim that she acquired a portion of the property from the petitioners by virtue of an oral sale, the Torrens title of petitioners must prevail. Petitioners' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.

3. ID.; ID.; ID.; COLLATERAL ATTACK ON THE TITLE IN AN EJECTMENT CASE IS NOT ALLOWED.— [R]espondent's argument that petitioners are no longer the owners of a portion of the subject land because of the sale in her favor is a collateral attack on the title of the petitioners, which is not allowed. The validity of petitioners' certificate of title cannot be attacked by respondent in this case for ejectment. Under Section 48 of Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack. It cannot be altered, modified or canceled, except in a direct proceeding for that purpose in accordance with law. The issue of the validity of the title of the petitioners can only be assailed in an action expressly

instituted for that purpose. Whether or not the respondent has the right to claim ownership over the property is beyond the power of the trial court to determine in an action for unlawful detainer.

4. CIVIL LAW; LACHES; EXPLAINED.— Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.

5. ID.; ID.; DOCTRINE, NOT APPLICABLE.— [T]he CA's ruling that petitioners' long inaction to assert their rights over the subject land bars them from recovering the same is without basis. Also, the doctrine invoked by the appellate court that a registered owner may loose his right to recover its possession by reason of laches is not applicable here. x x x Respondent first acquired possession of the subject lot by mere tolerance. From 1945 until the filing of the complaint for ejectment in 1997, the nature of that possession has never changed. Petitioners allowed the respondent to possess the property with the knowledge that the respondent will vacate the same upon demand. Hence, until such demand to vacate was communicated by the petitioners to the respondent, petitioners are not required to do any act to recover the subject land, precisely because they knew of the nature of the respondent's possession, *i.e.*, possession by mere tolerance. Thus, it cannot be said that petitioners are guilty of failure or neglect to assert a right within a reasonable time. Further, after the petitioners gave a demand letter to the respondent giving the latter until November 30, 1996 to vacate the subject premises, which respondent failed to heed, they immediately filed a complaint before the *barangay* authorities and, thereafter, lodged an ejectment case before the MCTC on February 24, 1997. In

sum, we find that petitioners are not guilty of laches as would bar their claim to the property in question. x x x Moreover, as the registered owners, petitioners' right to eject any person illegally occupying their property is not barred by laches.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; A PERSON WHOSE OCCUPATION OF THE PROPERTY WAS BY MERE TOLERANCE HAS NO RIGHT TO RETAIN ITS POSSESSION UNDER THE CONCEPT OF "BUILDER IN GOOD FAITH".— Since respondent's occupation of the subject property was by mere tolerance, she has no right to retain its possession under Article 448 of the Civil Code. She is aware that her tolerated possession may be terminated any time and she cannot be considered as builder in good faith. It is well settled that both Article 448 and Article 546 of the New Civil Code, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. Verily, persons whose occupation of a realty is by sheer tolerance of its owners are not possessors in good faith. At the time respondent built the improvements on the premises in 1945, she knew that her possession was by mere permission and tolerance of the petitioners; hence, she cannot be said to be a person who builds on land with the belief that she is the owner thereof.

APPEARANCES OF COUNSEL

Florentino & Esmaquel Law Office for petitioners.
Marcelo & Associates Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1]

[1] Penned by Associate Justice Alicia L. Santos, with Associate Justice Ramon A. Barcelona and Associate Justice Rodrigo V. Cosico, concurring; *rollo,* pp. 43-49.

and the Resolution[2] of the Court of Appeals, dated April 6, 2001 and February 15, 2002, respectively, (CA) in CA-G.R. SP No. 49994.

The antecedents are as follows:

On February 24, 1997, petitioners, spouses Marcos Esmaquel and Victoria Sordevilla (Victoria) filed an ejectment case[3] against respondent Maria V. Coprada before the 2nd Municipal Circuit Trial Court (MCTC) of Magdalena, Liliw and Majayjay Laguna. Petitioners claimed that they are the registered owners of a parcel of land situated in M.H. Del Pilar St., *Barangay* San Miguel, Majayjay, Laguna, containing an area of Two Hundred Fifty-Three (253) square meters and covered by Transfer Certificate of Title (TCT) No. T-93542. In 1945, respondent was able to persuade the petitioners to allow her and her family to use and occupy the land for their residence, under the condition that they will vacate the premises should petitioners need to use the same. Respondent and her family were allowed to construct their residential house. Since then, the petitioners never made an attempt to drive them away out of pity, knowing that respondent and her eight children have no other place to live in. Also, respondent and her family have been occupying the subject premises free of rent, including payment of realty taxes. Respondent's present circumstances have completely improved, *i.e.*, some of her children are already working; they are regularly sending her financial assistance; and she has acquired her own residential house at *Barangay* Panglan, Majayjay, Laguna. Because of this, petitioners verbally demanded that respondent vacate the subject land, but the latter refused. Thus, petitioners were forced to send a demand letter dated August 22, 1996, giving respondent until November 30, 1996 to vacate the subject premises. However, respondent still ignored said demand, which prompted petitioners to bring a complaint before the *barangay* authorities. No settlement was reached, hence, a certification to file action in Court was issued. Petitioners were, therefore,

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[2] *Rollo,* pp. 51-52.

[3] Records, pp. 7-11.

constrained to lodge an ejectment case against the respondent before the MCTC.

Respondent admitted that petitioners are the registered owners of the subject land. However, she averred that in 1945, it was Emiliana Coprada (petitioner Victoria Sordevilla's mother and original owner of the subject land) and not the petitioners who gave permission to her late husband Brigido Coprada to use the subject lot. Emiliana allowed her nephew Brigido and his family to occupy the lot as their permanent abode, because of her love and affection for her nephew, and also, due to the fact that the said lot is virtually a wasteland. Thereafter, Brigido and his family cleared the area and built therein a nipa hut to dwell in. When Emiliana died, the ownership of the property was inherited by her only child, petitioner Victoria Sordevilla. Respondent alleged that sometime in the early 1960's, petitioner Victoria offered the said lot for sale for ₱2,000.00 to respondent, who readily agreed. The purchase price was paid in installments and was fully paid in 1962. Due to their close relationship, the agreement was never reduced to writing. Respondent further maintained that since the execution of the oral sale of the subject lot, she has been the one paying the realty taxes due on the property. After the sale, respondent built on the subject land a semi-concrete structure. Respondent stated that petitioners' claim is barred by laches. Even granting, without admitting, that respondent's claim of ownership over the property is improper because petitioners are the registered owners thereof, respondent argued that she is a builder in good faith, because she was able to build the structure on the subject lot with the prior permission of the owner.

In its Decision[4] dated September 11, 1997, the MCTC rendered judgment dismissing the complaint. It held that laches had already set in which prevented petitioners from questioning the validity of the purported sale between Victoria and Maria.

On appeal, the Regional Trial Court (RTC) reversed the MCTC's judgment. The RTC ruled that respondent's occupation

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[4] *Rollo,* pp. 97-102.

of the subject property was by virtue of petitioners' tolerance and permission. Hence, respondent is bound by an implied promise that she will vacate the property upon demand. Thus, her possession over the subject property became unlawful after the petitioners demanded her to vacate the property. The RTC found that respondent failed to prove the alleged oral sale and that petitioners have adequately proven that they are entitled to the possession of the subject land as registered owners thereof. The RTC ordered the respondent and all other persons claiming rights under her to vacate and surrender the possession of the subject land to the petitioners and to remove any and all improvements she introduced on the parcel of land.[5]

Respondent filed a Motion for Reconsideration, which was denied by the RTC in an Order[6] dated November 24, 1998. Obviously dissatisfied by the Decision, respondent filed with the CA a petition for review with prayer for temporary restraining order and preliminary injunction.[7]

In its Decision dated April 6, 2001, the CA granted respondent's petition, reversed the Decision of the RTC and affirmed *in toto* the Decision of the MCTC. Petitioners filed a Motion for Reconsideration, which was denied by the CA in a Resolution[8] dated February 15, 2002. Hence, the instant petition raising the following grounds:

I

THE RIGHT OF THE REGISTERED OWNERS TO RECOVER POSSESSION IS NEVER BARRED BY LACHES AND/OR THE PERSON WHO HAS A TORRENS TITLE OVER A PARCEL OF LAND IS ENTITLED TO THE POSSESSION THEREOF.

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[5] *Id.* at. 137.

[6] Records, pp. 226-227.

[7] CA *rollo*, pp. 7-22.

[8] *Rollo*, pp. 51-52.

II

THE OWNERSHIP AND RIGHT OF PETITIONERS TO RECOVER POSSESSION OF THE SUBJECT PROPERTY CANNOT BE DEFEATED BY UNPROVEN ORAL SALE.

III

LACHES HAD SET IN AGAINST [RESPONDENT].

IV

THE CERTIFICATE OF TITLE IS NOT SUBJECT TO COLLATERAL ATTACK.[9]

The petition is meritorious.

The pertinent point of inquiry in this case is whether or not petitioners have a valid ground to evict respondent from the subject property.

An action for forcible entry or unlawful detainer is governed by Section 1, Rule 70 of the Rules of Court, which provides:

> SECTION 1. *Who may institute proceedings, and when.* - Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

In unlawful detainer cases, the possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. However, defendant's possession became illegal when

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[9] *Id.* at 21.

the plaintiff demanded that defendant vacate the subject property due to the expiration or termination of the right to possess under their contract, and defendant refused to heed such demand.[10]

The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not bar or prejudice an action between the same parties involving title to the property.[11] Since the issue of ownership was raised in the unlawful detainer case, its resolution boils down to which of the parties' respective evidence deserves more weight.

In the case at bar, petitioners' cause of action for unlawful detainer is based on their ownership of the land covered by TCT No. T-93542 and on their claim that they merely tolerated respondent's stay thereat. Respondent's possession, as well as those persons claiming right under her, became unlawful upon her refusal to vacate the premises. Petitioners contend that since they are the registered owners of the subject land, they are entitled to the possession thereof and their right to recover possession over it is never barred by laches. They maintain that respondent's claim of ownership is based on an unproven oral sale, which does not exist. Further, respondent cannot rely on the Tax Declarations as she was paying taxes in the petitioners' name, as the declared owners of the property. Moreover, she started paying the taxes only in 1984 despite her claim that the property was sold to her in 1962. Even assuming that the sale took place in 1962, respondent is guilty of laches as she failed to take any positive action for the delivery and conveyance to her of the portion of the property she is occupying. Finally,

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[10] *Estate of Soledad Manantan v. Somera,* G.R. No. 145867, April 7, 2009, 584 SCRA 81, 89.

[11] *Barias v. Heirs of Bartolome Boneo,* G.R. No. 166941, December 14, 2009, 608 SCRA 169, 174.

respondent cannot collaterally attack the title of the petitioners to the subject land.

On her part, respondent, although admitting that the property is registered in petitioners' name, claimed that the 100-square-meters portion of the property, where her house was erected, was already sold to her by petitioner Victoria. Thus, by virtue of the sale, she and her family have the right to possess the said property. The non-presentation of receipt and deed of sale, non-delivery of the owner's certificate of title, and her payment of the real property taxes in the name of the petitioners were due to the close relationship between the parties and the existing practice of *palabra de honor* in their day to day transactions. Respondent further alleged that she is not guilty of laches; rather, it is the registered owners' right to recover possession of their property which is barred by laches.

In the present case, respondent failed to present evidence to substantiate her allegation that a portion of the land was sold to her in 1962. In fact, when petitioners sent a letter[12] to the respondent, demanding her to vacate the subject property, the respondent, in reply[13] to the said letter, never mentioned that she purchased the subject land in 1962. If the sale really took place, the respondent should have immediately and categorically claimed that in her letter response. Clearly therefore, respondent's submission that there was an oral sale is a mere afterthought.

On the other hand, it is undisputed that the subject property is covered by Transfer Certificate of Title No. T-93542, registered in the name of the petitioners. As against the respondent's unproven claim that she acquired a portion of the property from the petitioners by virtue of an oral sale, the Torrens title of petitioners must prevail. Petitioners' title over the subject property is evidence of their ownership thereof. It is a fundamental principle in land registration that the certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.

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[12] Records, p. 14.

[13] *Id.* at 41.

Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.[14]

Further, respondent's argument that petitioners are no longer the owners of a portion of the subject land because of the sale in her favor is a collateral attack on the title of the petitioners, which is not allowed. The validity of petitioners' certificate of title cannot be attacked by respondent in this case for ejectment. Under Section 48 of Presidential Decree No. 1529, a certificate of title shall not be subject to collateral attack. It cannot be altered, modified or canceled, except in a direct proceeding for that purpose in accordance with law. The issue of the validity of the title of the petitioners can only be assailed in an action expressly instituted for that purpose. Whether or not the respondent has the right to claim ownership over the property is beyond the power of the trial court to determine in an action for unlawful detainer.[15]

In *Rodriguez v. Rodriguez*,[16] citing the case of *Co v. Militar*,[17] the Court held that:

> [T]he Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> It is settled that a Torrens Certificate of title is indefeasible and binding upon the whole world unless and until it has been nullified by a court of competent jurisdiction. Under existing statutory and decisional law, the power to pass upon the validity of such certificate of title at the first instance properly belongs to the Regional Trial Courts in a direct proceeding for cancellation of title.
>
> As the registered owner, petitioner had a right to the possession of the property, which is one of the attributes of ownership. x x x

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[14] *Caña v. Evangelical Free Church of the Philippines,* G.R. No. 157573, February 11, 2008, 544 SCRA 225, 238-239.

[15] *Soriente v. Estate of the Late Arsenio E. Concepcion,* G.R. No. 160239, November 25, 2009, 605 SCRA 315, 330.

[16] G.R. No. 175720, September 11, 2007, 532 SCRA 642, 652-653.

[17] G.R. No. 149912, January 29, 2004, 421 SCRA 455.

Anent the issue on laches, the CA's ruling that petitioners' long inaction to assert their rights over the subject land bars them from recovering the same is without basis. Also, the doctrine invoked by the appellate court that a registered owner may loose his right to recover its possession by reason of laches is not applicable here.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting the presumption that the party entitled to assert it either has abandoned or declined to assert it.[18] There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances, with the question of laches addressed to the sound discretion of the court. Because laches is an equitable doctrine, its application is controlled by equitable considerations and should not be used to defeat justice or to perpetuate fraud or injustice.[19]

Respondent first acquired possession of the subject lot by mere tolerance. From 1945 until the filing of the complaint for ejectment in 1997, the nature of that possession has never changed. Petitioners allowed the respondent to possess the property with the knowledge that the respondent will vacate the same upon demand. Hence, until such demand to vacate was communicated by the petitioners to the respondent, petitioners are not required to do any act to recover the subject land, precisely because they knew of the nature of the respondent's possession, *i.e.*, possession by mere tolerance. Thus, it cannot be said that petitioners are guilty of failure or neglect to assert a right within a reasonable time. Further, after the petitioners gave a demand letter to the respondent giving the latter until November 30, 1996 to vacate the subject premises, which respondent failed to heed, they immediately filed a complaint before the *barangay* authorities and, thereafter, lodged an ejectment case before the

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[18] *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486, 511.

[19] *Id.*

MCTC on February 24, 1997. In sum, We find that petitioners are not guilty of laches as would bar their claim to the property in question.

In contrast, respondent, who is claiming that a portion of the property was sold to her in 1962, has herself failed within a long period of time to have that portion transferred in her name. Respondent had to wait for almost 35 years since 1962, and were it not for the filing of the ejectment suit in 1997, she would not have bothered to assert her rights under the alleged sale. Respondent's failure to assert that right only goes to prove that no sale ever transpired between the parties.

Moreover, as the registered owners, petitioners' right to eject any person illegally occupying their property is not barred by laches. In *Gaudencio Labrador, represented by Lulu Labrador Uson, as Attorney-in-Fact v. Spouses Ildefonso Perlas and Pacencia Perlas and Spouse Rogelio Pobre and Melinda Fogata Pobre*,[20] the Court held that:

> **x x x As a registered owner, petitioner has a right to eject any person illegally occupying his property. This right is imprescriptible and can never be barred by laches.** In *Bishop v. Court of Appeals,* we held, thus:
>
> > As registered owners of the lots in question, the private respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioners' occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

Since respondent's occupation of the subject lot is by mere tolerance or permission of the petitioners, without any contract between them, respondent is bound by an implied promise that she will vacate the same upon demand, failing which a summary action for ejectment is the proper remedy against her.[21]

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[20] G.R. No. 173900, August 9, 2010. (Emphasis supplied.)

[21] *Arambulo v. Gungab,* 508 Phil. 612, 621-622 (2005).

In respondent's Answer filed before the MCTC, she claimed that since she was able to build a structure on the subject lot with the prior permission from the owner, she is a builder in good faith and thus entitled to be reimbursed the necessary and useful expenses under Articles 546 and 548 of the Civil Code of the Philippines. Without such reimbursement, she has the right of retention over the property and she cannot just be ejected from the premises.

Respondent's argument does not hold water. Since respondent's occupation of the subject property was by mere tolerance, she has no right to retain its possession under Article 448 of the Civil Code. She is aware that her tolerated possession may be terminated any time and she cannot be considered as builder in good faith.[22] It is well settled that both Article 448[23] and Article 546[24] of the New Civil Code, which allow full reimbursement of useful improvements and retention of the premises until reimbursement is made, apply only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. Verily, persons whose occupation of a realty is by sheer tolerance of its owners are not possessors in good faith.[25] At

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[22] *Id.* at 622, citing *Del Rosario v. Manuel*, 420 SCRA 128, 131 (2004).

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

[24] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[25] *Pada-Kilario v. Court of Appeals*, 379 Phil. 515, 529-530 (2000).

the time respondent built the improvements on the premises in 1945, she knew that her possession was by mere permission and tolerance of the petitioners; hence, she cannot be said to be a person who builds on land with the belief that she is the owner thereof.

Respondent's reliance on her payment of realty taxes on the property is unavailing. She started paying taxes only in 1984 despite her claim that she bought the property in 1962. Further, aside from the rule that tax declarations and corresponding tax receipts cannot be used to prove title to or ownership of a real property inasmuch as they are not conclusive evidence of the same,[26] the RTC found that although the payment for said taxes were received from respondent, the declared owner was petitioner Victoria.

It must be stressed, however, that the court's adjudication of ownership in an ejectment case is merely provisional, and affirmance of the RTC's decision would not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.[27]

WHEREFORE, the petition is *GRANTED*. The Decision and the Resolution of the Court of Appeals, dated April 6, 2001 and February 15, 2002, respectively, in CA-G.R. SP No. 49994, affirming the Decision of the 2nd Municipal Circuit Trial Court in Civil Case No. 1875, are *REVERSED* and *SET ASIDE*. The Decision of the Regional Trial Court of Santa Cruz, Laguna, Branch 26, in Civil Case No. SC-3580, is *REINSTATED*.

SO ORDERED.

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

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[26] *Castillo v. Escutin,* G.R. No. 171056, March 13, 2009, 581 SCRA 258, 285.

[27] *Soriente v. Estate of the Late Arsenio E. Concepcion, supra* note 15.

FIRST DIVISION

[G.R. No. 157852. December 15, 2010]

HEIRS OF DOMINGO VALIENTES, *petitioners, vs.* **HON. REINERIO (ABRAHAM) B. RAMAS, Acting Presiding Judge, RTC, Branch 29, 9th Judicial Region, San Miguel, Zamboanga del Sur and VILMA V. MINOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; DISMISSAL OF ACTION; THE COURT HAS AUTHORITY TO DISMISS CASES *MOTU PROPRIO* ON THE GROUND OF PRESCRIPTION AND LACHES.— The second sentence of [Section 1, Rule 9 of the Rules of Court] does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows courts to dismiss cases *motu proprio* on any of the enumerated grounds – (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription – provided that the ground for dismissal is apparent from the pleadings or the evidence on record. We therefore rule that private respondent Minor cannot be deemed to have waived the defense of prescription, and that the Court of Appeals may consider the same *motu proprio*. Furthermore, as regards the pronouncement by the Court of Appeals that Civil Case No. 98-021 is likewise heavily infirmed with laches, we rule that the Court of Appeals is not in error when it considered the same *motu proprio*. While not included in the above enumeration under Section 1, Rule 9 of the Rules of Court, we have ruled in previous cases that laches need not be specifically pleaded and may be considered by the court on its own initiative in determining the rights of the parties.

2. CIVIL LAW; PRESCRIPTION; AN ACTION ENFORCING AN IMPLIED TRUST PRESCRIBES IN TEN YEARS FROM ISSUANCE OF CERTIFICATE OF TITLE IF PLAINTIFF IS NOT IN POSSESSION OF THE PROPERTY; APPLICATION.— The cause of action of petitioners in Civil Case No. 98-021, wherein they claim that private respondent Minor's predecessor-in-interest acquired the subject property

by forgery, can indeed be considered as that of enforcing an implied trust. In particular, Article 1456 of the Civil Code provides: Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. However, the Court made a clear distinction in *Olviga*: **when the plaintiff in such action is not in possession of the subject property**, the action prescribes in ten years from the date of registration of the deed or the date of the issuance of the certificate of title over the property. **When the plaintiff is in possession of the subject property**, the action, being in effect that of quieting of title to the property, does not prescribe. In the case at bar, petitioners (who are the plaintiffs in Civil Case No. 98-021) are not in possession of the subject property. Civil Case No. 98-021, if it were to be considered as that of enforcing an implied trust, should have therefore been filed within ten years from the issuance of TCT No. T-5,427 on December 22, 1969. Civil Case No. 98-021 was, however, filed on August 20, 1998, which was way beyond the prescriptive period.

3. ID.; ID.; PRESCRIPTION UNDER PROPERTY REGISTRATION DECREE (P.D. No. 1529) PREVAILS OVER THE GENERAL RULES ON PRESCRIPTION UNDER THE CIVIL CODE.— Articles 1141, 1134 and 1137 of the Civil Code, however, are general rules on prescription which should give way to the special statute on registered lands, Presidential Decree No. 1529, otherwise known as the Property Registration Decree. Under the Torrens System as enshrined in P.D. No. 1529, the decree of registration and the certificate of title issued become incontrovertible upon the expiration of one year from the date of entry of the decree of registration, without prejudice to an action for damages against the applicant or any person responsible for the fraud.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF.— [I]t should be pointed out that in choosing to file a Petition for *Certiorari* before this Court, petitioners are required to prove nothing less than grave abuse of discretion on the part of the Court of Appeals. We have consistently held that "*certiorari* will not be issued to cure errors in proceedings or

correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of *certiorari.*" In the case at bar, petitioners proved neither grave abuse of discretion, nor even a simple error of judgment on the part of the Court of Appeals. The present petition should, therefore, fail.

APPEARANCES OF COUNSEL

Emmanuel C. Opay for petitioners.
Quintin M. Landingin for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for *Certiorari* assailing the Decision[1] of the Court of Appeals dated August 16, 2002 and the subsequent Resolution denying reconsideration dated January 16, 2003 in CA-G.R. SP No. 68501.

Petitioners claim that they are the heirs of Domingo Valientes who, before his death, was the owner of a parcel of land in Gabay, Margosatubig, Zamboanga del Sur then covered by *Original Certificate of Title (OCT) No. P-18,208* of the Register of Deeds of Zamboanga del Sur. In **1939**, Domingo Valientes mortgaged the subject property to secure his loan to the spouses Leon Belen and Brigida Sescon (spouses Belen). In the **1950s**, the Valientes family purportedly attempted, but failed, to retrieve the subject property from the spouses Belen. Through an allegedly forged document captioned VENTA DEFINITIVA purporting to be a deed of sale of the subject property between Domingo Valientes and the spouses Belen, the latter obtained *Transfer Certificate of Title (TCT) No. T-5,427* in their name. On **February**

[1] *Rollo,* pp. 111-115; penned by Associate Justice Eliezer R. de los Santos with then Acting Presiding Justice Cancio C. Garcia and Associate Justice Marina L. Buzon, concurring.

28, 1970, Maria Valientes Bucoy and Vicente Valientes, legitimate children of the late Domingo Valientes, had their Affidavit of Adverse Claim[2] duly entered in the Memorandum of Encumbrances at the back of TCT No. T-5,427. Upon the death of the spouses Belen, their surviving heirs Brigida Sescon Belen and Maria Lina Belen executed an extra-judicial settlement with partition and sale in favor of private respondent Vilma Valencia-Minor, the present possessor of the subject property.

On **June 20, 1979**, herein private respondent Minor filed with the then Court of First Instance of Pagadian City a "PETITION FOR CANCELLATION OF MEMORANDUM OF ENCUMBRANCE APPEARING IN TCT NO. T-5,427 OF THE REGISTRY OF DEEDS OF ZAMBOANGA DEL SUR," which was docketed as SPL Case No. 1861.[3] On **July 31, 2000**, the Regional Trial Court (RTC) granted Minor's prayer to allow the Register of Deeds to have the title to the subject property transferred to her name.

In the meantime, on **August 20, 1998**, petitioners filed a Complaint before the RTC of San Miguel, Zamboanga del Sur for the "CANCELLATION OF TRANSFER CERTIFICATE OF TITLE NO. T-5,427, RECONVEYANCE, WITH ACCOUNTING, RECEIVERSHIP AND APPLICATION FOR A WRIT OF PRELIMINARY PROHIBITORY INJUNCTION PLUS DAMAGES." The Complaint was docketed as **Civil Case No. 98-021**.[4]

Private respondent Minor filed an Omnibus Motion to Dismiss Civil Case No. 98-021 on the grounds of forum shopping and *litis pendentia*. On **August 3, 2000**, the RTC issued an order in open court ruling that forum shopping does not apply. On **September 22, 2000**, private respondent Minor filed a Motion for Reconsideration[5] of the August 3, 2000 Order. On **May 7,**

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[2] CA *rollo*, pp. 40-41.

[3] *Id.* at 38-39.

[4] *Id.* at 30-34.

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

2001, the RTC issued an Order granting the Motion for Reconsideration by dismissing Civil Case No. 98-021 on the ground of forum shopping.[6] Petitioners filed a Motion for Reconsideration[7] on **May 30, 2001**, but the same was denied by the RTC in its Order[8] dated **September 18, 2001**.

On **November 12, 2001**, petitioners filed with the Court of Appeals a Petition for *Certiorari*[9] assailing the RTC Orders dated May 7, 2001 and September 18, 2001. Petitioners raised the sole issue of whether the trial court was correct in finding that Civil Case No. 98-021 constitutes forum shopping, *litis pendentia* or *res judicata* with SPL Case No. 186. The Petition was docketed as CA-G.R. SP No. 68501.

The Court of Appeals rendered its assailed Decision on said petition on **August 16, 2002**. Despite agreeing with petitioners that there was no forum shopping, *litis pendentia* or *res judicata* in the filing of Civil Case No. 98-021, the Court of Appeals, asserting that it has the discretion to review matters not otherwise assigned as errors on appeal if it finds that their consideration is necessary at arriving at a complete and just resolution of the case,[10] held that Civil Case No. 98-021 cannot prosper on the grounds of prescription and laches.

Hence, this Petition for *Certiorari*, wherein petitioners raised the following grounds for assailing the Court of Appeals' Decision:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT APPLIED PRESCRIPTION IN THE PRESENT PETITION, AFTER ALL, WHEN SHE DID NOT APPEAL THE DECISION OF THE HONORABLE REGIONAL TRIAL COURT DISMISSING THE COMPLAINT ON THE SOLE GROUND OF *RES*

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[6] *Id.* at 59-61.

[7] *Id.* at 62-69.

[8] *Id.* at 78-80.

[9] *Id.* at 5-22.

[10] *Id.* at 114.

JUDICATA, PRIVATE RESPONDENT IS DEEMED TO HAVE ALREADY WAIVED THE DEFENSE OF PRESCRIPTION.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN DISMISSING THE COMPLAINT ON THE GROUND OF PRESCRIPTION, THE PRESENT ACTION, ALTHOUGH CAPTIONED FOR CANCELLATION OF TRANSFER CERTIFICATE OF TITLE NO. T-5,427, RECONVEYANCE AND *ETC.*, SUBSTANTIALLY, IS FOR QUIETING OF TITLE, HENCE, PRESCRIPTION WILL NOT LIE.

III

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION IN APPLYING THE CASES OF *TENIO-OBSEQUIO VERSUS COURT OF APPEALS*, 330 SCRA 88, AND *DECLARO VS. COURT OF APPEALS*, 346 SCRA 57 WHEN FACTS OBTAINING IN SAID CASES ARE NOT ATTENDANT IN THE PRESENT CASE FOR CANCELLATION OF TRANSFER CERTIFICATE OF TITLE NO. T-5,427 ON THE GROUND OF FORGERY OR BY REASON OF FORGED DOCUMENT CAPTIONED VENTA DEFINITIVA.

IV

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT [RENEGED] FROM ITS SOLEMN DUTY TO RENDER SUBSTANTIAL JUSTICE DUE THE PARTIES RATHER THAN THE SANCTIFICATION OF TECHNICAL RULES OR EQUITY ON PRESCRIPTION.[11]

Authority of the Court of Appeals to Dismiss the Complaint on the Grounds of Prescription and Laches Despite Respondent's Failure to Appeal the Dismissal Order

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[11] *Rollo*, pp. 20-21.

Petitioners recount that private respondent Minor interposed prescription as one of her grounds for the dismissal of the case in her Answer with Affirmative Defenses. When private respondent Minor's Motion to Dismiss was denied by the RTC in open court, she filed a Motion for Reconsideration dwelling on forum shopping, *litis pendentia* and/or *res judicata*.[12] The trial court proceeded to dismiss the case on the ground of forum shopping.[13] Petitioners now claim before us that private respondent Minor's failure to appeal the RTC's dismissal of the complaint on the sole ground of forum shopping constituted a waiver of the defense of prescription. Petitioners further argue that the consideration by the Court of Appeals of grounds not assigned as errors in the Appellee's Brief runs contrary to the precepts of fair play, good taste and estoppel.[14]

We rule in favor of private respondent Minor on this issue.

Firstly, it stretches the bounds of credulity for petitioners to argue that a defendant in a case should appeal the dismissal order she prayed for just because other grounds for dismissal were not considered by the court.

Secondly, and more importantly, Section 1, Rule 9 of the Rules of Court provides:

> 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 claim.

The second sentence of this provision does not only supply exceptions to the rule that defenses not pleaded either in a motion to dismiss or in the answer are deemed waived, it also allows

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[12] CA *rollo*, pp. 52-53.

[13] *Id.* at 59-61.

[14] *Rollo*, p. 317, Petitioner's memorandum.

courts to dismiss cases *motu proprio* on any of the enumerated grounds – (1) lack of jurisdiction over the subject matter; (2) *litis pendentia*; (3) *res judicata*; and (4) prescription – provided that the ground for dismissal is apparent from the pleadings or the evidence on record.

We therefore rule that private respondent Minor cannot be deemed to have waived the defense of prescription, and that the Court of Appeals may consider the same *motu proprio*. Furthermore, as regards the pronouncement by the Court of Appeals that Civil Case No. 98-021 is likewise heavily infirmed with laches, we rule that the Court of Appeals is not in error when it considered the same *motu proprio*. While not included in the above enumeration under Section 1, Rule 9 of the Rules of Court, we have ruled in previous cases that laches need not be specifically pleaded and may be considered by the court on its own initiative in determining the rights of the parties.[15]

Having thus determined the authority of the Court of Appeals to dismiss the Complaint on the grounds of prescription and laches despite private respondent Minor's failure to appeal the dismissal Order, We shall now proceed to determine whether or not prescription or laches has already set in to bar the filing of Civil Case No. 98-021.

Imprescriptibility of Quieting of Title

After the Court of Appeals ruled in favor of petitioners on the issue of whether Civil Case No. 98-021 is already barred by forum shopping, *res judicata* or *litis pendentia*, the appellate court, nevertheless, affirmed the dismissal order, but on the grounds of prescription and laches:

> Be that as it may, this Court is imbued with sufficient discretion to review matters, not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case (*Heirs of Ramon Durano, Sr. vs. Uy*, 344 SCRA 238).

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[15] *Logronio v. Taleseo*, 370 Phil. 907, 918 (1999); *Rumarate v. Hernandez*, G.R. No. 168222, April 18, 2006, 487 SCRA 317, 335-336.

The case cannot prosper because an action for reconveyance is a legal remedy granted to a landowner whose property has been wrongfully or erroneously registered in another's name, which must be filed within ten years from the issuance of the title since such issuance operates as a constructive notice (*Declaro vs. Court of Appeals*, 346 SCRA 57). Where a party has neglected to assert his rights over a property in question for an unreasonably long period, he is estopped from questioning the validity of another person's title to the property (Ibid.) Long inaction and passivity in asserting one's rights over a disputed property precludes him from recovering said property (*Po Lam vs. Court vs. Court of Appeals*, 347 SCRA 86).

In conclusion, petitioners' cause of action has already prescribed and now heavily infirmed with laches.[16]

Petitioners claim that although the complaint was captioned for "**CANCELLATION OF TRANSFER CERTIFICATE OF TITLE NO. T-5,427, RECONVEYANCE, WITH ACCOUNTING, RECEIVERSHIP, AND APPLICATION FOR A WRIT OF PRELIMINARY PROHIBITORY INJUNCTION PLUS DAMAGES,**" the complaint is substantially in the nature of an action to quiet title which allegedly does not prescribe. Petitioners also allege that the cases cited by the Court of Appeals in ruling that prescription has set in, particularly that of *Declaro v. Court of Appeals*,[17] which in turn cites *Tenio-Obsequio v. Court of Appeals*,[18] are inapplicable to the case at bar since neither fraud nor forgery was attendant in said cases.

As regards petitioners' claim that the complaint in Civil Case No. 98-021 is really one of quieting of title which does not prescribe, it appears that petitioners are referring to the doctrine laid down in the often-cited case of *Heirs of Jose Olviga v. Court of Appeals*,[19] wherein we held:

With regard to the issue of prescription, this Court has ruled a number of times before that an action for reconveyance of a parcel

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[16] *Rollo*, p. 114.

[17] 399 Phil. 616 (2000).

[18] G.R. No. 107967, March 1, 1994, 230 SCRA 550.

[19] G.R. No. 104813, October 21, 1993, 227 SCRA 330.

of land based on implied or constructive trust prescribes in ten years, the point of reference being the date of registration of the deed or the date of the issuance of the certificate of title over the property (*Vda. de Portugal vs. IAC*, 159 SCRA 178). But this rule applies only *when the plaintiff is not in possession of the property*, since if a person claiming to be the owner thereof is in actual possession of the property, *the right to seek reconveyance, which in effect seeks to quiet title to the property*, does not prescribe.[20]

The cause of action of petitioners in Civil Case No. 98-021, wherein they claim that private respondent Minor's predecessor-in-interest acquired the subject property by forgery, can indeed be considered as that of enforcing an implied trust. In particular, Article 1456 of the Civil Code provides:

> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

However, the Court made a clear distinction in *Olviga*: **when the plaintiff in such action is not in possession of the subject property**, the action prescribes in ten years from the date of registration of the deed or the date of the issuance of the certificate of title over the property. **When the plaintiff is in possession of the subject property**, the action, being in effect that of quieting of title to the property, does not prescribe. In the case at bar, petitioners (who are the plaintiffs in Civil Case No. 98-021) are not in possession of the subject property. Civil Case No. 98-021, if it were to be considered as that of enforcing an implied trust, should have therefore been filed within ten years from the issuance of TCT No. T-5,427 on December 22, 1969. Civil Case No. 98-021 was, however, filed on August 20, 1998, which was way beyond the prescriptive period.

As an alternative argument, petitioners claim that the prescriptive period for filing their complaint is thirty years, pursuant to Article 1141 of the Civil Code, in connection with Articles 1134 and 1137 thereof, which respectively provide:

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

Art. 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

Art. 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

Art. 1137. Ownership and other real rights over immovables also prescribe through uninterrupted adverse possession thereof for thirty years, without need of title or of good faith.

The theory of petitioners is that the Motion to Dismiss hypothetically admits the allegations of the complaint, including the allegations thereon that the spouses Belen were successful in fraudulently acquiring TCT No. T-5,427 in their favor by means of the forged VENTA DEFINITIVA. Thus, for purposes of ruling on a Motion to Dismiss, it is hypothetically admitted that private respondent Minor's predecessors-in-interest are in bad faith. The applicable prescriptive period, therefore, is that provided in Article 1141 in relation to Article 1137 of the Civil Code, which is thirty years. Civil Case No. 98-021 was filed on August 20, 1998, 28 years and eight months from the issuance of TCT No. T-5,427 on December 22, 1969.

Articles 1141, 1134 and 1137 of the Civil Code, however, are general rules on prescription which should give way to the special statute on registered lands, Presidential Decree No. 1529, otherwise known as the Property Registration Decree. Under the Torrens System as enshrined in P.D. No. 1529, the decree of registration and the certificate of title issued become incontrovertible upon the expiration of one year from the date of entry of the decree of registration, without prejudice to an action for damages against the applicant or any person responsible for the fraud.[21]

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[21] Presidential Decree No. 1529, Sections 31 and 32 provide:

Section 31. *Decree of registration.* - x x x

The decree of registration shall bind the land and quiet title thereto, subject only to such exceptions or liens as may be provided by law. It shall be conclusive upon and against all persons, including the National Government and all branches

As previously discussed, however, we have allowed actions for reconveyance based on implied trusts even beyond such one-year period, for such actions respect the decree of registration as incontrovertible. We explained this in *Walstrom v. Mapa, Jr.*[22]:

> We have ruled before in *Amerol vs. Bagumbaran* that notwithstanding the irrevocability of the Torrens title already issued in the name of another person, he can still be compelled under the law to reconvey the subject property to the rightful owner. The property registered is deemed to be held in trust for the real owner by the person in whose name it is registered. After all, the Torrens system was not designed to shield and protect one who had committed fraud or misrepresentation and thus holds title in bad faith.
>
> In an action for reconveyance, the decree of registration is respected as incontrovertible. What is sought instead is the transfer of the property, in this case the title thereof, which has been wrongfully or erroneously registered in another person's name, to its rightful and legal owner, or to one with a better right. This is what reconveyance is all about.

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thereof, whether mentioned by name in the application or notice, the same being included in the general description "To all whom it may concern."

Section 32. *Review of decree of registration; Innocent purchaser for value.* - The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[22] G.R. No. L-38387, January 29, 1990, 181 SCRA 431.

Yet, the right to seek reconveyance based on an implied or constructive trust is not absolute nor is it imprescriptible. An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years from the issuance of the Torrens title over the property.[23]

As discussed above, Civil Case No. 98-021 was filed more than 28 years from the issuance of TCT No. T-5,427. This period is unreasonably long for a party seeking to enforce its right to file the appropriate case. Thus, petitioners' claim that they had not slept on their rights is patently unconvincing.

As a final note, it should be pointed out that in choosing to file a Petition for *Certiorari* before this Court, petitioners are required to prove nothing less than grave abuse of discretion on the part of the Court of Appeals. We have consistently held that "*certiorari* will not be issued to cure errors in proceedings or correct erroneous conclusions of law or fact. As long as a court acts within its jurisdiction, any alleged errors committed in the exercise of its jurisdiction will amount to nothing more than errors of judgment which are reviewable by timely appeal and not by a special civil action of *certiorari.*"[24] In the case at bar, petitioners proved neither grave abuse of discretion, nor even a simple error of judgment on the part of the Court of Appeals. The present petition should, therefore, fail.

WHEREFORE, the present Petition for *Certiorari* is *DISMISSED*. The Decision of the Court of Appeals dated August 16, 2002 and the Resolution dated January 16, 2003 in CA-G.R. SP No. 68501 are *AFFIRMED.*

No pronouncement as to costs.

SO ORDERED.

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

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[23] *Id.* at 442.

[24] *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1, 41-42 (1996).

SECOND DIVISION

[G.R. No. 162575. December 15, 2010]

BEATRIZ SIOK PING TANG, *petitioner, vs.* **SUBIC BAY DISTRIBUTION, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE PERSON INTERESTED IN SUSTAINING THE PROCEEDINGS SHOULD BE JOINED AS PARTY DEFENDANT WITH THE COURT OR THE JUDGE; CASE AT BAR.— [I]n filing the petition for *certiorari*, respondent should join as party defendant with the court or judge, the person interested in sustaining the proceedings in the court, and it shall be the duty of such person to appear and defend, both in his own behalf and in behalf of the court or judge affected by the proceedings. In this case, there is no doubt that it is only the petitioner who is the person interested in sustaining the proceedings in court since she was the one who sought for the issuance of the writ of preliminary injunction to enjoin the banks from releasing funds to respondent. As earlier discussed, the banks are not parties interested in the subject matter of the petition. Thus, it is only petitioner who should be joined as party defendant with the judge and who should defend the judge's issuance of injunction.

2. ID.; ID; ID; FILING OF A MOTION FOR RECONSIDERATION IS A CONDITION *SINE QUA NON*; EXCEPTIONS, APPLIED.— [T]he settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a *quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent

necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved. Respondent explained their omission of filing a motion for reconsideration before resorting to a petition for *certiorari* based on exceptions (b), (c) and (i). The CA brushed aside the filing of the motion for reconsideration based on the ground that the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court. We agree. Respondent had filed its position paper in the RTC stating the reasons why the injunction prayed for by petitioner should not be granted. However, the RTC granted the injunction. Respondent filed a petition for *certiorari* with the CA and presented the same arguments which were already passed upon by the RTC. The RTC already had the opportunity to consider and rule on the question of the propriety or impropriety of the issuance of the injunction. We found no reversible error committed by the CA for relaxing the rule since respondent's case falls within the exceptions.

APPEARANCES OF COUNSEL

Remberto R. Villanueva for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Beatriz Siok Ping Tang seeking to annul and set aside the Decision[1] dated October 17, 2003 and the Resolution[2] dated March 5, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 74629.

The antecedent facts are as follows:

Petitioner is doing business under the name and style of Able Transport. Respondent Subic Bay Distribution, Inc. (SBDI) entered in two Distributorship Agreements with petitioner and Able Transport in April 2002. Under the Agreements, respondent, as seller, will sell, deliver or procure to be delivered petroleum products, and petitioner, as distributor, will purchase, receive and pay for its purchases from respondent. The two Agreements had a period of one year, commencing on October 2001 to October 2002, which shall continue on an annual basis unless terminated by either party upon thirty days written notice to the other prior to the expiration of the original term or any extension thereof.

Section 6.3 of the Distributorship Agreement provides that respondent may require petitioner to put up securities, real or personal, or to furnish respondent a performance bond issued by a bonding company chosen by the latter to secure and answer for petitioner's outstanding account, and or faithful performance of her obligations as contained or arising out of the Agreement. Thus, petitioner applied for and was granted a credit line by the United Coconut Planters Bank (UCPB), International Exchange Bank (IEBank), and Security Bank Corporation (SBC). Petitioner also applied with the Asia United Bank (AUB) an irrevocable domestic standby letter of credit in favor of respondent. All these banks separately executed several undertakings setting

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[1] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Remedios Salazar-Fernando and Edgardo F. Sundiam, concurring; *rollo*, pp. 39-45.

[2] *Id.* at 47-48.

the terms and conditions governing the drawing of money by respondent from these banks.

Petitioner allegedly failed to pay her obligations to respondent despite demand, thus, respondent tried to withdraw from these bank undertakings.

Petitioner then filed with the Regional Trial Court (RTC) of Quezon City separate petitions[3] against the banks for declaration of nullity of the several bank undertakings and domestic letter of credit which they issued with the application for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction. The cases were later consolidated and were assigned to Branch 101. Petitioner asked for the annulment of the bank undertakings/letter of credit which she signed on the ground that the prevailing market rate at the time of respondent's intended drawings with which petitioner will be charged of as interests and penalties is oppressive, exorbitant, unreasonable and unconscionable rendering it against public morals and policy; and that to make her automatically liable for millions of pesos on the bank undertakings, these banks merely required the submission of a mere certification from the company (respondent) that the customer (petitioner) has not paid its account (and its statement of account of the client) without first verifying the truthfulness of the alleged petitioner's total liability to the drawer thereon. Therefore, such contracts are oppressive, unreasonable and unconscionable as they would result in her obtaining several millions of liability.

On November 28, 2002, a hearing was conducted for the issuance of the TRO and the writ of preliminary injunction wherein the petitioner and the bank representatives were present. On query of the respondent Judge Normandie Pizarro (Judge Pizarro) to the bank representatives with regard to the eventual issuance of the TRO, the latter all replied that they will abide by the sound judgment of the court. The court then issued an Order[4] granting the TRO and requiring petitioner to implead

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[3] Docketed as Civil Case Nos. Q-02-48334 to Q-02-48337.

[4] *Rollo,* pp. 149-151.

respondent as an indispensable party and for the latter to submit its position paper on the matter of the issuance of the injunction. Petitioner and respondent submitted their respective position papers.

On December 17, 2002, the RTC rendered an Order,[5] the dispositive portion of which reads:

> ACCORDINGLY, let a Writ of Preliminary Injunction be issued restraining and enjoining herein Respondent UCPB, IEB, SB and AUB from releasing any funds to SBDI, pursuant to the Bank Undertakings and/or Domestic Standby Letter of Credit until further orders from this Court. Consequently, Petitioner is hereby DIRECTED to post a bond in the amount of TEN MILLION PESOS (₱10,000,000.00), to answer for whatever damages respondent banks and SBDI may suffer should this Court finally decide that petitioner was not entitled thereto.[6]

The RTC found that both respondent and petitioner have reasons for the enforcement or non-enforcement of the bank undertakings, however, as to whether said reasons were justifiable or not, in view of the attending circumstances, the RTC said that these can only be determined after a full blown trial. It ruled that the outright denial of petitioner's prayer for the issuance of injunction, even if the evidence warranted the reasonable probability that real injury will occur if the relief for shall not be granted in favor of petitioner, will not serve the ends of justice.

Respondent filed with the CA a petition for *certiorari* with prayer for the issuance of a TRO and writ of preliminary injunction against respondent Judge Pizarro and petitioner. Subsequently, petitioner filed her Comment and respondent filed its Reply.

On July 4, 2003, the CA issued a Resolution[7] granting the TRO prayed for by respondent after finding that it was apparent

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[5] Penned by Judge Normandie B. Pizarro (now Associate Justice of the Court of Appeals); *id.* at 285-288;

[6] *Id.* at 288.

[7] Penned by Associate Justice Elvie John S. Asuncion, with Associate Justices Martin S. Villarama, Jr. (now Associate Justice of the Supreme Court) and Mario L. Guariña III, concurring; *id.* at 433-434.

that respondent has a legal right under the bank undertakings issued by UCPB, SBC, and IEBank; and that until those undertakings were nullified, respondent's rights under the same should be maintained.

On July 11, 2003, the CA issued a Supplemental Resolution[8] wherein the Domestic Standby Letter of Credit issued by AUB was ordered included among the bank undertakings, to which respondent has a legal right.

On October 17, 2003, the CA rendered its assailed Decision, the decretal portion of which reads:

> WHEREFORE, the petition is hereby GRANTED. The Order dated December 17, 2002 is hereby ANNULLED AND SET ASIDE. The writ of preliminary injunction issued by the lower court is hereby LIFTED.[9]

In so ruling, the CA said that the grant or denial of an injunction rests on the sound discretion of the RTC which should not be intervened, except in clear cases of abuse. Nonetheless, the CA continued that the RTC should avoid issuing a writ of preliminary injunction which would, in effect, dispose of the main case without trial. It found that petitioner was questioning the validity of the bank undertakings and letter of credit for being oppressive, unreasonable and unconscionable. However, as provided under the law, private transactions are presumed to be fair and regular and that a person takes ordinary care of his concerns. The CA ruled that the RTC's issuance of the injunction, which was premised on the abovementioned justification, would be a virtual acceptance of petitioner's claim, thus, already a prejudgment of the main case. It also said that contracts are presumed valid until they are voided by a court of justice, thus, until such time that petitioner has presented sufficient evidence to rebut such presumption, her legal right to the writ is doubtful.

As to petitioner's claim of respondent's non-filing of a motion for reconsideration before resorting to a petition for *certiorari*,

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[8] *Id.* at 435-436.

[9] *Id.* at 45.

the CA said that it is not a rigid rule, as jurisprudence had said, that when a definite question has been properly raised, argued and submitted in the RTC and the latter had decided the question, a motion for reconsideration is no longer necessary before filing a petition for *certiorari*. The court found that both parties had fully presented their sides on the issuance of the writ of preliminary injunction and that the RTC had squarely resolved the issues presented by both parties. Thus, respondent could not be faulted for not filing a motion for reconsideration.

In a Resolution dated March 5, 2004, petitioner's motion for reconsideration was denied.

Hence, this petition, wherein petitioner raises the following assignment of errors:

I. THE HONORABLE COURT OF APPEALS *A QUO* COMMITTED A SERIOUS AND REVERSIBLE ERROR IN GIVING DUE COURSE AND GRANTING THE PETITION FOR *CERTIORARI* FILED BY PRIVATE RESPONDENT SBDI, DESPITE THE FACT THAT THE ORIGINAL PARTIES IN THE TRIAL COURT, WHO ARE EQUALLY MANDATED BY THE QUESTIONED ORDER OF THE TRIAL COURT, NAMELY; UCPB, IEBANK, SBC AND AUB, AS DEFENDANTS IN THE MAIN CASE, WERE NOT IMPLEADED AS INDISPENSABLE PARTIES IN THE PETITION.

II. THE HONORABLE COURT OF APPEALS *A QUO* COMMITTED A SERIOUS AND REVERSIBLE ERROR IN GIVING DUE COURSE AND GRANTING PRIVATE RESPONDENT SBDI'S PETITION WHEN THE LATTER ADMITTEDLY FAILED TO FILE A PRIOR MOTION FOR RECONSIDERATION BEFORE THE TRIAL COURT, MORESO WHEN INDISPENSABLE PARTIES WERE NOT IMPLEADED WHICH SHOULD HAVE RENDERED THE COURT OF APPEALS IN WANT OF JURISDICTION TO ACT.[10]

Petitioner claims that the CA decision is void for want of authority of the CA to act on the petition as the banks should have been impleaded for being indispensable parties, since they are the original party respondents in the RTC; that the filing with the CA of respondent's petition for *certiorari* emanated

[10] *Id.* at 21.

from the RTC Order wherein the banks were the ones against whom the questioned Order was issued; that the banks are the ones who stand to release hundred millions of pesos which respondent sought to draw from the questioned bank undertakings and domestic standby letter of credit through the *certiorari* proceedings, thus, they should be given an opportunity to be heard. Petitioner claims that even the CA recognized the banks' substantial interest over the subject matter of the case when, despite not being impleaded as parties in the petition filed by respondent, the CA also notified the banks of its decision.

Petitioner argues that a petition for *certiorari* filed without a prior motion for reconsideration is a premature action and such omission constitutes a fatal infirmity; that respondent explained its omission only when petitioner already brought the same to the attention of the CA, thus, a mere afterthought and an attempt to cure the fatal defects of its petition.

In its Comment, respondent contends that the banks which issued the bank undertakings and letter of credit are not indispensable parties in the petition for *certiorari* filed in the CA. Respondent argues that while the RTC preliminarily resolved the issue of whether or not petitioner was entitled to an injunctive relief, and the enforcement of any decision granting such would necessarily involve the banks, the resolution of the issue regarding the injunction does not require the banks' participation. This is so because on one hand the entitlement or non-entitlement to an injunction is a matter squarely between petitioner and respondent, the latter being the party that is ultimately enjoined from benefiting from the banks' undertakings. On the other hand, respondent contends that the issue resolved by the CA was whether or not the RTC gravely abused its discretion in granting the injunctive relief to respondent; that while the enforcement of any decision enjoining the implementation of the injunction issued by the RTC would affect the banks, the resolution of whether there is grave abuse of discretion committed by the RTC does not require the banks' participation.

Respondent claims that while as a rule, a motion for reconsideration is required before filing a petition for *certiorari*,

the rule admits of exceptions, which are, among others: (1) when the issues raised in the *certiorari* proceedings have been duly raised and passed upon by the RTC or are the same as those raised and passed upon in the RTC; (2) there is an urgent necessity and time is of the essence for the resolution of the issues raised and any further delay would prejudice the interests of the petitioner; and (3) the issue raised is one purely of law, which are present in respondent's case.

In her Reply, petitioner claims that the decree that will compel and order the banks to release any funds to respondent pending the resolution of her petition in the RTC will have an injurious effect upon her rights and interest. She reiterates her arguments in her petition.

Respondent filed a Rejoinder saying that it is misleading for petitioner to allege that the decree sought by respondent before the CA is directed against the banks; that even the dispositive portion of the CA decision did not include any express directive to the banks; that there was nothing in the CA decision which compelled and ordered the banks to release funds in favor of respondent as the CA decision merely annulled the RTC Order and lifted the writ of preliminary injunction. Respondent contends that the banks are not persons interested in sustaining the RTC decision as this was obvious from the separate answers they filed in the RTC wherein they uniformly maintained that the bank undertakings/letter of credit are not oppressive, unreasonable and unconscionable. Respondent avers that petitioner is the only person interested in upholding the injunction issued by the RTC, since it will enable her to prevent the banks from releasing funds to respondent. Respondent insists that petitioner's petition before the RTC and the instant petition have caused and continues to cause respondent grave and irreparable damage.

Both parties were then required to file their respective memoranda, in which they complied.

Petitioner's insistence that the banks are indispensable parties, thus, should have been impleaded in the petition for *certiorari* filed by respondent in the CA, is not persuasive.

In *Arcelona v. Court of Appeals*,[11] we stated the nature of indispensable party, thus:

> An indispensable party is a party who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest, a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.
>
> A person is not an indispensable party, however, if his interest in the controversy or subject matter is separable from the interest of the other parties, so that it will not necessarily be directly or injuriously affected by a decree which does complete justice between them. Also, a person is not an indispensable party if his presence would merely permit complete relief between him and those already parties to the action, or if he has no interest in the subject matter of the action. It is not a sufficient reason to declare a person to be an indispensable party that his presence will avoid multiple litigation.[12]

Applying the foregoing, we find that the banks are not indispensable parties in the petition for *certiorari* which respondent filed in the CA assailing the RTC Order dated December 17, 2002. In fact, several circumstances would show that the banks are not parties interested in the matter of the issuance of the writ of preliminary injunction, whether in the RTC or in the CA.

First. During the hearing of petitioner's prayer for the issuance of a TRO, the RTC, in open court, elicited from the lawyer-representatives of the four banks their position in the event of the issuance of the TRO, and all these representatives invariably

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[11] 345 Phil. 250 (1997).

[12] *Id.* at 269-270.

replied that they will abide and/or submit to the sound judgment of the court.[13]

Second. When the RTC issued its Order dated December 17, 2002 granting the issuance of the writ of preliminary injunction, the banks could have challenged the same if they believe that they were aggrieved by such issuance. However, they did not, and such actuations were in consonance with their earlier position that they would submit to the sound judgment of the RTC.

Third. When respondent filed with the CA the petition for *certiorari* with prayer for the issuance of a TRO and writ of preliminary injunction, and a TRO was subsequently issued, copies of the resolution were also sent[14] to the banks, although not impleaded, yet the latter took no action to question their non-inclusion in the petition. Notably, the SBC filed an Urgent Motion for Clarification[15] on whether or not the issuance of the TRO has the effect of restraining the bank from complying with the writ of preliminary injunction issued by the RTC or nullifying /rendering ineffectual the said writ. In fact, SBC even stated that the motion was filed for no other purpose, except to seek proper guidance on the issue at hand so that whatever action or position it may take with respect to the CA resolution will be consistent with its term and purposes.

Fourth. When the CA rendered its assailed Decision nullifying the injunction issued by the RTC, and copies of the decision were furnished these banks, not one of these banks ever filed any pleading to assail their non-inclusion in the *certiorari* proceedings.

Indeed, the banks have no interest in the issuance of the injunction, but only the petitioner. The banks' interests as defendants in the petition for declaration of nullity of their bank undertakings filed against them by petitioner in the RTC are separable from the interests of petitioner for the issuance of the injunctive relief.

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[13] *Rollo*, p. 150.

[14] CA *rollo*, pp. 155, 158.

[15] *Id.* at 161-163.

Moreover, *certiorari,* as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions.[16] It is an original and independent action that is not part of the trial or the proceedings on the complaint filed before the trial court.[17] Section 5, Rule 65 of the Rules of Court provides:

> Section 5. *Respondents and costs in certain cases*. - When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents. The person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.
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> x x x x x x x x x

Clearly, in filing the petition for *certiorari*, respondent should join as party defendant with the court or judge, the person interested in sustaining the proceedings in the court, and it shall be the duty of such person to appear and defend, both in his own behalf and in behalf of the court or judge affected by the proceedings. In this case, there is no doubt that it is only the petitioner who is the person interested in sustaining the proceedings in court since she was the one who sought for the issuance of the writ of preliminary injunction to enjoin the banks from releasing funds to respondent. As earlier discussed, the banks are not parties interested in the subject matter of

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[16] *San Miguel Bukid Homeowners Association,Inc. v. City of Mandaluyong*, G.R. No. 153653, October 2, 2009, 602 SCRA 30, 37.

[17] *Id.*, citing *Tible and Tible Company, Inc. v. Royal Savings and Loan Association*, 550 SCRA 562, 574 (2008), citing *Madrigal Transport, Inc. v. Lapanday Holding Corporation*, 436 SCRA 123 (2004).

the petition. Thus, it is only petitioner who should be joined as party defendant with the judge and who should defend the judge's issuance of injunction.

Notably, the dispositive portion of the assailed CA Decision declared the annulment of the Order dated December 17, 2002 and lifted the writ of preliminary injunction issued by the RTC. The decision was directed against the order of the judge. There was no order for the banks to release the funds subject of their undertakings/letter of credit although such order to lift the injunction would ultimately result to the release of funds to respondent.

Petitioner contends that respondent filed its petition for *certiorari* in the CA without a prior motion for reconsideration, thus, constitutes a fatal infirmity.

We do not agree.

Concededly, the settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.[18] Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[19] The rule is, however, circumscribed by well-defined exceptions, such as (a) where the order is a patent nullity, as where the court a *quo* had no jurisdiction; (b) where the questions raised in the *certiorari* proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due

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[18] *Office of the Ombudsman v. Laja*, G.R. No. 169241, May, 2 2006, 488 SCRA 574, 580.

[19] *Id.*, citing *Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez*, 466 SCRA 120, 127 (2005); *National Housing Authority v. Court of Appeals*, 413 Phil. 58, 64 (2001).

process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were *ex parte*, or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.[20]

Respondent explained their omission of filing a motion for reconsideration before resorting to a petition for *certiorari* based on exceptions (b), (c) and (i). The CA brushed aside the filing of the motion for reconsideration based on the ground that the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court. We agree.

Respondent had filed its position paper in the RTC stating the reasons why the injunction prayed for by petitioner should not be granted. However, the RTC granted the injunction. Respondent filed a petition for *certiorari* with the CA and presented the same arguments which were already passed upon by the RTC. The RTC already had the opportunity to consider and rule on the question of the propriety or impropriety of the issuance of the injunction. We found no reversible error committed by the CA for relaxing the rule since respondent's case falls within the exceptions.

Petitioner's reliance on *Philippine National Construction Corporation v. National Labor Relations Commission*,[21] where we required the filing of a motion for reconsideration before the filing of a petition for *certiorari* notwithstanding petitioner's invocation of the recognized exception, *i.e.*, the same questions raised before the public respondent were to be raised before us, is not applicable. In said case, we ruled that petitioner failed to convince us that his case falls under the recognized exceptions as the basis was only petitioner's bare allegation. In this case

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[20] *Id.*

[21] 342 Phil. 769 (1997).

before us, the CA found, and to which we agree, that both parties have fully presented their respective arguments in the RTC on petitioner's prayer for the issuance of the writ of preliminary injunction, and that respondent's argument that petitioner is not entitled to the injunctive relief had been squarely resolved by the RTC.

WHEREFORE, the petition is *DENIED.* The Decision dated October 17, 2003 and the Resolution dated March 5, 2004 of the Court of Appeals, in CA-G.R. SP No. 74629, are hereby *AFFIRMED.*

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165266. December 15, 2010]

AIR FRANCE, *petitioner, vs.* **BONIFACIO H. GILLEGO, substituted by his surviving heirs represented by Dolores P. Gillego,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMON CARRIERS; CONTRACT OF CARRIAGE; NATURE, EXPLAINED.— A business intended to serve the travelling public primarily, a contract of carriage is imbued with public interest. The law governing common carriers consequently imposes an exacting standard. Article 1735 of the Civil Code provides that in case of lost or damaged goods, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required by Article 1733. Thus, in

an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier.

2. ID.; ID.; ID.; THERE IS BREACH OF CONTRACT WHEN THE CARRIER RETURNED THE PASSENGER'S BAGGAGE ONLY AFTER TWO YEARS.— That respondent's checked-in luggage was not found upon arrival at his destination and was not returned to him until about two years later is not disputed. The action filed by the respondent is founded on such breach of the contract of carriage with petitioner who offered no satisfactory explanation for the unreasonable delay in the delivery of respondent's baggage. The presumption of negligence was not overcome by the petitioner and hence its liability for the delay was sufficiently established.

3. ID.; ID.; ID.; ID.; TO BE ENTITLED TO MORAL AND EXEMPLARY DAMAGES, THE CARRIER MUST BE SHOWN TO HAVE ACTED FRAUDULENTLY OR IN BAD FAITH; BAD FAITH, HOW PROVED.— In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith. Not every case of mental anguish, fright or serious anxiety calls for the award of moral damages. Where in breaching the contract of carriage the airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation which the parties had foreseen or could have reasonably foreseen. In such a case the liability does not include moral and exemplary damages. Bad faith should be established by clear and convincing evidence. The settled rule is that the law always presumes good faith such that any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive.

4. ID.; ID.; ID.; ID.; ID.; THE AIRLINE ACTED IN BAD FAITH IN REPEATEDLY IGNORING PASSENGER'S FOLLOW-UP CALLS ABOUT HIS MISSING LUGGAGE.— We hold that the trial and appellate courts did not err in finding that petitioner acted in bad faith in repeatedly ignoring respondent's

follow-up calls. x x x Inattention to and lack of care for the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to an award of moral damages. What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit. While respondent failed to cite any act of discourtesy, discrimination or rudeness by petitioner's employees, this did not make his loss and moral suffering insignificant and less deserving of compensation. In repeatedly ignoring respondent's inquiries, petitioner's employees exhibited an indifferent attitude without due regard for the inconvenience and anxiety he experienced after realizing that his luggage was missing. Petitioner was thus guilty of bad faith in breaching its contract of carriage with the respondent, which entitles the latter to the award of moral damages.

5. ID.; DAMAGES; RATIONALE BEHIND THE AWARD OF MORAL AND EXEMPLARY DAMAGES.— The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action. On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings. Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. Simply put, the amount of damages must be fair, reasonable and proportionate to the injury suffered.

6. ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES, AND ATTORNEY'S FEES AWARDED IN VIEW OF THE CARRIER'S FAILURE TO ACT TIMELY ON ITS PASSENGER'S PREDICAMENT.— Where as in this case the air carrier failed to act timely on the passenger's predicament caused by its employees' mistake and more than ordinary inadvertence or inattention, and the passenger failed to show any act of arrogance, discourtesy or rudeness committed by

the air carrier's employees, the amounts of ₱200,000.00, ₱50,000.00 and ₱30,000.00 as moral damages, exemplary damages and attorney's fees would be sufficient and justified.

APPEARANCES OF COUNSEL

Platon Marinez Flores San Pedro & Leano for petitioner.
Apostol Gumaru & Balgua Law Offices for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

For review is the Decision[1] dated June 30, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 56587 which affirmed the Decision[2] dated January 3, 1996 of the Regional Trial Court (RTC) of Makati City, Branch 137 in Civil Case No. 93-2328.

The facts follow:

Sometime in April 1993, respondent Bonifacio H. Gillego,[3] then incumbent Congressman of the Second District of Sorsogon and Chairman of the House of Representatives Committee on Civil, Political and Human Rights, was invited to participate as one of the keynote speakers at the *89th Inter-Parliamentary Conference Symposium on Parliament Guardian of Human Rights* to be held in Budapest, Hungary and Tokyo, Japan from May 19 to 22, 1993. The Philippines is a member of the Inter-Parliamentary Union which organized the event.[4]

On May 16, 1993, respondent left Manila on board petitioner Air France's aircraft bound for Paris, France. He arrived in

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[1] CA *rollo*, pp. 129-136. Penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Elvi John S. Asuncion and Mariano C. Del Castillo (now a Member of this Court).

[2] Records, pp. 318-326. Penned by Judge Jaime D. Discaya.

[3] Died during the pendency of the appeal and duly substituted by his surviving spouse and children. CA *rollo*, pp. 122-124.

[4] Records, pp. 76-159.

Paris early morning of May 17, 1993 (5:00 a.m.). While waiting at the De' Gaulle International Airport for his connecting flight to Budapest scheduled at 3:15 p.m. that same day, respondent learned that petitioner had another aircraft bound for Budapest with an earlier departure time (10:00 a.m.) than his scheduled flight. He then went to petitioner's counter at the airport and made arrangements for the change in his booking. He was given a corresponding ticket and boarding pass for Flight No. 2024 and also a new baggage claim stub for his checked-in luggage.[5]

However, upon arriving in Budapest, respondent was unable to locate his luggage at the claiming section. He sought assistance from petitioner's counter at the airport where petitioner's representative verified from their computer that he had indeed a checked-in luggage. He was advised to just wait for his luggage at his hotel and that petitioner's representatives would take charge of delivering the same to him that same day. But said luggage was never delivered by petitioner's representatives despite follow-up inquiries by respondent.

Upon his return to the Philippines, respondent's lawyer immediately wrote petitioner's Station Manager complaining about the lost luggage and the resulting damages he suffered while in Budapest. Respondent claimed that his single luggage contained his personal effects such as clothes, toiletries, medicines for his hypertension, and the speeches he had prepared, including the notes and reference materials he needed for the conference. He was thus left with only his travel documents, pocket money and the clothes he was wearing. Because petitioner's representatives in Budapest failed to deliver his luggage despite their assurances and his repeated follow-ups, respondent was forced to shop for personal items including new clothes and his medicines. Aside from these unnecessary expenditures of about $1,000, respondent had to prepare another speech, in which he had difficulty due to lack of data and information. Respondent thus demanded the sum of ₱1,000,000.00 from the petitioner as compensation for his loss, inconvenience

[5] *Id.* at 160-162.

and moral damages.[6] Petitioner, however, continued to ignore respondent's repeated follow-ups regarding his lost luggage.

On July 13, 1993, respondent filed a complaint[7] for damages against the petitioner alleging that by reason of its negligence and breach of obligation to transport and deliver his luggage, respondent suffered inconvenience, serious anxiety, physical suffering and sleepless nights. It was further alleged that due to the physical, mental and emotional strain resulting from the loss of his luggage, aggravated by the fact that he failed to take his regular medication, respondent had to be taken to a medical clinic in Tokyo, Japan for emergency treatment. Respondent asserted that as a common carrier which advertises and offers its services to the public, petitioner is under obligation to observe extraordinary diligence in the vigilance over checked-in luggage and to see to it that respondent's luggage entrusted to petitioner's custody would accompany him on his flight and/or could be claimed by him upon arrival at his point of destination or delivered to him without delay. Petitioner should therefore be held liable for actual damages ($2,000.00 or ₱40,000.00), moral damages (₱1,000,000.00), exemplary damages (₱500,000.00), attorney's fees (₱50,000.00) and costs of suit.

Petitioner filed its answer[8] admitting that respondent was issued tickets for the flights mentioned, his subsequent request to be transferred to another flight while at the Paris airport and the loss of his checked-in luggage upon arrival at Budapest, which luggage has not been retrieved to date and the respondent's repeated follow-ups ignored. However, as to the rest of respondent's allegations, petitioner said it has no knowledge and information sufficient to form a belief as to their truth. As special and affirmative defense, petitioner contended that its liability for lost checked-in baggage is governed by the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage. Under the said treaty, petitioner's liability

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[6] *Id.* at 163-164.

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

[8] *Id.* at 17-25.

for lost or delayed registered baggage of respondent is limited to 250 francs per kilogram or US$20.00, which constitutes liquidated damages and hence respondent is not entitled to any further damage.

Petitioner averred that it has taken all necessary measures to avoid loss of respondent's baggage, the contents of which respondent did not declare, and that it has no intent to cause such loss, much less knew that such loss could occur. The loss of respondent's luggage is due to or occasioned by *force majeure* or fortuitous event or other causes beyond the carrier's control. Diligent, sincere and timely efforts were exerted by petitioner to locate respondent's missing luggage and attended to his problem with utmost courtesy, concern and dispatch. Petitioner further asserted that it exercised due diligence in the selection and supervision of its employees and acted in good faith in denying respondent's demand for damages. The claims for actual, moral and exemplary damages and attorney's fees therefore have no basis in fact and in law, and are, moreover speculative and unconscionable.

In his Reply,[9] respondent maintained that the loss of his luggage cannot be attributed to anything other than petitioner's simple negligence and its failure to perform the diligence required of a common carrier.

On January 3, 1996, the trial court rendered its decision in favor of respondent and against the petitioner, as follows:

WHEREFORE, premises considered, judgment is rendered ordering defendant to pay plaintiff:

1. The sum of ₱1,000,000.00 as moral damages;
2. The sum of ₱500,000.00 as exemplary damages;
3. The sum of ₱50,000.00 as attorney's fees; and
4. The costs.

SO ORDERED.[10]

[9] *Id.* at 26.

[10] *Id.* at 326.

The trial court found there was gross negligence on the part of petitioner which failed to retrieve respondent's checked-in luggage up to the time of the filing of the complaint and as admitted in its answer, ignored respondent's repeated follow-ups. It likewise found petitioner guilty of willful misconduct as it persistently disregarded the rights of respondent who was no ordinary individual but a high government official. As to the applicability of the limited liability for lost baggage under the Warsaw Convention, the trial court rejected the argument of petitioner citing the case of *Alitalia v. Intermediate Appellate Court.*[11]

Petitioner appealed to the CA, which affirmed the trial court's decision. The CA noted that in the memorandum submitted by petitioner before the trial court it was mentioned that respondent's luggage was eventually found and delivered to him, which was not denied by respondent and thus resulted in the withdrawal of the claim for actual damages. As to the trial court's finding of gross negligence, bad faith and willful misconduct which justified the award of moral and exemplary damages, the CA sustained the same, stating thus:

> It bears stressing that defendant-appellant committed a breach of contract by its failure to deliver the luggage of plaintiff-appellee on time despite demand from plaintiff-appellee. **The unreasonable delay in the delivery of the luggage has not been satisfactorily explained by defendant-appellant, either in its memorandum or in its appellant's brief.** Instead of justifying the delay, defendant-appellant took refuge under the provisions of the Warsaw Convention to escape liability. Neither was there any showing of apology on the part of defendant-appellant as to the delay. **Furthermore, the unapologetic defendant-appellant even faulted plaintiff-appellee for not leaving a local address in Budapest in order for the defendant-appellant to contact him (plaintiff-appellee) in the event the luggage is found. This actuation of defendant-appellant is a clear showing of willful misconduct and a deliberate design to avoid liability. It amounts to bad faith.** As elucidated by Chief Justice Hilario Davide, Jr., "*[b]ad faith* does not simply connote bad judgment or negligence; it imports a dishonest purpose or some

[11] G.R. No. 71929, December 4, 1990, 192 SCRA 9.

moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud."[12] (Emphasis supplied.)

Its motion for reconsideration having been denied, petitioner filed the present Rule 45 petition raising the following grounds:

I.

THE AMOUNTS AWARDED TO RESPONDENT AS MORAL AND EXEMPLARY DAMAGES ARE EXCESSIVE, UNCONSCIONABLE AND UNREASONABLE.

II.

THERE IS NO LEGAL AND FACTUAL BASIS TO THE FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS THAT PETITIONER'S ACTIONS WERE ATTENDED BY GROSS NEGLIGENCE, BAD FAITH AND WILLFUL MISCONDUCT AND THAT IT ACTED IN A WANTON, FRAUDULENT, RECKLESS, OPPRESSIVE OR MALEVOLENT MANNER, TO JUSTIFY THE AWARD OF MORAL AND EXEMPLARY DAMAGES.[13]

Petitioner assails the trial and appellate courts for awarding extravagant sums to respondent that already tend to punish the petitioner and enrich the respondent, which is not the function at all of moral damages. Upon the facts established, the damages awarded are definitely not proportionate or commensurate to the wrong or injury supposedly inflicted. Without belittling the problems respondent experienced in Budapest after losing his luggage, petitioner points out that despite the unfortunate incident, respondent was able to reconstruct the speeches, notes and study guides he had earlier prepared for the conference in Budapest and Tokyo, and to attend, speak and participate therein as scheduled. Since he prepared the research and wrote his speech, considering his acknowledged and long-standing expertise in the field of human rights in the Philippines, respondent should have had no difficulty delivering his speech even without his notes. In addition, there is no evidence that members of the

[12] CA *rollo*, pp. 134-135.

[13] *Rollo*, p. 9.

Inter-Parliamentary Union made derogatory statements or even knew that he was unprepared for the conference. Bearing in mind that the actual damages sought by respondent was only $2,000.00, then clearly the trial court went way beyond that amount in determining the appropriate damages, inspite of the fact that the respondent eventually got back his baggage.[14]

Comparing the situation in this case to other cases awarding similar damages to the aggrieved passenger as a result of breaches of contract by international carriers, petitioner argues that even assuming that respondent was entitled to moral and exemplary damages, the sums adjudged should be modified or reduced. It is stressed that petitioner or its agents were never rude or discourteous toward respondent; he was not subjected to humiliating treatment or comments as in the case of *Lopez, et al. v. Pan American World Airways*,[15] *Ortigas, Jr. v. Lufthansa German Airlines*[16] and *Zulueta v. Pan American World Airways, Inc.*[17] The mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages recoverable. As held in *Kierulf v. Court of Appeals*[18] the social and financial standing of a claimant may be considered only if he or she was subjected to contemptuous conduct despite the offender's knowledge of his or her social and financial standing.[19]

In any event, petitioner invokes the application of the exception to the rule that only questions of law may be entertained by this Court in a petition for review under Rule 45 as to allow a factual review of the case. First, petitioner contends that it has always maintained that the "admission" in its answer was only made out of inadvertence, considering that it was inconsistent with the special and affirmative defenses set forth in the same

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

[15] No. L-22415, March 30, 1966, 16 SCRA 431.

[16] No. L-28773, June 30, 1975, 64 SCRA 610.

[17] No. L-28589, February 29, 1972, 43 SCRA 397.

[18] G.R. Nos. 99301 & 99343, March 13, 1997, 269 SCRA 433, 446.

[19] *Rollo,* pp. 13-16.

pleading. The trial court incorrectly concluded that petitioner had not prepared a Property Irregularity Report (PIR) but fabricated one only as an afterthought. A PIR can only be initiated upon the instance of a passenger whose baggage had been lost, and in this case it was prepared by the station where the loss was reported. The PIR in this case was automatically and chronologically recorded in petitioner's computerized system. Respondent himself admitted in his testimony that he gave his Philippine address and telephone number to the lady in charge of petitioner's complaint desk in Budapest. It was not necessary to furnish a passenger with a copy of the PIR since its purpose is for the airline to trace a lost baggage. What respondent ought to have done was to make a xerox copy thereof for himself.[20]

Petitioner reiterates that there was no bad faith or negligence on its part and the burden is on the respondent to prove by clear and convincing evidence that it acted in bad faith. Respondent in his testimony miserably failed to prove that bad faith, fraud or ill will motivated or caused the delay of his baggage. This Court will surely agree that mere failure of a carrier to deliver a passenger's baggage at the agreed place and time did not *ipso facto* amount to willful misconduct as to make it liable for moral and exemplary damages. Petitioner adduced evidence showing that it exerted diligent, sincere and timely efforts to locate the missing baggage, eventually leading to its recovery. It attended to respondent's problem with utmost courtesy, concern and dispatch. Respondent, moreover, never alleged that petitioner's employees were at anytime rude, mistreated him or in anyway showed improper behavior.[21]

The petition is partly meritorious.

A business intended to serve the travelling public primarily, a contract of carriage is imbued with public interest.[22] The law

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[20] *Id.* at 17-21.

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

[22] *British Airways v. Court of Appeals*, G.R. No. 121824, January 29, 1998, 285 SCRA 450, 457-458.

governing common carriers consequently imposes an exacting standard. Article 1735 of the Civil Code provides that in case of lost or damaged goods, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required by Article 1733. Thus, in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent. All that he has to prove is the existence of the contract and the fact of its non-performance by the carrier.[23]

That respondent's checked-in luggage was not found upon arrival at his destination and was not returned to him until about two years later[24] is not disputed. The action filed by the respondent is founded on such breach of the contract of carriage with petitioner who offered no satisfactory explanation for the unreasonable delay in the delivery of respondent's baggage. The presumption of negligence was not overcome by the petitioner and hence its liability for the delay was sufficiently established. However, upon receipt of the said luggage during the pendency of the case in the trial court, respondent did not anymore press on his claim for actual or compensatory damages and neither did he adduce evidence of the actual amount of loss and damage incurred by such delayed delivery of his luggage. Consequently, the trial court proceeded to determine only the propriety of his claim for moral and exemplary damages, and attorney's fees.

In awarding moral damages for breach of contract of carriage, the breach must be wanton and deliberately injurious or the one responsible acted fraudulently or with malice or bad faith.[25] Not every case of mental anguish, fright or serious anxiety calls

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[23] *China Air Lines, Ltd. v. Court of Appeals,* G.R. Nos. L-45985 & L-46036, May 18, 1990, 185 SCRA 449, 457.

[24] Records, p. 231.

[25] *Cervantes v. Court of Appeals,* G.R. No. 125138, March 2, 1999, 304 SCRA 25, 32, citing *Perez v. Court of Appeals,* No. L-20238, January 30, 1965, 13 SCRA 137, 142.

for the award of moral damages.[26] Where in breaching the contract of carriage the airline is not shown to have acted fraudulently or in bad faith, liability for damages is limited to the natural and probable consequences of the breach of the obligation which the parties had foreseen or could have reasonably foreseen. In such a case the liability does not include moral and exemplary damages.[27]

Bad faith should be established by clear and convincing evidence. The settled rule is that the law always presumes good faith such that any person who seeks to be awarded damages due to the acts of another has the burden of proving that the latter acted in bad faith or with ill motive.[28]

In the case of *Tan v. Northwest Airlines, Inc.*,[29] we sustained the CA's deletion of moral and exemplary damages awarded to a passenger whose baggage were loaded to another plane with the same expected date and time of arrival but nevertheless not delivered to her on time. We found that respondent carrier was not motivated by malice or bad faith in doing so due to weight and balance restrictions as a safety measure. In another case involving the off-loading of private respondents' baggage to another destination, taken together with petitioner airline's neglect in providing the necessary accommodations and assistance to its stranded passengers, aggravated by the discourteous acts of its employees, we upheld the CA in sustaining the trial court's decision awarding moral and exemplary damages and attorney's fees. We pointed out that it is PAL's duty to provide assistance

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[26] *China Air Lines, Ltd. v. Court of Appeals*, G.R. No. 129988, July 14, 2003, 406 SCRA 113, 133.

[27] *Cathay Pacific Airways Ltd. v. Vasquez*, G.R. No. 150843, March 14, 2003, 399 SCRA 20 7, 222-223, citing *Tan v. Northwest Airlines, Inc.*, G.R. No. 135802, March 3, 2000, 327 SCRA 263, 268 and *Morris v. Court of Appeals*, G.R. No. 127957, February 21, 2001, 352 SCRA 428, 436.

[28] *Ford Philippines, Inc. v. Court of Appeals*, G.R. No. 99039, February 3, 1997, 267 SCRA 320, 328-329, citing *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240 and *Chua v. Court of Appeals*, G.R. No. 112660, March 14, 1995, 242 SCRA 341, 345.

[29] G.R. No. 135802, March 3, 2000, 327 SCRA 263.

to private respondents and to any other passenger similarly inconvenienced due to delay in the completion of the transport and the receipt of their baggage.[30]

After a careful review, we find that petitioner is liable for moral damages.

Petitioner's station manager, Ma. Lourdes Reyes, testified that upon receiving the letter-complaint of respondent's counsel, she immediately began working on the PIR from their computerized data. Based on her testimony, a PIR is issued at the airline station upon complaint by a passenger concerning missing baggage. From the information obtained in the computer-printout, it appears that a PIR[31] was initiated at petitioner's Budapest counter. A search telex for the missing luggage was sent out on the following dates: May 17, May 21 and May 23, 1993. As shown in the PIR printout, the information respondent supposedly furnished to petitioner was only his Philippine address and telephone number, and not the address and contact number of the hotel where he was billeted at Budapest. According to the witness, PIR usually is printed in two originals, one is kept by the station manager and the other copy given to the passenger. The witness further claimed that there was no record or entry in the PIR of any follow-up call made by the respondent while in Budapest.[32] Respondent, on the other hand, claimed that he was not given a copy of this PIR and that his repeated telephone calls to inquire about his lost luggage were ignored.

We hold that the trial and appellate courts did not err in finding that petitioner acted in bad faith in repeatedly ignoring respondent's follow-up calls. The alleged entries in the PIR deserve scant consideration, as these have not been properly identified or authenticated by the airline station representative in Budapest who initiated and inputed the said entries. Furthermore, this Court cannot accept the convenient excuse

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[30] *Philippine Airlines, Inc. v. Court of Appeals,* G.R. No. 119641, May 17, 1996, 257 SCRA 33, 45.

[31] Records, p. 212.

[32] TSN, February 6, 1995, pp. 5-27; records, pp. 288-310.

given by petitioner that respondent should be faulted in allegedly not giving his hotel address and telephone number. It is difficult to believe that respondent, who had just lost his single luggage containing all his necessities for his stay in a foreign land and his reference materials for a speaking engagement, would not give an information so vital such as his hotel address and contact number to the airline counter where he had promptly and frantically filed his complaint. And even assuming *arguendo* that his Philippine address and contact number were the only details respondent had provided for the PIR, still there was no explanation as to why petitioner never communicated with respondents concerning his lost baggage long after respondent had already returned to the Philippines. While the missing luggage was eventually recovered, it was returned to respondent only after the trial of this case.

Furthermore, the alleged copy of the PIR confirmed that the only action taken by the petitioner to locate respondent's luggage were telex searches allegedly made on May 17, 21 and 23, 1993. There was not even any attempt to explain the reason for the loss of respondent's luggage. Clearly, petitioner did not give the attention and care due to its passenger whose baggage was not transported and delivered to him at his travel destination and scheduled time. Inattention to and lack of care for the interest of its passengers who are entitled to its utmost consideration, particularly as to their convenience, amount to bad faith which entitles the passenger to an award of moral damages.[33] What the law considers as bad faith which may furnish the ground for an award of moral damages would be bad faith in securing the contract and in the execution thereof, as well as in the enforcement of its terms, or any other kind of deceit.[34]

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[33] See *Trans World Airlines v. Court of Appeals*, No. L-78656, August 30, 1988, 165 SCRA 143, 147 and *Alitalia Airways v. Court of Appeals*, G.R. No. 77011, July 24, 1990, 187 SCRA 763, 771.

[34] *Japan Airlines v. Simangan*, G.R. No. 170141, April 22, 2008, 552 SCRA 341, 362, citing *Philippine Airlines, Inc. v. Court of Appeals*, G.R. No. 119641, May 17, 1996, 257 SCRA 33, 43.

While respondent failed to cite any act of discourtesy, discrimination or rudeness by petitioner's employees, this did not make his loss and moral suffering insignificant and less deserving of compensation. In repeatedly ignoring respondent's inquiries, petitioner's employees exhibited an indifferent attitude without due regard for the inconvenience and anxiety he experienced after realizing that his luggage was missing. Petitioner was thus guilty of bad faith in breaching its contract of carriage with the respondent, which entitles the latter to the award of moral damages.

However, we agree with petitioner that the sum of ₱1,000,000.00 awarded by the trial court is excessive and not proportionate to the loss or suffering inflicted on the passenger under the circumstances. As in *Trans World Airlines v. Court of Appeals*[35] where this Court after considering the social standing of the aggrieved passenger who is a lawyer and director of several companies, the amount of ₱500,000.00 awarded by the trial court as moral damages was still reduced to ₱300,000.00, the moral damages granted to herein respondent should likewise be adjusted.

The purpose of awarding moral damages is to enable the injured party to obtain means, diversion or amusement that will serve to alleviate the moral suffering he has undergone by reason of defendant's culpable action. On the other hand, the aim of awarding exemplary damages is to deter serious wrongdoings.[36] Article 2216 of the Civil Code provides that assessment of damages is left to the discretion of the court according to the circumstances of each case. This discretion is limited by the principle that the amount awarded should not be palpably excessive as to indicate that it was the result of prejudice or corruption on the part of the trial court. Simply put, the amount

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[35] No. L-78656, August 30, 1988, 165 SCRA 143, 147-148.

[36] *Philippine Airlines, Incorporated v. Court of Appeals,* G.R. No. 123238, September 22, 2008, 566 SCRA 124, 138.

of damages must be fair, reasonable and proportionate to the injury suffered.[37]

Where as in this case the air carrier failed to act timely on the passenger's predicament caused by its employees' mistake and more than ordinary inadvertence or inattention, and the passenger failed to show any act of arrogance, discourtesy or rudeness committed by the air carrier's employees, the amounts of ₱200,000.00, ₱50,000.00 and ₱30,000.00 as moral damages, exemplary damages and attorney's fees would be sufficient and justified.[38]

WHEREFORE, the petition is *DENIED*. The Decision dated June 30, 2004 of the Court of Appeals in CA-G.R. CV No. 56587 is hereby *AFFIRMED* with *MODIFICATION* in that the award of moral damages, exemplary damages and attorney's fees are hereby reduced to ₱200,000.00, ₱50,000.00 and ₱30,000.00, respectively.

With costs against the petitioner.

SO ORDERED.

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

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[37] *Id.*, citing *Singson v. Court of Appeals*, G.R. No. 119995, November 18, 1997, 282 SCRA 149, 163-164.

[38] See *Singson v. Court of Appeals*, G.R. No. 119995, November 18, 1997, 282 SCRA 149.

[*] Designated additional member per Special Order No. 921 dated December 13, 2010.

FIRST DIVISION

[G.R. No. 167363. December 15, 2010]

SEALOADER SHIPPING CORPORATION, *petitioner, vs.* **GRAND CEMENT MANUFACTURING CORPORATION, JOYCE LAUNCH & TUG CO., INC., ROMULO DIANTAN & JOHNNY PONCE,** *respondents.*

[G.R. No. 177466. December 15, 2010]

TAIHEIYO CEMENT PHILIPPINES, INC. (Formerly Grand Cement Manufacturing Corporation), *petitioner, vs.* **SEALOADER SHIPPING CORPORATION, JOYCE LAUNCH & TUG CO., INC., ROMULO DIANTAN & JOHNNY PONCE,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; COMMON CARRIERS; DOCTRINE OF LAST CLEAR CHANCE; REITERATED.— The Court had occasion to reiterate the well-established doctrine of last clear chance in *Philippine National Railways v. Brunty* as follows: The doctrine of last clear chance states that **where both parties are negligent** but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. Stated differently, the antecedent negligence of plaintiff does not preclude him from recovering damages caused by the supervening negligence of defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.

2. ID.; ID.; ID.; NEGLIGENCE, DEFINED.— [I]n *Layugan v. Intermediate Appellate Court*, the Court defined negligence as "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley

defines it, '(T)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"

3. REMEDIAL LAW; APPEALS; ISSUES; THE MATTER OF NEGLIGENCE OF EITHER OR BOTH PARTIES IS A QUESTION OF FACT NOT PROPER UNDER RULE 45 PETITION; EXCEPTION, APPLIED.— [T]he matter of negligence of either or both parties to a case is a question of fact since a determination of the same "would entail going into factual matters on which the finding of negligence was based." Generally, questions of fact should not be raised in a petition for review. Section 1, Rule 45 of the Rules of Court explicitly states that a petition filed thereunder shall raise only questions of law, which must be distinctly set forth. Jurisprudence has provided for exceptions to this rule, however, one of which is when the findings of fact of the Court of Appeals are contrary to those of the trial court. As will be further elaborated upon, this exception is present in the instant case as the RTC and the Court of Appeals issued contrary findings of fact as to the negligence of Grand Cement. Thus, an examination of the evidence adduced by the parties is warranted under the circumstances.

4. COMMERCIAL LAW; COMMON CARRIERS; NEGLIGENCE; CIRCUMSTANCES SHOWING NEGLIGENCE OF THE CARRIER.— The Court, therefore, agrees with the conclusion of Grand Cement that there was either no radio on board the D/B Toploader, the radio was not fully functional, or the head office of Sealoader was negligent in failing to attempt to contact the D/B Toploader through radio. Either way, this negligence cannot be ascribed to anyone else but Sealoader. Correlated to the above finding is the manifest laxity of the crew of the D/B Toploader in monitoring the weather. Despite the apparent difficulty in receiving weather bulletins from the head office of Sealoader, the evidence on record suggests that the crew of the D/B Toploader failed to keep a watchful eye on the prevailing weather conditions. x x x Unmistakably, the crew of the D/B Toploader and the M/T Viper were caught unawares and unprepared when Typhoon Bising struck their vicinity. x x x At the height of the typhoon, the M/T Viper tried in vain

to tow the D/B Toploader away from the wharf. Since the barge was still moored to the wharf, the line connecting the same to the M/T Viper snapped and the latter vessel drifted to the Bohol area. The violent waves then caused the D/B Toploader to ram against the wharf, thereby causing damage thereto. Sealoader cannot pass to Grand Cement the responsibility of casting off the mooring lines connecting the D/B Toploader to the wharf. The Court agrees with the ruling of the Court of Appeals x x x that the people at the wharf could not just cast off the mooring lines without any instructions from the crew of the D/B Toploader and the M/T Viper. As the D/B Toploader was without an engine, casting off the mooring lines prematurely might send the barge adrift or even run the risk of the barge hitting the wharf sure enough. Thus, Sealoader should have taken the initiative to cast off the mooring lines early on or, at the very least, requested the crew at the wharf to undertake the same. In failing to do so, Sealoader was manifestly negligent.

5. ID.; ID.; CONTRIBUTORY NEGLIGENCE; CONCEPT.— Article 2179 of the Civil Code defines the concept of contributory negligence as follows: Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded. Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.

6. ID.; ID.; ID.; CONTRIBUTORY NEGLIGENCE OF A PARTY, NOT ESTABLISHED.— We find that, contrary to the judgment of the Court of Appeals in the Amended Decision dated March 3, 2005, Grand Cement was not guilty of negligent acts, which contributed to the damage that was incurred on its wharf. x x x The Court holds that Sealoader had the responsibility to inform itself of the prevailing weather conditions in the areas where its vessel was set to sail. Sealoader cannot merely rely on other vessels for weather updates and warnings on approaching storms, as what apparently happened in this case. Common sense and reason dictates this. To do so would be to gamble with the

safety of its own vessel, putting the lives of its crew under the mercy of the sea, as well as running the risk of causing damage to the property of third parties for which it would necessarily be liable. Be that as it may, the records of the instant case reveal that Grand Cement timely informed the D/B Toploader of the impending typhoon. x x x Furthermore, the Court cannot subscribe to the ruling of the Court of Appeals in the Amended Decision that Grand Cement was likewise negligent inasmuch as it continued to load the Cargo Lift Tres despite the fast approaching typhoon. Such fact alone does not prove that Grand Cement was oblivious of the typhoon. x x x As regards the presence of employees at the wharf during the typhoon, Acosta stated in his deposition dated March 16, 1998 that there was nobody on the wharf to cast off the mooring lines at that time. Nobleza refuted this statement, however, responding that he was present at the wharf during the typhoon, together with a roving guard and four other people from the arrastre. Notably, Sealoader's own witness, Renee Cayang, also contradicted the statement of Acosta, testifying that there were actually stevedores present at the wharf who were in a position to cast off the mooring lines. In light of the foregoing, the Court finds that the evidence proffered by Sealoader to prove the negligence of Grand Cement was marred by contradictions and are, thus, weak at best. We therefore conclude that the contributory negligence of Grand Cement was not established in this case.

APPEARANCES OF COUNSEL

Mutia Trinidad Venadas & Verzosa for Sealoader Shipping Corp.

Sycip Salazar Hernandez & Gatmaitan for Taiheiyo Cement Phils., Inc.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For consideration of the Court are two Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, both seeking to challenge the Amended Decision[2] dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083. The Amended Decision reduced by 50% the award of actual damages that was previously granted in the Decision[3] dated April 19, 1999 of the Regional Trial Court (RTC) of Cebu City, Branch 58, in Civil Case No. CEB-16602 and affirmed by the Court of Appeals in its earlier Decision[4] dated November 12, 2004.

The antecedents of the case are presented hereunder:

Sealoader Shipping Corporation (Sealoader) is a domestic corporation engaged in the business of shipping and hauling cargo from one point to another using sea-going inter-island barges.[5] Grand Cement Manufacturing Corporation (now Taiheiyo Cement Philippines, Inc.), on the other hand, is a domestic corporation engaged in the business of manufacturing and selling cement through its authorized distributors and, for which purposes, it maintains its own private wharf in San Fernando, Cebu, Philippines.[6]

On March 24, 1993, Sealoader executed a Time Charter Party Agreement[7] with Joyce Launch and Tug Co., Inc. (Joyce Launch), a domestic corporation, which owned and operated the motor

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[1] *Rollo* (G.R. No. 167363), pp. 3-27; *rollo* (G.R. No. 177466), pp. 3-29.

[2] *Id.* at 29-35; penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring.

[3] *Id.* at 80-92; penned by Judge Jose P. Soberano, Jr.

[4] *Id.* at 37-43; penned by Associate Justice Isaias P. Dicdican with Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr., concurring.

[5] *Id.* at 38; records, p. 371.

[6] Records, p. 2.

[7] *Id.* at 21-23.

tugboat M/T Viper. By virtue of the agreement, Sealoader chartered the M/T Viper in order to tow the former's unpropelled barges for a minimum period of fifteen days from the date of acceptance, renewable on a fifteen-day basis upon mutual agreement of the parties.[8]

Subsequently, Sealoader entered into a contract with Grand Cement for the loading of cement clinkers and the delivery thereof to Manila. On March 31, 1994, Sealoader's barge, the D/B Toploader, arrived at the wharf of Grand Cement tugged by the M/T Viper. The D/B Toploader, however, was not immediately loaded with its intended cargo as the employees of Grand Cement were still loading another vessel, the Cargo Lift Tres.

On April 4, 1994, Typhoon Bising struck the Visayas area, with maximum recorded winds of 120 kilometers per hour. Public storm signal number 3 was raised over the province of Cebu. The D/B Toploader was, at that time, still docked at the wharf of Grand Cement. In the afternoon of said date, as the winds blew stronger and the waves grew higher, the M/T Viper tried to tow the D/B Toploader away from the wharf. The efforts of the tugboat were foiled, however, as the towing line connecting the two vessels snapped. This occurred as the mooring lines securing the D/B Toploader to the wharf were not cast off. The following day, the employees of Grand Cement discovered the D/B Toploader situated on top of the wharf, apparently having rammed the same and causing significant damage thereto.

On October 3, 1994, Grand Cement filed a **Complaint for Damages**[9] against Sealoader; Romulo Diantan, the Captain of the M/T Viper; and Johnny Ponce, the Barge Patron of the D/B Toploader. The complaint was docketed as Civil Case No. CEB-16602 before the RTC of Cebu City, Branch 58. Grand Cement claimed, among others, that when the D/B Toploader arrived at its wharf on March 31, 1994, the same was not properly secured. Likewise, the storm warnings for Typhoon Bising were

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[8] *Id.* at 21; paragraph 3 of the Time Charter Party Agreement.

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

allegedly circulated to the public as early as 6:00 a.m. of April 4, 1994 through radio and print media. Grand Cement stated that after it received the weather updates for that day, it immediately advised Romulo Diantan and Johnny Ponce to move their respective vessels away from the wharf to a safer berthing area. Both men allegedly refused to do so, with Romulo Diantan even abandoning the D/B Toploader in the critical hours in the afternoon. Because of the strong winds of Typhoon Bising, the D/B Toploader was forced to smash against the wharf of Grand Cement. On April 7, 1994, Grand Cement sent a letter[10] addressed to Johnny Ponce, demanding the payment of the cost of the damage to the wharf in the amount of ₱2,423,318.58. As Grand Cement still failed to receive a reply, it sought the assistance of the Coast Guard Investigation Service Detachment in Cebu. The said office scheduled consecutive hearings, but Sealoader allegedly did not appear. Hence, Grand Cement filed the complaint, praying that the defendants named therein be ordered to pay jointly and severally the amount of ₱2,423,318.58 as actual damages, plus ₱1,000,000.00 as compensatory damages, ₱200,000.00 as attorney's fees, and ₱100,000.00 as litigation expenses and other costs.

On November 25, 1994, Sealoader filed a motion to dismiss[11] the complaint. Sealoader insisted that Joyce Launch should have been sued in its stead, as the latter was the owner and operator of the M/T Viper. Having complete physical control of the M/T Viper, as well as the towing, docking, mooring and berthing of the D/B Toploader, Sealoader maintained that Joyce Launch should be held liable for the negligent acts of the latter's employees who were manning the M/T Viper.

Before the RTC could hear the above motion, Grand Cement filed on December 14, 1994, an Amended Complaint,[12] impleading Joyce Launch as one of the party defendants. The RTC admitted

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[10] *Id.* at 160.

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

[12] *Id.* at 31-37.

the Amended Complaint and ordered that summons be issued to Joyce Launch.[13]

On January 2, 1995, Sealoader instituted a **Cross-claim**[14] against Joyce Launch and Romulo Diantan. Sealoader reiterated that the M/T Viper was under the complete command, control, supervision and management of Joyce Launch through Romulo Diantan and the crew, all of whom were employed by Joyce Launch. Sealoader posited that Joyce Launch had the sole duty and responsibility to secure the M/T Viper and the D/B Toploader in order to avert any damage to the properties of third parties. Thus, Sealoader pleaded that, should it be adjudged liable to pay the damages sought by Grand Cement, Joyce Launch should likewise be ordered to reimburse Sealoader any and all amounts that the latter is ordered to pay.

On January 4, 1995, Sealoader filed its Answer[15] to the amended complaint, maintaining that it only had the right to use the M/T Viper for the purposes for which the tugboat was chartered and nothing more. Sealoader pointed out that Grand Cement did not initiate the loading of the D/B Toploader notwithstanding the fact that the said barge had been docked at the latter's wharf long before Typhoon Bising came on April 4, 1994. As the typhoon was a *force majeure*, the damage it brought upon the wharf of Grand Cement was allegedly beyond the control of Sealoader. The Clearing Officer of Sealoader, Emar Acosta, also appeared before the Coast Guard Investigation Service Detachment in Cebu to testify on the circumstances that occurred when Typhoon Bising struck. Sealoader also instituted a counterclaim against Grand Cement and sought the payment of exemplary damages, attorney's fees and expenses of litigation.

On March 14, 1995, Joyce Launch posted its Answer[16] to the cross-claim of Sealoader, asserting that the damage sustained

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[13] *Id.* at 39.

[14] *Id.* at 54-56.

[15] *Id.* at 41-45.

[16] *Id.* at 64-67.

by the wharf of Grand Cement was not due to the gross negligence of the M/T Viper crew but due to the *force majeure* that was Typhoon Bising. Joyce Launch also claimed that the wharf was not equipped with rubber fenders and finger jutes, such that the same could easily be damaged by strong waves and winds even without any vessel berthed thereat. When the typhoon struck, the employees of Grand Cement allegedly abandoned the wharf, thus, leaving the crew of the M/T Viper helpless in preventing the D/B Toploader from ramming the wharf. Joyce Launch likewise faulted Grand Cement's employees for not warning the crew of the M/T Viper early on to seek refuge from the typhoon.

In its Answer[17] to the amended complaint, Joyce Launch reprised its argument that the resultant damage to the wharf of Grand Cement was brought about by a fortuitous event, of which it was belatedly warned. Joyce Launch insisted that, if only the loading of the D/B Toploader proceeded as scheduled, the M/T Viper could have tugged the barge away from the wharf before the typhoon struck. Joyce Launch prayed for the dismissal of the complaint and the cross-claim against it, as well as the payment of attorney's fees and litigation expenses, by way of counterclaim against Grand Cement.

The trial of the case ensued thereafter.

On May 14, 1997, Grand Cement presented *ex parte* its first witness, Rolando Buhisan, in order to establish the factual allegations in the complaint and to prove the damages sought therein.[18] Buhisan stated that, in 1994, he became the head of the civil engineering department of Grand Cement. The primary duty of the said office was to estimate expenses, as well as to investigate or inspect the implemented projects under the said department.[19] Buhisan related that on April 5, 1994, he was instructed to investigate the damage caused by the D/B Toploader

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[17] *Id.* at 138-140.

[18] TSN, May 14, 1997, p. 3.

[19] *Id.* at 5.

on the wharf of Grand Cement.[20] After inspecting the damage on the top and bottom sides of the pier, Buhisan immediately made an estimate of the total cost of repairs and sent it to the Senior Vice President of Grand Cement.[21] On April 17, 1994, Grand Cement sent a letter to Johnny Ponce, the Barge Patron of the D/B Toploader, demanding that he pay the estimated cost of damage.[22] The demand, however, was not paid.[23] Buhisan said that the estimated total cost was about ₱2,640,000.00, more or less.[24]

The next witness also put forward *ex parte* by Grand Cement, on May 16, 1997, was Wennie C. Saniel. As the Corporate Affairs Manager of Grand Cement, Saniel testified that he was responsible for keeping the company documents and was likewise in charge of the internal and external functions of the company, the claims for damages, and the keeping of the policies required for minor claims.[25] Saniel pertinently stated that, on April 4, 1994, he gave instructions for the pullout of the D/B Toploader from the wharf in view of the incoming typhoon.[26] As the instructions were ignored, Grand Cement resultantly suffered damages estimated to be around ₱2.4 million.[27] The cost of repairs made on the wharf was ₱2,362,358.20.[28]

Subsequently, in an Order[29] dated November 12, 1997, the RTC granted the manifestation of Grand Cement to drop Romulo Diantan as a party defendant. The latter was, at that time, already

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[20] *Id.*

[21] *Id.* at 12.

[22] *Id.* at 20.

[23] *Id.* at 21.

[24] *Id.* at 22.

[25] TSN, May 16, 1997, p. 3.

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

[27] *Id.* at 6.

[28] *Id.* at 12.

[29] CA *rollo*, p. 202.

working abroad and cannot be served with summons and a copy of the complaint.

On February 26, 1998, the RTC granted[30] the motion of Sealoader to take the testimonies of its witnesses by depositions upon written interrogatories.

Thus, on March 16, 1998, the deposition[31] of Marita S. Santos was taken by Sealoader in order to prove that the damage to the wharf of Grand Cement was caused by *force majeure*, as well as the negligent acts and omissions of Grand Cement and Joyce Launch. Santos declared that she was the General Manager of Sealoader. She related that Sealoader and Joyce Launch entered into a Time Charter Party Agreement on March 24, 1993.[32] In accordance with the contract, Joyce Launch would provide a tugboat, the M/T Viper, to tow the barge of Sealoader. On March 31, 1994, Sealoader's barge, the D/B Toploader, was towed by the M/T Viper to the wharf of Grand Cement in San Fernando, Cebu. Upon arrival, Sealoader's Clearing Officer, Emar Acosta, notified Grand Cement that the D/B Toploader was ready to load. The crew of the barge then waited as Grand Cement had three days from notice to load cargo into the barge. Despite waiting for several days, Santos averred that Grand Cement did not load the barge. Santos explained that there are demurrage charges if Grand Cement failed to complete the loading within three days from the commencement thereof. In the afternoon of April 4, 1994, the crew of the D/B Toploader received notice that Typhoon Bising was expected to batter the Cebu province. The crew then looked for Romulo Diantan, the captain of the M/T Viper, to direct him to tow the barge to a safer place.[33] At around 3:00 p.m., the crew of the barge found Diantan trying to maneuver the M/T Viper to tow the D/B Toploader away from the wharf. The M/T Viper failed to tow the barge since the mooring lines were not cast off and the

[30] Records, p. 228.

[31] *Id.* at 371-376.

[32] *Id.* at 371.

[33] *Id.* at 372.

arrastre responsible for the same were not at the wharf. The towing line connecting the M/T Viper to the D/B Toploader then snapped with the force of the strong winds and the weight of the vessels. The crew of the M/T Viper tried to connect another towing line to the D/B Toploader but they failed to do so because of the big waves. The M/T Viper drifted away to the Bohol area, while the D/B Toploader ran aground.[34]

Santos contended that Sealoader was not liable for the damage given that the wharf was still under construction at that time and Grand Cement was completely responsible for the pulling out of the vessels docked therein.[35] Also, had Grand Cement loaded the D/B Toploader with cargo before April 4, 1994, the accident could have been averted. Santos further stressed that, since the D/B Toploader had no engine, the M/T Viper was responsible for towing the barge to safety. Finally, Santos asserted that Typhoon Bising was an act of God; hence, the parties had to suffer their respective losses.[36]

In reply to the written cross-interrogatories submitted by the counsel of Grand Cement, Santos stated that, after Sealoader chartered the M/T Viper, they communicated with the tugboat by means of SSB radio and sometimes through messages with other vessels. The SSB radio of Sealoader was allegedly operational on the months of March and April 1994. Santos declared that Sealoader gets weather forecasts twice a day, every 12 hours, from the Japan Meteorological Company.[37] Santos admitted that Sealoader received the weather bulletin issued by PAGASA regarding Typhoon Bising at 5:00 a.m. of April 3, 1994. Sealoader, however, was not able to relay the information to the M/T Viper as radio reception was poor. Sealoader tried to communicate through the operator of another vessel, the Tugboat BJay, but the reception was likewise weak.

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[34] *Id.* at 373.

[35] *Id.* at 374.

[36] *Id.* at 375.

[37] *Id.* at 308.

Consequently, the succeeding weather forecasts were also not conveyed to the M/T Viper.[38]

The deposition of Emar A. Acosta was also taken by Sealoader on March 16, 1998 to negate the alleged liability of Sealoader to Grand Cement. Acosta stated that he was the Clearing Officer of Sealoader from 1992 to 1997. On March 31, 1994, he was on board the M/T Viper, which tugged the D/B Toploader to the wharf of Grand Cement. Upon their arrival on said date, Acosta informed Grand Cement, through the latter's representative Jaime Nobleza, that the D/B Toploader was ready to be loaded.[39] Nobleza supposedly told Acosta to wait as another vessel was being loaded at that time. Thereafter, on April 4, 1994, Typhoon Bising struck. At around 3:00 p.m. of said date, Romulo Diantan tried to steer the M/T Viper in an effort to pull the D/B Toploader away from the wharf, as the waves grew stronger. The lines between the vessels snapped as the D/B Toploader was still moored to the wharf. The arrastre were supposed to cast off the mooring lines but there was nobody on the wharf during the typhoon.[40] Acosta explained that the M/T Viper did not tow the D/B Toploader before the typhoon intensified because there were no instructions from Nobleza to pull out from the wharf. Acosta pointed out that the employees of Grand Cement were still loading another vessel at around 1:00 p.m. on April 4, 1994.[41] Lastly, Acosta presented the Sworn Statement[42] he executed before the Coast Guard on July 26, 1994 to affirm the truth of his statements in connection with the incident in question.

Acosta also answered written cross-interrogatories submitted by the counsel of Grand Cement on July 9, 1998. Upon being asked if he had the authority to direct where and when the D/B

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[38] *Id.* at 309.

[39] *Id.* at 386.

[40] *Id.* at 387.

[41] *Id.* at 388.

[42] *Rollo* (G.R. No. 167363) pp. 302-307.

Toploader and the M/T Viper will go, Acosta answered in the affirmative. He likewise acknowledged that he was authorized to order the withdrawal of the vessels from any wharf at any given time, through the captain of the M/T Viper. Acosta added that he first came to know of the typhoon when Romulo Diantan told him so, while the latter was maneuvering the M/T Viper away from the wharf. Acosta claimed that it was not his duty to receive weather forecasts and the same was gathered by the crew of the M/T Viper.[43] Acosta also said that the D/B Toploader was equipped with a handheld radio, while the M/T Viper had a SSB radio. Acosta further stated that he did not order the withdrawal of the D/B Toploader away from the wharf because they were waiting for Grand Cement to load their barge and he had no knowledge of the typhoon until it struck the wharf.[44]

On November 4, 1998, Grand Cement called on Jaime Nobleza to the witness stand in order to rebut the testimonies of Santos and Acosta. Nobleza testified that he was the Ward Coordinator of Grand Cement from 1993-1995, whose duties were to monitor the loading operations at the Grand Cement pier, to oversee the general situation therein, and to receive and disseminate information to the vessels and his superior.[45] Nobleza contradicted the statement of Acosta that there was no instruction to pull the D/B Toploader away from the wharf. Nobleza said that Acosta was aware of the typhoon as early as April 3, 1994. When Nobleza learned that typhoon signal number 1 was raised in the Central Visayas region, he discussed the same with Acosta and advised him of the possible towing of the D/B Toploader to a safer place. Acosta allegedly told Nobleza that the typhoon was still far. At about 9:00 a.m. on April 4, 1994, Nobleza boarded the D/B Toploader and advised Acosta to remove the barge from the wharf since the weather was already deteriorating. Acosta did not heed the instructions and instead told Nobleza that the anchor of the vessel and the cable wire attached thereto

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[43] Records, p. 311.

[44] *Id.* at 312.

[45] TSN, November 4, 1998, p. 3.

were strong enough to withstand the typhoon.[46] The last time that Nobleza directed Acosta to pull out the barge from the wharf was at 2:00 p.m. on April 4, 1994. About 15 minutes thereafter, the operations of the wharf were suspended. Contrary to the claim of Acosta, Nobleza averred that during the typhoon, he was at the wharf along with a roving guard and four other people from the arrastre.[47]

Nobleza further testified that he did not receive any request for the casting off of the mooring lines, which connected the D/B Toploader to the wharf. Nobleza said that it was also not proper to simply cast off the mooring lines without the proper coordination with the crew of the barge because the vessel might no longer be maneuvered and would drift out to sea.[48] Anent the alleged failure of Grand Cement to load cargo on the D/B Toploader on time, Nobleza countered that Santos was aware of this since the latter was told that the barge will be loaded only after the loading of the Cargo Lift Tres was completed.[49]

On cross-examination, Nobleza articulated that Grand Cement took days to load just one vessel because the sea was not cooperative and they had to stop loading at times. At around 9:00 a.m. on April 4, 1994, despite telling Acosta to pull out the D/B Toploader from the wharf, Nobleza admitted that they did not suspend the loading of the Cargo Lift Tres. He explained that the vessel was grounded in the shallow waters and it was already loaded with clinkers.[50] Nobleza testified that he remained at the vicinity of the wharf at around 4:00 p.m. on April 4, 1994.[51]

Finally, on December 9, 1998, Sealoader presented Renee Cayang as a surrebuttal witness to prove that Nobleza was not

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[46] *Id.* at 4.

[47] *Id.* at 5.

[48] *Id.* at 6.

[49] *Id.* at 8.

[50] *Id.* at 11.

[51] *Id.* at 12.

at the wharf when Typhoon Bising struck. Cayang stated that he was the Assistant Barge Patron of the D/B Toploader at the time of the incident on question. On April 4, 1994, he was on board the D/B Toploader.[52] Cayang testified that he did not see Nobleza either on board the D/B Toploader, before the typhoon struck, or at the wharf at the time of the typhoon. Cayang also asserted that there was nobody at the wharf at that time.[53]

At his cross-examination, Cayang said that, during the entire afternoon of April 4, 1994, he stayed inside the compartment of the D/B Toploader where the officers were usually stationed.[54] Cayang revealed that they were waiting for the master of the barge to arrive. When asked if there was a radio on board the barge, Cayang replied in the negative. He also disclosed that nobody notified them of the typhoon and they only came to know about the same when their vessel was hit.[55] Cayang stated that Nobleza stayed in the guardhouse of Grand Cement on April 4, 1994 and the latter did not go to the wharf.[56] Cayang alleged that, on their end, there was no advice to pull out the D/B Toploader and that was why they were waiting for somebody to cast off the mooring lines. On re-direct examination, however, Cayang said that there were stevedores present at that time who were in a position to cast off the mooring lines.[57]

On April 19, 1999, the RTC rendered a decision on Civil Case No. 161602, declaring that:

> From the evidence adduced, the Court is of the view that the defendants are guilty of negligence, which caused damage to the [Grand Cement's] wharf. The defendants' negligence can be shown from their acts or omissions, thus: they did not take any precautionary measure as demanded or required of them in complete disregard of

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[52] TSN, December 9, 1998, p. 3.

[53] *Id.* at 4.

[54] *Id.* at 5.

[55] *Id.* at 6.

[56] *Id.* at 7.

[57] *Id.* at 10.

the public storm signal or warning; the master or captain or the responsible crew member of the vessel was not in the vessel, hence, nobody could make any move or action for the safety of the vessel at such time of emergency or catastrophe; and the vessel was not equipped with a radio or any navigational communication facility, which is a mandatory requirement for all navigational vessels.

On the second issue: Re: Damages. – As the defendants are guilty of negligence, [Grand Cement] is entitled to recover damages from them. Even the failure of the defendants to equip their vessel with the communication facility, such as radio, such failure is undisputedly a negligence. x x x Had defendants been mindful enough to equip their vessel with a radio, a responsible crew member of the vessel would have been informed through the radio of the incoming typhoon and the notice from the [Grand Cement] about the said typhoon would have been of no concern to the defendant and/or the responsible crew members of the vessel. The safety of the vessel and the avoidance of injury or damage to another should be the primary concern of the defendants and/or the crew members themselves.

x x x x x x x x x

The damage to [Grand Cement's] private wharf was caused by the negligence of both defendants Sealoader and Joyce Launch as well as their employees, who are the complements of the barge Toploader and the tugboat M/T Viper. Said defendants are also responsible for the negligence of their employees, as the law says:

> "Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those persons for whom one is responsible.
>
> x x x x x x x x x
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry." (Civil Code)

The Court finds sufficient and competent evidence to award [Grand Cement] actual or compensatory damages in the amount of ₱2,362,358.20 x x x. Likewise, as [Grand Cement] has engaged the services of counsel because of defendants' act or omission and has incurred expenses to protect its interest (Art. 2208, par. (2), Civil Code), [Grand Cement] should recover the sum of ₱50,000.00 as

attorney's fees and another sum of ₱10,000.00 as litigation expenses. The defendants are held liable to pay all these damages, and their liability is solidary (Art. 2194, Civil Code).

As to the counterclaim, considering the findings of Court, which are adverse to the defendants, the counterclaim has become without basis, hence, should be dismissed.

WHEREFORE, premises considered, judgment is hereby rendered in favor of [Grand Cement] and against the defendants by ordering the defendants Sealoader Shipping Corporation, Joyce Launch and Tug Company, Inc. and Johnny Ponce to pay jointly and severally to the [Grand Cement] the sum of Pesos Two Millions Three Hundred Sixty-Two Thousand Three Hundred Fifty-Eight and 20/ centavos (₱2,362,358.20) as actual or compensatory damages, the sum of Fifty Thousand Pesos (₱50,000.00) as attorney's fees, the sum of Ten Thousand Pesos (₱10,000.00) as litigation expenses, and the costs of the suit.

The counterclaim is hereby dismissed.[58]

Sealoader appealed the above ruling with the Court of Appeals, which appeal was docketed as CA-G.R. CV No. 65083. On the other hand, Joyce Launch and Johnny Ponce no longer questioned the trial court's decision.

Before the appellate court, Sealoader argued that the RTC erred in: (1) finding that the damage to the wharf of Grand Cement was caused by the negligence of Sealoader; (2) holding Sealoader liable for damages despite the fact that it was Grand Cement that had the last clear chance to avert the damage; (3) not holding that Grand Cement was negligent for not loading the vessel on time; and (4) giving credence to the afterthought testimony of Grand Cement's rebuttal witness.[59]

In its Decision dated November 12, 2004, the Court of Appeals found no merit in the appeal of Sealoader, adjudging thus:

On the first and second assignment of error, Sealoader attributes the cause of the damage to the negligence of Grand Cement for not

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[58] *Rollo* (G.R. No. 167363), pp. 90-92.

[59] *Id.* at 40.

casting off the mooring lines of the barge at the height of the typhoon despite their having the last clear chance to avert any damage. We find this contention untenable.

x x x x x x x x x

Indeed, the people at the wharf could not just cast off the mooring lines absent any instructions from the crew of the vessels to do so, considering that the barge was a dumb boat, *i.e.*, without a propeller. In view of this, Sealoader can not fault the people at the wharf for not acting. Although Sealoader presented a Mr. Renee Cayang, Assistant Patron of D/B "Toploader", to rebut Mr. Nobleza's testimony, the same did not reveal that any command for the release of the mooring lines was made. Mr. Cayang's testimony revealed that they had no radio on board x x x and that there were stevedores present at that time x x x.

Second, good seamanship dictates that, in cases of departure under extraordinary circumstances, as in the case at bench, the tugboat's crew has the obligation to cut off their mooring lines. The records reveal that the crew did try to cut off the mooring lines but were unsuccessful due to the big waves. Consequently, the towing lines between M/T "Viper" and D/B "Toploader" snapped. x x x.

Going to the third assignment of error, Sealoader contends that Grand Cement was negligent for not loading the vessel on time. Yet again, we find this to be untenable. x x x. With the knowledge that a storm was approaching, prudence would have dictated them to tug the barge to shelter and safety at the earliest possible time. Instead, they waited until the last minute to take action which was already too late. Their experience would have prompted them to take precautionary measures considering that the weather and the sea are capricious. Whether Grand Cement was late in loading the barge or not is of no moment. It was the judgment of the vessels' captain and patron that was crucial.

As to the last assignment of error regarding the rebuttal witness of Grand Cement, we find no reversible error committed by the court *a quo* in giving credence to the testimony of the said witness. The defendant-appellant and defendants-appellees were given chance to cross-examine the witness. Moreover, no documentary or testimonial evidence was given to rebut the crucial testimony that no command from the vessel was given to the people at the wharf to release the mooring lines.

WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us **DISMISSING** the appeal filed in this case. The decision dated April 19, 1999 rendered by the Regional Trial Court, Branch 58 in Cebu City in Civil Case No. CEB-16602 is hereby **AFFIRMED**.[60]

On December 9, 2004, Sealoader filed a Motion for Reconsideration[61] of the above decision, arguing that the obligation to pay the damages sustained by Grand Cement did not require solidarity given that Joyce Launch was solely liable therefor. Sealoader insisted that the D/B Toploader would not have rammed the wharf if the M/T Viper had towed the barge to safety on the morning of April 4, 1994. Sealoader also asserted that the delay in the loading of the D/B Toploader partly contributed to the resulting damage to the wharf.

On March 3, 2005, the Court of Appeals issued an Amended Decision in CA-G.R. CV No. 65083, finding the above stated motion of Sealoader partly meritorious. While upholding its earlier finding that Sealoader was negligent, the appellate court determined that:

> Like Sealoader, Grand Cement did not take any precaution to avoid the damages wrought by the storm. Grand Cement waited until the last possible moment before informing Sealoader and Joyce about the impending storm. In fact, it continued loading on another vessel (Cargo Lift 3) until 2:15 p.m. of April 4, 1994 (transcript of the testimony of Jaime Nobleza, pp. 10-11) or roughly just before the storm hit. It is no wonder that Sealoader did not immediately move away from the pier since the owner of the pier, Grand Cement, was continuing to load another vessel despite the fast approaching storm. As for the conduct of Grand Cement when the storm hit, we find the testimony of Sealoader's witness that there were no employees of Grand Cement manning the pier to be more convincing. In totality, we find that Grand Cement also did not exercise due diligence in this case and that its conduct contributed to the damages that it suffered.
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> Article 2179 of the New Civil Code states that where the plaintiff's negligence was only contributory, the immediate and proximate cause

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[60] *Id.* at 40-43.

[61] *Id.* at 106-111.

of the injury being the defendant's lack of due care, the plaintiff may recover damages, the courts shall mitigate the damages to be awarded. Contributory negligence is conduct on the part of the plaintiff which falls below the standard to which he should conform for his own protection and which is legally contributing cause, cooperating with the negligence of the defendant in bringing about the plaintiff's harm.
x x x

Due to its contributory negligence, Grand Cement must carry part of the brunt of the damages. This Court finds it equitable that Grand Cement should bear FIFTY PER CENT (50%) or half of the actual damages. The other pronouncements of the court regarding attorney's fees, litigation expenses and cost of suit shall, however, not be disturbed.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us *PARTIALLY MODIFYING* our earlier judgment by reducing the award for actual damages by *FIFTY PER CENT (50%)* or *HALF*.[62]

Grand Cement filed a Motion for Reconsideration[63] of the Amended Decision but the Court of Appeals denied the same in a Resolution[64] dated February 20, 2007.

Desirous of having the Amended Decision overturned, Sealoader and Grand Cement each filed their separate Petitions for Review on *Certiorari* before this Court, which petitions were docketed as G.R. No. 167363 and G.R. No. 177466, respectively. In a Resolution[65] dated August 6, 2008, the Court ordered the consolidation of the two petitions, as the same involved identical parties, identical sets of facts, and both petitions assailed the Amended Decision dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083.

Issues

In G.R. No. 167363, Sealoader raised the following issues in its Memorandum, to wit:

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[62] *Id.* at 33-34.

[63] *Id.* at 139-159.

[64] CA *rollo*, pp. 248-249.

[65] *Rollo* (G.R. No. 177466), p. 277.

I

WHILE THE HONORABLE COURT OF APPEALS WAS CORRECT IN RULING THAT GRAND CEMENT WAS GUILTY OF NEGLIGENCE, IT COMMITTED REVERSIBLE ERROR IN NOT HOLDING THAT GRAND CEMENT WAS BARRED FROM RECOVERING DAMAGES UNDER THE DOCTRINE OF LAST CLEAR CHANCE.

II

THE COURT OF APPEALS AND THE TRIAL COURT DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS IN REFUSING TO DETERMINE THE ULTIMATE RIGHTS AND OBLIGATIONS OF PETITIONER [SEALOADER] AND RESPONDENT JOYCE LAUNCH AS AGAINST EACH OTHER AND AS AGAINST GRAND CEMENT.[66]

In G.R. No. 177466, Grand Cement set forth the following assignment of errors for our consideration:

I

WHETHER OR NOT JOYCE LAUNCH SHOULD HAVE BEEN IMPLEADED AS ONE OF THE RESPONDENTS HEREIN PURSUANT TO SECTIONS 3 AND 4, RULE 45 OF THE 1997 RULES OF CIVIL PROCEDURE AND SUPREME COURT CIRCULAR NO. 19-91.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN CREATING A PREVIOUSLY NON-EXISTENT LEGAL DUTY BY SHIPPERS OF GOODS OR OWNERS OF PIERS TO WARN DOCKED VESSELS OF APPROACHING TYPHOONS AND IN MAKING THE SAME AS ONE OF ITS BASES IN FINDING [GRAND CEMENT] GUILTY OF CONTRIBUTORY NEGLIGENCE.

III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN CREATING A PREVIOUSLY NON-EXISTENT LEGAL DUTY ON AN OWNER OF A PIER TO STATION EMPLOYEES AT SUCH PIER WHEN A TYPHOON HITS AND IN MAKING THE SAME AS ONE

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[66] *Rollo* (G.R. No. 167363), pp. 228-229.

OF ITS BASES IN FINDING [GRAND CEMENT] GUILTY OF CONTRIBUTORY NEGLIGENCE.

IV

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REFUSING TO TAKE COGNIZANCE OF THE ISSUES RAISED IN [GRAND CEMENT'S] MOTION FOR RECONSIDERATION, ON THE GROUND THAT ALL THE ISSUES HAD ALREADY BEEN DISCUSSED, WHEN NEITHER ITS ORIGINAL DECISION OR THE AMENDED DECISION HAD RULED ON THE POINTS RAISED IN SAID MOTION FOR RECONSIDERATION.[67]

Ultimately, the question that needs to be resolved by this Court is who, among the parties in this case, should be liable for the damage sustained by the wharf of Grand Cement.

Sealoader assails the Amended Decision of the Court of Appeals insofar as it was found guilty of committing negligent acts that partly caused damage to the wharf of Grand Cement. Instead, Sealoader directly lays the blame on Grand Cement and Joyce Launch.

Sealoader argues that the negligence imputed on its part was not established, thus, it is absolved from any liability. On the contrary, the negligent acts allegedly committed by Grand Cement should bar its recovery of damages in view of the doctrine of last clear chance. Sealoader reiterates that the damage to the wharf was ultimately caused by the failure of Grand Cement to cast off the mooring lines attached to the D/B Toploader at the height of the typhoon. The second sentence of Article 2179 of the Civil Code on contributory negligence was supposedly inapplicable in the instant case, considering that Sealoader was not negligent at all. Sealoader again insists that the D/B Toploader was entirely dependent on the M/T Viper for movement. Thus, the failure of the M/T Viper to tow the D/B Toploader to safety should not be charged to the latter.

On the other hand, Grand Cement disputes the Court of Appeals' finding in the Amended Decision that it was guilty of

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[67] *Rollo* (G.R. No. 177466), p. 213.

contributory negligence, and thus, likewise questions the reduction by 50% of the award of actual damages to be paid by Sealoader.

Ruling

Sealoader contends that Grand Cement had the last clear chance to prevent the damage to the latter's wharf. Had Grand Cement cast off the mooring lines attached to the D/B Toploader early on, the barge could have been towed away from the wharf and the damage thereto could have been avoided. As Grand Cement failed to act accordingly, Sealoader argues that the former was barred from recovering damages.

Grand Cement counters that the determination as to who among the parties had the last clear chance to avoid an impending harm or accident calls for a re-examination of the evidence adduced by the parties. As this Court is not a trier of facts, Grand Cement posits that Sealoader's petition may already be dismissed. Furthermore, Grand Cement asserts that the doctrine of last clear chance cannot aid Sealoader since the doctrine presumes that Sealoader's negligence had ceased and the alleged negligence of Grand Cement came at a later time. Thus, an appreciable time must have intervened, which effectively severed the negligence of Sealoader. Contrarily, Grand Cement maintains that the negligence of Sealoader did not cease, while its own negligence was not proven.

The Court had occasion to reiterate the well-established doctrine of last clear chance in *Philippine National Railways v. Brunty*[68] as follows:

> The doctrine of last clear chance states that **where both parties are negligent** but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. Stated differently, the antecedent negligence of plaintiff does not preclude him from recovering damages caused by the

[68] G.R. No. 169891, November 2, 2006, 506 SCRA 685.

supervening negligence of defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence.[69] (Emphasis ours.)

Upon the other hand, in *Layugan v. Intermediate Appellate Court*,[70] the Court defined negligence as "the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do, or as Judge Cooley defines it, '(T)he failure to observe for the protection of the interests of another person, that degree of care, precaution, and vigilance which the circumstances justly demand, whereby such other person suffers injury.'"

Verily, the matter of negligence of either or both parties to a case is a question of fact since a determination of the same "would entail going into factual matters on which the finding of negligence was based."[71] Generally, questions of fact should not be raised in a petition for review.[72] Section 1, Rule 45[73] of the Rules of Court explicitly states that a petition filed thereunder shall raise only questions of law, which must be distinctly set forth.

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[69] *Id.* at 701.

[70] G.R. No. 73998, November 14, 1988, 167 SCRA 363, 372-373.

[71] *Philippine National Railways v. Brunty*, *supra* note 68 at 697.

[72] *Cordial v. Miranda*, 401 Phil. 307, 316 (2000).

[73] SEC. 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

Jurisprudence has provided for exceptions[74] to this rule, however, one of which is when the findings of fact of the Court of Appeals are contrary to those of the trial court. As will be further elaborated upon, this exception is present in the instant case as the RTC and the Court of Appeals issued contrary findings of fact as to the negligence of Grand Cement. Thus, an examination of the evidence adduced by the parties is warranted under the circumstances.

After a thorough review of the records of this case, the Court finds that Sealoader was indeed guilty of negligence in the conduct of its affairs during the incident in question.

One of the bases cited by the RTC for its finding that Sealoader was negligent was the lack of a radio or any navigational communication facility aboard the D/B Toploader. To recall, Emar Acosta stated in his deposition dated July 9, 1998 that Sealoader was equipped with a handheld radio while the M/T Viper had on board an SSB radio. Marita Santos, on the other hand, explained that Sealoader communicated and transmitted weather forecasts to the M/T Viper through the latter's SSB radio. Before Typhoon Bising hit the province of Cebu on April 4, 1994, Santos stated that Sealoader tried to relay the weather bulletins pertaining to the storm directly with the M/T Viper but the radio signal was always poor. The foregoing statements were put to doubt, however, when Sealoader's own witness, Renee Cayang, stated on cross-examination that there was no

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[74] The exceptions are when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (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) the CA went beyond the issues of the case and its findings are contrary to the admissions of both appellant and appellees; (7) the findings of fact of the CA are contrary to those of the trial court; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Rosario v. PCI Leasing and Finance, Inc.*, 511 Phil. 115, 123-124 [2005], citing *Sarmiento v. Court of Appeals*, 353 Phil. 834, 846 [1998].)

radio on board the D/B Toploader. The Court, therefore, agrees with the conclusion of Grand Cement that there was either no radio on board the D/B Toploader, the radio was not fully functional, or the head office of Sealoader was negligent in failing to attempt to contact the D/B Toploader through radio. Either way, this negligence cannot be ascribed to anyone else but Sealoader.

Correlated to the above finding is the manifest laxity of the crew of the D/B Toploader in monitoring the weather. Despite the apparent difficulty in receiving weather bulletins from the head office of Sealoader, the evidence on record suggests that the crew of the D/B Toploader failed to keep a watchful eye on the prevailing weather conditions. Cayang, then the Assistant Barge Patron of the D/B Toploader, admitted that on the afternoon of April 4, 1994, he only stayed inside the officers' station in the barge, waiting for the barge patron to arrive. He testified that nobody notified the crew of the barge of the impending typhoon and the latter knew about the typhoon only when it hit their vessel.

In like manner, Acosta stated in his deposition dated July 9, 1998 that it was not his duty to receive weather forecasts and the said information was gathered only from the crew of the M/T Viper. He was also not aware if Sealoader had records of weather forecasts and how many of such were received. Acosta likewise gave conflicting statements as to how and when he came to know of the typhoon. In his answer to the written cross-interrogatories dated July 9, 1998, Acosta said that he found out about the incoming typhoon when Romulo Diantan told him while the latter was already maneuvering the M/T Viper away from the wharf on April 4, 1994. However, in the Sworn Statement he executed before the Coast Guard Investigation Service Detachment on July 26, 1994, Acosta declared as follow:

> 32. Q – While on board did you hear any news about the approaching typhoon BISING?
> A – **Yes about 1100H I heard a news about the typhoon**.

33. Q – How were you able to hear about this news of the typhoon approaching?
A – **I contacted another tugboat M/T BEEJAY and I heard that the typhoon was still far**.

34. Q – Did you inquire from them if San Fernando, Cebu is the path of the incoming typhoon?
A – **Yes I tried asking them but they said the place is safe for the incoming typhoon**.

35. Q – Did you inform your captain about this typhoon?
A – **Yes I informed him but he says the typhoon is far**.

36. Q – What was the weather condition during that time 1100H?
A – **The weather is fine the sea was calm, but it was cloudy**.

x x x x x x x x x

38. Q — What did ROMULO DIANTAN do with xxx after 1100H of that day?
A – He stood by at the tugboat.

39. Q – Until what time?
A – **Until the time when the wind was becoming strong**.

40. Q – What time was this about the wind becoming strong?
A – 1300H of that day I say 1500H not 1300H. **[T]hat is 3:00 P.M.**

41. Q – What did the captain do at about x x x 1500H?
A – He stood by the main engine for maneuvering.

42. Q – What was the decision of the captain during that time?
A – To pull out the BARGE TOPLOADER from the beaching area of Grand Cement Pier in order to shelter at Sangat, San Fernando.[75] (Emphases ours.)

Unmistakably, the crew of the D/B Toploader and the M/T Viper were caught unawares and unprepared when Typhoon Bising struck their vicinity. According to the Sworn Statement of Acosta, which was taken barely three months after the typhoon, he was already informed of the approaching typhoon. Regrettably, Acosta merely relied on the assurances of the M/T Beejay crew

[75] *Rollo* (G.R. No. 167363), pp. 303-304.

and the opinion of Romulo Diantan that the typhoon was nowhere near their area. As it turned out, such reliance was utterly misplaced. Within a few hours, the weather quickly deteriorated as huge winds and strong waves began to batter the vessels. At the height of the typhoon, the M/T Viper tried in vain to tow the D/B Toploader away from the wharf. Since the barge was still moored to the wharf, the line connecting the same to the M/T Viper snapped and the latter vessel drifted to the Bohol area. The violent waves then caused the D/B Toploader to ram against the wharf, thereby causing damage thereto.

Sealoader cannot pass to Grand Cement the responsibility of casting off the mooring lines connecting the D/B Toploader to the wharf. The Court agrees with the ruling of the Court of Appeals in the Decision dated November 12, 2004 that the people at the wharf could not just cast off the mooring lines without any instructions from the crew of the D/B Toploader and the M/T Viper. As the D/B Toploader was without an engine, casting off the mooring lines prematurely might send the barge adrift or even run the risk of the barge hitting the wharf sure enough. Thus, Sealoader should have taken the initiative to cast off the mooring lines early on or, at the very least, requested the crew at the wharf to undertake the same. In failing to do so, Sealoader was manifestly negligent.

On the issue of the negligence of Grand Cement, the Court of Appeals initially affirmed the ruling of the RTC that the damage to the wharf of Grand Cement was caused by the negligent acts of Sealoader, Joyce Launch and Johnny Ponce. Upon motion of Sealoader, however, the Court of Appeals rendered an Amended Decision, finding that Grand Cement was guilty of contributory negligence. The award of actual damages to Grand Cement was, thus, reduced by 50%.

Article 2179 of the Civil Code defines the concept of contributory negligence as follows:

> Art. 2179. When the plaintiff's own negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate

cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

Contributory negligence is conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection.[76]

We find that, contrary to the judgment of the Court of Appeals in the Amended Decision dated March 3, 2005, Grand Cement was not guilty of negligent acts, which contributed to the damage that was incurred on its wharf.

To recall, the Court of Appeals subsequently found that Grand Cement likewise did not exercise due diligence since it belatedly informed Sealoader of the approaching typhoon and, thereafter, still continued to load another vessel. The Court of Appeals further gave more credence to the claim of Sealoader that there were no employees of Grand Cement manning the pier when the typhoon struck.

The Court holds that Sealoader had the responsibility to inform itself of the prevailing weather conditions in the areas where its vessel was set to sail. Sealoader cannot merely rely on other vessels for weather updates and warnings on approaching storms, as what apparently happened in this case. Common sense and reason dictates this. To do so would be to gamble with the safety of its own vessel, putting the lives of its crew under the mercy of the sea, as well as running the risk of causing damage to the property of third parties for which it would necessarily be liable.

Be that as it may, the records of the instant case reveal that Grand Cement timely informed the D/B Toploader of the impending typhoon. Jaime Nobleza testified that he warned Acosta of the typhoon as early as April 3, 1994 and even advised the latter to move the D/B Toploader to a safer place. On April 4, 1994, Nobleza twice directed Acosta to remove the barge away

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[76] *Philippine National Railways v. Brunty, supra* note 68.

from the wharf. The first order was given at about 9:00 a.m., while the second was around 2:00 p.m.

In contrast, Acosta again gave contradictory statements regarding the advise of Grand Cement to remove the D/B Toploader away from the wharf. In the deposition of Acosta dated March 16, 1998, he stated that the M/T Viper did not tow the D/B Toploader away from the wharf before the typhoon intensified because there was no instruction from Nobleza to pull out. However, in his Sworn Statement before the Coast Guard, Acosta declared thus:

> 43. Q – According to the representative of Grand Cement you were notified as early as the morning of April 4, 1994 to pull out your vessel but allegedly you did not do so. What can you say on this?
>
> A – They informed us at about 2:40 P.M. telling me that if ever the typhoon will become stronger we must pull out the barge. I told MR. NOBLEZA about this that we will do so.[77]

Furthermore, the Court cannot subscribe to the ruling of the Court of Appeals in the Amended Decision that Grand Cement was likewise negligent inasmuch as it continued to load the Cargo Lift Tres despite the fast approaching typhoon. Such fact alone does not prove that Grand Cement was oblivious of the typhoon. As testified upon by Nobleza, Sealoader was very much aware of this as he told Marita Santos that the D/B Toploader would only be loaded with its cargo after the loading of the Cargo Lift Tres. The latter vessel was also grounded in shallow waters at that time and already loaded with cement clinkers.

As regards the presence of employees at the wharf during the typhoon, Acosta stated in his deposition dated March 16, 1998 that there was nobody on the wharf to cast off the mooring lines at that time. Nobleza refuted this statement, however, responding that he was present at the wharf during the typhoon, together with a roving guard and four other people from the

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[77] *Rollo* (G.R. No. 167363), p. 304.

arrastre. Notably, Sealoader's own witness, Renee Cayang, also contradicted the statement of Acosta, testifying that there were actually stevedores present at the wharf who were in a position to cast off the mooring lines.

In light of the foregoing, the Court finds that the evidence proffered by Sealoader to prove the negligence of Grand Cement was marred by contradictions and are, thus, weak at best. We therefore conclude that the contributory negligence of Grand Cement was not established in this case. Thus, the ruling of the Court of Appeals in the Amended Decision, which reduced the actual damages to be recovered by Grand Cement, is hereby revoked. Accordingly, the doctrine of last clear chance does not apply to the instant case.

WHEREFORE, the Court hereby rules that:

(1) The Petition for Review in G.R. No. 167363 is *DENIED;*

(2) The Petition for Review in G.R. No. 177466 is *GRANTED;*

(3) The Amended Decision dated March 3, 2005 of the Court of Appeals in CA-G.R. CV No. 65083 is *REVERSED* and *SET ASIDE;* and

(4) The Decision dated November 12, 2004 of the Court of Appeals in CA-G.R. CV No. 65083 is *REINSTATED.*

No costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 169965-66. December 15, 2010]

CARLOS V. VALENZUELA, *petitioner, vs.* **CALTEX PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; REQUIREMENT OF VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING, PROPERLY COMPLIED WITH.— [T]he claim of the petitioner that there was only one certification and verification against forum shopping filed by the respondents therein is utterly incorrect. Records show that there were two certifications and verifications against forum shopping submitted together with the questioned petition for *certiorari:* one signed by Alejandro Rey C. Pardo, Jr. in behalf of therein petitioner Caltex Philippines, Inc., and another one signed by Leodegario W. Jacinto in behalf of himself as petitioner, also in the same petition for *certiorari*. Records show that a Secretary's Certificate dated October 9, 2003 was issued by then Corporate Secretary Ariel F. Abonal certifying that a Board Resolution was duly passed on January 28, 2002 approving a Revised Approvals Manual, on the basis of which, Alejandro Rey C. Pardo, Jr. was authorized to sign, verify and cause the filing of the petition for *certiorari* before the CA in the case entitled "*Caltex (Philippines), Inc. v. Carlos Valenzuela, et al.*," and to sign, verify and cause the filing of other necessary pleadings. Thus, it is clear that the respondent submitted a proper verification and certification against forum shopping.

2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; FAILURE TO SUBMIT CERTAIN DOCUMENTS DOES NOT WARRANT DISMISSAL OF THE PETITION.— Equally without merit is petitioner's contention that the failure of respondent to submit certain documents together with its petition for *certiorari* warrants the dismissal thereof. In *Quintano v. National Labor Relations Commission,* we held, x x x **The Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the**

judgment, final order, or resolution being assailed. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution, or judgment, falls upon the petitioner. The CA will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case. If the CA was of the view that the petitioner should have submitted other pleadings, documents or portions of the records to enable it to determine whether the petition was sufficient in substance, it should have accorded the petitioner, in the interest of substantial justice, a chance to submit the same instead of dismissing the petition outright. Clearly, this is the better policy. x x x Thus, the failure to submit certain documents, assuming there was such a failure on respondent's part, does not automatically warrant outright dismissal of its petition.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; WHEN EMPLOYEE'S DISMISSAL WAS EFFECTED WITH JUST CAUSE.— There is no compelling reason in this case for us to reverse the ruling of the CA sustaining the finding of the Labor Arbiter that petitioner's dismissal was effected with just cause. The findings of the Labor Arbiter are supported by more than substantial evidence and even petitioner's admissions during the administrative hearings. As the CA correctly held, Evidence overwhelmingly shows that petitioner Valenzuela was indeed guilty of habitual and gross neglect of his duties. It was not the first time that there occurred a shortage of the merchandise stocks but apparently petitioner Valenzuela did nothing about it and, instead, manipulated documents and records, *i.e.*, stock cards, to create the illusion that all merchandise stocks were accounted for, when in fact a lot of these merchandise were already missing from petitioner Company's Lapu-Lapu terminal. x x x Furthermore, petitioner Valenzuela likewise committed fraud and willful breach of the trust reposed in him by petitioner Caltex. He was in-charge of the custody and monitoring of the merchandise stocks, and, as found by the Labor Arbiter, was entrusted with confidence on delicate matters, *i.e.*, the handling and care and protection of the employer's property. Considering that the merchandise stocks are the lifeblood of petitioner

Caltex, petitioner Valenzuela's act of allowing the loss of merchandise stocks and concealing these from the employer is reason enough for his termination from his employment.

4. ID.; ID.; ID.; GROUNDS, EXPLAINED.— Under Article 282 of the Labor Code, as amended, gross and habitual neglect by the employee of his duties is a sufficient and legal ground to terminate employment. Jurisprudence provides that serious misconduct and habitual neglect of duties are among the just causes for terminating an employee. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. Further, Article 282 of the Labor Code, as amended, also provides fraud or willful breach by employee of the trust reposed in him by his employer as a just cause for termination. It is always a serious issue for the employer when an employee performs acts which diminish or break the trust and confidence reposed in him. The Labor Code, as amended, although sympathetic to the working class, is aware of this scenario and in pursuit of fairness, included fraud or willful breach of trust as a just cause for termination of employment.

5. ID.; ID.; PREVENTIVE SUSPENSION; EMPLOYEE IS ENTITLED TO HIS WAGES AND BENEFITS DURING THE ADDITIONAL PERIOD OF SUSPENSION.— [P]etitioner was preventively suspended from November 26, 1999 to December 25, 1999. Respondents extended his preventive suspension for thirty days, from December 26, 1999 to January 24, 2000. After the conclusion of the administrative investigation, he was finally terminated on January 21, 2000. There is no showing that petitioner was paid his wages and benefits during the additional period of suspension. Clearly, petitioner is entitled to his salary and other benefits prior to his dismissal, from December 26, 1999 to January 21, 2000.

APPEARANCES OF COUNSEL

Armando M. Alforque for petitioner.
Angara Abello Concepcion Regala & Cruz for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated July 20, 2005 of the Court of Appeals (CA) in CA-G.R. SP Nos. 80494 and 80638. The appellate court had reversed and set aside the Decision[2] of the National Labor Relations Commission (NLRC) and reinstated the Decision[3] of the Labor Arbiter which dismissed petitioner's complaint for illegal dismissal for lack of merit.

The facts follow.

Petitioner was hired by respondent Caltex Philippines, Inc. sometime in March 1965 as Laborer and assigned in the Lube Oil Section of its Pandacan Terminal in Manila. After three years, he was designated as Machine Operator A.[4]

Sometime in 1970, petitioner requested that he be transferred to respondent's main office. Since the position available then was that of a messenger, he accepted the same. One year later, petitioner was given a new assignment as Aviation Attendant of respondent's Manila Aviation Service.[5]

After twenty-two (22) years at the Manila Aviation Service, petitioner was moved to respondent's Lapu-Lapu Terminal in Lapu-Lapu City. The transfer was part of the penalty for the charge of not servicing an aircraft's fuel needs, which petitioner denied. Reluctantly, petitioner acceded to the transfer.[6]

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[1] *Rollo*, pp. 27-38. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring.

[2] *Id.* at 58-72. Dated September 10, 2002.

[3] *Id.* at 710-715. Dated May 19, 2000.

[4] *Id.* at 7.

[5] *Id.*

[6] *Id.*

Petitioner was initially designated as Gauger but he also handled Bulk Receiving, Tank Truck Loading and Bunkering. In 1996, the Warehouseman retired and the functions of the warehouseman were given to petitioner.[7] As warehouseman, petitioner's duties included, among others, the maintenance of stock cards for storehouse materials and supplies, the conduct of physical inventory of the company's merchandise stocks and monitoring the movement of said stocks.[8]

On November 23, 1999, a spot operational audit was conducted on the Lapu-Lapu City District Office, and several irregularities in the handling of respondent's merchandise were discovered. A net inventory shortage amounting to ₱823,100.49 was discovered.[9]

Petitioner was required to explain within forty-eight (48) hours such shortage and the other irregularities discovered during the spot audit. He was further informed[10] that an administrative investigation will be conducted on the matter and because of the nature of his offense and his position in the Company, he was preventively suspended to prevent further losses and/or possible tampering of the documents and other evidence.[11]

The administrative investigation was conducted with two hearings held on December 15, 1999 and January 18, 2000. On both dates, petitioner was present, together with his counsel and/or union officer. Thereafter, based on the findings from the administrative investigation, respondent found cause to terminate petitioner's employment.[12] Specifically, respondent found petitioner liable for (1) Gross and Habitual neglect of duties and responsibilities as warehouse clerk, (2) Not performing

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[7] *Id.* at 8.

[8] *Id.* at 28.

[9] *Id.*

[10] *Id.* at 202.

[11] *Id.* at 28-29.

[12] *Id.* at 29.

month-end inventory duties, (3) Not investigating the shortages of stocks under his custody and (4) Commission of Fraud.[13]

Aggrieved by the respondent's decision to terminate his employment, petitioner filed a complaint[14] for illegal dismissal with the NLRC Regional Arbitration Branch No. VII in Cebu City. He also claimed salary differentials representing his pay increases pursuant to the existing Collective Bargaining Agreement[15] (CBA) between the parties, which were not given to him by respondent.[16]

On May 19, 2000, Labor Arbiter Ernesto F. Carreon rendered a Decision[17] declaring the claim for illegal dismissal unmeritorious. The Labor Arbiter held,

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the claim for illegal dismissal for lack of merit and the other monetary claims are referred to the grievance machinery and/or voluntary arbitrator as provided under the CBA.
>
> SO ORDERED.[18]

On appeal to the NLRC, the NLRC set aside the decision of the Labor Arbiter and declared that petitioner was illegally dimissed. The dispositive portion of the NLRC decision states:

> WHEREFORE, the Labor Arbiter's Decision dated May 19, 2000 is hereby SET ASIDE and a new one is rendered declaring CALTEX PHILIPPINES, INC. and LEODEGARIO W. JACINTO to have illegally dismissed the complainant, CARLOS V. VALENZUELA. Instead of reinstatement, the same respondents are ORDERED to pay, jointly and severally, the same complainant a separation pay computed at one (1) month salary for every year of service, a fraction of at least six (6) months being considered one (1) year, multiplied by the number

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[13] *Id.* at 275.

[14] Docketed as RAB Case No. 7-01-0135-2000.

[15] *Rollo*, pp. 98-120.

[16] *Id.* at 29.

[17] *Id.* at 710-715.

[18] *Id.* at 714.

of years from his date of employment until full separation pay shall have been paid, which is tentatively computed below as of the date of this Decision:

Salary per month	₱ 25,800.00
Number of years in service	x 38
Separation Pay	₱ 980,400.00

Other benefits covered by the CBA may be claimed by the complainant in the Grievance Machinery in accordance with the CBA.

All other claims are dismissed for lack of merit.

SO ORDERED.[19]

Both parties went to the CA by way of petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended. On July 20, 2005, the CA, 20th Division, Cebu City issued the challenged Decision[20] reinstating the Labor Arbiter's decision, as follows:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition in CA-G.R. SP NO. 80638 and DENYING the petition in CA-G.R. SP NO. 80494. The assailed decision of the NLRC, Fourth Division dated September 10, 2002 is hereby REVERSED and SET ASIDE and the Decision dated May 19, 2000 rendered by Labor Arbiter Ernesto F. Carreon in RAB Case No. 7-01-0135-2000 is hereby REINSTATED.

SO ORDERED.[21]

On September 20, 2005, the CA denied the motion for reconsideration. Hence, this petition.

Petitioner argues that there were several procedural lapses in the Petition for *Certiorari*[22] respondent filed with the CA. In particular, petitioner points out that the petitioners therein

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[19] *Id.* at 71.

[20] *Id.* at 27-38.

[21] *Id.* at 38.

[22] *Id.* at 400-487.

were respondent and Leodegario Jacinto, but only the latter submitted a verification and certification against forum shopping. There was no board resolution from respondent authorizing Leodegario Jacinto to sign the verification and certification against forum shopping in its behalf, thereby making the petition ineffectual.

Further, petitioner mentions the failure of herein respondent to accompany said petition with copies of all pleadings and documents relevant and pertinent to the petition as required by Section 1 of Rule 65. This allegation is based on the Resolution[23] dated February 26, 2004 of the CA directing respondent and Jacinto to submit a copy of the May 19, 2000 Decision of the Labor Arbiter, the Motions for Reconsideration dated November 7, 2002 and November 11, 2002 filed by the parties and other pleadings and documents filed before the Labor Arbiter. According to the petitioner, the CA would not have ordered respondent to submit those documents if they were not relevant and pertinent to the case. Hence, failure to submit them together with the Petition for *Certiorari* was a violation of the Rules which warranted dismissal of the petition.

On the merits, petitioner argues that there was no basis in law to support petitioner's dismissal, contrary to the finding of the CA. Petitioner relies on the fact that he had previously brought to respondent's attention that he was overworked and that his duties were too cumbersome for one person.

Respondent for its part counters by first denying petitioner's claim that there was no certification and verification against forum shopping. Respondent points out that there were two certifications and verifications against forum shopping: one from Alejandro Rey C. Pardo, Jr. in behalf of respondent and one from Leodegario Jacinto in behalf of himself. Records would also show that there was a board resolution authorizing Alejandro Rey C. Pardo, Jr. to sign a certification and verification against forum shopping in behalf of respondent.

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[23] *Id.* at 703-704.

As to the resolution of the CA requiring the submission of additional documents, respondent argues that the issuance of the resolution did not mean that the appellate court committed grave abuse of discretion in eventually giving due course to the petition for *certiorari*. The Resolution simply meant that the appellate court, in the exercise of its sound discretion, wanted to review the documents. Such order to submit particular documents did not mean that the petition filed was procedurally defective.

On the merits, respondent argues that the termination of petitioner's employment was sufficiently supported by evidence and the law. The CA categorically stated that petitioner was guilty of habitual and gross neglect of his duties and performed various acts that directly caused the loss of trust and confidence reposed by the company in him.

Respondent also argues that the present petition raises questions of fact which are beyond the ambit of a petition for review on *certiorari* under Rule 45. Respondent points out that unless for compelling reasons, which are absent in this case, a review of the factual milieu of a case is not in order under Rule 45.

Essentially, the two issues for our resolution are: (1) Whether the CA erred in giving due course to the petition for *certiorari* filed by herein respondent despite the alleged procedural defects; and (2) Whether the CA correctly ruled that petitioner was validly dismissed.

We deny the petition.

On the first issue, the claim of the petitioner that there was only one certification and verification against forum shopping filed by the respondents therein is utterly incorrect. Records show that there were two certifications and verifications against forum shopping submitted together with the questioned petition for *certiorari:* one signed by Alejandro Rey C. Pardo, Jr.[24] in behalf of therein petitioner Caltex Philippines, Inc., and another

[24] *Rollo,* p. 483.

one signed by Leodegario W. Jacinto in behalf of himself as petitioner, also in the same petition for *certiorari*. Records show that a Secretary's Certificate[25] dated October 9, 2003 was issued by then Corporate Secretary Ariel F. Abonal certifying that a Board Resolution was duly passed on January 28, 2002 approving a Revised Approvals Manual, on the basis of which, Alejandro Rey C. Pardo, Jr. was authorized to sign, verify and cause the filing of the petition for *certiorari* before the CA in the case entitled "*Caltex (Philippines), Inc. v. Carlos Valenzuela, et al.,*" and to sign, verify and cause the filing of other necessary pleadings. Thus, it is clear that the respondent submitted a proper verification and certification against forum shopping.

Equally without merit is petitioner's contention that the failure of respondent to submit certain documents together with its petition for *certiorari* warrants the dismissal thereof. In *Quintano v. National Labor Relations Commission,*[26] we held,

> x x x **The Rules do not specify the precise documents, pleadings or parts of the records that should be appended to the petition other than the judgment, final order, or resolution being assailed**. The Rules only state that such documents, pleadings or records should be relevant or pertinent to the assailed resolution, judgment or orders; as such, the initial determination of which pleading, document or parts of the records are relevant to the assailed order, resolution, or judgment, falls upon the petitioner. The CA will ultimately determine if the supporting documents are sufficient to even make out a *prima facie* case. If the CA was of the view that the petitioner should have submitted other pleadings, documents or portions of the records to enable it to determine whether the petition was sufficient in substance, it should have accorded the petitioner, in the interest of substantial justice, a chance to submit the same instead of dismissing the petition outright. Clearly, this is the better policy. x x x (Emphasis supplied.)

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[25] *Id.* at 661-662.

[26] G.R. No. 144517, December 13, 2004, 446 SCRA 193, 204-205, citing *Atillo v. Bombay*, G.R. No. 136096, February 7, 2001, 351 SCRA 361.

Thus, the failure to submit certain documents, assuming there was such a failure on respondent's part, does not automatically warrant outright dismissal of its petition.

On the merits, we likewise find that the petition fails. There is no compelling reason in this case for us to reverse the ruling of the CA sustaining the finding of the Labor Arbiter that petitioner's dismissal was effected with just cause. The findings of the Labor Arbiter are supported by more than substantial evidence and even petitioner's admissions during the administrative hearings.[27] As the CA correctly held,

> Evidence overwhelmingly shows that petitioner Valenzuela was indeed guilty of habitual and gross neglect of his duties. It was not the first time that there occurred a shortage of the merchandise stocks but apparently petitioner Valenzuela did nothing about it and, instead, manipulated documents and records, *i.e.*, stock cards, to create the illusion that all merchandise stocks were accounted for, when in fact a lot of these merchandise were already missing from petitioner Company's Lapu-Lapu terminal. x x x[28]
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> x x x x x x x x x
>
> Furthermore, petitioner Valenzuela likewise committed fraud and willful breach of the trust reposed in him by petitioner Caltex. He was in-charge of the custody and monitoring of the merchandise stocks, and, as found by the Labor Arbiter, was entrusted with confidence on delicate matters, *i.e.*, the handling and care and protection of the employer's property. Considering that the merchandise stocks are the lifeblood of petitioner Caltex, petitioner Valenzuela's act of allowing the loss of merchandise stocks and concealing these from the employer is reason enough for his termination from his employment.[29]

Under Article 282 of the Labor Code, as amended, gross and habitual neglect by the employee of his duties is a sufficient and legal ground to terminate employment. Jurisprudence provides that serious misconduct and habitual neglect of duties are among

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[27] *Rollo*, pp. 33-35.

[28] *Id.* at 33.

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

the just causes for terminating an employee. Gross negligence connotes want of care in the performance of one's duties. Habitual neglect implies repeated failure to perform one's duties for a period of time, depending upon the circumstances.[30]

Further, Article 282 of the Labor Code, as amended, also provides fraud or willful breach by employee of the trust reposed in him by his employer as a just cause for termination. It is always a serious issue for the employer when an employee performs acts which diminish or break the trust and confidence reposed in him. The Labor Code, as amended, although sympathetic to the working class, is aware of this scenario and in pursuit of fairness, included fraud or willful breach of trust as a just cause for termination of employment.

One last point on the preventive suspension imposed by the respondents.

Sections 8 and 9 of Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code provides:

SEC. 8. *Preventive suspension*. – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 9. *Period of suspension*. – **No preventive suspension shall last longer than thirty (30) days**. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or **the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker**. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker. (Emphasis supplied.)

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[30] *Valiao v. Court of Appeals*, G.R. No. 146621, July 30, 2004, 435 SCRA 543, 551, citing *JGB and Associates, Inc. v. National Labor Relations Commission*, G.R. No. 109390, March 7, 1996, 254 SCRA 457, 463.

In this case, petitioner was preventively suspended from November 26, 1999 to December 25, 1999. Respondents extended his preventive suspension for thirty days, from December 26, 1999 to January 24, 2000.[31] After the conclusion of the administrative investigation, he was finally terminated on January 21, 2000.[32] There is no showing that petitioner was paid his wages and benefits during the additional period of suspension. Clearly, petitioner is entitled to his salary and other benefits prior to his dismissal, from December 26, 1999 to January 21, 2000.

WHEREFORE, the petition is *DENIED.* The assailed Decision dated July 20, 2005 of the Court of Appeals in the consolidated cases of CA-G.R. SP Nos. 80494 and 80638 is hereby *AFFIRMED with MODIFICATION* in that respondents are hereby *ORDERED* to pay petitioner Carlos V. Valenzuela his corresponding salary, allowances and other benefits for the period December 26, 1999 to January 21, 2000.

No costs.

SO ORDERED.

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

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[31] *Rollo,* p. 142.

[32] *Id.* at 143.

[*] Designated additional member per Special Order No. 921 dated December 13, 2010.

SECOND DIVISION

[G.R. No. 171717. December 15, 2010]

RAMON B. BRITO, SR., *petitioner, vs.* **SEVERINO D. DIANALA, VIOLETA DIANALA SALES, JOVITA DIANALA DEQUINTO, ROSITA DIANALA, CONCHITA DIANALA and JOEL DEQUINTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; ANSWER-IN-INTERVENTION; EFFECT OF FILING AND DISMISSAL THEREOF.— [W]hen respondents filed their Answer-in-Intervention they submitted themselves to the jurisdiction of the court and the court, in turn, acquired jurisdiction over their persons. Respondents, thus, became parties to the action. Subsequently, however, respondents' Answer-in-Intervention was dismissed without prejudice. From then on, they ceased to be parties in the case so much so that they did not have the opportunity to present evidence to support their claims, much less participate in the compromise agreement entered into by and between herein petitioner and his co-heirs on one hand and the defendant in Civil Case No. 12887 on the other. Stated differently, when their Answer-in-Intervention was dismissed, herein respondents lost their standing in court and, consequently, became strangers to Civil Case No. 12887. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court. Thus, being strangers to Civil Case No. 12887, respondents are not bound by the judgment rendered therein.

2. CIVIL LAW; PRESCRIPTION; ACTION FOR RECONVEYANCE BASED ON AN IMPLIED TRUST PRESCRIBES IN TEN YEARS FROM DATE OF REGISTRATION OF THE DEED; APPLICATION.— Article 1456 of the Civil Code provides that a person acquiring property through fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance

based on an implied trust prescribes in ten years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property. x x x In the instant case, TCT No. T-12561 was obtained by petitioner and his co-heirs on September 28, 1990, while respondents filed their complaint for reconveyance on August 18, 1999. Hence, it is clear that the ten-year prescriptive period has not yet expired.

3. ID.; ID.; WHEN THE PARTIES ARE IN POSSESSION OF THE DISPUTED PROPERTY, THEIR COMPLAINT FOR RECONVEYANCE IS IMPRESCRIPTIBLE.— [T]he prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession thereof. Otherwise, if the plaintiff is in possession of the property, prescription does not commence to run against him. Thus, when an action for reconveyance is nonetheless filed, it would be in the nature of a suit for quieting of title, an action that is imprescriptible. The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the rationale for the rule being, that his undisturbed possession provides him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by the one who is in possession. In the present case, there is no dispute that respondents are in possession of the subject property as evidenced by the fact that petitioner and his co-heirs filed a separate action against respondents for recovery of possession thereof. Thus, owing to respondents' possession of the disputed property, it follows that their complaint for reconveyance is, in fact, imprescriptible.

4. ID.; LACHES; DOCTRINE, NOT APPLICABLE.— The Court, likewise, does not agree with petitioner's contention that respondents are guilty of laches and are already estopped from questioning the decision of the RTC in Civil Case No. 12887 on the ground that they slept on their rights and allowed the said decision to become final. In the first place, respondents cannot be faulted for not appealing the decision of the RTC in Civil Case No. 12887 simply because they are no longer parties

to the case and, as such, have no personality to assail the said judgment. Secondly, respondents' act of filing their action for reconveyance within the ten-year prescriptive period does not constitute an unreasonable delay in asserting their right. The Court has ruled that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. Laches is recourse in equity. Equity, however, is applied only in the absence, never in contravention, of statutory law. x x x As such, with more reason should respondents not be held guilty of laches as the said doctrine, which is one in equity, cannot be set up to resist the enforcement of an imprescriptible legal right.

5. REMEDIAL LAW; ACTIONS; A PARTY WHOSE ANSWER-IN-INTERVENTION WAS DISMISSED HAS AN OPTION TO INSTITUTE A SEPARATE ACTION TO PROTECT THEIR RIGHTS.— [R]espondents' Answer-in-Intervention was dismissed by the RTC of Bacolod City without prejudice. This leaves them with no other option but to institute a separate action for the protection and enforcement of their rights and interests. It will be the height of inequity to declare herein petitioner and his co-heirs as exclusive owners of the disputed lot without giving respondents the opportunity to prove their claims that they have legal interest over the subject parcel of land, that it forms part of the estate of their deceased predecessor and that they are in open, and uninterrupted possession of the same for more than 30 years. Much more, it would be tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.

APPEARANCES OF COUNSEL

Moya Law Office and *Roberto V. Ferrer* for petitioner.
David Lozada for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to annul and set aside the Decision[1] dated January 12, 2005 and Resolution[2] dated February 13, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 70009. The assailed Decision set aside the Joint Orders[3] dated June 29, 2000 of the Regional Trial Court (RTC) of Negros Occidental, Branch 60, Cadiz City, while the questioned Resolution denied petitioner's Motion for Reconsideration.

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

Subject of the present petition is a parcel of land located at Barrio Sicaba, Cadiz City, Negros Occidental. The said tract of land is a portion of Lot No. 1536-B, formerly known as Lot No. 591-B, originally owned by a certain Esteban Dichimo and his wife, Eufemia Dianala, both of whom are already deceased.

On September 27, 1976, Margarita Dichimo, assisted by her husband, Ramon Brito, Sr., together with Bienvenido Dichimo, Francisco Dichimo, Edito Dichimo, Maria Dichimo, Herminia Dichimo, assisted by her husband, Angelino Mission, Leonora Dechimo, assisted by her husband, Igmedio Mission, Felicito, and Merlinda Dechimo, assisted by her husband, Fausto Dolleno, filed a Complaint for Recovery of Possession and Damages with the then Court of First Instance (now Regional Trial Court) of Negros Occidental, against a certain Jose Maria Golez. The case was docketed as Civil Case No. 12887.

Petitioner's wife, Margarita, together with Bienvenido and Francisco, alleged that they are the heirs of a certain Vicente Dichimo, while Edito, Maria, Herminia, Leonora, Felicito and

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[1] Annex "I" to Petition, *rollo*, pp. 67-75.

[2] Annex "O" to Petition, *id.* at 135-136.

[3] Annex "H" to Petition, *id.* at 61-65.

Merlinda claimed to be the heirs of one Eusebio Dichimo; that Vicente and Eusebio are the only heirs of Esteban and Eufemia; that Esteban and Eufemia died intestate and upon their death Vicente and Eusebio, as compulsory heirs, inherited Lot No. 1536-B; that, in turn, Vicente and Eusebio, and their respective spouses, also died intestate leaving their *pro indiviso* shares of Lot No. 1536-B as part of the inheritance of the complainants in Civil Case No. 12887.

On July 29, 1983, herein respondents filed an Answer-in-Intervention claiming that prior to his marriage to Eufemia, Esteban was married to a certain Francisca Dumalagan; that Esteban and Francisca bore five children, all of whom are already deceased; that herein respondents are the heirs of Esteban and Francisca's children; that they are in open, actual, public and uninterrupted possession of a portion of Lot No. 1536-B for more than 30 years; that their legal interests over the subject lot prevails over those of petitioner and his co-heirs; that, in fact, petitioner and his co-heirs have already disposed of their shares in the said property a long time ago.

On November 26, 1986, the trial court issued an Order dismissing without prejudice respondents' Answer-in-Intervention for their failure to secure the services of a counsel despite ample opportunity given them.

Civil Case No. 12887 then went to trial.

Subsequently, the parties in Civil Case No. 12887 agreed to enter into a Compromise Agreement wherein Lot No. 1536-B was divided between Jose Maria Golez, on one hand, and the heirs of Vicente, namely: Margarita, Bienvenido, and Francisco, on the other. It was stated in the said agreement that the heirs of Eusebio had sold their share in the said lot to the mother of Golez. Thus, on September 9, 1998, the Regional Trial Court (RTC) of Bacolod City, Branch 45 rendered a decision approving the said Compromise Agreement.

Thereafter, TCT No. T-12561 was issued by the Register of Deeds of Cadiz City in the name of Margarita, Bienvenido and Francisco.

On January 18, 1999, herein petitioner and his co-heirs filed another Complaint for Recovery of Possession and Damages, this time against herein respondents. The case, filed with the RTC of Cadiz City, Branch 60, was docketed as Civil Case No. 548-C. Herein respondents, on the other hand, filed with the same court, on August 18, 1999, a Complaint for Reconveyance and Damages against petitioner and his co-heirs. The case was docketed as Civil Case No. 588-C.

The parties filed their respective Motions to Dismiss. Thereafter, the cases were consolidated.

On June 29, 2000, the RTC issued Joint Orders, disposing as follows:

> WHEREFORE, in view of the foregoing, this Court hereby orders the following:
>
> 1. The Motion to Dismiss Civil Case No. 548-C is hereby GRANTED and Civil Case No. 548[-C] is hereby ordered DISMISSED for violation of the rule on forum shopping;
>
> 2. The Motion to Dismiss Civil Case No. 588-C is likewise hereby GRANTED and the Complaint dated August 13, 1999 is hereby DISMISSED for want of jurisdiction.
>
> 3. All counterclaims in both cases, Civil Case No. 548-C and 588-C are likewise ordered DISMISSED.
>
> SO ORDERED.[4]

The parties filed their respective motions for reconsideration, but both were denied by the RTC in an Order dated October 5, 2000.

Herein respondents then appealed the case to the CA praying that the portion of the RTC Joint Orders dismissing Civil Case No. 588-C be declared null and void and that the case be decided on the merits.

On January 12, 2005, the CA rendered judgment disposing as follows:

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[4] CA *rollo*, pp. 164-165.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **GRANTING** the appeal filed in this case and **SETTING ASIDE**, as we hereby set aside, the Joint Order[s] dated June 29, 2000 of the RTC of Cadiz City, Branch 60, dismissing Civil Case No. 588-C. Further, let the entire records of this case be remanded to the court *a quo* for the trial and hearing on the merits of Civil Case No. 588-C.

SO ORDERED.[5]

Petitioner filed a Motion for Reconsideration, but the CA denied it in a Resolution dated February 13, 2006.

Hence, the instant petition with the following assigned errors:

I. THE HONORABLE COURT OF APPEALS ERRED WHEN IT RULED THAT THE LOWER COURT HAS THE JURISDICTION TO HEAR THE RECONVEYANCE CASE OF THE HEREIN PLAINTIFFS-APPELLANTS BEFORE THE REGIONAL TRIAL COURT OF NEGROS OCCIDENTAL, BRANCH 60, CADIZ CITY.

II. THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE AMENDMENT OF THE DECISION IN CIVIL CASE NO. 12887 IS NOT TANTAMOUNT TO ANNULMENT OF THE SAID DECISION. THE HONORABLE COURT IS WITHOUT JURISDICTION TO TAKE COGNIZANCE OF THIS CASE.[6]

In his first assigned error, petitioner claims that the CA erred in holding that respondents are not parties in Civil Case No. 12887 contending that, since their Answer-in-Intervention was admitted, respondents should be considered parties in the said case. Petitioner also avers that, being parties in Civil Case No. 12887, respondents are bound by the judgment rendered therein.

The Court is not persuaded.

It is true that the filing of motions seeking affirmative relief, such as, to admit answer, for additional time to file answer, for

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[5] *Rollo*, p. 74.

[6] *Id.* at 14-15.

reconsideration of a default judgment, and to lift order of default with motion for reconsideration, are considered voluntary submission to the jurisdiction of the court.[7] In the present case, when respondents filed their Answer-in-Intervention they submitted themselves to the jurisdiction of the court and the court, in turn, acquired jurisdiction over their persons. Respondents, thus, became parties to the action. Subsequently, however, respondents' Answer-in-Intervention was dismissed without prejudice. From then on, they ceased to be parties in the case so much so that they did not have the opportunity to present evidence to support their claims, much less participate in the compromise agreement entered into by and between herein petitioner and his co-heirs on one hand and the defendant in Civil Case No. 12887 on the other. Stated differently, when their Answer-in-Intervention was dismissed, herein respondents lost their standing in court and, consequently, became strangers to Civil Case No. 12887. It is basic that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[8] Thus, being strangers to Civil Case No. 12887, respondents are not bound by the judgment rendered therein.

Neither does the Court concur with petitioner's argument that respondents are barred by prescription for having filed their complaint for reconveyance only after more than eight years from the discovery of the fraud allegedly committed by petitioner and his co-heirs, arguing that under the law an action for reconveyance of real property resulting from fraud prescribes in four years, which period is reckoned from the discovery of the fraud.

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[7] *Leah Palma v. Hon. Danilo P. Galvez, etc., et al*., G.R. No. 165273, March 10, 2010; *Dole Philippines, Inc. (Tropifresh Division) v. Quilala*, G.R. No. 168723, July 9, 2008, 557 SCRA 433, 437; *Hongkong and Shanghai Banking Corp. Ltd. v. Catalan*, 483 Phil. 525, 542 (2004).

[8] *Heirs of Marcelino Doronio v. Heirs of Fortunato Doronio*, G.R. No. 169454, December 27, 2007, 541 SCRA 479, 501; *Manotok Realty, Inc. v. CLT Realty Development Corporation*, G.R. Nos. 123346 and 134385, December 14, 2007, 540 SCRA 304, 339; *National Housing Authority v. Evangelista*, 497 Phil. 762, 770 (2005).

In their complaint for reconveyance and damages, respondents alleged that petitioner and his co-heirs acquired the subject property by means of fraud.

Article 1456 of the Civil Code provides that a person acquiring property through fraud becomes, by operation of law, a trustee of an implied trust for the benefit of the real owner of the property. An action for reconveyance based on an implied trust prescribes in ten years, the reckoning point of which is the date of registration of the deed or the date of issuance of the certificate of title over the property.[9] Thus, in *Caro v. Court of Appeals*,[10] this Court held as follows:

> x x x The case of *Liwalug Amerol, et al. v. Molok Bagumbaran*, G.R. No. L-33261, September 30, 1987,154 SCRA 396, illuminated what used to be a gray area on the prescriptive period for an action to reconvey the title to real property and, corollarily, its point of reference:
>
> > x x x It must be remembered that before August 30, 1950, the date of the effectivity of the new Civil Code, the old Code of Civil Procedure (Act No. 190) governed prescription. It provided:
> >
> > SEC. 43. Other civil actions; how limited.- Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues:
> >
> > x x x x x x x x x
> >
> > 3. Within four years: xxx An action for relief on the ground of fraud, but the right of action in such case shall not be deemed to have accrued until the discovery of the fraud;
> >
> > x x x x x x x x x

In contrast, under the present Civil Code, we find that just as an implied or constructive trust is an offspring of the law (Art. 1456, Civil Code), so is the corresponding obligation to reconvey the property and the title thereto in favor of the true owner. In this context, and *vis-a-vis* prescription, Article 1144 of the Civil Code is applicable.

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[9] *Manuel P. Ney and Romulo P. Ney v. Spouses Celso Quijano and Mina N. Quijano*, G.R. No. 178609, August 4, 2010.

[10] 259 Phil. 891 (1989).

> Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
>
> (1) Upon a written contract;
>
> (2) Upon an obligation created by law;
>
> (3) Upon a judgment.
>
> x x x x x x x x x. (Italics supplied.)

An action for reconveyance based on an implied or constructive trust must perforce prescribe in ten years and not otherwise. A long line of decisions of this Court, and of very recent vintage at that, illustrates this rule. Undoubtedly, it is now well settled that an action for reconveyance based on an implied or constructive trust prescribes in ten years from the issuance of the Torrens title over the property. The only discordant note, it seems, is *Balbin vs. Medalla*, which states that the prescriptive period for a reconveyance action is four years. However, this variance can be explained by the erroneous reliance on *Gerona vs. de Guzman*. But in Gerona, the fraud was discovered on June 25, 1948, hence Section 43(3) of Act No. 190, was applied, the new Civil Code not coming into effect until August 30, 1950 as mentioned earlier. It must be stressed, at this juncture, that Article 1144 and Article 1456, are new provisions. They have no counterparts in the old Civil Code or in the old Code of Civil Procedure, the latter being then resorted to as legal basis of the four-year prescriptive period for an action for reconveyance of title of real property acquired under false pretenses.

An action for reconveyance has its basis in Section 53, paragraph 3 of Presidential Decree No. 1529, which provides:

> In all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud without prejudice, however, to the rights of any innocent holder of the decree of registration on the original petition or application, x x x.

This provision should be read in conjunction with Article 1456 of the Civil Code, x x x

x x x x x x x x x

The law thereby creates the obligation of the trustee to reconvey the property and the title thereto in favor of the true owner.

Correlating Section 53, paragraph 3 of Presidential Decree No. 1529 and Article 1456 of the Civil Code with Article 1144(2) of the Civil Code, *supra*, the prescriptive period for the reconveyance of fraudulently registered real property is ten (10) years reckoned from the date of the issuance of the certificate of title. x x x[11]

In the instant case, TCT No. T-12561 was obtained by petitioner and his co-heirs on September 28, 1990, while respondents filed their complaint for reconveyance on August 18, 1999. Hence, it is clear that the ten-year prescriptive period has not yet expired.

The Court, likewise, does not agree with petitioner's contention that respondents are guilty of laches and are already estopped from questioning the decision of the RTC in Civil Case No. 12887 on the ground that they slept on their rights and allowed the said decision to become final.

In the first place, respondents cannot be faulted for not appealing the decision of the RTC in Civil Case No. 12887 simply because they are no longer parties to the case and, as such, have no personality to assail the said judgment.

Secondly, respondents' act of filing their action for reconveyance within the ten-year prescriptive period does not constitute an unreasonable delay in asserting their right. The Court has ruled that, unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief.[12] Laches is recourse in equity.[13] Equity, however, is applied only in the absence, never in contravention, of statutory law.[14]

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[11] *Id.* at 897-899. (Underscoring supplied.)

[12] *LICOMCEN, Incorporated v. Foundation Specialists, Inc.*, G.R. Nos. 167022 &169678, August 31, 2007, 531 SCRA 705, 724; *De Castro v. Court of Appeals*, 434 Phil 53, 68 (2002).

[13] *Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 219; *De Castro v. Court of Appeals*, *supra*.

[14] *Id.*

Moreover, the prescriptive period applies only if there is an actual need to reconvey the property as when the plaintiff is not in possession thereof.[15] Otherwise, if the plaintiff is in possession of the property, prescription does not commence to run against him.[16] Thus, when an action for reconveyance is nonetheless filed, it would be in the nature of a suit for quieting of title, an action that is imprescriptible.[17] The reason for this is that one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right, the rationale for the rule being, that his undisturbed possession provides him a continuing right to seek the aid of a court of equity to ascertain and determine the nature of the adverse claim of a third party and its effect on his own title, which right can be claimed only by the one who is in possession.[18]

In the present case, there is no dispute that respondents are in possession of the subject property as evidenced by the fact that petitioner and his co-heirs filed a separate action against respondents for recovery of possession thereof. Thus, owing to respondents' possession of the disputed property, it follows that their complaint for reconveyance is, in fact, imprescriptible. As such, with more reason should respondents not be held guilty of laches as the said doctrine, which is one in equity, cannot be set up to resist the enforcement of an imprescriptible legal right.

In his second assignment of error, petitioner argues that the objective of respondents in filing Civil Case No. 588-C with the RTC of Cadiz City was to have the decision of the RTC of Bacolod City in Civil Case No. 12887 amended, which is tantamount to having the same annulled. Petitioner avers that

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[15] *Ney v. Spouses Quijano, supra* note 9, citing *Lasquite v. Victory Hills, Inc*., 590 SCRA 616, 631 (2009).

[16] *Id.*

[17] *Id.*

[18] *D.B.T. Mar-Bay Construction, Incorporated v. Panes*, G.R. No. 167232, July 31, 2009, 594 SCRA 578, 591, citing *Vda. de Gualberto v. Go*, 463 SCRA 671, 681 (2005).

the RTC of Cadiz City has no jurisdiction to act on Civil Case No. 588-C, because it cannot annul the decision of the RTC of Bacolod City which is a co-equal court.

The Court does not agree.

The action filed by respondents with the RTC of Cadiz City is for reconveyance and damages. They are not seeking the amendment nor the annulment of the Decision of the RTC of Bacolod City in Civil Case No. 12887. They are simply after the recovery of what they claim as their rightful share in the subject lot as heirs of Esteban Dichimo.

As earlier discussed, respondents' Answer-in-Intervention was dismissed by the RTC of Bacolod City without prejudice. This leaves them with no other option but to institute a separate action for the protection and enforcement of their rights and interests. It will be the height of inequity to declare herein petitioner and his co-heirs as exclusive owners of the disputed lot without giving respondents the opportunity to prove their claims that they have legal interest over the subject parcel of land, that it forms part of the estate of their deceased predecessor and that they are in open, and uninterrupted possession of the same for more than 30 years. Much more, it would be tantamount to a violation of the constitutional guarantee that no person shall be deprived of property without due process of law.[19]

WHEREFORE, the instant petition is *DENIED.* The assailed Decision dated January 12, 2005 and Resolution dated February 13, 2006 of the Court of Appeals in CA-G.R. CV No. 70009 are *AFFIRMED.*

SO ORDERED.

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

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[19] *Galicia v. Manliquez Vda. de Mindo,* G.R. No. 155785, April 13, 2007, 521 SCRA 85, 95.

SECOND DIVISION

[G.R. No. 172841. December 15, 2010]

RENATO REYES, represented by RAMON REYES, *petitioner, vs.* **LEOPOLDO BARRIOS, substituted by LUCIA MANALUS-BARRIOS,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); DARAB RULES; THE BOARD AND ITS REGIONAL AND PROVINCIAL ADJUDICATORS ARE NOT BOUND BY TECHNICAL RULES OF PROCEDURE AND EVIDENCE.— Under Section 3, Rule I of the 1994 DARAB New Rules of Procedure (now Section 3, Rule I of the 2009 DARAB Rules of Procedure), the Board and its Regional and Provincial Adjudicators are not bound by technical rules of procedure and evidence x x x. Section 1, Rule VIII of the 1994 DARAB New Rules of Procedure (now Section 1, Rule X of the 2009 DARAB Rules of Procedure) reiterates the non-applicability of technical rules regarding the admission and sufficiency of evidence x x x. Besides, the DARAB Rules should be liberally construed to carry out the objectives of agrarian reform and to promote just, expeditious, and inexpensive adjudication and settlement of agrarian cases, disputes or controversies.

2. ID.; ID.; EMANCIPATION PATENTS; PROCEDURE FOR THE ISSUANCE THEREOF.— The Primer on Agrarian Reform enumerates the steps in transferring the land to the tenant-tiller, thus: "a. First step: the identification of tenants, landowners, and the land covered by OLT. b. Second step: land survey and sketching of the actual cultivation of the tenant to determine parcel size, boundaries, and possible land use; c. Third step: the issuance of the Certificate of Land Transfer (CLT). To ensure accuracy and safeguard against falsification, these certificates are processed at the National Computer Center (NCC) at Camp Aguinaldo; d. Fourth step: valuation of the land covered for amortization computation; e. Fifth step: amortization

payments of tenant-tillers over fifteen (15) year period; and f. Sixth step: the issuance of the Emancipation Patent." Thus, there are several steps to be undertaken before an Emancipation Patent can be issued. As regards respondent, the records are bereft of evidence indicating that this procedure has been followed.

3. ID.; ID.; ID.; THE ISSUANCE THEREOF REQUIRES A TENANT-FARMER TO SUBMIT SEVERAL SUPPORTING DOCUMENTS.— [T]here are several supporting documents which a tenant-farmer must submit before he can receive the Emancipation Patent, such as: "a. Application for issuance of Emancipation Patent; b. Applicant's (owner's) copy of Certificate of Land Transfer; c. Certification of the landowner and the Land Bank of the Philippines that the applicant has tendered full payment of the parcel of land as described in the application and as actually tilled by him; d. Certification by the President of the Samahang Nayon or by the head of farmers' cooperative duly confirmed by the municipal district officer (MDO) of the Ministry of Local Government and Community Development (MLGCD) that the applicant is a full-fledged member of a duly registered farmers' cooperative or a certification to these effect; e. Copy of the technical (graphical) description of the land parcel applied for prepared by the Bureau of Land Sketching Team (BLST) and approved by the regional director of the Bureau of Lands; f. Clearance from the MAR field team (MARFT) or the MAR District Office (MARDO) legal officer or trial attorney; or in their absence, a clearance by the MARFT leader to the effect that the land parcel applied for is not subject of adverse claim, duly confirmed by the legal officer or trial attorney of the MAR Regional Office or, in their absence, by the regional director; g. Xerox copy of Official Receipts or certification by the municipal treasurer showing that the applicant has fully paid or has effected up-to-date payment of the realty taxes due on the land parcel applied for; and h. Certification by the MARFT leader whether applicant has acquired farm machineries from the MAR and/or from other government agencies." Majority of these supporting documents are lacking in this case.

4. ID.; ID.; ID.; THE LAWS MANDATE FULL PAYMENT OF JUST COMPENSATION FOR THE LANDS ACQUIRED

UNDER PRESIDENTIAL DECREE 27 PRIOR TO THE ISSUANCE OF EMANCIPATION PATENTS.— [T]here was no sufficient evidence to prove that respondent has fully paid the value of the subject landholding. As held in *Mago v. Barbin*, the laws mandate full payment of just compensation for the lands acquired under PD 27 prior to the issuance of Emancipation Patents x x x. Clearly, respondent is not entitled to be issued an Emancipation Patent considering that he has not fully complied with the requirements for a grant of title under PD 27.

5. ID.; ID.; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); DARAB RULES; OFFICE OF THE SECRETARY OF THE DEPARTMENT OF AGRARIAN REFORM; HAS EXCLUSIVE JURISDICTION OVER THE EXERCISE OF THE RIGHT OF RETENTION BY THE LANDOWNER.— On the issue of petitioner's claim that the subject landholding forms part of the retained area awarded to him and his sisters, the Court notes that there was no sufficient evidence to substantiate petitioner's claim. Furthermore, as held by the Court of Appeals, only the Office of the Secretary of the Department of Agrarian Reform (DAR) has the exclusive jurisdiction to resolve the issue of whether petitioner is entitled to a retention area. Indeed, under Section 3 (3.5), Rule II of the DARAB 2003 Rules of Procedure, the exercise of the right of retention by the landowner is under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR.

6. ID.; ID.; LEASEHOLD RELATIONSHIP; CANNOT BE TERMINATED WITHOUT VALID CAUSE.— [E]ven if the subject landholding forms part of petitioner's retained area, petitioner landowner may still not eject respondent tenant absent any of the causes provided under the law. The landowner cannot just terminate the leasehold relationship without valid cause.

APPEARANCES OF COUNSEL

Rolleto Arce for petitioner.

Law Firm of Ching Mendoza Quilas Poquiz De Las Alas & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 8 February 2006 Decision[2] and the 29 May 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 90212. The Court of Appeals affirmed the 29 June 1998 Decision and the 7 December 2004 Resolution of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 5504, declaring Leopoldo Barrios as bona fide tenant of the subject landholding. The DARAB reversed the 31 October 1996 Decision of the Provincial Agrarian Reform Board (PARAD) of San Fernando, Pampanga.

The Facts

On 26 September 1995, petitioner Renato Reyes (petitioner) filed before the Department of Agrarian Reform, Region III, PARAD of San Fernando, Pampanga, a complaint for ejectment against respondent Leopoldo Barrios (respondent). The case was docketed as DARAB CASE No. 1089-P'95.

The case involves a parcel of land measuring approximately 3.6 hectares (landholding)[4] which forms part of the property with an aggregate area of 527,695 square meters (property)[5]

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

[2] *Rollo*, pp. 8-21. Penned by Associate Justice Renato C. Dacudao, with Associate Justices Lucas P. Bersamin (now SC Associate Justice) and Celia C. Librea-Leagogo, concurring.

[3] *Id.* at 23.

[4] The Certification dated 7 December 1982 of the Arayat-Sta. Ana-Candaba Agrarian Reform Team states that the land owned by petitioner is a 4-hectare unirrigated farmholding, *id.* at 250. Petitioner's complaint states that the retained area is 3.6 hectares. However, in his petition for review, petitioner stated that the retained property is a 3.5 hectare orchard farm which is part of the estate covered by TCT No. 14488 with a total area of 527,695 square meters.

[5] The property covered under TCT No. 14488 consists of five (5) parcels of land with a total aggregate area of 527,695 square meters.

located at Mapaniqui, Candaba, Pampanga covered by Transfer Certificate of Title (TCT) No. 14488.[6] The property was co-owned by petitioner and his four sisters.[7] Petitioner claimed that the property became subject of the Operation Land Transfer under Presidential Decree No. 27 (PD 27), except the 3.6–hectare landholding which was allegedly retained. In his Memorandum[8] dated 18 September 2007, petitioner averred that he and his sister Leticia V. Reyes are the co-owners of the landholding. Petitioner hired respondent as the overseer of the farm and piggery on the landholding. However, petitioner contended that respondent never remitted the proceeds from the piggery business and the fruits from the landholding.[9]

On the other hand, respondent alleged that he was a tenant of the landholding since 1972 and he even built his house on the subject landholding. Respondent also acted as the caretaker of the piggery business on the landholding. Contrary to petitioner's allegations, respondent stated that petitioner's wife took all the proceeds from the piggery business, which later ceased operation due to an epidemic.

When respondent failed to appear during the scheduled hearings, petitioner moved to submit the case for decision on the basis of the evidence presented. Respondent alleged that his failure to attend the scheduled hearings was because he received the Notice for the 29 February 1996 hearing only on 6 March 1996. Respondent moved for the postponement of the hearing because he was bedridden due to hypertension and heart ailment.[10] However, the PARAD again heard the case *ex-parte* on 28 March 1996, of which respondent alleged that he was still not notified.

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[6] *Rollo,* pp. 355-363.

[7] TCT No. 14488 states that the property is owned by Maria Pilar Dolores V. Reyes, Consolacion V. Reyes, Renato V. Reyes, Leticia V. Reyes, and Martina V. Reyes, *id.* at 355.

[8] *Id.* at 530-541.

[9] *Id.* at 97-100.

[10] Manifestations & Motion to Postpone Hearing, dated 25 March 1996, CA *rollo,* pp. 191-192.

On 31 October 1996, the PARAD rendered a decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, this Office renders judgment declaring that herein plaintiff [Renato Reyes] is entitled to recover the possession of the property subject of this present litigation; ordering the defendant [Leopoldo Barrios] or anyone claiming any right or authority under him to vacate the premises in question and surrender possession thereof to the plaintiff; and ordering the defendant to pay the sum of ₱3,000.00 to the plaintiff as attorney's fees.
>
> No pronouncement as to cost.
>
> SO ORDERED.[11]

Respondent appealed to the DARAB. Meanwhile, respondent passed away on 13 February 1997[12] and was substituted by his spouse Lucia Manalus-Barrios.[13]

On 29 June 1998, the DARAB reversed the PARAD decision and held that respondent is a bona fide tenant of the landholding and that he cannot be ejected from the landholding absent any justifiable cause. The DARAB held:

> It appears that Respondent-Appellant is listed as farmer-beneficiary of the land transfer program, as evidenced by the Certification issued by the Officer-in-charge of Arayat-Sta. Ana-Candaba Agrarian Reform Team. The fact of tenancy is buttressed by the joint statement dated March 5, 1989 of residents of neighboring lots who attest to Respondent-Appellant's cultivation of subject lot. As tenant thereon, Respondent-Appellant, therefore, cannot just be ejected. The causes for extinguishment of Leasehold Relation pursuant to Section 36, Republic Act No. 6657 are:
>
> 1. Abandonment of the landholding without the knowledge of the lessor;
> 2. Voluntary surrender of the landholding by the lessee, written notice of which shall be served three (3) months in advance;

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[11] *Rollo*, pp. 110-111.

[12] *Id.* at 243.

[13] *Id.* at 388.

3. Absence of successor or qualified heir, in case of death or permanent incapacity of the lessee;
4. Judicial ejectment of the lessee for causes provided under Sec. 36 of the Code;
5. Acquisition by the lessee of the landholding;
6. Termination of the leasehold under Sec. 38;
7. Mutual consent of the parties; and
8. Conversion of the landholding for non-agricultural purposes subject to the conditions required by law.

The records are bereft of evidence showing the existence of any of the above-quoted circumstances to justify ejectment of Respondent-Appellant from said landholding.

Under the prevailing circumstances, we hold that Respondent-Appellant Barrios is a bona fide tenant of the landholding.

WHEREFORE, premises considered, the appealed decision is SET ASIDE, and a new one entered:

1. Declaring Respondent-Appellant Leopoldo Barrios a bona fide tenant of the subject landholding. However, due to his death during the pendency of this case, the surviving spouse, if qualified, shall succeed; if not, the eldest descendant will succeed or the descending descendant in the order of their age;

2. Directing the plaintiff-landowner Renato Reyes to reinstate the qualified heir of Respondent-Appellant and to maintain him in peaceful possession as cultivator thereof; and

3. Directing the DAR Regional Office, through its Municipal Agrarian Reform Officer (MARO) to issue Certificate of Agricultural Lease (CAL) after fixing the lease rental therefor.

SO ORDERED.[14]

Petitioner filed a Motion for Reconsideration, asking for the reversal of the DARAB decision and the reinstatement of the PARAD decision. Respondent, substituted by his spouse Lucia Manalus-Barrios, also filed a Motion for Partial Reconsideration, asking for the modification of the decision by declaring respondent as a beneficiary under PD 27 and to issue an

[14] *Id.* at 84-85.

Emancipation Patent in favor of respondent's surviving spouse Lucia Manalus-Barrios.

In its 7 December 2004 Resolution, the DARAB denied petitioner's Motion for Reconsideration for lack of merit and granted respondent's Motion for Partial Reconsideration, thus:

> In the Motion for Partial Reconsideration, Movant alleged that this Board in its decision has declared that the deceased Defendant-Appellant Leopoldo Barrios is a bona fide tenant on the subject landholding. Moreover, Plaintiff-Appellee maintains that page three (3) of the decision rendered by this Board finds and provides that "Operation Land Transfer (OLT) or Presidential Decree No. 27 was signed into law 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 mechanisms therefore." Hence, movant prayed that an Emancipation Patent be issued in lieu of the Certificate of Agricultural Lease in consonance with the findings of this Board and DAR Administrative Order No. 13, Series of 1988.
>
> Acting on said motion, this Board finds that the appealed decision shows substantial appreciation that deceased Defendant-Appellant was a bona fide tenant on the subject landholding. Likewise, this Board, in the assailed decision sustained the provisions of Presidential Decree No. 27, providing "the emancipation of tenants from the bondage of the soil . . ."
>
> From the foregoing findings, the pronouncement of this Board specifically paragraph three (3) of the decision seeks modification. In finding that deceased Defendant-Appellant was a bona fide tenant of the subject landholding and declaring the emancipation of tenants from the bondage of the soil, the subsequent issuance of a Certificate of Agricultural Lease as provided in the assailed decision is not in consonance with the findings of the Board. Hence, this Board is constrained to modify or apply the correct conclusions drawn from the facts of the case.
>
> WHEREFORE, premises considered, the herein Motion for Reconsideration dated September 30, 1995 is hereby DENIED for lack of merit. Whereas, the Motion for Partial Reconsideration dated October 5, 1998 is GRANTED and a new judgment is rendered, as follows:

1. Paragraph three (3) of the decision dated June 29, 1998 is hereby modified;
2. Directing the DAR Regional Director, through the Municipal Agrarian Reform Officer (MARO), to issue Emancipation Patent in favor of Defendant-Appellant or his heir, herein substitute Defendant-Appellant Lucia Manalus-Barrios;
3. Directing Plaintiff-Appellee's successors, co-owners, and the alleged former tenants and all those persons acting on their behalf to vacate the subject landholding and to immediately reinstate the substitute Defendant-Appellant thereto and to maintain her in peaceful possession thereof;
4. Declaring the landholding fully paid by the defendant-appellant;
5. Directing the Plaintiff-Appellee's successors and co-owners to reimburse 75% of *palay* harvest, of its cash equivalent, on the remaining 12½ croppings to the Defendant-Appellant and deducting therefrom the amount of the expenses incurred by the Plaintiff-Appellee's successors and co-owners in the present planting season.

Let records of this case be remanded to the Sala of the Honorable Provincial Adjudicator of Pampanga for the immediate issuance of a writ of execution.

SO ORDERED.[15]

Petitioner filed another Motion for Reconsideration, which the DARAB denied in its Resolution dated 5 May 2005.[16] Petitioner then appealed to the Court of Appeals, which denied the petition for review in its 8 February 2006 Decision. The Court of Appeals likewise denied petitioner's motion for reconsideration in its 29 May 2006 Resolution.

Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals concurred with the findings of the DARAB, thus:

But the petitioner insists that public respondent decided the case at bench against him in defiance of the evidence on record. We do

[15] *Id.* at 90-92.

[16] *Id.* at 94-95.

not agree. The DARAB based its findings on the certification dated December 7, 1982 of then Ministry of Agrarian Reform (now Department of Agrarian Reform) of Sta. Ana, Pampanga finding Leopoldo Barrios as legitimate farmer-beneficiary over a four (4) hectare unirrigated land owned by Renato Reyes, located at Mapaniqui, Candaba, Pampanga; on the certification issued by the Officer-in-charge of Arayat-Sta. Ana-Candaba Agrarian Reform Team listing respondent-appellant as farmer-beneficiary; and on the joint statement dated March 5, 1989 of residents of neighboring lots who attested to respondent-appellant's cultivation and occupation of the subject lot.

It bears stressing that in administrative proceedings, as in the case at bench, the quantum of evidence required to sustain a judgment is only substantial evidence. It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently. Thus, findings of fact of quasi-judicial agencies are generally accorded respect, and even finality, by the appellate tribunal, if supported by substantial evidence, this in recognition of their expertise on the specific matters under their consideration.[17]

The Issues

In his petition, petitioner submits that:

1. THE COURT OF APPEALS BY RULING IN ITS QUESTIONED DECISION (ANNEX "A") THAT THE DARAB WAS CORRECT IN DECIDING THE CASE AGAINST HIM AS THIS IS SUPPORTED BY THE CERTIFICATIONS ISSUED BY THE MINISTRY OF AGRARIAN REFORM AND THE OFFICER-IN-CHARGE OF THE AGRARIAN REFORM TEAM OF ARAYAT-STA. ANA-CANDABA, PAMPANGA DENIED PETITIONER HIS RIGHT TO DUE PROCESS OF LAW AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BECAUSE THE RECORD SHOWS THAT NOT ONLY ARE THE EVIDENCE OF BARRIOS IRRELEVANT BUT THEY [ARE] ALSO MERE MACHINE COPIES WHICH WERE NEVER PRESENTED IN A PROPER HEARING WHERE THE PETITIONER CAN SCRUTINIZE THEM AND CROSS-EXAMINE PRIVATE RESPONDENT ON THEM.

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[17] *Id.* at 54.

2. THE COURT OF APPEALS COMMITTED GRIEVOUS LEGAL ERROR AND/OR GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY FAILING TO CORRECT THE DARAB IN NOT RECOGNIZING PETITIONER'S RIGHT OVER HIS RETAINED AREA WHICH HAD ALREADY BEEN THE SUBJECT OF AN AWARD IN CLAIM 83-144 OF LAND BANK OF THE PHILIPPINES.[18]

The Ruling of the Court

We partially grant the petition. We hold that respondent is a bona fide tenant of the subject landholding, as stated in the 29 June 1998 DARAB Decision in DARAB Case No. 5504. However, the 7 December 2004 DARAB Resolution, modifying the 29 June 1998 DARAB Decision and directing the DAR Regional Director to issue Emancipation Patent in favor of respondent or his heirs, should be set aside.

In this case, the DARAB ruling that respondent is a bona fide tenant is supported by evidence submitted by respondent, which included: (1) certification dated 7 December 1982 of the Arayat-Sta. Ana-Candaba Agrarian Reform Team, Ministry of Agrarian Reform, Region III, Pampanga District, stating that respondent is a bona fide farmer-beneficiary under the Operation Land Transfer of the four (4)-hectare farmholding owned by petitioner;[19] (2) joint statement ("*Salaysay*") dated 5 March 1989 of the former farmworkers of the neighboring farmlots attesting to respondent's occupation and cultivation of the subject landholding;[20] (3) pictures of the subject landholding which was planted with *palay* crops;[21] and (4) picture of respondent's house constructed on the subject landholding.[22]

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[18] *Id.* at 33-34.

[19] *Id.* at 250.

[20] *Id.* at 254.

[21] *Id.* at 314.

[22] *Id.* at 315.

Furthermore, in compliance with the Order[23] dated 30 September 2002 of the DARAB, the Provincial Agrarian Reform Officer (PARO) of Pampanga forwarded to the DARAB the status report on the subject landholding,[24] which states:

Republic of the Philippines
DEPARTMENT OF AGRARIAN REFORM
Region III
Municipal Agrarian Reform Office
Candaba, Pampanga

Engr. Rodolfo S. Pangilinan
OIC-PARO
DARPO-Del Pilar,
City of San Fernando Pampanga

Sir:

This refers to the Order dated September 30, 2002 issued by DARCO Appeal Board with the instruction to submit status report of the subject landholding owned by Renato Reyes located at Mapanique, Candaba, Pampanga.

That the undersigned conducted ocular inspection/verification and reveal the following finding to wit:

1. That Renato Reyes the landowner and **Leopoldo Barrios tenant** are both deceased.
2. That the subject landholding was taken over by Renato Reyes since 1996 and it is being administered by Antonio Manalus.
3. That at present **the land in question is planted to *palay*** by the administrator Antonio Manalus with the used (sic) of farm labor and 30 mango tree[s] are existing of the subject landholding.
4. That **the house of Lucia *Vda. De* Barrios was constructed to the subject landholding** with an area of 450 square meters more or less.
5. That **the qualified tenant beneficiaries [are] among the surviving heirs of Leopoldo Barrios is the wife of** (sic) **Lucia *Vda.* M. Barrios**.

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[23] *Id.* at 399-400.

[24] 3rd Indorsement dated 30 October 2002 signed by the OIC-PARO Engr. Rodolfo S. Pangilinan of the Provincial Agrarian Reform Office, Region III, San Fernando City.

In view of the foregoing facts and base[d] on the Order dated September 30, 2002[,] [t]he undersigned **schedule[d] mediation conference on November 18, 2002 in preparation of the Certificate of Agricultural Leasehold.**

Very truly yours,

(signed)
SALVADOR S. TOTAAN
M.A.R.O.[25]

Under Section 3, Rule I of the 1994 DARAB New Rules of Procedure (now Section 3, Rule I of the 2009 DARAB Rules of Procedure[26]), the Board and its Regional and Provincial Adjudicators are not bound by technical rules of procedure and evidence, thus:

SECTION 3. Technical Rules Not Applicable. The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity.

x x x x x x x x x

c) The provisions of the Rules of Court shall not apply even in suppletory character unless adopted herein or by resolution of the Board. However, due process of law shall be observed and followed in all instances.

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[25] *Rollo*, p. 401. Emphasis supplied.

[26] SECTION 3. Technical Rules Not Applicable.— The Board and its Regional and Provincial Adjudication Offices shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity.

x x x x x x x x x

c. The provision of the Rules of Court shall not apply even in suppletory character unless adopted herein or by resolution of the Board.

Section 1, Rule VIII of the 1994 DARAB New Rules of Procedure (now Section 1, Rule X of the 2009 DARAB Rules of Procedure[27]) reiterates the non-applicability of technical rules regarding the admission and sufficiency of evidence, thus:

> SECTION 1. Nature of Proceedings. The proceedings before the Board or its Adjudicators shall be non-litigious in nature. Subject to the essential requirements of due process, the technicalities of law and procedures and the rules governing the admissibility and sufficiency of evidence obtained in the courts of law shall not apply.
> x x x

Thus, in *Reyes v. Court of Appeals*,[28] the Court held:

> Finally, we rule that the trial court did not err when it favorably considered the affidavits of Eufrocina and Efren Tecson (Annexes "B" and "C") although the affiants were not presented and subjected to cross-examination. Section 16 of P.D. No. 946 provides that 'Rules of Court shall not be applicable in agrarian cases even in a suppletory character.' The same provision states that 'In the hearing, investigation and determination of any question or controversy, affidavits and counter-affidavits may be allowed and are admissible in evidence.'[29]

Besides, the DARAB Rules should be liberally construed to carry out the objectives of agrarian reform and to promote just, expeditious, and inexpensive adjudication and settlement of agrarian cases, disputes or controversies.[30]

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[27] SECTION 1. Nature of Proceedings.— The proceedings before the Adjudicator shall be non-litigious in nature.

Subject to the essential requirements of due process, the technicalities of law and procedures and the rules governing the admissibility and sufficiency of evidence obtained in the courts of law shall not apply.

The Adjudicator shall employ reasonable means to ascertain the facts of the controversy including a thorough examination or re-examination of witnesses and the conduct of ocular inspection of the premises in question, if necessary.

[28] G.R. No. 96492, 26 November 1992, 216 SCRA 25.

[29] *Id.* at 32.

[30] Rule I, Section 2 of the 1994 DARAB New Rules of Procedure.

Although we affirm the ruling of the DARAB that respondent is a bona fide tenant, we disagree with its order for the issuance of an Emancipation Patent in favor of respondent's heir, as provided in its Resolution dated 7 December 2004. The records show that when the property was placed under the Operation Land Transfer, respondent was not included in the list of tenant beneficiaries who were issued Emancipation Patents, as noted on the title of the property, TCT No. 14488, which was partially canceled in view of the issuance of the new TCTs in favor of the tenant beneficiaries.[31]

The Primer on Agrarian Reform[32] enumerates the steps in transferring the land to the tenant-tiller, thus:

a. First step: the identification of tenants, landowners, and the land covered by OLT.
b. Second step: land survey and sketching of the actual cultivation of the tenant to determine parcel size, boundaries, and possible land use;
c. Third step: the issuance of the Certificate of Land Transfer (CLT). To ensure accuracy and safeguard against falsification, these certificates are processed at the National Computer Center (NCC) at Camp Aguinaldo;
d. Fourth step: valuation of the land covered for amortization computation;
e. Fifth step: amortization payments of tenant-tillers over fifteen (15) year period; and
f. Sixth step: the issuance of the Emancipation Patent.[33]

Thus, there are several steps to be undertaken before an Emancipation Patent can be issued. As regards respondent, the records are bereft of evidence indicating that this procedure has been followed.

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[31] TCT No. 14488, *rollo*, pp. 355-363.

[32] Produced by the Agrarian Reform Communication Unit, National Media Production Center for the Ministry of Agrarian Reform (1979) and prepared in consultation with the Bureau of Land Tenure Improvement, Bureau of Agrarian Legal Assistance, Bureau of Resettlement, Center for Operation Land Transfer and the Public Information Division of the Ministry of Agrarian Reform and the Land Bank of the Philippines, *id.* at 377-384.

[33] *Id.* at 380.

Furthermore, there are several supporting documents which a tenant-farmer must submit before he can receive the Emancipation Patent, such as:

a. Application for issuance of Emancipation Patent;
b. Applicant's (owner's) copy of Certificate of Land Transfer.
c. Certification of the landowner and the Land Bank of the Philippines that the applicant has tendered full payment of the parcel of land as described in the application and as actually tilled by him;
d. Certification by the President of the Samahang Nayon or by the head of farmers' cooperative duly confirmed by the municipal district officer (MDO) of the Ministry of Local Government and Community Development (MLGCD) that the applicant is a full-fledged member of a duly registered farmers' cooperative or a certification to these effect;
e. Copy of the technical (graphical) description of the land parcel applied for prepared by the Bureau of Land Sketching Team (BLST) and approved by the regional director of the Bureau of Lands;
f. Clearance from the MAR field team (MARFT)or the MAR District Office (MARDO) legal officer or trial attorney; or in their absence, a clearance by the MARFT leader to the effect that the land parcel applied for is not subject of adverse claim, duly confirmed by the legal officer or trial attorney of the MAR Regional Office or, in their absence, by the regional director;
g. Xerox copy of Official Receipts or certification by the municipal treasurer showing that the applicant has fully paid or has effected up-to-date payment of the realty taxes due on the land parcel applied for; and
h. Certification by the MARFT leader whether applicant has acquired farm machineries from the MAR and/or from other government agencies.[34]

Majority of these supporting documents are lacking in this case. Hence, it was improper for the DARAB to order the issuance of the Emancipation Patent in favor of respondent without the required supporting documents and without following the requisite procedure before an Emancipation Patent may be validly issued.

Moreover, there was no sufficient evidence to prove that respondent has fully paid the value of the subject landholding.

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[34] Primer on Agrarian Reform, *id.* at 383.

As held in *Mago v. Barbin*,[35] the laws mandate full payment of just compensation for the lands acquired under PD 27 prior to the issuance of Emancipation Patents, thus:

> In the first place, the Emancipation Patents and the Transfer Certificates of Title should not have been issued to petitioners without full payment of the just compensation. Under Section 2 of Presidential Decree No. 266, the DAR will issue the Emancipation Patents only after the tenant-farmers have fully complied with the requirements for a grant of title under PD 27. Although PD 27 states that the tenant-farmers are already deemed owners of the land they till, it is understood that full payment of the just compensation has to be made first before title is transferred to them. Thus, Section 6 of EO 228 provides that ownership of lands acquired under PD 27 may be transferred only after the agrarian reform beneficiary has fully paid the amortizations.[36]

Clearly, respondent is not entitled to be issued an Emancipation Patent considering that he has not fully complied with the requirements for a grant of title under PD 27.[37]

On the issue of petitioner's claim that the subject landholding forms part of the retained area awarded to him and his sisters, the Court notes that there was no sufficient evidence to substantiate petitioner's claim. Furthermore, as held by the Court of Appeals, only the Office of the Secretary of the Department of Agrarian Reform (DAR) has the exclusive jurisdiction to resolve the issue of whether petitioner is entitled to a retention area.[38] Indeed, under Section 3 (3.5), Rule II of the DARAB 2003 Rules of Procedure, the exercise of the right of retention by the landowner is under the exclusive prerogative of and cognizable by the Office

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[35] G.R. No. 173923, 12 October 2009, 603 SCRA 383.

[36] *Id.* at 393.

[37] Section 105 of Presidential Decree No. 1529 (PROPERTY REGISTRATION DECREE) provides that: "After the tenant-farmer shall have fully complied with the requirements for a grant of title under P.D. No. 27, an Emancipation Patent which may cover previously titled or untitled property shall be issued by the Department of Agrarian Reform."

[38] CA Decision, p. 13; *rollo*, p. 20.

of the Secretary of the DAR. Besides, even if the subject landholding forms part of petitioner's retained area, petitioner landowner may still not eject respondent tenant absent any of the causes provided under the law. The landowner cannot just terminate the leasehold relationship without valid cause.

WHEREFORE, we *PARTIALLY GRANT* the petition. We *SET ASIDE* the 8 February 2006 Decision and the 29 May 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 90212. We *REINSTATE* the 29 June 1998 Decision of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 5504.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 173081. December 15, 2010]

ERNESTO MARCELO, JR. and LAURO LLAMES, *petitioners, vs.* **RAFAEL R. VILLORDON, Assistant City Prosecutor of Quezon City,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NOT A MERE FORMAL OR TECHNICAL RIGHT BUT A SUBSTANTIVE RIGHT.— A preliminary investigation is conducted before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the State from having to conduct useless and expensive

trials. Thus, a preliminary investigation is not a mere formal or technical right but is a substantive right.

2. ID.; ID.; ID.; OFFICERS AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATIONS; IT IS THE PROSECUTOR ALONE WHO HAS THE QUASI-JUDICIAL DISCRETION TO DETERMINE WHETHER OR NOT A CRIMINAL CASE SHOULD BE FILED IN COURT.— The function of determining whether there is sufficient ground for the filing of the information is executive in nature and rests with the prosecutor. It is the prosecutor alone who has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court.

3. ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS;* WHEN AVAILED OF.— *[M]andamus* will lie if (1) any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station; or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled; and (2) there is no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of *mandamus* being invoked.

4. ID.; ID.; ID.; LIES ONLY TO COMPEL AN OFFICER TO PERFORM A MINISTERIAL DUTY, NOT A DISCRETIONARY ONE; CASE AT BAR.— [T]he matter of deciding who to prosecute is a prerogative of the prosecutor. In *Hipos v. Judge Bay*, we held that the remedy of *mandamus*, as an extraordinary writ, lies only to compel an officer to perform a ministerial duty, not a discretionary one. *Mandamus* will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court. The only time the discretion of the prosecutor will stand review by *mandamus* is when the prosecutor gravely abuses his discretion. Here, due to the non-appearance of Dee on several hearings and the non-submission of the reply-affidavit by petitioners, Villordon cannot be faulted if he is still not convinced that a criminal information should be filed against Dee. Villordon may need to consider more evidence material to the complaint and is giving both parties the chance to submit their supporting documents.

5. ID.; ID.; ID.; CANNOT BE RESORTED TO WHEN THERE ARE OTHER PLAIN, SPEEDY AND ADEQUATE REMEDIES AVAILABLE TO PETITIONERS; CASE AT BAR.— [P]etitioners were not able to sufficiently demonstrate that they had no other plain, speedy and adequate remedy in order to be entitled to *mandamus*. A more expeditious and effective recourse could have been simply to submit their reply-affidavit in order for Villordon to make the proper determination whether there was sufficient ground to hold Dee for trial. Instead, petitioners resorted to filing cases in different fora like the OMB and the RTC to compel Villordon to file the criminal information against Dee immediately.

APPEARANCES OF COUNSEL

J.C. Yerreverre Law Firm for petitioners.

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 5 January 2006[2] and 30 May 2006[3] of the Regional Trial Court (RTC) of Quezon City, Branch 105, in Civil Case No. Q-05-56367.

The Facts

On 2 April 2004, petitioners Ernesto Marcelo, Jr. and Lauro Llames, together with two others, filed with the Office of the City Prosecutor of Quezon City a criminal complaint[4] against their former employer Eduardo R. Dee, Sr. (Dee). The criminal complaint stemmed from Dee's non-payment of their wages as

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

[2] *Rollo*, pp. 35-38. Penned by Presiding Judge Rosa Samson-Tatad.

[3] *Id.* at 48-49.

[4] Docketed as I.S. No. 04-4682.

President and General Manager of New Sampaguita Builders Construction Incorporated.[5]

On 28 April 2004, respondent Assistant City Prosecutor of Quezon City Rafael R. Villordon (Villordon) issued a subpoena against Dee to appear at the preliminary investigation of the case set on 18 May 2004. Dee failed to appear. The case was again set for preliminary investigation on several dates but Dee failed to appear in all of them. Each time the case was reset, petitioners asked that the case be declared submitted for resolution.

On 29 July 2004, Villordon declared the case submitted for resolution.

On 5 November 2004, Dee filed a motion to reopen the case and attached his Counter-Affidavit. Assistant City Prosecutor Rogelio Velasco, Villordon's Division Chief, approved the motion on 8 December 2004. Villordon then called the parties to a hearing on 28 December 2004. At the hearing, Dee failed to appear but petitioners were present and signed the minutes of the hearing confirming that they would appear and submit their Reply-Affidavit on 18 January 2005. Another hearing was also scheduled on 3 February 2005. On both dates, Dee failed to appear and petitioners did not submit their Reply-Affidavit.

On 22 March 2005, petitioners filed a proceeding for grievance/request for assistance with the Office of the Ombudsman (OMB). After several follow-ups for the early resolution of the case without receiving any action on the matter, petitioners later filed a case for violation of Section 3(f)[6] of Republic Act No.

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[5] Petitioners filed a case for estafa and violation of Article 116 of the Labor Code (withholding of wages and kickbacks); see *rollo*, p. 37.

[6] 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

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him

3019[7] against Villordon with the OMB.[8] On 31 July 2007, the OMB dismissed the case.

Meanwhile, on 19 September 2005, petitioners filed a petition for *mandamus*[9] against Villordon with the Regional Trial Court (RTC) of Quezon City, Branch 105. Petitioners prayed that Villordon be ordered to resolve the criminal complaint and pay petitioners (1) moral damages in the amount of ₱25,000 each; (2) exemplary damages in the amount of ₱25,000; (3) attorney's fees in the amount of ₱10,000, plus ₱2,000 per court appearance; and (4) cost of suit.[10]

In an Order dated 5 January 2006, the RTC dismissed the case for lack of merit. The RTC explained that petitioners failed to exhaust available administrative remedies before resorting to the court. The RTC stated that petitioners should have first referred the matter to the Chief City Prosecutor, being Villordon's superior, to correct Villordon's error, if any. The RTC added that petitioners filed an administrative charge against Villordon with the OMB for neglect of duty without waiting for the final determination of the case.[11] The RTC explained further:

> While the rule on exhaustion of administrative remedies is not an iron clad rule, the circumstances availing in this case does not categorized as an exception. The pending case for Estafa and violation of Article 116 of the Labor Code before the respondent, assuming they raise only legal questions, will not justify the petitioners to compel the former to make an immediate resolution of the same.

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for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[7] Anti-Graft and Corrupt Practices Act which took effect on 17 August 1960.

[8] See Comment; *rollo* p. 57.

[9] *Id.* at 11-15.

[10] *Id.* at 14.

[11] *Id.* at 37.

As the record of preliminary investigation will show, a Motion to Re-open Case was granted as per notation of his Division Chief and was scheduled for preliminary investigation on 18 January 2005 and 3 February 2005, respectively, which the petitioners themselves conformed with. On [the] 18 January 2005 hearing, petitioners appeared and signed the *minutes* giving [chance] for the last time to Eduardo Dee, Sr. to show up on the next hearing which was 3 February 2005. However, came the 3 February 2005 hearing, none of the parties appeared. This development has led the respondent to wait for the petitioners to file any pleading on account of the Counter-Affidavit filed by Eduardo Dee, Sr.[,] a copy of which was furnished the petitioners. As respondent reasoned out, he waited for a move from the petitioners to enable him to dispose [of] the cases accordingly. Until and after the case is submitted for resolution, any motion asking for immediate resolution to that sort is still unavailing. Thus, from the foregoing circumstances, the petitioners have not shown [any] legal right to compel the respondent to perform the relief they are suing for.

WHEREFORE, in the light of the foregoing considerations, the petition is DISMISSED for lack of merit.

SO ORDERED.[12]

Petitioners filed a motion for reconsideration which the RTC denied for lack of merit in an Order dated 30 May 2006.

Hence, this petition.

The Issue

The main issue is whether petitioners are entitled to the extraordinary writ of *mandamus*.

The Court's Ruling

The petition lacks merit.

Petitioners submit that the petition for *mandamus* was not prematurely filed with the RTC. Petitioners insist that under the Rules of Court it is the assistant city prosecutor's function as investigating prosecutor in a preliminary investigation to make

[12] *Id.* at 37-38.

his resolution, while it is the chief city prosecutor's function to either approve or disapprove the same. The chief city prosecutor then will get the chance to correct the errors committed by the investigating prosecutor only after the latter's resolution is submitted to him. In the present case, Villordon, as the investigating prosecutor, has not yet made any resolution. Thus, petitioners assert that Villordon committed grave abuse of discretion by unreasonably refusing to file an information despite the fact that the evidence clearly warrants such action.

On the other hand, respondent Villordon maintains that *mandamus* is a premature remedy since the case was not yet submitted for resolution when petitioners filed an action with the RTC. Villordon contends that after the hearing on 3 February 2005 which none of the parties attended, he was left hanging as to whether the case should be submitted for resolution. Petitioners failed to submit a Reply-Affidavit which should have rebutted the Counter-Affidavit filed by Dee. Villordon states that petitioners opted to just engage in forum-shopping and filed several cases against him in the RTC and the OMB.

Sections 1 and 2 of Rule 112 of the Revised Rules of Criminal Procedure state:

> Section 1. *Preliminary investigation defined; when required.* – Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. x x x
>
> Sec. 2. *Officers authorized to conduct preliminary investigations.* – The following may conduct preliminary investigations:
>
> (a) Provincial or City Prosecutors and their assistants; x x x

A preliminary investigation is conducted before an accused is placed on trial to secure the innocent against hasty, malicious, and oppressive prosecution; to protect him from an open and public accusation of a crime, as well as from the trouble, expenses, and anxiety of a public trial. It is also intended to protect the State from having to conduct useless and expensive trials. Thus,

a preliminary investigation is not a mere formal or technical right but is a substantive right.[13]

The function of determining whether there is sufficient ground for the filing of the information is executive in nature and rests with the prosecutor. It is the prosecutor alone who has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court.

In the present case, petitioners filed a criminal complaint against Dee with the Office of the City Prosecutor. After several hearings where Dee did not appear, Villordon declared the case submitted for resolution. After three months, Dee showed up and filed a motion to reopen the case and simultaneously submitted his counter-affidavit. Villordon's superior approved the motion. Thereafter, two hearings were scheduled on different dates. On the first hearing, Dee did not appear but petitioners were present. Villordon then directed petitioners to file their reply-affidavit on the next hearing to controvert the counter-affidavit submitted by Dee. However, on the second hearing, Dee and petitioners failed to appear. Since then, no other action was taken on the matter. Due to the long delay, petitioners filed an anti-graft and corruption case against Villordon with the OMB and a petition for *mandamus* with the RTC. The OMB dismissed the case and the RTC denied the petition. Petitioners now seek that we reverse the RTC's decision and grant the extraordinary writ of *mandamus* to compel Villordon to resolve the preliminary investigation and file a criminal information against Dee.

Section 3, Rule 65 of the Rules of Court states:

Sec. 3. *Petition for Mandamus*. – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition

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[13] *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, 27 June 2008, 556 SCRA 73, citing *Duterte v. Sandiganbayan*, 352 Phil. 557 (1998).

in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. x x x

The provision clearly defines that *mandamus* will lie if (1) any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station; or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled; and (2) there is no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of *mandamus* being invoked.

In the present case, petitioners insist that *mandamus* is proper since Villordon committed grave abuse of discretion by unreasonably refusing to file an information despite the fact that the evidence indicates otherwise.

We disagree with petitioners. As mentioned earlier, the matter of deciding who to prosecute is a prerogative of the prosecutor. In *Hipos v. Judge Bay*,[14] we held that the remedy of *mandamus*, as an extraordinary writ, lies only to compel an officer to perform a ministerial duty, not a discretionary one. *Mandamus* will not issue to control the exercise of discretion by a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court. The only time the discretion of the prosecutor will stand review by *mandamus* is when the prosecutor gravely abuses his discretion.[15]

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[14] G.R. Nos. 174813-15, 17 March 2009, 581 SCRA 674, citing *Akbayan-Youth v. Commission on Elections*, 407 Phil. 619 (2001). See also *Knecht v. Hon. Desierto*, 353 Phil. 494 (1998) and *Lim v. Court of Appeals*, G.R. No. 100311, 18 May 1993, 222 SCRA 279.

[15] *Knecht v. Hon. Desierto*, *supra* note 14. See also *D.M. Consunji, Inc. v. Esguerra*, 328 Phil. 1168 (1996).

Here, due to the non-appearance of Dee on several hearings and the non-submission of the reply-affidavit by petitioners, Villordon cannot be faulted if he is still not convinced that a criminal information should be filed against Dee. Villordon may need to consider more evidence material to the complaint and is giving both parties the chance to submit their supporting documents.

Also, the assertion of petitioners that the evidence against Dee is strong, amounting to grave abuse of discretion on Villordon's part in not filing the criminal information, has not been clearly established. The records show that aside from petitioners' bare declarations, no other proof was submitted.

Moreover, petitioners were not able to sufficiently demonstrate that they had no other plain, speedy and adequate remedy in order to be entitled to *mandamus*. A more expeditious and effective recourse could have been simply to submit their reply-affidavit in order for Villordon to make the proper determination whether there was sufficient ground to hold Dee for trial. Instead, petitioners resorted to filing cases in different fora like the OMB and the RTC to compel Villordon to file the criminal information against Dee immediately.

In sum, since the institution of a criminal action involves the exercise of sound discretion by the prosecutor and there being other plain, speedy and adequate remedies available to petitioners, the resort to the extraordinary writ of *mandamus* must fail.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Orders dated 5 January 2006 and 30 May 2006 of the Regional Trial Court of Quezon City, Branch 105, in Civil Case No. Q-05-56367.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 173326. December 15, 2010]

SOUTH COTABATO COMMUNICATIONS CORPORATION and GAUVAIN J. BENZONAN, *petitioners, vs.* **HON. PATRICIA A. STO. TOMAS, SECRETARY OF LABOR AND EMPLOYMENT, ROLANDO FABRIGAR, MERLYN VELARDE, VINCE LAMBOC, FELIPE GALINDO, LEONARDO MIGUEL, JULIUS RUBIN, EDEL RODEROS, MERLYN COLIAO and EDGAR JOPSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.— Anent the first procedural issue, the Court had summarized the jurisprudential principles on the matter in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*. In said case, we held that a President of a corporation, among other enumerated corporate officers and employees, can sign the verification and certification of non-forum shopping in behalf of the said corporation without the benefit of a board resolution. x x x It must be stressed, however, that the *Cagayan* ruling qualified that the better procedure is still to append a board resolution to the complaint or petition to obviate questions regarding the authority of the signatory of the verification and certification. Nonetheless, under the circumstances of this case, it bears reiterating that the requirement of the certification of non-forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. However, the Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance. In the case at bar, the Court holds that there has been substantial compliance with Sections 4 and 5, Rule 7 of

the 1997 Revised Rules on Civil Procedure on the petitioners' part in consonance with our ruling in the *Lepanto Consolidated Mining Company v. WMC Resources International PTY LTD.* that we laid down in 2003 with the rationale that the President of petitioner-corporation is in a position to verify the truthfulness and correctness of the allegations in the petition. Petitioner Benzonan clearly satisfies the aforementioned jurisprudential requirement because he is the President of petitioner South Cotabato Communications Corporation. Moreover, he is also named as co-respondent of petitioner-corporation in the labor case which is the subject matter of the special civil action for *certiorari* filed in the Court of Appeals.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTION.— The Court is mindful of previous rulings which instructs us that when there is enough basis on which a proper evaluation of the merits can be made, we may dispense with the time-consuming procedure in order to prevent further delays in the disposition of the case. However, based on the nature of the two remaining issues propounded before the Court which involve factual issues and given the inadequacy of the records, pleadings, and other evidence available before us to properly resolve those questions, we are constrained to refrain from passing upon them. After all, the Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts.

APPEARANCES OF COUNSEL

Garcia Jacobo & Besinga Law Office for petitioners.
The Solicitor General for private respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This a petition for review on *certiorari* under Rule 45 of the Rules of Court with application for temporary restraining order and/or writ of preliminary injunction seeking to set aside the Resolution[1] dated July 20, 2005 as well as its related Resolution[2] dated May 22, 2006 of the Court of Appeals in CA-G.R. SP No. 00179-MIN. In essence, the same petition likewise seeks to set aside the Order[3] dated November 8, 2004 and the Order[4] dated February 24, 2005 of public respondent Secretary Patricia A. Sto. Tomas of the Department of Labor and Employment (DOLE) as well as the Order[5] dated May 20, 2004 of the Regional Director, DOLE Regional XII Office.

The facts of this case, as culled from the Order dated November 8, 2004 of DOLE Secretary Sto. Tomas, are as follows:

> On the basis of a complaint, an inspection was conducted at the premises of appellant DXCP Radio Station on January 13, 2004, where the following violations of labor standards laws were noted:
>
> 1. Underpayment of minimum wage;
> 2. Underpayment of 13th month pay;
> 3. Non-payment of five (5) days service incentive leave pay;
> 4. Non-remittance of SSS premiums;
> 5. Non-payment of rest day premium pay of some employee;
> 6. Non-payment of holiday premium pay; and

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[1] *Rollo*, pp. 169-171; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Arturo G. Tayag and Normandie B. Pizarro concurring.

[2] *Id.* at 200-204; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Romulo V. Borja and Normandie B. Pizarro concurring.

[3] *Id.* at 81-84.

[4] *Id.* at 140-141.

[5] *Id.* at 58-61.

7. Some employees are paid on commission basis aside from their allowances.

A copy of the Notice of Inspection Results was explained to and received by Tony Ladorna for appellants. Later on, or on January 16, 200[4], another copy of the Notice of Inspection Results was received by Felipe S. Galindo, Technical Supervisor of appellant DXCP. The Notice of Inspection Results required the appellants to effect restitution and/or correction of the above violations within five (5) calendar days from receipt of the Notice. Likewise, appellants were informed that any questions on the findings should be submitted within five (5) working days from receipts of the Notice.

A summary investigation was scheduled on March 3, 2004, where only appellees appeared, while appellants failed to appear despite due notice. Another hearing was held on April 1, 2004, where appellees appeared, while a certain Nona Gido appeared in behalf of Atty. Thomas Jacobo. Ms. Gido sought to re-schedule the hearing, which the hearing officer denied.

On May 20, 2004, the Regional Director issued the assailed Order, directing appellants to pay appellees the aggregate amount of Seven Hundred Fifty Nine Thousand Seven Hundred Fifty Two Pesos (Php759,752.00).[6]

The dispositive portion of the Order dated May 20, 2004 of the Regional Director of the DOLE Region XII Office reads as follows:

WHEREFORE, premises considered, respondent DXCP Radio Station and/or Engr. Gauvain Benzonan, President, is hereby ordered to pay the seven (7) affected workers of their Salary Differential, Underpayment of 13th Month Pay, Five (5) days Service Incentive Leave Pay, Rest Day Premium Pay and Holiday Premium Pay in the total amount of **SEVEN HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED FIFTY-TWO PESOS** (₱759,752.00), Philippine Currency as indicated in the Annex "A" hereof and to submit proof of compliance to the Department of Labor and Employment, Regional Office No. XII, Cotabato City within ten (10) calendar days from receipt of this Order.[7]

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[6] *Id.* at 81-82.

[7] *Id.* at 61.

Petitioners appealed their case to then DOLE Secretary Sto. Tomas. However, this appeal was dismissed in an Order dated November 8, 2004 wherein the Secretary ruled that, contrary to their claim, petitioners were not denied due process as they were given reasonable opportunity to present evidence in support of their defense in the administrative proceeding before the Regional Director of DOLE Region XII Office. The dispositive portion of the said Order follows:

> WHEREFORE, premises considered, the appeal by DXCP Radio Station and Engr. Gauvain Benzonan is hereby **DISMISSED** for lack of merit. The Order dated May 24, 2004 of the Regional Director, directing appellants to pay the nine (9) appellees the aggregate amount of Seven Hundred Fifty-Nine Thousand Seven Hundred Fifty-Two Pesos (Php759,752.00), representing their claims for wage differentials, 13th month pay differentials, service incentive leave pay, holiday premium and rest day premium, is **AFFIRMED**.[8]

Undeterred, petitioners filed a Motion for Reconsideration with the DOLE Secretary but this was denied in an Order dated February 24, 2005, the dispositive portion of which states:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by DXCP Radio Station and Engr. Gauvain Benzonan, is hereby **DENIED** for lack of merit. Our Order dated November 8, 2004, affirming the Order dated May 20, 2004 of the OIC-Director, Regional Office No. 12, directing appellants to pay Rolando Fabrigar and eight (8) others, the aggregate amount of Seven Hundred Fifty-Nine Thousand Seven Hundred Fifty-Two Pesos (Php759,752.00), representing their claims for wage and 13th month pay differentials, service incentive leave pay, holiday pay and rest day premium, is **AFFIRMED**.[9]

In light of this setback, petitioners elevated their case to the Court of Appeals but their petition was dismissed in the assailed Court of Appeals Resolution dated July 20, 2005 because of several procedural infirmities that were explicitly cited in the same, to wit:

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[8] *Id.* at 83-84.

[9] *Id.* at 141.

1. The petition was not properly verified and the Certification of Non-Forum Shopping was not executed by the plaintiff or principal party in violation of Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure, as the affiant therein was not duly authorized to represent the corporation. Such procedural lapse renders the entire pleading of no legal effect and is dismissible. Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

> SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
>
> A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> **A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading**. x x x.
>
> SEC. 5. Certification against forum shopping. – **The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:**
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> x x x x x x x x x
>
> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.** The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. x x x.

2. Annexes A, B, C, E and its attachments and F are not certified true copies contrary to Section 1, Rule 65 of the 1997 Rules of Civil Procedure which provides:

SECTION 1. *Petition for Certiorari*. – x x x

x x x x x x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. x x x.

3. Petitioner's counsel failed to indicate the date of issue of his IBP Official Receipt. As provided for under Bar Matter 287 dated September 26, 2000:

"**All pleadings, motions and papers filed in court whether personally or by mail shall bear counsel's current IBP official receipt number and date of issue otherwise, such pleadings, motions and paper may not be acted upon by the court**, without prejudice to whatever disciplinary action the court may take against the erring counsel who shall likewise be required to comply with the such (sic) requirement within five (5) days from notice. Failure to comply with such requirement shall be ground for further disciplinary sanction and for contempt of court." x x x.[10]

Petitioners then filed a Motion for Reconsideration and the Court of Appeals ruled in its assailed Resolution dated May 22, 2006 that petitioners' subsequent submission made them substantially comply with the second and third procedural errors that were mentioned in the Court of Appeals Resolution dated July 20, 2005. However, the Court of Appeals also ruled that, with regard to the first procedural error, petitioners' justification does not deserve merit reasoning that "[w]hile it may be true that there are two (2) petitioners and that petitioner Gauvain Benzonan signed the verification and the certificate of non-forum shopping of the petition, the records show that petitioner Gauvain Benzonan did not initiate the petition in his own capacity to protect his personal interest in the case but was, in fact, only acting for and in the corporation's behalf as its president."[11]

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[10] *Id.* at 169-171.

[11] *Id.* at 201.

Thus, the Court of Appeals noted that "[h]aving acted in the corporation's behalf, petitioner Benzonan should have been clothed with the corporation's board resolution authorizing him to institute the petition."[12]

The Court of Appeals likewise ruled that petitioners' attachment of a "Secretary's Certificate" to their Motion for Reconsideration (purportedly to remedy the first procedural mistake in their petition for *certiorari* under Rule 65) was insufficient since their submission merely authorized petitioner Benzonan "to represent the corporation and cause the preparation and filing of a Motion for Reconsideration before the Court of Appeals."[13]

Consequently, petitioners filed the instant petition wherein they raised the following issues:

a. Whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the Petition for *Certiorari* and denied the Motion for Reconsideration on its finding that the petition was not properly verified and the certification of non-forum shopping was not executed by the principal party allegedly in violation of Sections 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure?

b. Whether petitioners were denied due process of law in the proceedings before the Regional Director and the Office of the Secretary, both of the Department of Labor and Employment?

c. Whether there was sufficient basis in the Order issued by the Regional Director, DOLE, Regional Office No. XII, dated May 20, 2004?[14]

Anent the first procedural issue, the Court had summarized the jurisprudential principles on the matter in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*.[15] In said case, we held that a President of a corporation, among other enumerated corporate officers and employees, can sign

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[12] *Id.* at 202.

[13] *Id.* at 183.

[14] *Id.* at 28-29.

[15] G.R. No. 151413, February 13, 2008, 545 SCRA 10.

the verification and certification against of non-forum shopping in behalf of the said corporation without the benefit of a board resolution. We quote the pertinent portion of the decision here:

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation.

In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc. v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in ***Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.**

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) **the President of a corporation**, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers

or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[16] (Emphases supplied.)

It must be stressed, however, that the *Cagayan* ruling qualified that the better procedure is still to append a board resolution to the complaint or petition to obviate questions regarding the authority of the signatory of the verification and certification.[17]

Nonetheless, under the circumstances of this case, it bears reiterating that the requirement of the certification of non-forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. However, the Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance.[18]

In the case at bar, the Court holds that there has been substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure on the petitioners' part in consonance with our ruling in the *Lepanto Consolidated Mining Company v. WMC Resources International PTY LTD.*[19] that we laid down in 2003 with the rationale that the President of petitioner-corporation is in a position to verify the truthfulness and correctness of the allegations in the petition. Petitioner Benzonan clearly satisfies the aforementioned jurisprudential requirement because he is the President of petitioner South Cotabato Communications Corporation. Moreover, he is also named as co-respondent of petitioner-corporation in the labor case which

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[16] *Id.* at 17-19.

[17] *Id.* at 19.

[18] *PNCC Skyway Traffic Management and Security Division Workers Organization (PSTMSDWO) v. PNCC Skyway Corporation*, G.R. No. 171231, February 17, 2010.

[19] G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109.

is the subject matter of the special civil action for *certiorari* filed in the Court of Appeals.

Clearly, it was error on the part of the Court of Appeals to dismiss petitioners' special civil action for *certiorari* despite substantial compliance with the rules on procedure. For unduly upholding technicalities at the expense of a just resolution of the case, normal procedure dictates that the Court of Appeals should be tasked with properly disposing the petition, a second time around, on the merits.

The Court is mindful of previous rulings which instructs us that when there is enough basis on which a proper evaluation of the merits can be made, we may dispense with the time-consuming procedure in order to prevent further delays in the disposition of the case.[20] However, based on the nature of the two remaining issues propounded before the Court which involve factual issues and given the inadequacy of the records, pleadings, and other evidence available before us to properly resolve those questions, we are constrained to refrain from passing upon them.

After all, the Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts.[21]

WHEREFORE, the petition is *PARTIALLY GRANTED.* The assailed Resolutions of the Court of Appeals are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for proper disposition of CA-G.R. SP No. 00179-MIN.

SO ORDERED.

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

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[20] *Somoso v. Court of Appeals*, G.R. No. 78050, October 23, 1989, 178 SCRA 654, 663; *Bach v. Ongkiko, Kalaw, Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426.

[21] *Buenventura v. Pascual*, G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.

FIRST DIVISION

[G.R. No. 173798. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENE CELOCELO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDELINES IN REVIEWING RAPE CASES.— In reviewing rape cases, this Court is guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Rape is a serious transgression with grave consequences for both the accused and the complainant. Using the above guiding principles in the review of rape cases, this Court is thus duty-bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape.

2. CRIMINAL LAW; RAPE; INSTANCES WHERE CARNAL KNOWLEDGE OF A WOMAN CONSTITUTES RAPE.— Carnal knowledge of a woman under any of the following instances constitutes rape: (1) when force or intimidation is used; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under twelve (12) years of age. In the case at bar, AAA gave categorical testimony that Celocelo was armed with a knife when he forced himself upon her x x x. It is evident x x x that force with the use of a deadly weapon was in fact employed by Celocelo on AAA to accomplish his depraved desires that dawn. AAA pleaded for Celocelo to not abuse her but instead he threatened her and her family x x x.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; A VICTIM OF A SAVAGE CRIME CANNOT

BE EXPECTED TO MECHANICALLY RETAIN AND THEN GIVE AN ACCURATE ACCOUNT OF EVERY LURID DETAIL OF A FRIGHTENING EXPERIENCE.— It is only human for AAA to not be able to readily narrate the exact details of her experience when questioned. The Court has in the past observed that "[i]t would not really be unusual for one to recollect a good number of things about an eventful incident but what should be strange is when one can put to mind everything." As this Court has time and again declared: "Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience - a verity born out of human nature and experience. This is especially true with a rape victim who is required to utilize every fiber of her body and mind to repel an attack from a stronger aggressor. x x x."

4. ID.; ID.; ID.; THE TRIAL COURT'S ASSESSMENT THEREON IS ENTITLED TO THE HIGHEST RESPECT.— We once again reiterate the time-honored maxim that the trial court's assessment of the credibility of witnesses is entitled to the highest respect. It was the trial court that had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.

5. ID.; ID.; ID.; RAPE MAY BE PROVEN BY THE UNCORROBORATED TESTIMONY OF THE OFFENDED VICTIM, AS LONG AS HER TESTIMONY IS CONCLUSIVE, LOGICAL AND PROBABLE.— In rape cases, there are usually only two witnesses: the complainant and the accused. It is a settled rule that rape may be proven by the uncorroborated testimony of the offended victim, as long as her testimony is conclusive, logical and probable. As we have ascertained that AAA was a credible witness, it bears stressing that her lone testimony, which was also shown to be conclusive, logical, and probable, is enough to convict Celocelo of the crime of rape. What is essential is that AAA categorically identified her attacker as Celocelo after she stated in open court and in her sworn statement that Celocelo dragged her by her hair into the comfort room outside her house, threatened her with a knife, undressed her, and then raped her. These are the

fundamental points in her testimonies constitutive of the crime of rape.

6. ID.; ID.; ID.; NO YOUNG FILIPINA WOULD PUBLICLY ADMIT THAT SHE HAD BEEN CRIMINALLY ABUSED AND RAVISHED, UNLESS IT IS THE TRUTH.— What AAA did after the rape is also telling. Immediately after the incident, she mindlessly walked towards the house of her sister and just cried on her doorstep. They then informed their parents about what happened, and without delay, they reported the incident to the *Barangay* office. On the very same day, AAA subjected herself to a thorough medico-legal examination. The foregoing actions of AAA, subsequent to the rape, overwhelmingly establish the truth of the charge of rape. They were spontaneous, impulsive and unpretentious. Moreover, Celocelo has not shown any improper motive on the part of AAA for her to accuse him of rape. This Court has in many cases held that no young Filipina would publicly admit that she had been criminally abused and ravished, unless it is the truth, for it is her natural instinct to protect her honor.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO*; MANDATORY UPON A FINDING OF THE FACT OF RAPE.— Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape.

8. ID.; ID.; MORAL DAMAGES; AUTOMATICALLY AWARDED WITHOUT NEED OF FURTHER PROOF.— Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.

9. ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN RAPE IS ATTENDED WITH A QUALIFYING CIRCUMSTANCE.— Taking into account the fact that the rape was attended with the use of a deadly weapon, a qualifying circumstance under Article 266-B, paragraph 2 of the Revised Penal Code, an award of Thirty Thousand Pesos (₱30,000.00) as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the Decision[1] of the Court of Appeals dated February 28, 2006, which affirmed with modification the Decision[2] rendered by the Regional Trial Court (RTC), Branch 275, Las Piñas City, in Criminal Case No. 98-1079, finding accused-appellant Rene Celocelo (Celocelo) guilty beyond reasonable doubt of the crime of Rape as defined and penalized under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code, as amended by Republic Act No. 8353, imposing the penalty of *reclusion perpetua*, and ordering Celocelo to pay the offended party Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

On September 22, 1998, Celocelo was charged before the RTC for the crime of Rape. The accusatory portion of the Information reads:

> That on or about the 26th day of July, 1998, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with knife and by means of force, violence and intimidation with lewd designs, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA] against her will and consent thereby subjecting her to sexual abuse.[3]

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[1] *Rollo*, pp. 2-20; penned by Associate Justice Vicente S.E. Veloso with Associate Justices Portia Aliño-Hormachuelos and Amelita G. Tolentino, concurring.

[2] CA *rollo*, pp. 37-38; penned by Judge Bonifacio Sanz Maceda.

[3] Records, p. 1.

Celocelo pleaded not guilty to the charge when he was arraigned on December 1, 1999.[4] Trial on the merits followed the termination of the pre-trial conference.

The prosecution offered three witnesses: (1) Dr. Aurea P. Villena, Medico Legal Officer II of the National Bureau of Investigation (NBI), who personally examined AAA;[5] (2) Senior Inspector Marilyn N. Samarita, the police investigator who requested the NBI to conduct the medico-legal examination on AAA; and (3) private complainant AAA, the 19-year-old victim. The defense had two witnesses: (1) Rene Celocelo, the accused; and (2) Edgardo de Vera, the accused's brother-in-law.

The prosecution first presented Dr. Aurea P. Villena, the Medico Legal Officer II of the NBI who conducted the physical examination on AAA on July 26, 1998. Her findings, as stated in the medico-legal report, are as follows:

FINDINGS

x x x x x x x x x

PHYSICAL INJURIES:

Contusion, purplish, 0.5 cm. x 1.0 cm., right breast.

GENITAL EXAMINATION:

Pubic hairs, fully grown, abundant. Labia majora and minora, gaping. Fourchette, lax. Vestibular mucosa, pinkish. Hymen, tall, thick, with an old healed complete laceration at 6:00 o'clock position corresponding to the face of a watch, edges rounded, non-coaptable. Hymenal orifice admits a tube 2.0 cm. in diameter. Vaginal walls, lax. Rugosities, shallow.

CONCLUSIONS:

1. The above-described physical injury was noted on the body of the subject at the time of the examination.

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[4] *Id.* at 23.

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

2. Hymenal laceration present.[6]

Dr. Villena also testified that after conducting a medico-legal examination on AAA, she took three vaginal smears from her and brought it to the laboratory for seminal examination.[7] The results were recorded in Laboratory Report No. S-98-267.[8] The report indicated that the vaginal smears gave a positive result for the presence of human spermatozoa. When the prosecutor asked Dr. Villena what this meant, she testified that positive semenology is highly indicative of recent sexual intercourse.[9]

The second witness presented was Marilyn N. Samarita. She was the police investigator who requested the NBI to conduct a medico-legal examination on AAA. She was assigned as Chief of the Women and Children's desk at the Las Piñas City Police Station at the time AAA went to her office. She testified that she made the request when AAA came to her office to file a complaint.[10] She also testified that AAA came back on July 29, 1998 to inform her that the results will be out the following day, July 30, but AAA will just come back on July 31 to give her statement as she was not yet ready.[11]

The third witness who took the stand was the victim herself, AAA. She testified that on July 26, 1998, at around two o'clock in the morning, while she was sleeping in their house with her siblings, she was awakened by Celocelo, who covered her mouth, and told her "not to make any scandal."[12] She testified that Celocelo pulled her by her hair and dragged her out of the bedroom towards the comfort room which was located outside their house. AAA said she pleaded to Celocelo not to abuse her

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[6] Records, p. 7.

[7] TSN, March 9, 2001, p. 15.

[8] Records, p. 142.

[9] TSN, March 9, 2001, p. 17.

[10] TSN, August 3, 2001, pp. 3-7.

[11] *Id.* at 13.

[12] TSN, November 7, 2001, pp. 10-11.

but he ignored her pleas and told her to undress. AAA claimed that Celocelo removed her jogging pants and panty while pointing a *lansetang dipindot* (automatic knife) at her. She was then forced to sit on top of Celocelo, face to face, who by then positioned himself on the toilet bowl, and while holding a knife with his right hand and holding her arm with his left hand, proceeded to rape her by moving AAA up and down. AAA said that after Celocelo raped her, he told her to dress herself and not to tell anybody or he will come back to kill her. AAA said that after the incident, she found herself on her sister's doorsteps, inconsolably crying. AAA, together with her sister, her sister's husband, and one of her brothers, went back to AAA's house to tell their parents who became hysterical upon learning that AAA was raped. They proceeded to the *Barangay* office to report the incident, and Celocelo was arrested that morning in his work place.

Celocelo, in his testimony, denied AAA's claim that he raped her. He said that he had been seeing and courting AAA for three months prior to the incident. On July 25, 1998, he went to AAA's house at around eight o'clock in the evening. AAA allowed him to enter her house, and it was then when he told her that he liked her. AAA favorably responded to his proposal with "*Oo, sinasagot na kita*," and when he asked for a kiss, she willingly obliged. However, after about 30 seconds of kissing, Celocelo said that AAA stopped for fear that her mother might catch them as they were in the living room. She then took his hand and led him to the comfort room outside their house. Celocelo said that it was AAA who undressed herself and it was she who sat on top of him to have sexual intercourse. They agreed to meet again the following day as it was his pay day, but when he reported for work, he was arrested for allegedly raping AAA.[13]

Edgardo de Vera was also presented as a witness for Celocelo. De Vera is Celocelo's brother-in-law and he testified that he was the one who introduced Celocelo to AAA. He claimed that

[13] TSN, August 13, 2003, pp. 3-23.

AAA always watched Celocelo play basketball and she was particularly happy whenever the ball was in Celocelo's hands. He also claimed that AAA would hold Celocelo's hands when congratulating him and would ask him to pass by their bench during time-outs.[14]

On August 31, 2004, the RTC convicted Celocelo for the crime of rape and sentenced him to suffer the penalty of *reclusion perpetua* and to indemnify the offended party the sum of One Hundred Thousand Pesos (₱100,000.00). The dispositive portion of the decision reads:

> WHEREFORE, judgment is rendered finding accused Rene Celocelo GUILTY beyond reasonable doubt as charged and hereby sentenced to suffer the prison term of *reclusion perpetua* and likewise suffer the accessory penalty provided for by law and to pay the complainant, [AAA], the sum of ₱100,000.00 and to pay the costs.[15]

The RTC, in its decision, said that the issue it was faced with was whether or not the sexual congress was attended with the use of force or intimidation. The RTC resolved the issue in the affirmative and held that it believed that there was indeed force and intimidation when Celocelo poked a knife at AAA while having sexual intercourse with her. The RTC said that it was but natural for AAA to not fight back or even make any noise for fear of what Celocelo might do to her and her family. The RTC found AAA to be a credible witness as it had the opportunity to observe the demeanor of AAA and saw that she was "straightforward in denouncing the accused while [he] appeared [to be] impishly smiling as [AAA] denounced him."[16]

On intermediate appellate review before the Court of Appeals, Celocelo alleged that the RTC erred in finding him guilty beyond reasonable doubt and assigned the following errors:

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[14] TSN, March 25, 2004, pp. 9-13.

[15] CA *rollo*, p. 38.

[16] *Id*.

I

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE INCREDIBLE TESTIMONY OF THE PRIVATE COMPLAINANT.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF [THE] PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN NOT MAKING A FINDING OF FACTS IN ITS DECISION, WHICH IS A REVERSIBLE ERROR.[17]

Celocelo alleged that AAA's "account of how she was raped by [Celocelo] is contrary to human experience"[18] when she said that her jogging pants and panty were pulled down to her ankles and yet she was able to sit on top of him. Celocelo also asserted that the RTC was not able to prove his guilt beyond reasonable doubt as it relied mainly on the testimony of AAA. Moreover, Celocelo claimed that the RTC's decision was constitutionally and procedurally infirm as it "did not bother to state clearly and distinctly the facts and the law on which it was based,"[19] as required by both the 1987 Constitution[20] and the 1997 Rules on Civil Procedure.[21]

The Court of Appeals sustained Celocelo's conviction and addressed each of the assigned errors. With regard to the inconsistencies in AAA's testimony, the Court of Appeals believed that the inconsistency Celocelo was pointing out was fully explained in the same testimony.

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[17] *Id.* at 52.

[18] *Id.* at 59.

[19] *Id.* at 61.

[20] Article VIII, Section 14.

[21] Rule 36, Section 1.

Next, the Court of Appeals defended the RTC's reliance on the testimony of AAA, as the RTC found AAA's demeanor consistent with her allegation that Celocelo raped her. The Court of Appeals stated that the findings of the RTC "on the credibility of the witnesses and their testimonies are generally accorded great respect by an appellate court,"[22] and since Celocelo was unable to present proof of overlooked or misappreciated facts and circumstances that would alter the results of the case, there was no reason to disregard the RTC's findings of facts.

On the last assignment of error, the Court of Appeals held that the fact that the judgment may not be satisfactory to Celocelo is not enough to convince it that the decision is flawed.[23] The Court of Appeals maintained that the conviction was based on facts on record and sound doctrines applicable to the case. The Court of Appeals further noted the Solicitor General's argument that, while the RTC's decision may be short, it is neither constitutionally nor procedurally infirm as only the "essential ultimate facts" upon which the court's conclusion is drawn are required to be stated in the court's decision.[24]

In finding that the prosecution was able to establish Celocelo's guilt beyond reasonable doubt, the Court of Appeals, on February 28, 2006, affirmed the RTC with clarification on the award, to wit:

> WHEREFORE, the judgment of conviction is **AFFIRMED** with clarification that the award of "₱100,000.00" should cover the (a) civil indemnity of ₱50,000.00 and (b) moral damages of ₱50,000.00.[25]

On March 23, 2006, Celocelo filed his Notice of Appeal and subsequently filed a Manifestation that he is adopting the arguments in his Appellant's Brief in this appeal.

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[22] *Rollo*, p. 14.

[23] *Id.* at 15.

[24] *Id.* at 16.

[25] *Id.* at 19.

This Court believes that the resolution of this case hinges upon whether or not Celocelo's guilt for the crime of rape was proven beyond reasonable doubt.

> It is doctrinal that the requirement of proof beyond reasonable doubt in criminal law does not mean such a degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. x x x.[26]

In reviewing rape cases, this Court is guided by three settled principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the person accused, although innocent, to disprove; (2) considering the intrinsic nature of the crime, only two persons being usually involved, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merit, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[27]

Rape is a serious transgression with grave consequences for both the accused and the complainant. Using the above guiding principles in the review of rape cases, this Court is thus duty-bound to conduct a thorough and exhaustive evaluation of a judgment of conviction for rape.[28]

This Court has made a painstaking scrutiny of the entire records of the case, including both parties' exhibits and the transcript of stenographic notes, and finds no reason to reverse the Courts below.

Celocelo was charged in the information under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code, as amended by Republic Act No. 8353.[29]

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[26] *People v. Suarez,* 496 Phil. 231, 249 (2005).

[27] *People v. Antivola,* 466 Phil. 394, 408 (2004).

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

[29] Records, p. 1.

Carnal knowledge of a woman under any of the following instances constitutes rape: (1) when force or intimidation is used; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when she is under twelve (12) years of age.[30] In the case at bar, AAA gave categorical testimony that Celocelo was armed with a knife when he forced himself upon her, to wit:

Q: How did you come to know that he is made, very mad?

A: He pulled my hair.

Q: What else, if any?

A: He is also pointing to me a ***LANSETANG DIPINDOT*** on my right side.

Q: Now, after pulling your hair and pointing a knife at the right side of your body, what else did Rene Celocelo do?

A: He told me to undress myself.

Q: What did you do when Rene Celocelo [told] you to undress yourself?

A: Still I pleaded to him, continuosly pleading to him but he did the raped to me.

Q: And what happened after that?

A: And he removed my panty.

Q: How did he remove your panty?

A: While his left hand is pointing to me, at my right side of my body, he uses his other hand in removing the panty.

Q: After removing the panty, what else did he do?

A: ***GINALAW NA NIYA PO AKO***, he inserted his private parts to my genital.[31]

It is evident from the foregoing that force with the use of a deadly weapon was in fact employed by Celocelo on AAA to

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[30] *People v. Erese*, 346 Phil. 307, 314 (1997).

[31] TSN, November 7, 2001, pp. 12-13.

accomplish his depraved desires that dawn. AAA pleaded for Celocelo to not abuse her but instead he threatened her and her family, to wit:

Q: Why did you not, at the time that Rene was dragging you towards the bathroom, why did you not shout and ask for help from your housemate?

A: Because, according to him if I will shout, he will not hesitate to kill me.

Q: How did you feel, when he uttered those words to you?

A: So, I kept silent fright and pleading to him.

Q: Why did you cry?

A: I only cried, sir, because I do not want that my brothers who are also inside the bedroom will be affected, or will be involved.

Q: Now, how did you feel when Rene Celocelo uttered those words to you?

A: ***PURO TAKOT NA PO***. I am afraid, sir.

Q: From the time that Rene Celocelo was removing your Jogging Pants, or pulling down your Jogging Pants as well as your panty, why did you not shout and ask for help?

A: Because he is threatening me that he will kill me if I will shout including my brothers and sisters.[32]

Celocelo insists that both the RTC and the Court of Appeals erred in giving full weight and credence to AAA's testimony, claiming that her testimony was incredible as the "manner as to how she was allegedly raped by [Celocelo] is patently incredible and contrary to human experience and observation."[33]

Celocelo makes much of the fact that in one part of AAA's testimony, she said that during the sexual intercourse, her jogging pants and panty were only pulled down up to her ankles, while

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

[33] CA *rollo*, p. 60.

she was sitting on top of Celocelo, with her legs spread wide open.[34] Celocelo however missed the more important fact that the RTC itself clarified this issue in the same testimony:

Court: By the way, while the accused was pulling you up and down, were you facing him or your face backwards of him?

A: I was facing.

Court: And at that time, you had your jogging pants down to your ankle?

A: **Well, it was only the other pair of the jogging pants was not removed, the other one was completely removed.**

Court: Do I understand correctly, that while the accused was doing the push and pull movement, you legs were open?

A: Yes, your Honor.[35] (Emphasis ours.)

It is only human for AAA to not be able to readily narrate the exact details of her experience when questioned. The Court has in the past observed that "[i]t would not really be unusual for one to recollect a good number of things about an eventful incident but what should be strange is when one can put to mind everything."[36] As this Court has time and again declared:

> Etched in our jurisprudence is the doctrine that a victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience - a verity born out of human nature and experience. This is especially true with a rape victim who is required to utilize every fiber of her body and mind to repel an attack from a stronger aggressor. x x x.[37]

This error cannot impair the credibility of AAA especially since first, the imputed inconsistency or incredible testimony

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[34] TSN, December 7, 2001, p. 24.

[35] *Id.* at 33.

[36] *People v. Mirafuentes,* 402 Phil. 233, 242 (2001).

[37] *People v. Del Rosario,* 398 Phil. 292, 301 (2000).

was later explained and clarified by no less than the RTC itself, and second, the RTC, who was in the best position to determine if AAA were indeed credible, believed her to be so, to wit:

> The Court had been observant of the demeanor of the complainant and the accused in the course of the trial and found that the complainant was straightforward in denouncing the accused while the accused appeared impishly smiling as the complainant denounced him.[38]

We once again reiterate the time-honored maxim that the trial court's assessment of the credibility of witnesses is entitled to the highest respect. It was the trial court that had the opportunity to observe the witnesses' manner of testifying, their furtive glances, calmness, sighs and the scant or full realization of their oath.[39]

Celocelo also claims that the prosecution failed to prove his guilt beyond reasonable doubt. In rape cases, there are usually only two witnesses: the complainant and the accused. It is a settled rule that rape may be proven by the uncorroborated testimony of the offended victim, as long as her testimony is conclusive, logical and probable.[40]

As we have ascertained that AAA was a credible witness, it bears stressing that her lone testimony, which was also shown to be conclusive, logical, and probable, is enough to convict Celocelo of the crime of rape.

What is essential is that AAA categorically identified her attacker as Celocelo after she stated in open court and in her sworn statement that Celocelo dragged her by her hair into the comfort room outside her house, threatened her with a knife, undressed her, and then raped her. These are the fundamental points in her testimonies constitutive of the crime of rape.[41]

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[38] *Rollo,* p. 38.

[39] *People v. Fernandez*, 426 Phil. 169, 173 (2002).

[40] *People v. Buenviaje*, 408 Phil. 342, 354 (2001).

[41] *People v. Del Rosario, supra* note 37.

What AAA did after the rape is also telling. Immediately after the incident, she mindlessly walked towards the house of her sister and just cried on her doorstep. They then informed their parents about what happened, and without delay, they reported the incident to the *Barangay* office. On the very same day, AAA subjected herself to a thorough medico-legal examination. The foregoing actions of AAA, subsequent to the rape, overwhelmingly establish the truth of the charge of rape. They were spontaneous, impulsive and unpretentious.

Moreover, Celocelo has not shown any improper motive on the part of AAA for her to accuse him of rape. This Court has in many cases held that no young Filipina would publicly admit that she had been criminally abused and ravished, unless it is the truth, for it is her natural instinct to protect her honor.[42]

These facts were also found by the RTC, and stated in its decision, however short it may be. Borrowing the Court of Appeals' words:

> The assailed decision may not be the kind of judgment rendered to the satisfaction of the accused. But such is not enough to convince Us that it is flawed.[43]

The RTC based its decision on the transcript of stenographic notes, and all the documents collected during the course of the trial. It explained why it believed AAA to be a credible witness and even described Celocelo's demeanor during the trial. It used settled principles, as established by this Court in its evaluation of the evidence and the records. The RTC cannot be faulted for its desire to be brief, concise, and straight to the point in penning its decision.

In fine, the prosecution was able to discharge its burden of proving Celocelo's guilt beyond reasonable doubt under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 2, of the Revised Penal Code.

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[42] *People v. Santiago*, 274 Phil. 847, 860 (1991).

[43] *Rollo*, p. 15.

Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape.[44] Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[45] Taking into account the fact that the rape was attended with the use of a deadly weapon, a qualifying circumstance under Article 266-B, paragraph 2 of the Revised Penal Code, an award of Thirty Thousand Pesos (₱30,000.00) as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[46]

WHEREFORE, the Decision of the Court of Appeals dated February 28, 2006 finding Rene Celocelo *GUILTY* beyond reasonable doubt of the crime of *RAPE* is *AFFIRMED* with *MODIFICATION.* Appellant is further ordered to pay private complainant exemplary damages in the amount of ₱30,000.00 plus interest at the rate of 6% per annum on ALL damages from the date of finality of this judgment. No Costs.

SO ORDERED.

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

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[44] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

[45] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 28-29.

[46] *People v. Macapanas*, G.R. No. 187049, May 4, 2010.

FIRST DIVISION

[G.R. No. 174251. December 15, 2010]

RAUL PALOMATA, *petitioner, vs.* **NESTOR COLMENARES and TERESA GURREA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; DOES NOT INCLUDE A FACTUAL REVIEW OF THE CASE; EXCEPTION; NOT PRESENT IN CASE AT BAR.— A factual review of the case is beyond the province of a Rule 45 petition. In seeking a review of the factual conclusions of the trial and appellate courts, petitioner Raul insists that the instant case falls under the exceptions because these conclusions are allegedly not supported by the evidence on record. Petitioner also contends that the two courts below misinterpreted facts that would materially affect the disposition of the case. Contrary to petitioner's arguments, the Court finds the conclusions of the two courts adequately supported by the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; AGRICULTURAL LESSEES; THE PLAINTIFF IN CASE AT BAR FAILED TO PROVE THAT THE SUBJECT PROPERTY WAS AWARDED TO HIS FATHER THROUGH A CERTIFICATE OF LAND TRANSFER.— The Palomatas presented Alipio's tax declaration covering the awarded farmlot, which described the actual boundaries thereof as the following: "North: AR-00141, National Road East: National Road to Carlos *South: AR-00145, Camambugan Creek* West: Lot 143, AR-00141" Instead of helping the Palomatas' cause, the trial court found the stated southern boundary of the farmlot (the Camambugan Creek) as evidence that the subject property was not included therein. The ocular inspection revealed that the subject property lies on the other side of the Camambugan Creek, physically separate from Alipio's farmlot. The trial court thus concluded that the subject property is not part of the farmlot, which conclusion is not unwarranted. The declaration that the

farmlot is bounded on the south by the Camambugan Creek reveals Alipio's admission and understanding that his farmlot extends up to the creek only, and not across. Since the subject property is across the creek, it is but fair to conclude that it is not part of the farmlot. This is particularly significant considering that the Palomatas failed to offer any contrary explanation and considering that the tax declaration was their very own evidence. The other pieces of evidence offered by the Palomatas to prove that the subject property was within Alipio's farmlot were the two investigation reports of the DAR. The Palomatas were relying on the fact that it was stated therein that the Bureau of Lands surveyed the land and found that the subject property lies within Alipio's farmlot. However, the findings of the two reports were *disavowed* on the witness stand by the officials who participated therein. x x x In sum, the CLT, tax declaration and investigation reports offered by the Palomatas as evidence of their right to the subject property are, at best, inconclusive and insufficient to prove their claim that the subject property is included in Alipio's farmlot. In fact, they even prove quite the opposite: that the subject property is actually not included in the farmlot.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULAR PERFORMANCE OF OFFICIAL DUTY; PRESENT ONLY WHEN THERE IS NOTHING ON RECORD THAT WOULD AROUSE SUSPICIONS OF IRREGULARITY.— There is a presumption of regular performance of official duty only when there is nothing on record that would arouse suspicions of irregularity. The refusal of the Bureau of Lands and DAR officials to affirm their written findings in open court indicates that the presumption should not apply in the evaluation of these reports.

4. ID.; ID.; ID.; PRESUMPTION THAT A CERTAIN LOT IS OWNED BY ITS CURRENT POSSESSOR; DOES NOT STAND IN CASE AT BAR.— Raul then maintains that the Colmenareses did not prove their ownership over the subject lot; hence it should be presumed that the lot is owned by its current possessor. Raul's argument ignores the fact that, by alleging their right to the subject property as tenant-farmers of the Colmenareses, the Palomatas readily admitted that the land belonged to the Colmenareses. Thus, if Raul fails, as he

did fail, to prove that the subject property was awarded to his father through a CLT, then the presumption is that it remains the property of the Colmenareses.

5. ID.; CIVIL PROCEDURE; PLEADINGS; RELIEF; A NECESSARY CONSEQUENCE TO THE EXCLUSION OF THE SUBJECT PROPERTY FROM THE CERTIFICATE OF LAND TRANSFER ISSUED TO THE PLAINTIFF'S FATHER IS THE EJECTMENT OF THE PLAINTIFF THEREFROM; CASE AT BAR.— While the Colmenareses' prayer does not expressly include the ejectment of the Palomatas, it does include a prayer for the court to declare that the subject property was excluded from Alipio's CLT. A necessary consequence to the exclusion of the subject property from Alipio's CLT is the ejectment of the Palomatas therefrom. The Palomatas have no right to stay on the subject property if it is not covered by Alipio's CLT.

6. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; AGRICULTURAL LESSEES; THE RE-ALLOCATION OF THE FARMLOT OF THE PLAINTIFF'S FATHER TO ANOTHER PERSON IS IRRELEVANT TO THE SUBJECT PROPERTY AS THE SUBJECT PROPERTY IS NOT PART OF THE FARMLOT; CASE AT BAR.— Raul's next argument is based on a supervening event that allegedly resolves Raul's right to succeed to Alipio's farmlot. For the first time in his motion for reconsideration before the CA, Raul revealed that he had filed a petition for re-allocation sometime after 1993, which was favorably acted upon by the DAR, as evidenced by its Order dated July 27, 2000. However, this development, even assuming that it could be raised at such late a stage, would not change the outcome of the case. The re-allocation of Alipio's farmlot to another person (Raul) is irrelevant to the subject property precisely because the subject property is *not* part of the farmlot.

APPEARANCES OF COUNSEL

Jun Eric C. Cabardo for petitioner.
William R. Veto and *Rean S. Sy* for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Factual findings of trial and appellate courts that are well-supported by the evidence on record are binding on this Court.

This is a Petition for Review[1] under Rule 45 assailing the December 21, 2005 Decision,[2] as well as the July 18, 2006 Resolution[3] in CA-G.R. CV No. 55205. The dispositive portion of the assailed Decision reads:

> WHEREFORE and in the light of the foregoing, the *Decision* appealed from is **AFFIRMED** *in toto.*
>
> SO ORDERED.[4]

Factual antecedents

This case involves a parcel of land along the Camambugan Creek in Balasan, Iloilo on which stand petitioner Raul Palomata's (Raul) house and *talyer*. Letecia Colmenares (Letecia),[5] claiming ownership over the said land, filed a criminal complaint for squatting against Raul in 1981.[6] However, for reasons undisclosed by the records, the case was eventually dismissed.[7]

In order to prevent further ejectment from the subject property, Raul, together with his father Alipio, filed a complaint in 1984 before Branch 30 of the Iloilo City Regional Trial Court, sitting

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[1] *Rollo*, pp. 4-30.

[2] *Id.* at 50-60; penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Arsenio J. Magpale and Vicente L. Yap.

[3] *Id.* at 77-78.

[4] CA Decision, p. 10; *id.* at 59.

[5] Also spelled as "Leticia" in some parts of the records. Letecia Colmenares died on January 6, 2002 per the death certificate filed by the respondents (CA *rollo*, p. 98).

[6] RTC Decision, p. 2; records, p. 402.

[7] The cause for the dismissal is unknown given that neither of the parties attached a copy of the order of dismissal.

as a Court of Agrarian Relations (CAR), for "maintenance and damages" against Letecia, her son Nestor Colmenares, and Teresa Gurrea.[8] The complaint alleged that Alipio Palomata (Alipio) was the bona fide agricultural lessee of Letecia. After the issuance of Presidential Decree No. 27,[9] an approximate two-hectare portion of Colmenares' landholding was awarded to Alipio, who was issued Certificate of Land Transfer (CLT) No. 10055.[10] Raul contended that the subject property occupied by his house and *talyer* was part of Alipio's farmlot. Thus, Raul and Alipio prayed to be maintained in the subject property and that the Colmenareses be ordered to refrain from ejecting the Palomatas from the subject property.[11]

The Colmenareses admitted that Alipio was their agricultural lessee but denied any knowledge of the survey which led to the issuance of the CLT in Alipio's favor. The Colmenareses countered that the property claimed by Raul is within their subdivision, not within the agricultural land tenanted by Alipio.[12] They prayed that the subject property be excluded from Alipio's land transfer certificate.[13] Should the property be included in Alipio's CLT, they prayed that the same be declared null and void because they were not informed of the survey conducted by the Department of Agrarian Reform (DAR).[14]

During the trial, both parties attempted to prove their right to the subject property. Aside from presenting Alipio's CLT, Raul presented two DAR investigation reports, which stated that the survey conducted by the Bureau of Lands revealed that the subject property lies within Alipio's farmlot. These

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[8] Records, pp. 1-4.

[9] 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.

[10] Records, p. 185.

[11] *Id.* at 3.

[12] *Id.* at 5.

[13] *Id.* at 7.

[14] *Id.* at 5-7.

two surveys were conducted because of the conflict that ensued between the Palomatas and the Colmenareses.[15] However, both these surveys were concluded without notifying the Colmenareses.[16] Raul also presented Alipio's tax declaration[17] covering the awarded farmlot.

On the other hand, the Colmenareses presented two tax declarations, which covered Lots 2-A[18] and 36-A.[19] The *talyer* allegedly occupies portions of Lot 36-A (207 square meters) and Lot 2-A (162 square meters).[20] They likewise assailed the validity of the surveys conducted by the Bureau of Lands on the basis that these were conducted without the presence of officials from the DAR and without notifying the Colmenareses.

Ruling of the Regional Trial Court[21]

Based on the evidence presented by the contesting parties, the trial court ruled that the subject property was *not* part of Alipio's farmlot. The trial court noted that Alipio's tax declaration itself cited the Camambugan Creek as the southern boundary of his farmlot. However, upon ocular inspection, the court observed that the subject property lies across the Camambugan Creek. The trial court thus concluded that the subject property is physically separate from, and is not included in, Alipio's farmlot.[22]

The trial court gave little credence to the surveys conducted by the Bureau of Lands given that these were conducted without notifying the Colmenareses. Moreover, the witnesses that were

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[15] *Id.* at 187, 189-190.

[16] *Id.* at 190.

[17] *Id.* at 191.

[18] *Id.* at 388.

[19] *Id.* at 388-A.

[20] *Id.* at 386-387.

[21] *Id.* at 401-411; penned by Judge Jesus G. Alonsagay of Branch 30 of the Regional Trial Court of Iloilo City.

[22] RTC Decision, p. 5; *id.* at 405.

supposed to affirm the contents of the investigation reports were ambivalent and refused to validate the findings of the Bureau of Lands. For instance, Rodolfo Italia (Rodolfo), the DAR assistant team leader, stated that the DAR had not confirmed the survey made by the Bureau of Lands.[23] Crisanto Babao (Crisanto), the Bureau of Lands' official sent to the subject property to investigate, also refused to affirm the findings of the survey because he did not participate therein.[24] Lastly, the court found the report unreliable because it contained an observation that, upon inspection, the subject property appeared separate from Alipio's farmlot.

Given the finding that the subject property lies outside Alipio's farmlot, the court went on to determine if Raul, being Alipio's successor, had a right to the subject property as his homelot. The trial court held that Raul, not being an agricultural lessee of the Colmenareses, had no right to a homelot. The court explained that Raul's unilateral installation as Alipio's successor was void because it violated the landowners' right to choose the successor as provided under Section 9 of the Code of Agrarian Reform.[25]

The dispositive portion of the trial court ruling is as follows:

WHEREFORE, all of the foregoing considered, judgment is hereby rendered –

1. Declaring the lot in question – where Raul's house and battery and auto repair shop are located – not part of Alipio's farmlot;

2. Ordering the plaintiffs, particularly Raul, their agents and privies, to vacate the lot in question, to remove all the buildings and improvements they have constructed thereon, and to turn over the ownership and possession of said lot to the defendants, their heirs or successors;

3. Ordering the plaintiffs to pay the defendants the amount of ₱2,000.00 as attorney's fees;

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[23] *Id.* at 6-7; *id.* at 406-407.

[24] *Id.* at 7-8; *id.* at 407-408.

[25] REPUBLIC ACT NO. 3844, as amended.

4. Dismissing the claim of the plaintiffs for damages, attorney's fees and litigation expenses for lack of merit; and

5. Ordering the plaintiffs to pay the costs of the suit.

SO ORDERED.

Iloilo City, July 15, 1994.[26]

Raul appealed the decision to the Court of Appeals (CA).

Ruling of the Court of Appeals[27]

The appellate court noted that Raul merely rehashed all the arguments he had already presented to the trial court. The evidence presented by Raul before the trial court were not convincing, especially in light of the fact that Raul's witnesses themselves were reluctant to declare the subject property as part of Alipio's farmlot.

Since Raul did not prove that the subject property was part of his father's farmlot, the subject property remained part of Colmenareses' landholding. As landowner, Colmenares had the right to oust an intruder thereon; hence, the trial court's order for Raul to vacate the subject property was correct.

Raul moved for reconsideration[28] where he admitted for the first time that, while the appeal was pending, he filed a petition for re-allocation of Alipio's farmholding with the DAR.[29] The DAR granted his petition in an Order dated July 27, 2000, which decision had allegedly attained finality.[30] The dispositive portion thereof states:

WHEREFORE, premises considered, ORDER is hereby issued:

1. GRANTING the herein petition for re-allocation filed by Raul Palomata. Consequently, Lot No. 2-B, with an area of 1.8698 hectares shall be awarded/allocated to him;

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[26] RTC Decision, p. 11; records, p. 411.

[27] CA *rollo*, pp. 106-119.

[28] *Id.* at 131-140.

[29] Motion for Reconsideration, p. 4; *id.* at 135.

[30] *Id.* at 4-5; *id.* at 135-136.

2. DIRECTING the Provincial Agrarian Reform Officer of Iloilo and Municipal Agrarian Reform Officer of Balasan, Iloilo to generate Emancipation Patent in favor of the new allocatee; and

3. DIRECTING the PARO and MARO concerned to strictly implement this Order.

SO ORDERED.[31]

Raul did not state how this DAR Order affected the CA Decision. He only argued in his motion for reconsideration that, being an occupant of the subject property, he enjoyed the presumption of ownership. He also contended that, absent a contrary survey, the Bureau of Lands' survey should be respected.

The CA denied[32] the motion for reconsideration. Hence, this petition.

Issues

Following are the issues raised by petitioner:

1. Whether the trial and appellate courts erred in the appreciation of facts when they ruled that the subject property is not included in the farmlot covered by CLT No. 10055;

2. Whether the trial and appellate courts erred in the appreciation of facts when they ruled that the subject property belongs to respondents;

3. Whether the trial and appellate courts erred in ordering the petitioner to vacate the subject property, remove the improvements thereon, and to return possession thereof to respondents.

Our Ruling

A factual review of the case is beyond the province of a Rule 45 petition. In seeking a review of the factual conclusions of the trial and appellate courts, petitioner Raul insists that the instant case falls under the exceptions because these conclusions

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[31] *Id.* at 142.

[32] *Id.* at 189-190.

are allegedly not supported by the evidence on record. Petitioner also contends that the two courts below misinterpreted facts that would materially affect the disposition of the case. Contrary to petitioner's arguments, the Court finds the conclusions of the two courts adequately supported by the evidence on record.

In their complaint, the Palomatas recognized the Colmenareses as the owners of the subject property, but the Palomatas claimed entitlement to the subject property by virtue of Alipio's CLT which awarded a farmlot to Alipio. But the said CLT did not indicate the metes and bounds of the awarded farmlot; it only stated that the farmlot awarded to Alipio consisted of two hectares. Hence, it became necessary to prove, beyond the CLT, that the subject property is actually included in Alipio's farmlot. The Palomatas, however, failed to discharge this burden. On the contrary, what appeared during the trial was that the subject property was actually *not* included in Alipio's farmlot.

The Palomatas presented Alipio's tax declaration[33] covering the awarded farmlot, which described the actual boundaries thereof as the following:

> North: AR-00141, National Road
> East: National Road to Carlos
> *South: AR-00145, Camambugan Creek*
> West: Lot 143, AR-00141

Instead of helping the Palomatas' cause, the trial court found the stated southern boundary of the farmlot (the Camambugan Creek) as evidence that the subject property was not included therein. The ocular inspection revealed that the subject property lies on the other side of the Camambugan Creek, physically separate from Alipio's farmlot. The trial court thus concluded that the subject property is not part of the farmlot, which conclusion is not unwarranted. The declaration that the farmlot is bounded on the south by the Camambugan Creek reveals Alipio's admission and understanding that his farmlot extends up to the creek only, and not across. Since the subject property

[33] Records, p. 191.

is across the creek, it is but fair to conclude that it is not part of the farmlot. This is particularly significant considering that the Palomatas failed to offer any contrary explanation and considering that the tax declaration was their very own evidence.

The other pieces of evidence offered by the Palomatas to prove that the subject property was within Alipio's farmlot were the two investigation reports of the DAR. The Palomatas were relying on the fact that it was stated therein that the Bureau of Lands surveyed the land and found that the subject property lies within Alipio's farmlot. However, the findings of the two reports were *disavowed* on the witness stand by the officials who participated therein.

The engineer, who was supposed to have conducted the survey, denied doing so and pointed to Crisanto and Carlos Baldelovar (Carlos) as the actual surveyors.[34]

When placed on the witness stand, Crisanto denied conducting the survey and pointed to Carlos as the actual surveyor.[35]

When it was Carlos' turn to testify, he revealed that he was not a geodetic engineer[36] but was a high school graduate,[37] thus disclosing his lack of qualification to officially conduct the survey. Interestingly, Carlos also testified that it was Crisanto who prepared the written report of the survey.[38] Thus, it appears that the report was written by someone who did *not* actually conduct the survey and the person who actually conducted the survey had no qualifications to do so on his own.

Also damning to these surveys is the refusal of Rodolfo, the assistant team leader of the DAR, Balasan, Iloilo, to confirm its findings. When asked to confirm the survey of the Bureau of Lands, Rodolfo stated that the DAR will still conduct its own

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[34] TSN of Carlos Baldelovar, p. 7 (Hearing of August 20, 1986).

[35] TSN of Crisanto Babao, pp. 3-4 (Hearing of May 21, 1986).

[36] TSN of Carlos Baldelovar, p. 4 (Hearing of August 20, 1986).

[37] *Id.* at 13.

[38] *Id.* at 10.

survey of the property.[39] Further, Rodolfo stated that upon DAR's inspection, the subject property appeared to lie outside Alipio's farmlot, contrary to the findings of the Bureau of Lands.

All these circumstances support the trial and the appellate court's refusal to give the investigation reports much weight and credence. This Court will not disturb the conclusions arrived at by the CAR and the appellate court when these are well-supported by the evidence.[40]

Raul then argues that the trial and appellate courts should have given more weight to the surveys of the Bureau of Lands because these carry the presumption of the regular performance of official duty.

The argument fails to convince. There is a presumption of regular performance of official duty only when there is nothing on record that would arouse suspicions of irregularity.[41] The refusal of the Bureau of Lands and DAR officials to affirm their written findings in open court indicates that the presumption should not apply in the evaluation of these reports.

In sum, the CLT, tax declaration and investigation reports offered by the Palomatas as evidence of their right to the subject property are, at best, inconclusive and insufficient to prove their claim that the subject property is included in Alipio's farmlot. In fact, they even prove quite the opposite: that the subject property is actually not included in the farmlot.

Raul then maintains that the Colmenareses did not prove their ownership over the subject lot; hence it should be presumed that the lot is owned by its current possessor.

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[39] TSN of Rodolfo Italia, p. 9 (Hearing of September 11, 1986).

[40] *Malate v. Court of Appeals*, G.R. No. 55318, February 9, 1993, 218 SCRA 572, 576; *Heirs of E.B. Roxas, Inc. v. Tolentino*, 249 Phil. 334, 339 (1988).

[41] *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 156.

Raul's argument ignores the fact that, by alleging their right to the subject property as tenant-farmers of the Colmenareses, the Palomatas readily admitted that the land belonged to the Colmenareses. Thus, if Raul fails, as he did fail, to prove that the subject property was awarded to his father through a CLT, then the presumption is that it remains the property of the Colmenareses.

Raul proceeds to question the trial and appellate court's order for him to vacate the premises and surrender possession thereof to the Colmenareses. He contends that the said order goes beyond the prayer of the Colmenareses, which was limited to the annulment of the CLT or the exclusion of the subject property from the CLT's coverage.

The argument is specious at best. While the Colmenareses' prayer does not expressly include the ejectment of the Palomatas, it does include a prayer for the court to declare that the subject property was excluded from Alipio's CLT. A necessary consequence to the exclusion of the subject property from Alipio's CLT is the ejectment of the Palomatas therefrom. The Palomatas have no right to stay on the subject property if it is not covered by Alipio's CLT.

Raul's next argument is based on a supervening event that allegedly resolves Raul's right to succeed to Alipio's farmlot. For the first time in his motion for reconsideration before the CA, Raul revealed that he had filed a petition for re-allocation sometime after 1993,[42] which was favorably acted upon by the DAR, as evidenced by its Order dated July 27, 2000.[43] However, this development, even assuming that it could be raised at such late a stage, would not change the outcome of the case. The re-allocation of Alipio's farmlot to another person (Raul) is irrelevant to the subject property precisely because the subject property is *not* part of the farmlot.

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[42] Petitioner's Memorandum, p. 30; *rollo*, p. 204.

[43] CA *rollo*, pp. 141-142.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The December 21, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 55205 and its July 18, 2006 Resolution denying the motion for reconsideration, are *AFFIRMED*.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 174570. December 15, 2010]

ROMER SY TAN, *petitioner, vs.* **SY TIONG GUE, FELICIDAD CHAN SY, SY CHIM, SY TIONG SAN, SY YU BUN, SY YU SHIONG, SY YU SAN, and BRYAN SY LIM,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE PROPRIETY OF THE QUASHAL OF SEARCH WARRANTS IN CASE AT BAR NEED NOT BE EXAMINED AS IT HAS NO MORE PRACTICAL LEGAL EFFECT.— [I]n view of the withdrawal of the Information for Robbery, the quashal of the subject search warrants and the determination of the issue of whether or not there was probable cause warranting the issuance by the RTC of the said search warrants for respondents' alleged acts of robbery has been rendered moot and academic. Verily, there is no more reason to further delve into the propriety of the quashal of the search warrants as it has no more practical legal effect.

2. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; MAY BE ISSUED ONLY IF THERE IS PROBABLE CAUSE IN CONNECTION WITH ONLY ONE SPECIFIC OFFENSE ALLEGED IN THE APPLICATION ON THE BASIS OF THE APPLICANT'S PERSONAL KNOWLEDGE AND HIS WITNESSES.— [E]ven if an Information for Qualified Theft be later filed on the basis of the same incident subject matter of the dismissed case of robbery, petitioner cannot include the seized items as part of the evidence therein. Contrary to petitioner's contention, he cannot use the items seized as evidence in any other offense except in that in which the subject search warrants were issued. Section 4, Rule 126 of the Revised Rules of Court provides: "Section 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon *probable cause in connection with one specific offense* to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and things to be seized which may be anywhere in the Philippines." Thus, a search warrant may be issued only if there is probable cause in connection with only *one* specific offense alleged in an application on the basis of the applicant's personal knowledge and his or her witnesses. Petitioner cannot, therefore, utilize the evidence seized by virtue of the search warrants issued in connection with the case of Robbery in a separate case of Qualified Theft, even if both cases emanated from the same incident.

3. CRIMINAL LAW; ROBBERY; UNLAWFUL TAKING; ALL OFFENSES WHICH ARE NECESSARILY INCLUDED IN THE CRIME OF ROBBERY CANNOT BE FILED IN THE ABSENCE OF THE ESSENTIAL ELEMENT OF UNLAWFUL TAKING.— [C]onsidering that the withdrawal of the Information was based on the findings of the CA, as affirmed by this Court, that there was no probable cause to indict respondents for the crime of Robbery absent the essential element of unlawful taking, which is likewise an essential element for the crime of Qualified Theft, all offenses which are necessarily included in the crime of Robbery can no longer be filed, much more, prosper.

APPEARANCES OF COUNSEL

E.L. Gayo & Associates for petitioner.
Poblador bautista & Reyes for respondents.

R E S O L U T I O N

PERALTA, *J.*:

On February 17, 2010, this Court rendered a Decision[1] in G.R. No. 174570 entitled *Romer Sy Tan v. Sy Tiong Gue, et al.*, the decretal portion of which reads, as follows:

> WHEREFORE, premises considered, the petition is **GRANTED**. The Decision and Resolution dated December 29, 2005 and August 18, 2006, respectively, of the Court of Appeals in CA-G.R. SP No. 81389 are **REVERSED** and **SET ASIDE**. The Orders of the RTC dated September 1, 2003 and October 28, 2003 are **REINSTATED**. The validity of Search Warrant Nos. 03-3611 and 03-3612 is **SUSTAINED**.

On March 22, 2010, respondents filed a Motion for Reconsideration[2] wherein respondents informed this Court, *albeit* belatedly, that the Regional Trial Court (RTC) granted their motion for the withdrawal of the Information filed in Criminal Case No. 06-241375. As such, respondents prayed that the decision be reconsidered and set aside and that the quashal of the subject search warrants be rendered moot and academic on the basis of the dismissal of the criminal case.

In his Comment[3] dated July 7, 2010, petitioner maintains that the motion is a mere reiteration of what respondents have previously alleged in their Comment and which have been passed upon by this Court in the subject decision. Petitioner alleges that he also filed with the Office of the City Prosecutor of Manila a Complaint for Qualified Theft against the respondents

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[1] *Rollo*, pp. 241-251.

[2] *Id.* at 252-272.

[3] *Id.* at 280-284.

based on the same incidents and that should the Information for Qualified Theft be filed with the proper court, the items seized by virtue of the subject search warrants will be used as evidence therein.

On August 6, 2010, respondents filed their Reply.

On September 8, 2010, this Court issued a Resolution[4] wherein respondents were required to submit a certified true copy of the Order of the RTC dated November 14, 2008, which granted their motion to withdraw the information.

On October 22, 2010, respondents complied with the Court's directive and submitted a certified true copy of the Order.[5]

In granting the motion to withdraw the Information, the RTC took into consideration the Amended Decision of the Court of Appeals (CA) in CA-G.R. SP No. 90368 dated August 29, 2006, which affirmed the findings of the City Prosecutor of Manila and the Secretary of Justice that the elements of Robbery, *i.e.*, unlawful taking with intent to gain, with force and intimidation, were absent. Thus, there was lack of probable cause, warranting the withdrawal of the Information.[6] The RTC also considered that the said pronouncements of the CA were affirmed by no less than this Court in G.R. No. 177829 in the Resolution[7] dated November 12, 2007.

Accordingly, the RTC granted respondents' motion to withdraw the information without prejudice, the dispositive portion of which reads:

WHEREFORE, the motion to withdraw information is hereby GRANTED and the case is DISMISSED without prejudice.

SO ORDERED.

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[4] *Id.* at 346.

[5] *Id.* at 350-351.

[6] CA-G.R. SP No. 90368, Amended Decision dated August 26, 2006, p. 6; *rollo*, pp. 180-191.

[7] *Rollo* (*Sy Siy Ho & SONA, Inc. v. Sy Tiong Gui, et al.*, G.R. No. 177829), pp. 906-907.

Consequently, in view of the withdrawal of the Information for Robbery, the quashal of the subject search warrants and the determination of the issue of whether or not there was probable cause warranting the issuance by the RTC of the said search warrants for respondents' alleged acts of robbery has been rendered moot and academic. Verily, there is no more reason to further delve into the propriety of the quashal of the search warrants as it has no more practical legal effect.[8]

Furthermore, even if an Information for Qualified Theft be later filed on the basis of the same incident subject matter of the dismissed case of robbery, petitioner cannot include the seized items as part of the evidence therein. Contrary to petitioner's contention, he cannot use the items seized as evidence in any other offense except in that in which the subject search warrants were issued. Section 4, Rule 126 of the Revised Rules of Court provides:

> Section 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon *probable cause in connection with one specific offense* to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and things to be seized which may be anywhere in the Philippines.

Thus, a search warrant may be issued only if there is probable cause in connection with only *one* specific offense alleged in an application on the basis of the applicant's personal knowledge and his or her witnesses. Petitioner cannot, therefore, utilize the evidence seized by virtue of the search warrants issued in connection with the case of Robbery in a separate case of Qualified Theft, even if both cases emanated from the same incident.

Moreover, considering that the withdrawal of the Information was based on the findings of the CA, as affirmed by this Court, that there was no probable cause to indict respondents for the

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[8] See *Drugmaker's Laboratories, Inc. v. Jose*, G.R. No. 128766, October 9, 2006, 504 SCRA 9.

crime of Robbery absent the essential element of unlawful taking, which is likewise an essential element for the crime of Qualified Theft, all offenses which are necessarily included in the crime of Robbery can no longer be filed, much more, prosper.

Based on the foregoing, the Court resolves to *Grant* the motion.

WHEREFORE, premises considered, the Motion for Reconsideration filed by the respondents is *GRANTED*. The Decision of this Court dated February 17, 2010 is *RECONSIDERED* and *SET ASIDE*. The petition filed by Romer Sy Tan is *DENIED* for being *MOOT* and *ACADEMIC*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174833. December 15, 2010]

MYRNA P. MAGANA, *petitioner, vs.* **MEDICARD PHILIPPINES, INC., and COURT OF APPEALS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; THE REQUIREMENT FOR EMPLOYERS TO PAY WAGES TO EMPLOYEES OBTAINING FAVORABLE RULINGS IN ILLEGAL SUITS PENDING APPEAL IS STATUTORILY MANDATED.— The requirement for employers to pay wages to employees obtaining favorable rulings in illegal dismissal suits pending appeal is statutorily mandated under the second paragraph of Article 223 of the Labor Code, as

amended: "Article 223. Appeal. – x x x In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, *shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll*. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein." Article 223 gives employers two options, namely, to (1) actually reinstate the dismissed employees or, (2) constructively reinstate them in the payroll. Either way, this must be done immediately upon the filing of their appeal, without need of any executory writ.

2. ID.; ID.; ID.; THE MANDATORY ORDER BY LAW TO EXECUTE REINSTATEMENT ORDERS PENDING APPEAL IS A POLICE POWER MEASURE.— This unusual, mandatory order by law to execute reinstatement orders pending appeal, unheard of in ordinary civil proceedings, is a police power measure, grounded on the theory – "[t]hat the preservation of the lives of the citizens is a basic duty of the State, that is more vital than the preservation of corporate profits. Then, by and pursuant to the same power, the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act *is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and its family*."

3. ID.; ID.; ID.; EVEN IF THE ORDER OF REINSTATEMENT IS REVERSED ON APPEAL, IT IS OBLIGATORY ON THE PART OF THE EMPLOYER TO REINSTATE AND PAY THE WAGES OF THE DISMISSED EMPLOYEE DURING THE PERIOD OF APPEAL UNTIL REVERSAL BY THE HIGHEST COURT.— More than five years ago, the Court in *Roquero v. Philippine Airlines, Inc.* was confronted with the same question now posed and, as respondent prays, was there asked to refuse payment of reinstatement wages of the dismissed employee because of the reversal on appeal of the reinstatement order. Speaking through Justice, later Chief

Justice, Reynato S. Puno, we rejected this contention, holding that – "[t]echnicalities have no room in labor cases where the Rules of Court are applied only in a suppletory manner and only to effectuate the objectives of the Labor Code and not to defeat them. ***Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court****. On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period.*" We reiterated *Roquero* in our succeeding ruling in *Air Philippines Corporation v. Zamora*. True, a Division of the Court in *Genuino v. National Labor Relations Commission* diverged from *Roquero* by requiring refund or set-off of salaries received post-reversal of the reinstatement order. However, the Court *en banc* in *Garcia v. Philippine Airlines, Inc*., nipped *Genuino* in the bud and reaffirmed the *Roquero* line of jurisprudence: "[T]he *Genuino* ruling not only disregards the social justice principles behind the rule [in Article 223], but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the 'posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement.' In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal. x x x ***The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until***

reversal by the higher court. It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee's salaries." Thus, respondent is not only bound to pay petitioner her reinstatement wages, had it done so, it is precluded from recovering the amount paid post-reversal of the arbiter's reinstatement order by the Court of Appeals.

APPEARANCES OF COUNSEL

Lapesura Aragon & Associates Law Offices for petitioner.
Baiza Magsino Recinto Law Offices for private respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This resolves the petition for review[1] of the rulings[2] of the Court of Appeals absolving respondent Medicard Philippines, Inc. from liability for reinstatement wages in an illegal dismissal suit.

The Facts

In June 1990, respondent Medicard Philippines, Inc. (respondent), a health maintenance organization, hired petitioner Myrna P. Magana (petitioner) as company nurse whom respondent detailed to its corporate client, the Manila Pavilion Hotel (Hotel). Although respondent initially hired petitioner on probation,

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

[2] Decision dated 11 April 2006, penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring and the Resolution dated 5 September 2006, penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Normandie B. Pizarro.

respondent converted petitioner's employment status to permanent in February 1993.

In October 1994, respondent was summarily replaced with another nurse. In lieu of a nursing-related position, respondent offered petitioner the position of liaison officer. Finding the offer unacceptable and with her continued non-assignment, petitioner sued respondent and the Hotel in the National Labor Relations Commission (NLRC) for illegal dismissal and payment of benefits and damages.

The Ruling of the Labor Arbiter

The labor arbiter[3] ruled for petitioner.[4] The arbiter found respondent to be a mere labor contractor for the Hotel which exercised control and termination powers over petitioner. The arbiter considered the Hotel's summary replacement of petitioner indicative of lack of cause for her dismissal and of bad faith. Consequently, the arbiter ordered the Hotel to reinstate petitioner and, with respondent, jointly and severally pay petitioner backwages, 13th month pay, damages and attorney's fees.[5]

Respondent and the Hotel appealed to the NLRC.

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[3] Ramon Valentin C. Reyes.

[4] In a Decision dated 10 August 2000.

[5] The dispositive portion of the ruling provides (*Rollo*, p. 148):

WHEREFORE, in light of the foregoing, judgment is hereby rendered, declaring complainant's dismissal illegal, ordering Manila Pavilion to reinstate her to her former position or substantially equivalent one without loss of seniority rights, and ordering respondents to jointly and severally pay complainant:

a) Full backwages from her dismissal until her reinstatement which for purpose of appeal, is hereby computed from October 10, 1994, until her reinstatement at ₱6,010.00 per month, which, when computed up to date, already amounts to ₱420,700.00 (Oct. 10, 1994 to Aug. 10, 1994 = 70 mos. x ₱6,010.00 = ₱420,700.00).
b) 13th month pay of ₱30,050.00 (₱6,010.00 x 5 yrs. = ₱30,050.00);
c) Moral damages of ₱20,000.00;
d) Exemplary damages of ₱10,000.00;
e) Attorney's fees of ten percent (10%) of the total award.

The Ruling of the NLRC

The NLRC affirmed the arbiter's ruling with modification.[6] It found respondent, not the Hotel, as petitioner's employer and held respondent liable for constructive illegal dismissal, and hence, for the payment of separation pay, 13th month pay, attorney's fees, and reinstatement wages.[7] The NLRC grounded its ruling on uncontroverted documentary evidence showing petitioner as respondent's regular employee whom respondent detailed to the Hotel under a health maintenance contract. The NLRC considered respondent's failure to assign petitioner to a suitable position within six months as basis for its liability for constructive illegal dismissal. The NLRC also awarded reinstatement wages to petitioner for respondent's failure to reinstate her pending appeal as required under the second paragraph of Article 223 of the Labor Code. However, for lack of basis, the NLRC deleted the award of damages.

Respondent appealed to the Court of Appeals (CA) in a petition for *certiorari*, alleging grave abuse of discretion on the part of the NLRC.

Ruling of the Court of Appeals

The CA partially granted respondent's appeal by deleting the award of reinstatement wages. The CA found petitioner's

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[6] In the Resolution dated 22 November 2002, penned by Commissioner Tito F. Genilo with Commissioners Lourdes C. Javier and Ireneo B. Bernardo, concurring.

[7] The dispositive portion of its ruling provides (*Rollo*, p. 198):

WHEREFORE, premises considered, Manila Pavilion's appeal is GRANTED and Medicard's appeal [is] partially GRANTED. Accordingly, the Decision appealed from is MODIFIED to the effect that Medicard is the employer of Mrs. Magana; that Medicard is guilty of constructive dismissal of her, and hence, liable to pay her separation pay equivalent to one (1) month for every year of service from April 28, 1992 to May 10, 1994; that Medicard is likewise liable to pay her thirteenth (13th) month pay in the amount of Php30,050.00, and reinstatement wages from the filing of the twin appeals on October 5, 2000 to the issuance of this Resolution which is in the amount of ₱186,579.50 as of the present time; that Medicard[,] however[,] is not liable to pay her any moral and exemplary damages; and that Manila Pavilion is absolved of any liability whatsoever.

dismissal with cause, noting that respondent's failure to assign petitioner to a suitable position within six months after her replacement is "analogous to a suspension of operations of an enterprise" entitling the employee to payment only of separation pay.[8]

In this petition, petitioner concedes the legality of her constructive dismissal. She grounds her case on the narrow contention that the Court of Appeals erred in deleting the reinstatement wages the NLRC awarded in her favor.

Respondent seeks the petition's denial, noting that the CA's finding that petitioner's dismissal was for cause precludes other remedies other than the payment of separation pay.

The Issue

The question is whether an employee is entitled to draw wages under an arbiter's ruling ordering her reinstatement even though such order is subsequently reversed on appeal.

The Ruling of the Court

We hold in the affirmative and thus, grant the petition.

Article 223, Paragraph 2 of the Labor Code, a Police Power Measure, is Mandatory and Immediately Executory

The requirement for employers to pay wages to employees obtaining favorable rulings in illegal dismissal suits pending appeal is statutorily mandated under the second paragraph of Article 223 of the Labor Code, as amended:

Article 223. Appeal. – x x x

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, *shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated*

[8] *Rollo,* p. 29.

in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein. (Emphasis supplied)

Article 223 gives employers two options, namely, to (1) actually reinstate the dismissed employees or, (2) constructively reinstate them in the payroll. Either way, this must be done immediately upon the filing of their appeal, without need of any executory writ.

This unusual, mandatory order by law to execute reinstatement orders pending appeal, unheard of in ordinary civil proceedings,[9] is a police power measure, grounded on the theory –

> [t]hat the preservation of the lives of the citizens is a basic duty of the State, that is more vital than the preservation of corporate profits. Then, by and pursuant to the same power, the State may authorize an immediate implementation, pending appeal, of a decision reinstating a dismissed or separated employee since that saving act *is designed to stop, although temporarily since the appeal may be decided in favor of the appellant, a continuing threat or danger to the survival or even the life of the dismissed or separated employee and its family*.[10] (Emphasis supplied)

Reversal of Reinstatement Order Does not Preclude its Execution

The issue at bar explores an aspect of Article 223's implementation: if the arbiter's order of reinstatement remains unexecuted, should its subsequent reversal on appeal preclude execution? Respondent expectedly holds the negative view, arguing that "there can be no reinstatement by virtue of the fact that there is no illegal dismissal to speak of."[11] A cursory search of this Court's jurisprudence belies the cogency of this claim.

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[9] Where execution pending appeal is allowed only "upon good reasons." Rule 39, Section 2(a) of the 1997 Rules of Civil Procedure.

[10] *Aris (Phil.), Inc. v. NLRC*, G.R. No. 90501, 5 August 1991, 200 SCRA 246, 255 (internal citation omitted).

[11] *Rollo*, p. 287.

More than five years ago, the Court in *Roquero v. Philippine Airlines, Inc.*[12] was confronted with the same question now posed and, as respondent prays, was there asked to refuse payment of reinstatement wages of the dismissed employee because of the reversal on appeal of the reinstatement order. Speaking through Justice, later Chief Justice, Reynato S. Puno, we rejected this contention, holding that –

> [t]echnicalities have no room in labor cases where the Rules of Court are applied only in a suppletory manner and only to effectuate the objectives of the Labor Code and not to defeat them. ***Hence, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court***. *On the other hand, if the employee has been reinstated during the appeal period and such reinstatement order is reversed with finality, the employee is not required to reimburse whatever salary he received for he is entitled to such, more so if he actually rendered services during the period*.[13] (Emphasis supplied)

We reiterated *Roquero* in our succeeding ruling in *Air Philippines Corporation v. Zamora*.[14]

True, a Division of the Court in *Genuino v. National Labor Relations Commission*[15] diverged from *Roquero* by requiring refund or set-off of salaries received post-reversal of the reinstatement order.[16] However, the Court *en banc* in *Garcia*

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[12] 449 Phil. 437 (2003).

[13] *Id.* at 446 (internal citation omitted).

[14] G.R. No. 148247, 7 August 2006, 498 SCRA 59.

[15] G.R. Nos. 142732-33, 4 December 2007, 539 SCRA 342, Second Division.

[16] The ruling states: "If the decision of the labor arbiter is later reversed on appeal upon the finding that the ground for dismissal is valid, then the employer has the right to require the dismissed employee on payroll reinstatement to refund the salaries [he/she] received while the case was pending appeal, or it can be deducted from the accrued benefits that the dismissed employee was entitled to receive from his/her employer under existing laws, collective bargaining agreement provisions, and company practices. However, if the employee was reinstated to work during the pendency of the appeal, then the

v. Philippine Airlines, Inc.,[17] nipped *Genuino* in the bud and reaffirmed the *Roquero* line of jurisprudence:

> [T]he *Genuino* ruling not only disregards the social justice principles behind the rule [in Article 223], but also institutes a scheme unduly favorable to management. Under such scheme, the salaries dispensed *pendente lite* merely serve as a bond posted in installment by the employer. For in the event of a reversal of the Labor Arbiter's decision ordering reinstatement, the employer gets back the same amount without having to spend ordinarily for bond premiums. This circumvents, if not directly contradicts, the proscription that the "posting of a bond [even a cash bond] by the employer shall not stay the execution for reinstatement."
>
> In playing down the stray posture in *Genuino* requiring the dismissed employee on payroll reinstatement to refund the salaries in case a final decision upholds the validity of the dismissal, the Court realigns the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal.
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> ***The Court reaffirms the prevailing principle that even if the order of reinstatement of the Labor Arbiter is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until reversal by the higher court***. It settles the view that the Labor Arbiter's order of reinstatement is immediately executory and the employer has to either re-admit them to work under the same terms and conditions prevailing prior to their dismissal, or to reinstate them in the payroll, and that failing to exercise the options in the alternative, employer must pay the employee's salaries.[18] (Underlining in the original; italicization and boldfacing supplied)

Thus, respondent is not only bound to pay petitioner her reinstatement wages, had it done so, it is precluded from recovering the amount paid post-reversal of the arbiter's reinstatement order by the Court of Appeals.

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employee is entitled to the compensation received for actual services rendered without need of refund." *Id.* at 363-364 (internal citation omitted).

[17] G.R. No. 164856, 20 January 2009, 576 SCRA 479.

[18] *Id.* at 492-493 (internal citations omitted).

WHEREFORE, we *GRANT* the petition. We *REVERSE* the Decision dated 11 April 2006 and the Resolution dated 5 September 2006 of the Court of Appeals insofar as they deleted the award of reinstatement wages to petitioner Myrna P. Magana. We *ORDER* respondent Medicard Philippines, Inc. to pay petitioner reinstatement wages computed from the filing of respondent's appeal of the labor arbiter's decision on 5 October 2000 until its receipt of the Court of Appeals' Decision dated 11 April 2006.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 176381. December 15, 2010]

PCI LEASING AND FINANCE, INC., *petitioner, vs.* **TROJAN METAL INDUSTRIES, INCORPORATED, WALFRIDO DIZON, ELIZABETH DIZON, and JOHN DOE,** *respondents.*

SYLLABUS

1. CIVIL LAW; REPUBLIC ACT NO. 5980 (THE FINANCING COMPANY ACT) AND REPUBLIC ACT NO. 8556 (THE FINANCING COMPANY ACT OF 1998); FINANCIAL LEASING; DEFINED.— Since the lease agreement in this case was executed on 8 April 1997, Republic Act No. 5980 (RA 5980), otherwise known as the Financing Company Act, governs as to what constitutes financial leasing. Section 1, paragraph (j) of the New Rules and Regulations to Implement RA 5980 defines financial leasing as follows: "LEASING shall refer to financial leasing which is a mode of extending credit

through a non-cancelable contract under which the lessor purchases or acquires at the instance of the lessee heavy equipment, motor vehicles, industrial machinery, appliances, business and office machines, and other movable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least 70% of the purchase price or acquisition cost, including any incidental expenses and a margin of profit, over the lease period. The contract shall extend over an obligatory period during which the lessee has the right to hold and use the leased property and shall bear the cost of repairs, maintenance, insurance, and preservation thereof, but with no obligation or option on the part of the lessee to purchase the leased property at the end of the lease contract." The above definition of financial leasing gained statutory recognition with the enactment of Republic Act No. 8556 (RA 8556), otherwise known as the Financing Company Act of 1998. Section 3(d) of RA 8556 defines financial leasing as: "a mode of extending credit through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract."

2. ID.; ID.; ID.; NOT ESTABLISHED IN CASE AT BAR.— [I]n a true financial leasing, whether under RA 5980 or RA 8556, a finance company purchases on behalf of a cash-strapped lessee the equipment the latter wants to buy but, due to financial limitations, is incapable of doing so. The finance company then leases the equipment to the lessee in exchange for the latter's periodic payment of a fixed amount of rental. x x x In the present case, since the transaction between PCILF and TMI involved equipment already owned by TMI, it cannot be considered as

one of financial leasing, as defined by law, but simply a loan secured by the various equipment owned by TMI.

3. CIVIL LAW; PRESCRIPTION OF ACTIONS; ACTIONS BASED UPON A WRITTEN CONTRACT AND FOR REFORMATION OF AN INSTRUMENT MUST BE BROUGHT WITHIN TEN YEARS FROM THE TIME THE RIGHT OF ACTION ACCRUES.— Under Article 1144 of the Civil Code, the prescriptive period for actions based upon a written contract and for reformation of an instrument is ten years. The right of action for reformation accrued from the date of execution of the lease agreement on 8 April 1997. TMI timely exercised its right of action when it filed an answer on 14 February 2000 asking for the reformation of the lease agreement.

4. ID.; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; INTEREST; RULES ON THE COMPUTATION OF LEGAL INTEREST.— In the absence of stipulation, the applicable interest due on the remaining balance of the loan is the legal rate of 12% per annum, computed from the date PCILF sent a demand letter to TMI on 8 December 1998. No interest can be charged prior to this date because TMI was not yet in default prior to 8 December 1998. The interest due shall also earn legal interest from the time it is judicially demanded, pursuant to Article 2212 of the Civil Code, which provides: "Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point." The foregoing provision has been incorporated in the comprehensive summary of existing rules on the computation of legal interest laid down by the Court in *Eastern Shipping Lines, Inc. v. Court of Appeals*, to wit: "1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. **Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded.** In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code. x x x 3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal**

interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit." Applying the rules in the computation of interest, the remaining balance of the principal loan subject of the chattel mortgage must earn the legal interest of 12% per annum, which interest, as long as unpaid, also earns legal interest of 12% per annum, computed from the filing of the complaint on 7 May 1999. In accordance with the rules laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*, we derive the following formula for the RTC's guidance: "TOTAL AMOUNT DUE = [principal – partial payments made] + [interest + interest on interest], where Interest = remaining balance x 12% per annum x no. of years from due date (8 December 1998 when demand was made) until date of sale to a third party Interest on interest = interest computed as of the filing of the complaint on 7 May 1999 x 12% x no. of years until date of sale to a third party" From the computed total amount should be deducted ₱1,025,000.00 representing the proceeds of the sale already in PCILF's hands. The difference represents overpayment by TMI, which the law requires PCILF to refund to TMI.

5. ID.; ACT NO. 1508 (THE CHATTEL MORTGAGE LAW); ENTITLES THE DEBTOR-MORTGAGOR TO THE BALANCE OF THE PROCEEDS, UPON SATISFACTION OF THE PRINCIPAL LOAN AND COSTS; CASE AT BAR.— Section 14 of Act No. 1508, otherwise known as the Chattel Mortgage Law, provides: "Section 14. *Sale of property at public auction; officer's return; fees; disposition of proceeds*. x x x The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand." Section 14 of the Chattel Mortgage Law expressly entitles the debtor-mortgagor to the balance of the proceeds, upon satisfaction of the principal loan and costs. Prevailing jurisprudence also holds that the Chattel Mortgage Law bars the creditor-mortgagee from retaining the excess of the sale proceeds. TMI's right to the refund accrued from the

time PCILF received the proceeds of the sale of the mortgaged equipment. However, since TMI never made a counterclaim or demand for refund due on the resulting overpayment after offsetting the proceeds of the sale against the remaining balance on the principal loan plus applicable interest, no interest applies on the amount of refund due. Nonetheless, in accord with prevailing jurisprudence, the excess amount PCILF must refund to TMI is subject to interest at 12% per annum from finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leaño for petitioner.
Arthur C. Valdellon for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] with application for the immediate issuance of a temporary restraining order and writ of preliminary injunction assailing the 5 October 2006 Decision[2] and the 23 January 2007 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 75855. The 5 October 2006 Decision set aside the 23 July 2002 Decision[4] of the Regional Trial Court (Branch 79) of Quezon City in Civil Case No. Q-99-37559, which granted petitioner's complaint for recovery of sum of money and personal property with prayer for the issuance of a writ of replevin. The 23 January 2007 Resolution denied petitioner's motion for reconsideration.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 42-52. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring.

[3] *Id.* at 53. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Josefina Guevara-Salonga and Apolinario D. Bruselas, Jr., concurring.

[4] CA *rollo*, pp. 67-72. Penned by Judge Demetrio B. Macapagal, Sr.

The Facts

Sometime in 1997, respondent Trojan Metal Industries, Inc. (TMI) came to petitioner PCI Leasing and Finance, Inc. (PCILF) to seek a loan. Instead of extending a loan, PCILF offered to buy various equipment TMI owned, namely: a Verson double action hydraulic press with cushion, a Hinohara powerpress 75-tons capacity, a USI-clearing powerpress 60-tons capacity, a Watanabe powerpress 60-tons capacity, a YMGP powerpress 30-tons capacity, a YMGP powerpress 15-tons capacity, a lathe machine, a vertical milling machine, and a radial drill. Hard-pressed for money, TMI agreed. PCILF and TMI immediately executed deeds of sale[5] evidencing TMI's sale to PCILF of the various equipment in consideration of the total amount of ₱2,865,070.00.

PCILF and TMI then entered into a lease agreement,[6] dated 8 April 1997, whereby the latter leased from the former the various equipment it previously owned. Pursuant to the lease agreement, TMI issued postdated checks representing 24 monthly installments. The monthly rental for the Verson double action hydraulic press with cushion was in the amount of ₱62,328.00; for the Hinohara powerpress 75-tons capacity, the USI-clearing powerpress 60-tons capacity, the Watanabe powerpress 60-tons capacity, the YMGP powerpress 30-tons capacity, and the YMGP powerpress 15-tons capacity, the monthly rental was in the amount of ₱49,259.00; and for the lathe machine, the vertical milling machine, and the radial drill, the monthly rental was in the amount of ₱22,205.00.

The lease agreement required TMI to give PCILF a guaranty deposit of ₱1,030,350.00,[7] which would serve as security for the timely performance of TMI's obligations under the lease agreement, to be automatically forfeited should TMI return the leased equipment before the expiration of the lease agreement.

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[5] Records, pp. 179-181.

[6] *Id.* at 10-14.

[7] *Id.* at 12-14. TSN dated 12 July 2001, p. 19.

Further, spouses Walfrido and Elizabeth Dizon, as TMI's President and Vice-President, respectively executed in favor of PCILF a Continuing Guaranty of Lease Obligations.[8] Under the continuing guaranty, the Dizon spouses agreed to immediately pay whatever obligations would be due PCILF in case TMI failed to meet its obligations under the lease agreement.

To obtain additional loan from another financing company,[9] TMI used the leased equipment as temporary collateral.[10] PCILF considered the second mortgage a violation of the lease agreement. At this time, TMI's partial payments had reached ₱1,717,091.00.[11] On 8 December 1998, PCILF sent TMI a demand letter[12] for the payment of the latter's outstanding obligation. PCILF's demand remained unheeded.

On 7 May 1999, PCILF filed in the Regional Trial Court (Branch 79) of Quezon City a complaint[13] against TMI, spouses Dizon, and John Doe (collectively referred to as "respondents" hereon) for recovery of sum of money and personal property with prayer for the issuance of a writ of replevin, docketed as Civil Case No. Q-99-37559.

On 7 September 1999, the RTC issued the writ of replevin[14] PCILF prayed for, directing the sheriff to take custody of the leased equipment. Not long after, PCILF sold the leased equipment to a third party and collected the proceeds amounting to ₱1,025,000.00.[15]

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[8] *Id.* at 17.

[9] Technology and Livelihood Resources Center.

[10] Records, pp. 279-280, 204-205; TSN dated 7 February 2002, p. 7.

[11] *Id.* at 157, 187.

[12] *Id.* at 15-16.

[13] *Id.* at 1-9.

[14] *Id.* at 75-76.

[15] TSN dated 17 August 2001, p. 15.

In their answer,[16] respondents claimed that the sale with lease agreement was a mere scheme to facilitate the financial lease between PCILF and TMI. Respondents explained that in a simulated financial lease, property of the debtor would be sold to the creditor to be repaid through rentals; at the end of the lease period, the property sold would revert back to the debtor. Respondents prayed that they be allowed to reform the lease agreement to show the true agreement between the parties, which was a loan secured by a chattel mortgage.

The Ruling of the RTC

In its 23 July 2002 Decision, the RTC granted the prayer of PCILF in its complaint. The RTC ruled that the lease agreement must be presumed valid as the law between the parties even if some of its provisions constituted unjust enrichment on the part of PCILF. The dispositive portion of its Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff-PCI Leasing and Finance, Inc. and against defendants Trojan Metal, Walfrido Dizon, and Elizabeth Dizon, as follows:
>
> 1. Ordering the plaintiff to be entitled to the possession of herein machineries.
> 2. Ordering the defendants to pay the remaining rental obligation in the amount of Php 888,434.48 plus legal interest from the date of filing of the complaint;
> 3. Ordering defendant to pay an attorneys fees in the amount of Php 50,000.00;
> 4. Ordering the defendant to pay the cost of suit.
>
> SO ORDERED.[17]

Respondents appealed to the Court of Appeals alleging that the RTC erred in ruling that PCILF was entitled to the possession of TMI's equipment and that respondents still owed PCILF the balance of ₱888,423.48.

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[16] Records, pp. 117-119.

[17] CA *rollo*, p. 72.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the sale with lease agreement was in fact a loan secured by chattel mortgage. The Court of Appeals held that since PCILF sold the equipment to a third party for ₱1,025,000.00 and TMI paid PCILF a guaranty deposit of ₱1,030,000.00, PCILF had in its hands the sum of ₱2,055,250.00, as against TMI's remaining obligation of ₱888,423.48, or an excess of ₱1,166,826.52, which should be returned to TMI in accordance with Section 14 of the Chattel Mortgage Law.

Thus, in its 5 October 2006 Decision, the Court of Appeals set aside the Decision of the RTC. The Court of Appeals entered a new one dismissing PCILF's complaint and directing PCILF to pay TMI, by way of refund, the amount of ₱1,166,826.52. The decretal part of its Decision reads:

> WHEREFORE, premises considered, the July 23, 2002 Decision of the Regional Trial Court of Quezon City, Branch 79, in Civil Case No. Q-99-37559, is hereby REVERSED and SET ASIDE, and a new one entered DISMISSING the complaint and DIRECTING the plaintiff-appellee PCI Leasing and Finance, Inc. to PAY, by way of REFUND, to the defendant-appellant Trojan Metal Industries, Inc., the net amount of Php 1,166,826.52.
>
> SO ORDERED.[18]

The Issues

The issues for resolution are (1) whether the sale with lease agreement the parties entered into was a financial lease or a loan secured by chattel mortgage; and (2) whether PCILF should pay TMI, by way of refund, the amount of ₱1,166,826.52.

The Court's Ruling

The petition lacks merit.

PCILF contends that the transaction between the parties was a sale and leaseback financing arrangement where the client

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[18] *Rollo*, p. 52.

sells movable property to a financing company, which then leases the same back to the client. PCILF insists the transaction is not financial leasing, which contemplates extension of credit to assist a buyer in acquiring movable property which the buyer can use and eventually own. PCILF claims that the sale and leaseback financing arrangement is not contrary to law, morals, good customs, public order, or public policy. PCILF stresses that the guaranty deposit should be forfeited in its favor, as provided in the lease agreement. PCILF points out that this case does not involve mere failure to pay rentals, it deals with a flagrant violation of the lease agreement.

Respondents counter that from the very beginning, transfer to PCILF of ownership over the subject equipment was never the intention of the parties. Respondents claim that under the lease agreement, the guaranty deposit would be forfeited if TMI returned the leased equipment to PCILF before the expiration of the lease agreement; thus, since TMI never returned the leased equipment voluntarily, but through a writ of replevin ordered by the RTC, the guaranty deposit should not be forfeited.

Since the lease agreement in this case was executed on 8 April 1997, Republic Act No. 5980 (RA 5980), otherwise known as the Financing Company Act, governs as to what constitutes financial leasing. Section 1, paragraph (j) of the New Rules and Regulations to Implement RA 5980[19] defines financial leasing as follows:

> LEASING shall refer to financial leasing which is a mode of extending credit through a non-cancelable contract under which the lessor purchases or acquires at the instance of the lessee heavy equipment, motor vehicles, industrial machinery, appliances, business and office machines, and other movable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least 70% of the purchase price or acquisition cost, including any incidental expenses and a margin of profit, over the lease period. The contract shall extend over an obligatory period during which the lessee has the right to hold and use the leased property and shall bear the cost of repairs, maintenance, insurance, and

[19] Dated 16 October 1991.

preservation thereof, but with no obligation or option on the part of the lessee to purchase the leased property at the end of the lease contract.

The above definition of financial leasing gained statutory recognition with the enactment of Republic Act No. 8556 (RA 8556), otherwise known as the Financing Company Act of 1998.[20] Section 3(d) of RA 8556 defines financial leasing as:

> a mode of extending credit through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract.

Thus, in a true financial leasing, whether under RA 5980 or RA 8556, a finance company purchases on behalf of a cash-strapped lessee the equipment the latter wants to buy but, due to financial limitations, is incapable of doing so. The finance company then leases the equipment to the lessee in exchange for the latter's periodic payment of a fixed amount of rental.

In this case, however, TMI already owned the subject equipment before it transacted with PCILF. Therefore, the transaction between the parties in this case cannot be deemed to be in the nature of a financial leasing as defined by law.

The facts in the instant case are analogous to those in *Cebu Contractors Consortium Co. v. Court of Appeals.*[21] There, Cebu Contractors Consortium Co. (CCCC) approached Makati Leasing

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[20] An Act Amending Republic Act No. 5980, otherwise known as the Financing Company Act.

[21] G.R. No. 107199, 22 July 2003, 407 SCRA 154.

and Finance Corporation (MLFC) to obtain a loan. MLFC agreed to extend financial assistance to CCCC but, instead of a loan with collateral, MLFC induced CCCC to adopt a sale and leaseback scheme. Under the scheme, several of CCCC's equipment were made to appear as sold to MLFC and then leased back to CCCC, which in turn paid lease rentals to MLFC. The rentals were treated as installment payments to repurchase the equipment.

The Court held in *Cebu Contractors Consortium Co. v. Court of Appeals*[22] that the transaction between CCCC and MLFC was not one of financial leasing as defined by law, but simply a loan secured by a chattel mortgage over CCCC's equipment. The Court went on to explain that where the client already owned the equipment but needed additional working capital and the finance company purchased such equipment with the intention of leasing it back to him, the lease agreement was simulated to disguise the true transaction that was a loan with security. In that instance, continued the Court, the intention of the parties was not to enable the client to acquire and use the equipment, but to extend to him a loan.

Similarly, in *Investors Finance Corporation v. Court of Appeals*,[23] a borrower came to Investors Finance Corporation (IFC) to secure a loan with his heavy equipment and machinery as collateral. The parties executed documents where IFC was made to appear as the owner of the equipment and the borrower as the lessee. As consideration for the lease, the borrower-lessee was to pay monthly amortizations over a period of 36 months. The parties executed a lease agreement covering various equipment described in the lease schedules attached to the lease agreement. As security, the borrower-lessee also executed a continuing guaranty.

The Court in *Investors Finance Corporation v. Court of Appeals*[24] held that the transaction between the parties was not a true financial leasing because the intention of the parties was

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[22] *Id.*

[23] G.R. No. 91334, 7 February 1991, 193 SCRA 701.

[24] *Id.*

not to enable the borrower-lessee to acquire and use the heavy equipment and machinery, which already belonged to him, but to extend to him a loan to use as capital for his construction and logging businesses. The Court held that the lease agreement was simulated to disguise the true transaction between the parties, which was a simple loan secured by heavy equipment and machinery owned by the borrower-lessee. The Court differentiated between a true financial leasing and a loan with mortgage in the guise of a lease. The Court said that financial leasing contemplates the extension of credit to assist a buyer in acquiring movable property which he can use and eventually own. If the movable property already belonged to the borrower-lessee, the transaction between the parties, according to the Court, was a loan with mortgage in the guise of a lease.

In the present case, since the transaction between PCILF and TMI involved equipment already owned by TMI, it cannot be considered as one of financial leasing, as defined by law, but simply a loan secured by the various equipment owned by TMI.

Articles 1359 and 1362 of the Civil Code provide:

> Art. 1359. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct, or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.
>
> Art. 1362. If one party was mistaken and the other acted fraudulently or inequitably in such a way that the instrument does not show their true intention, the former may ask for the reformation of the instrument.

Under Article 1144 of the Civil Code, the prescriptive period for actions based upon a written contract and for reformation of an instrument is ten years.[25] The right of action for reformation

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[25] Civil Code, Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

1. Upon a written contract;

x x x x x x x x x

accrued from the date of execution of the lease agreement on 8 April 1997. TMI timely exercised its right of action when it filed an answer[26] on 14 February 2000 asking for the reformation of the lease agreement.

Hence, had the true transaction between the parties been expressed in a proper instrument, it would have been a simple loan secured by a chattel mortgage, instead of a simulated financial leasing. Thus, upon TMI's default, PCILF was entitled to seize the mortgaged equipment, not as owner but as creditor-mortgagee for the purpose of foreclosing the chattel mortgage. PCILF's sale to a third party of the mortgaged equipment and collection of the proceeds of the sale can be deemed in the exercise of its right to foreclose the chattel mortgage as creditor-mortgagee.

The Court of Appeals correctly ruled that the transaction between the parties was simply a loan secured by a chattel mortgage. However, in reckoning the amount of the principal obligation, the Court of Appeals should have taken into account the proceeds of the sale to PCILF less the guaranty deposit paid by TMI. After deducting payments made by TMI to PCILF, the balance plus applicable interest should then be applied against the aggregate cash already in PCILF's hands.

Records show that PCILF paid TMI ₱2,865,070.00[27] as consideration for acquiring the mortgaged equipment. In turn, TMI gave PCILF a guaranty deposit of ₱1,030,350.00.[28] **Thus, the amount of the principal loan was ₱1,834,720.00, which was the net amount actually received by TMI (proceeds of the sale of the equipment to PCILF minus the guaranty deposit).** Against the principal loan of ₱1,834,720.00 plus the applicable interest should be deducted loan payments, totaling ₱1,717,091.00.[29] Since PCILF sold the mortgaged equipment

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[26] Records, pp. 117-119.

[27] Records, pp. 179-181.

[28] *Id.*

[29] *Id.* at 157, 187.

to a third party for ₱1,025,000.00,[30] the proceeds of the said sale should be applied to offset the remaining balance on the principal loan plus applicable interest.

However, the exact date of the sale of the mortgaged equipment, which is needed to compute the interest on the remaining balance of the principal loan, cannot be gleaned from the facts on record. We thus remand the case to the RTC for the computation of the total amount due from the date of demand on 8 December 1998 until the date of sale of the mortgaged equipment to a third party, which amount due shall be offset against the proceeds of the sale.

In the absence of stipulation, the applicable interest due on the remaining balance of the loan is the legal rate of 12% per annum, computed from the date PCILF sent a demand letter to TMI on 8 December 1998. No interest can be charged prior to this date because TMI was not yet in default prior to 8 December 1998. The interest due shall also earn legal interest from the time it is judicially demanded, pursuant to Article 2212 of the Civil Code, which provides:

> Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

The foregoing provision has been incorporated in the comprehensive summary of existing rules on the computation of legal interest laid down by the Court in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[31] to wit:

> 1. When an obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. **Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded.** In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or

[30] TSN dated 17 August 2001, p. 15.

[31] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95-97.

extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction**, this interim period being deemed to be by then an equivalent to a forbearance of credit. (Emphasis supplied)

Applying the rules in the computation of interest, the remaining balance of the principal loan subject of the chattel mortgage must earn the legal interest of 12% per annum, which interest, as long as unpaid, also earns legal interest of 12% per annum, computed from the filing of the complaint on 7 May 1999.

In accordance with the rules laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*,[32] we derive the following formula for the RTC's guidance:

TOTAL AMOUNT DUE = [principal – partial payments made] + [interest + interest on interest], where

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[32] *Id.*

Interest = remaining balance x 12% per annum x no. of years from due date (8 December 1998 when demand was made) until date of sale to a third party

Interest on interest = interest computed as of the filing of the complaint on 7 May 1999 x 12% x no. of years until date of sale to a third party

From the computed total amount should be deducted ₱1,025,000.00 representing the proceeds of the sale already in PCILF's hands. The difference represents overpayment by TMI, which the law requires PCILF to refund to TMI.

Section 14 of Act No. 1508, otherwise known as the Chattel Mortgage Law, provides:

> Section 14. *Sale of property at public auction; officer's return; fees; disposition of proceeds*. x x x The proceeds of such sale shall be applied to the payment, first, of the costs and expenses of keeping and sale, and then to the payment of the demand or obligation secured by such mortgage, and the residue shall be paid to persons holding subsequent mortgages in their order, and the balance, after paying the mortgages, shall be paid to the mortgagor or person holding under him on demand.

Section 14 of the Chattel Mortgage Law expressly entitles the debtor-mortgagor to the balance of the proceeds, upon satisfaction of the principal loan and costs. Prevailing jurisprudence[33] also holds that the Chattel Mortgage Law bars the creditor-mortgagee from retaining the excess of the sale proceeds.

TMI's right to the refund accrued from the time PCILF received the proceeds of the sale of the mortgaged equipment. However, since TMI never made a counterclaim or demand for refund due on the resulting overpayment after offsetting the proceeds of the sale against the remaining balance on the principal loan plus applicable interest, no interest applies on the amount of refund due. Nonetheless, in accord with prevailing jurisprudence,[34] the excess amount PCILF must refund to TMI

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[33] *PAMECA Wood Treatment Plant, Inc. v. CA*, 369 Phil. 544 (1999).

[34] *Cuyco v. Cuyco*, G.R. No. 168736, 19 April 2006, 487 SCRA 693.

is subject to interest at 12% per annum from finality of this Decision until fully paid.

WHEREFORE, we *DENY* the petition. We *AFFIRM with MODIFICATION* the 5 October 2006 Decision and the 23 January 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 75855. Petitioner PCI Leasing and Finance, Inc. is hereby *ORDERED* to *PAY* respondent Trojan Metal Industries, Inc., by way of refund, the excess amount to be computed by the Regional Trial Court based on the formula specified above, with interest at 12% per annum from finality of this Decision until fully paid.

Costs against petitioner.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177355. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONTANO FLORES *y* PARAS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCE OF MINORITY; MUST NOT ONLY BE ALLEGED IN THE INFORMATION BUT MUST ALSO BE ESTABLISHED WITH MORAL CERTAINTY.— This Court has held that for minority to be considered as a qualifying circumstance in the crime of rape, it must not only be alleged in the Information, but it must also be established with moral certainty.

2. ID.; ID.; GUIDELINES IN APPRECIATING AGE, EITHER AS AN ELEMENT OF THE CRIME OR AS A QUALIFYING CIRCUMSTANCE.— Noting the divergent rulings on the proof required to establish the age of the victim in rape cases, this Court, in *People v. Pruna*, has set out the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance: "1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him."

3. ID.; ID.; QUALIFYING CIRCUMSTANCE THAT RAPE IS COMMITTED IN FULL VIEW OF THE VICTIM'S MOTHER; SUFFICIENTLY PROVED IN CASE AT BAR; PENALTY.— Under Article 266-B of the Revised Penal Code, when rape is committed in full view of the parent, the penalty to be imposed is death, to wit: "**ART. 266-B. Penalties**.- Rape under paragraph 1 of the next preceding article shall be punished

by *reclusion perpetua*. x x x The **death penalty** shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: x x x **3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.**" x x x Both the RTC and the Court of Appeals found that the prosecution was able to sufficiently prove the qualifying circumstance that Flores raped AAA in full view of her mother. This Court has found the testimonies of both AAA and BBB to be candid, frank, and genuine. Despite the fact that both daughter and mother did not know how to read nor write, they were able to narrate to the court their harrowing experience with the utmost openness, candor, and sincerity. AAA's mother recounted the painful details of that night in a straightforward manner x x x. It is indisputable that when Flores raped AAA, he committed such act in full view of BBB, AAA's mother. Hence, the RTC was correct in imposing upon Flores the penalty of death as it found Flores guilty beyond reasonable doubt of the crime of **qualified rape**. However, although under the Death Penalty Law, the crime of qualified rape is punishable by death, Republic Act No. 9346, which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Flores in lieu of the death penalty is *reclusion perpetua*, without eligibility for parole.

4. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO*, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award. Pursuant to prevailing jurisprudence, the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages must be increased to Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Accused-appellant Montano Flores is now before us on review after the Court of Appeals, in its Decision[1] dated November 21, 2006, in CA-G.R. CR No. 00502, affirmed *in toto*, the October 13, 2004 Decision[2] of the Regional Trial Court (RTC), Branch 62, Gumaca, Quezon, in Criminal Case No. 7098-G, which found Flores guilty beyond reasonable doubt of the crime of **Qualified Rape** as defined and penalized under Article 266-A of the Revised Penal Code and imposed on him the penalty of DEATH and the payment of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages.

On August 17, 2001, Flores was charged before the RTC of Rape. The accusatory portion of the Information reads:

> That on or about the 18th day of June 2001, at Barangay Payte, Municipality of Pitogo, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, armed with a bladed weapon, with force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA],[3] a minor, 13 years of age at the time of the commission of the offense, against her will.
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> That the crime of rape was committed with the qualifying circumstances of victim being under 18 years of age, the accused is her stepfather, being the common-law spouse of her mother, and

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[1] *Rollo*, pp. 2-19; penned by Associate Justice Enrico A. Lanzanas with Associate Justices Edgardo P. Cruz and Jose C. Reyes, Jr., concurring.

[2] CA *rollo*, pp. 12-47; penned by Executive Judge and Presiding Judge Aurora V. Maqueda-Roman.

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

that the rape was committed in full view of the victim's mother, [BBB].[4]

Flores pleaded not guilty to the charge upon arraignment on February 12, 2002. Trial on the merits ensued after the termination of the pre-trial conference.

The prosecution's first witness was Dr. Purita T. Tullas, the Medical Officer of Gumaca District Hospital who examined the victim AAA. She produced the Medico-Legal Certificate dated June 19, 2001, wherein she made the following findings:

P.E.	⁂	No signs of external physical injury
I.E.	:	Vulva – presence of moderate amount of pubic hair
		Labia majora and minora well coaptated Contusion labia minora, left
		Vaginal orifice – admits 5th finger with resistance
		Hymen – fresh lacerations at 3, 6, and 9 o'clock

Vaginal smear – negative for sperm cells.[5]

Dr. Tullas testified that the labia minora was slightly swollen and reddish which means that there was a forceful penetration probably by a male sex organ, and that the lacerations could have been inflicted within 24 hours before the examination. The doctor also said that it was most likely AAA's first sexual experience as the orifice of her vagina was still tight and AAA felt pain when she was examined. Dr. Tullas said that the absence of sperm cells was probably because AAA had washed her organ before she went to the hospital for examination. Dr. Tullas further testified that AAA was around 13 years old as her body only started to physically develop.[6]

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[4] Records, p. 1.

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

[6] TSN, September 5, 2002, pp. 4-5.

BBB, the victim's mother, was presented next. She testified that AAA was 13 years old at the time of the incident, and that AAA was her daughter with her late husband. She confirmed that Flores was her live-in-partner for ten years prior to the incident and that they all lived together in one house. BBB swore that on the fateful evening of July 18, 2001, at around eight o'clock, Flores ordered her to ask her daughter AAA to sleep with them. Both AAA and BBB obeyed Flores for fear of his wrath. At around ten o'clock in the evening, BBB was awakened by the pinch of her daughter, BBB was then shocked to see that Flores was already on top of her daughter, who was shouting *"Aray, Aray, Nanay, Aray."* She felt angry but could not do anything because Flores not only had a bladed weapon poked at her neck, but he also threatened to kill her if she shouted. BBB endured this horrifying episode for the next thirty minutes. The following day, BBB accompanied her daughter AAA to the *Barangay* Captain to report the incident. They went to the municipality's Department of Social Welfare and Development then proceeded to the Gumaca District Hospital.[7]

The third witness for the prosecution was the victim herself, AAA. She testified that she knew Flores because he was the common-law spouse of her mother. She identified him in open court and said that she filed this case against him because he raped her. She testified that on the night she was raped, she was sleeping between Flores and her mother, BBB, when she was awakened by Flores who removed her shorts and panty. Flores then proceeded to insert his penis into her vagina, making a push and pull movement. She shouted in pain and tried to wake her mother up by pinching her. However, AAA realized that her mother will not be able to help her as she felt the bladed weapon Flores had poked at BBB's neck.[8]

Flores, for himself, denied raping AAA. He claimed that BBB was his mother-in-law and not his live-in partner. He alleged that he and AAA had been "sweethearts" for four years prior

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[7] TSN, October 23, 2002, p. 2-12.

[8] TSN, October 29, 2003, pp. 2-6.

to the incident and that it was the first time he and AAA had sexual relations due to his enormous respect for her. He also claimed that it was AAA who slept beside him and he was the one awakened by AAA, whom he found on top of him. He averred that AAA was already 19 years old at the time of the incident and even produced a Certification from the Office of the Municipal Civil Registrar[9] of General Luna, Quezon to prove that AAA was no longer a minor at the time of the sexual intercourse. He also claimed that he and AAA talked after this case was filed and they agreed to get married, but AAA could not withdraw the case for fear of her mother. Flores further claimed that the reason why this charge was filed against him was because he refused to live with BBB, who wanted Flores for herself.[10]

On October 13, 2004, the RTC handed down a guilty verdict against Flores and imposed on him the supreme penalty of death:

> WHEREFORE AND IN VIEW OF ALL THE FOREGOING, the Court finds accused **MONTANO FLORES** guilty beyond reasonable doubt of the crime of Qualified Rape defined and punished under Article 266-A of the Revised Penal Code as amended by R.A. 8353 and imposes upon him the penalty of **DEATH**, and in addition, to pay the amount of Php75,000.00 as civil indemnity, Php50,000.00 as moral damages and Php25,000.00 as exemplary damages.[11]

In its decision, the RTC debunked Flores' "sweetheart defense." The RTC said that AAA's testimony was frank, candid, and straightforward,[12] and AAA was able to establish that Flores was able to have carnal knowledge of her, and his guilt for the crime of rape.[13] The RTC further held that AAA's allegations were not only corroborated by her own mother's testimony,

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[9] Folder of Exhibits, Exhibit "B".

[10] TSN, March 4, 2004, pp. 2-12.

[11] CA *rollo,* p. 47.

[12] *Id.* at 19.

[13] *Id.* at 22.

but also by the medico-legal findings of Dr. Tullas. The RTC found Flores' imputation of ill motive on BBB was incredible as no mother would subject her own daughter to such humiliation and shame, just because she was shunned by the man she desires. In sum, the RTC said that all the essential elements of rape were proven and duly established, and Flores' blanket denial cannot overcome the categorical assertions of AAA.[14]

On intermediate appellate review, the Court of appeals was faced with the sole issue of whether or not the RTC erred in sentencing him to death:

LONE ASSIGNMENT OF ERROR

THE TRIAL COURT GRAVELY ERRED IN IMPOSING UPON THE ACCUSED-APPELLANT THE SUPREME PENALTY OF DEATH IN VIEW OF THE FAILURE OF THE PROSECUTION TO PROVE THE PRIVATE COMPLAINANT'S MINORITY.[15]

Flores claimed that the RTC erred in sentencing him to death considering that AAA was already 18 years old at the time of the alleged rape. Flores averred that although AAA was stated to be 13 years old in the Information, AAA was in fact no longer a minor, as shown in the Certification issued by the Office of the Municipal Civil Registrar of General Luna, Quezon. The Court of Appeals agreed with Flores that AAA was indeed already 18 years old when she was raped. However, this did not prevent the Court of Appeals from affirming the imposition of the death penalty as the rape was committed in full view of AAA's mother, hence, under the Revised Penal Code, the death penalty shall still be imposed. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, finding no reversible error, the appealed Decision dated October 13, 2004 of the Regional Trial Court, Branch 62, Gumaca, Quezon, finding appellant **MONTANO FLORES** guilty of the crime of **QUALIFIED RAPE** is hereby **AFFIRMED *in toto***. However, in lieu of the death penalty imposed by the trial court,

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

[15] *Id.* at 112-113.

appellant is hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA***, pursuant to Republic Act No. 9346. With regards to civil indemnity, the accused is hereby ***ORDERED TO PAY*** the victim the amount of ₱75,000.00 as civil indemnity.

And in addition, accused is also ORDERED to pay the victim ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.[16]

On December 6, 2006, Flores filed his Notice of Appeal and subsequently filed a Manifestation that he is adopting the arguments in his Appellant's Brief in this appeal.

Flores is now before this Court with the same lone assignment of error, wherein he questions the propriety of the imposition of the death penalty upon him in view of the fact that AAA's minority was not conclusively proven by the prosecution.

This Court has made a thorough and exhaustive review of all the records of this case and has found no reason to reverse the judgment below.

We agree with Flores that AAA's age was not proven with certainty. This Court has held that for minority to be considered as a qualifying circumstance in the crime of rape, it must not only be alleged in the Information, but it must also be established with moral certainty.[17] Noting the divergent rulings on the proof required to establish the age of the victim in rape cases, this Court, in *People v. Pruna*,[18] has set out the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

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[16] *Rollo,* p. 18.

[17] *People v. Macabata,* 460 Phil. 409, 422 (2003).

[18] *People v. Pruna,* 439 Phil. 440 (2002).

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.[19]

In the case at bar, not only did the prosecution fail to present AAA's birth certificate, but BBB, the victim's mother herself, gave contradictory statements on the true age of her daughter. At one time she said that AAA was 13 years old, and yet when asked about the year of AAA's birthday, she declared that it was 1982. AAA herself did not know the exact year she was

[19] *Id.* at 470-471.

born. The Certification from the Municipal Civil Registrar[20] of General Luna, Quezon that both parties offered as evidence of AAA's age has no probative value because it was not a certification as to the true age of AAA but as to the fact that the records of birth filed in their archives included those registered from 1930 up to the time the certificate was requested, and that records for the period of 1930 – June 23, 1994 were razed by fire.

However, as the Court of Appeals correctly ruled, Flores still cannot escape the penalty of death. Flores forgot the important fact that aside from AAA's minority, the qualifying circumstance that the rape was committed in full view of AAA's mother was also alleged in the Information, to wit:

> That on or about the 18th day of June 2001, at Barangay Payte, Municipality of Pitogo, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, armed with a bladed weapon, with force, threats and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of one [AAA], a minor, 13 years of age at the time of the commission of the offense, against her will.
>
> That the crime of rape was committed with the qualifying circumstances of victim being under 18 years of age, the accused is her stepfather, being the common-law spouse of her mother, **and that the rape was committed in full view of the victim's mother, [BBB]**.[21]

Under Article 266-B of the Revised Penal Code, when rape is committed in full view of the parent, the penalty to be imposed is death, to wit:

> **ART. 266-B. Penalties**.- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.
>
> x x x x x x x x x
>
> The **death penalty** shall be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[20] Folder of Exhibits, Exhibit "B".

[21] Records, p. 1.

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;

2) When the victim is under the custody of the police or military authorities or any law enforcement or penal institution;

3) When the rape is committed in full view of the spouse, parent, any of the children or other relatives within the third civil degree of consanguinity.

4) When the victim is a religious engaged in legitimate religious vocation or calling and is personally known to be such by the offender before or at the time of the commission of the crime;

5) When the victim is a child below seven (7) years old;

6) When the offender knows that he is afflicted with Human Immuno-Deficiency Virus (HIV)/Acquired Immune Deficiency Syndrome (AIDS) or any other sexually transmissible disease and the virus or disease is transmitted to the victim;

7) When committed by any member of the Armed Forces of the Philippines or para-military units thereof or the Philippine National Police or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime;

8) When by reason or on the occasion of the rape, the victim suffered permanent physical mutilation or disability;

9) When the offender knew of the pregnancy of the offended party at the time of the commission of the crime and;

10) When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. (Emphases ours.)

Both the RTC and the Court of Appeals found that the prosecution was able to sufficiently prove the qualifying circumstance that Flores raped AAA in full view of her mother.

This Court has found the testimonies of both AAA and BBB to be candid, frank, and genuine. Despite the fact that both daughter and mother did not know how to read nor write, they were able to narrate to the court their harrowing experience with the utmost openness, candor, and sincerity. AAA's mother recounted the painful details of that night in a straightforward manner, to wit:

Q On that particular date and time, what were you doing then?
A While Montano was doing that to the victim, I was lying and I was being pinched by my daughter, Mam.

INTERPRETER:

The witness demonstrating gesture on her neck.

PROSECUTOR FLORIDO:

Q Now, when you were awakened, when your daughter was pinching your neck, what did you see?
A He was on top of her, Mam.

Q Who was on top?
A Montano, Mam.

Q And who was under?
A [AAA], Mam.

Q And what was happening when this Montano was on top of [AAA]?
A My daughter was crying, Mam.

Q And while this Montano was on top of [AAA], what was Montano actually doing?
A *Iniiyot po niya*. He was having sexual intercourse with her.

Q And during the time that he was doing sexual intercourse with her, your daughter was crying?
A Yes, Mam.

Q So, when you have seen those incident, your live-in-partner was having sexual intercourse with your daughter while your daughter was crying, what did you do, if any?
A I let, I just allowed them. "*Nagpabaya na lamang*."

Q Why did you say you let them allow?
A Because he was poking a weapon on me, Mam.

Q Who was poking a weapon? On you?
A He, Mam.

Q Are you referring to Montano?
A Yes, Mam.

Q What kind of weapon was that?
A The one used in scalling fish, Mam.

Q Was that a sharp object?
A Yes, Mam.

Q Do I get from you, while Montano Flores was having sexual intercourse with your daughter, your daughter was crying and this Montano Flores was poking a weapon a sharp instrument on you?
A Yes, Mam.[22]

It is indisputable that when Flores raped AAA, he committed such act in full view of BBB, AAA's mother. Hence, the RTC was correct in imposing upon Flores the penalty of death as it found Flores guilty beyond reasonable doubt of the crime of **qualified rape**. However, although under the Death Penalty Law,[23] the crime of qualified rape is punishable by death, Republic Act No. 9346,[24] which took effect on June 24, 2006, prohibits the imposition of the death penalty. Under this Act, the proper penalty to be imposed upon Flores in lieu of the death penalty is *reclusion perpetua*,[25] without eligibility for parole.[26]

Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape.[27] Moral damages are automatically awarded

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[22] TSN, October 23, 2002, pp. 4-5.

[23] Republic Act No. 7659.

[24] An Act Prohibiting the Imposition of the Death Penalty, June 24, 2006.

[25] Republic Act No. 9346, Section 2.

[26] Republic Act No. 9346, Section 3.

[27] *People v. Calongui*, G.R. No. 170566, March 3, 2006, 484 SCRA 76, 88.

without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[28] Pursuant to prevailing jurisprudence,[29] the amount of Fifty Thousand Pesos (₱50,000.00) as moral damages must be increased to Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00).

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR No. 00502, is hereby *AFFIRMED with MODIFICATION*. Accused-appellant Montano Flores *y* Paras is found *GUILTY* beyond reasonable doubt of the crime of *QUALIFIED RAPE*, and sentenced to *reclusion perpetua*, in lieu of death, without eligibility for parole. He is ordered to pay the victim AAA Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity, Seventy-Five Thousand Pesos (₱75,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, ALL with interest at the rate of 6% per annum from the date of finality of this judgment. No costs.

SO ORDERED.

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

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[28] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 28-29.

[29] *People v. Sambrano,* 446 Phil. 145, 162 (2003).

SECOND DIVISION

[G.R. No. 178030. December 15, 2010]

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY (PFDA), *petitioner, vs.* **CENTRAL BOARD OF ASSESSMENT APPEALS, LOCAL BOARD OF ASSESSMENT APPEALS OF LUCENA CITY, CITY OF LUCENA, LUCENA CITY ASSESSOR AND LUCENA CITY TREASURER,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INSTRUMENTALITIES; PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY; AN INSTRUMENTALITY OF THE NATIONAL GOVERNMENT WHICH IS GENERALLY EXEMPT FROM THE PAYMENT OF REAL PROPERTY TAX.— In the 2007 case of *Philippine Fisheries Development Authority v. Court of Appeals*, the Court resolved the issue of whether the PFDA is a government-owned or controlled corporation or an instrumentality of the national government. In that case, the City of Iloilo assessed real property taxes on the Iloilo Fishing Port Complex (IFPC), which was managed and operated by PFDA. The Court held that PFDA is an instrumentality of the government and is thus exempt from the payment of real property tax, thus: "**The Court rules that the Authority [PFDA] is not a GOCC but an instrumentality of the national government which is generally exempt from payment of real property tax. However, said exemption does not apply to the portions of the IFPC which the Authority leased to private entities.** With respect to these properties, the Authority is liable to pay property tax. Nonetheless, the IFPC, being a property of public dominion cannot be sold at public auction to satisfy the tax delinquency. x x x Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence it is not a stock corporation. Neither is it a non-stock corporation because it has no members. The Authority is actually a national government

instrumentality which is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers." This ruling was affirmed by the Court in a subsequent PFDA case involving the Navotas Fishing Port Complex, which is also managed and operated by the PFDA. In consonance with the previous ruling, the Court held in the subsequent PFDA case that the PFDA is a government instrumentality not subject to real property tax except those portions of the Navotas Fishing Port Complex that were leased to taxable or private persons and entities for their beneficial use. Similarly, we hold that as a government instrumentality, the PFDA is exempt from real property tax imposed on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

2. **ID.; ID.; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; HAVE NO POWER TO TAX INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT.—** The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code. Under Section 133(o) of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the PFDA. Thus, PFDA is not liable to pay real property tax assessed by the Office of the City Treasurer of Lucena City on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

3. **CIVIL LAW; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; CLASSIFICATION OF PROPERTY; PROPERTY OF PUBLIC DOMINION; THE LUCENA FISHING PORT COMPLEX IS A PROPERTY OF PUBLIC DOMINION INTENDED FOR PUBLIC USE AND THUS EXEMPT FROM REAL PROPERTY TAX; CASE AT BAR.—** [T]he Lucena Fishing Port Complex is a property of

public dominion intended for public use, and is therefore exempt from real property tax under Section 234(a) of the Local Government Code. Properties of public dominion are owned by the State or the Republic of the Philippines. Thus, Article 420 of the Civil Code provides: "Art. 420. The following things are **property of public dominion**: (1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and others of similar character; (2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the **development of the national wealth**." The Lucena Fishing Port Complex, which is one of the major infrastructure projects undertaken by the National Government under the Nationwide Fishing Ports Package, is devoted for public use and falls within the term "ports." The Lucena Fishing Port Complex "serves as PFDA's commitment to continuously provide post-harvest infrastructure support to the fishing industry, especially in areas where productivity among the various players in the fishing industry need to be enhanced." As property of public dominion, the Lucena Fishing Port Complex is owned by the Republic of the Philippines and thus exempt from real estate tax.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Marvin A. Tan for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 9 May 2007 Decision[2] of the Court of Tax Appeals in C.T.A. EB No. 193, affirming the

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

[2] *Rollo*, pp. 65-90. Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

5 October 2005 Decision of the Central Board of Assessment Appeals (CBAA) in CBAA Case No. L-33. The CBAA dismissed the appeal of petitioner Philippine Fisheries Development Authority (PFDA) from the Decision of the Local Board of Assessment Appeals (LBAA) of Lucena City, ordering PFDA to pay the real property taxes imposed by the City Government of Lucena on the Lucena Fishing Port Complex.

The Facts

The facts as found by the CBAA are as follows:

The records show that the Lucena Fishing Port Complex (LFPC) is one of the fishery infrastructure projects undertaken by the National Government under the Nationwide Fish Port-Package. Located at Barangay Dalahican, Lucena City, the fish port was constructed on a reclaimed land with an area of 8.7 hectares more or less, at a total cost of PHP 296,764,618.77 financed through a loan (L/A PH-25 and 51) from the Overseas Economic Cooperation Fund (OECF) of Japan, dated November 9, 1978 and May 31, 1978, respectively.

The Philippine Fisheries Development Authority (PFDA) was created by virtue of P.D. 977 as amended by E.O. 772, with functions and powers to (m)anage, operate, and develop the Navotas Fishing Port Complex and such other fishing port complexes that may be established by the Authority. Pursuant thereto, Petitioner-Appellant PFDA took over the management and operation of LFPC in February 1992.

On October 26, 1999, in a letter addressed to PFDA, the City Government of Lucena demanded payment of realty taxes on the LFPC property for the period from 1993 to 1999 in the total amount of ₱39,397,880.00. This was received by PFDA on November 24, 1999.

On October 17, 2000 another demand letter was sent by the Government of Lucena City on the same LFPC property, this time in the amount of ₱45,660,080.00 covering the period from 1993 to 2000.

On December 18, 2000 Petitioner-Appellant filed its Appeal before the Local Board of Assessment Appeals of Lucena City, which was dismissed for lack of merit. On November 6, 2001

Petitioner-Appellant filed its motion for reconsideration; this was denied by the Appellee Local Board on December 10, 2001.[3]

PFDA appealed to the CBAA. In its Decision dated 5 October 2005, the CBAA dismissed the appeal for lack of merit. The CBAA ruled:

> Ownership of LFPC however has, before hand, been handed over to the PFDA, as provided for under Sec. 11 of P.D. No. 977, as amended, and declared under the MCIAA case [*Mactan Cebu International Airport Authority v. Marcos*, G.R. No. 120082, 11 September 1996, 261 SCRA 667]. The allegations therefore that PFDA is not the beneficial user of LFPC and not a taxable person are rendered moot and academic by such ownership of PFDA over LFPC.
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> x x x x x x x x x
>
> PFDA's Charter, P.D. 977, provided for exemption from income tax under Par. 2, Sec. 10 thereof: "(t)he Authority shall be exempted from the payment of income tax." Nothing was said however about PFDA's exemption from payment of real property tax: PFDA therefore was not to lay claim for realty tax exemption on its Fishing Port Complexes. Reading Sec. 40 of P.D. 464 and Sec. 234 of R.A. 7160 however, provided such ground: LFPC is owned by the Republic of the Philippines, PFDA is only tasked to manage, operate, and develop the same. Hence, LFPC is exempted from payment of realty tax.
>
> x x x x x x x x x
>
> The ownership of LFPC as passed on by the Republic of the Philippines to PFDA is bourne by Direct evidence: P.D. 977, as amended (*supra*). Therefore, Petitioner-Appellant's claim for realty tax exemption on LFPC is untenable.
>
> WHEREFORE, for all of the foregoing, the herein Appeal is hereby dismissed for lack of merit.
>
> SO ORDERED.[4]

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

[4] CTA *rollo*, pp. 60-62.

PFDA moved for reconsideration, which the CBAA denied in its Resolution dated 7 June 2006.[5] On appeal, the Court of Tax Appeals denied PFDA's petition for review and affirmed the 5 October 2005 Decision of the CBAA.

Hence, this petition for review.

The Ruling of the Court of Tax Appeals

The Court of Tax Appeals held that PFDA is a government-owned or controlled corporation, and is therefore subject to the real property tax imposed by local government units pursuant to Section 232 in relation to Sections 193 and 234 of the Local Government Code. Furthermore, the Court of Tax Appeals ruled that PFDA failed to prove that it is exempt from real property tax pursuant to Section 234 of the Local Government Code or any of its provisions.

The Issue

The sole issue raised in this petition is whether PFDA is liable for the real property tax assessed on the Lucena Fishing Port Complex.

The Ruling of the Court

The petition is meritorious.

In ruling that PFDA is not exempt from paying real property tax, the Court of Tax Appeals cited Sections 193, 232, and 234 of the Local Government Code which read:

Section 193. *Withdrawal of Tax Exemption Privileges*. — Unless otherwise provided in this Code, tax exemptions or incentives granted to, or presently enjoyed by all persons, whether natural or juridical, including government-owned or -controlled corporations, except local water districts, cooperatives duly registered under R.A. No. 6938, non-stock and non-profit hospitals and educational institutions, are hereby withdrawn upon the effectivity of this Code.

Section 232. *Power to Levy Real Property Tax*.— A province or city or a municipality within the Metropolitan Manila Area may levy

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

an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

Section 234. *Exemptions from Real Property Tax*.— The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivision except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, nonprofit or religious cemeteries and all lands, buildings and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.

The Court of Tax Appeals held that as a government-owned or controlled corporation, PFDA is subject to real property tax imposed by local government units having jurisdiction over its real properties pursuant to Section 232 of the Local Government Code. According to the Court of Tax Appeals, Section 193 of the Local Government Code withdrew all tax exemptions granted to government-owned or controlled corporations. Furthermore, Section 234 of the Local Government Code explicitly provides that any exemption from payment of real property tax granted to government-owned or controlled corporations have already been withdrawn upon the effectivity of the Local Government Code.

The ruling of the Court of Tax Appeals is anchored on the wrong premise that the PFDA is a government-owned or controlled corporation. On the contrary, this Court has already ruled that the PFDA is a government instrumentality and not a government-owned or controlled corporation.

In the 2007 case of *Philippine Fisheries Development Authority v. Court of Appeals*,[6] the Court resolved the issue of whether the PFDA is a government-owned or controlled corporation or an instrumentality of the national government. In that case, the City of Iloilo assessed real property taxes on the Iloilo Fishing Port Complex (IFPC), which was managed and operated by PFDA. The Court held that PFDA is an instrumentality of the government and is thus exempt from the payment of real property tax, thus:

> **The Court rules that the Authority [PFDA] is not a GOCC but an instrumentality of the national government which is generally exempt from payment of real property tax. However, said exemption does not apply to the portions of the IFPC which the Authority leased to private entities.** With respect to these properties, the Authority is liable to pay property tax. Nonetheless, the IFPC, being a property of public dominion cannot be sold at public auction to satisfy the tax delinquency.
>
> x x x x x x x x x
>
> Indeed, the Authority is not a GOCC but an instrumentality of the government. The Authority has a capital stock but it is not divided into shares of stocks. Also, it has no stockholders or voting shares. Hence it is not a stock corporation. Neither is it a non-stock corporation because it has no members.
>
> The Authority is actually a national government instrumentality which is defined as an agency of the national government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. When the law vests in a government instrumentality corporate powers, the instrumentality does not become a corporation. Unless the government instrumentality

[6] G.R. No. 169836, 31 July 2007, 528 SCRA 706.

is organized as a stock or non-stock corporation, it remains a government instrumentality exercising not only governmental but also corporate powers.[7] (Emphasis supplied)

This ruling was affirmed by the Court in a subsequent PFDA case involving the Navotas Fishing Port Complex, which is also managed and operated by the PFDA. In consonance with the previous ruling, the Court held in the subsequent PFDA case that the PFDA is a government instrumentality not subject to real property tax except those portions of the Navotas Fishing Port Complex that were leased to taxable or private persons and entities for their beneficial use.[8]

Similarly, we hold that as a government instrumentality, the PFDA is exempt from real property tax imposed on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

The exercise of the taxing power of local government units is subject to the limitations enumerated in Section 133 of the Local Government Code.[9] Under Section 133(o)[10] of the Local Government Code, local government units have no power to tax instrumentalities of the national government like the PFDA. Thus, PFDA is not liable to pay real property tax assessed by the Office of the City Treasurer of Lucena City on the Lucena Fishing Port Complex, except those portions which are leased to private persons or entities.

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[7] *Id.* at 710, 712-714.

[8] *Philippine Fisheries Development Authority v. Court of Appeals*, G.R. No. 150301, 2 October 2007, 534 SCRA 490.

[9] *Manila International Airport Authority v. City of Pasay*, G.R. No. 163072, 2 April 2009, 583 SCRA 234.

[10] Section 133(o) of the Local Government Code reads:

SECTION 133. *Common Limitations on the Taxing Powers of the Local Government Units*. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and *barangays* shall not extend to the levy of the following:

x x x x x x x x x

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Besides, the Lucena Fishing Port Complex is a property of public dominion intended for public use, and is therefore exempt from real property tax under Section 234(a)[11] of the Local Government Code. Properties of public dominion are owned by the State or the Republic of the Philippines.[12] Thus, Article 420 of the Civil Code provides:

> Art. 420. The following things are **property of public dominion**:
> (1) Those **intended for public use**, such as roads, canals, rivers, torrents, **ports** and bridges **constructed by the State**, banks, shores, roadsteads, and others of similar character;
> (2) Those which belong to the State, without being for public use, and are **intended for some public service** or for the **development of the national wealth**. (Emphasis supplied)

The Lucena Fishing Port Complex, which is one of the major infrastructure projects undertaken by the National Government under the Nationwide Fishing Ports Package, is devoted for public use and falls within the term "ports." The Lucena Fishing Port Complex "serves as PFDA's commitment to continuously provide post-harvest infrastructure support to the fishing industry, especially in areas where productivity among the various players in the fishing industry need to be enhanced."[13] As property of public dominion, the Lucena Fishing Port Complex is owned by the Republic of the Philippines and thus exempt from real estate tax.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 9 May 2007 of the Court of Tax Appeals in C.T.A. EB No. 193. We *DECLARE* the Lucena Fishing Port

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[11] Section 234. *Exemptions from Real Property Tax*.— The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivision except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

[12] *Manila International Airport Authority v. Court of Appeals*, G.R. No. 155650, 20 July 2006, 495 SCRA 591, 644.

[13] Lucena Fish Port Complex, <http://www.pfda.da.gov.ph/lfpc.html> (visited 13 December 2010).

Complex *EXEMPT* from real property tax imposed by the City of Lucena. We declare *VOID* all the real property tax assessments issued by the City of Lucena on the Lucena Fishing Port Complex managed by Philippine Fisheries Development Authority, *EXCEPT* for the portions that the Philippine Fisheries Development Authority has leased to private parties.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179395. December 15, 2010]

MAXWELL HEAVY EQUIPMENT CORPORATION, *petitioner, vs.* **ERIC UYCHIAOCO YU,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; THE SUPREME COURT'S JURISDICTION IS LIMITED TO REVIEWING ERRORS OF LAW THAT MIGHT HAVE BEEN COMMITTED BY THE LOWER COURT.— This Court is not a trier of facts. It is not the Court's function to analyze or weigh the evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court. In this case, the question of whether Maxwell's transactions with BPI were accommodation loans for Yu's benefit is clearly factual, and thus, beyond the Court's review.

2. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY ENTITLED TO GREAT WEIGHT AND RESPECT ON APPEAL.— [F]actual findings of the trial court,

when affirmed by the Court of Appeals, will not be disturbed by this Court. As a rule, such findings by the lower courts are entitled to great weight and respect, and are deemed final and conclusive on this Court when supported by the evidence on record. The foregoing principle applies to the present controversy.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; ARTICLE 1236 OF THE CIVIL CODE APPLIES IN CASE AT BAR.— While Maxwell is the real debtor, it was Yu who paid BPI the entire amount of Maxwell's loans. Hence, contrary to Maxwell's view, Article 1236 of the Civil Code applies. This provision reads: "The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary. Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor." The above provision grants the plaintiff (Yu) the right to recovery and creates an obligation on the part of the defendant (Maxwell) to reimburse the plaintiff. In this case, Yu paid BPI ₱8,888,932.33, representing the amount of the principal loans with interest, thereby extinguishing Maxwell's loan obligation with BPI. Pursuant to Article 1236 of the Civil Code, Maxwell, which was indisputably benefited by Yu's payment, must reimburse Yu the same amount of ₱8,888,932.33.

APPEARANCES OF COUNSEL

Reynaldo P. Melendres for petitioner.
Britanico Sarmiento & Franco Law Offices for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 21 June 2007 Decision[2] of the Court of Appeals in CA-G.R. CV No. 84522. The Court of Appeals affirmed with modification the 11 January 2005 Decision[3] of the Regional Trial Court, National Capital Judicial Region, Branch 167, Pasig City. The trial court ordered, among others, the reimbursement by petitioner Maxwell Heavy Equipment Corporation (Maxwell) of the amount of ₱8,888,932.33 to respondent Eric Uychiaoco Yu (Yu) for the latter's payment of Maxwell's loan obligation with the Bank of Philippine Islands (BPI).

The Facts

On 3 April 2001 and 2 May 2001, Maxwell obtained loans from BPI, G. Araneta Avenue Branch, in the total sum of ₱8,800,000.00 covered by two Promissory Notes and secured by a real estate mortgage over two lots registered in Yu's name. Promissory Note No. 1-6743742-001 for ₱800,000.00 was due on 26 March 2002[4] while Promissory Note No. 1-6743742-002 for ₱8,000,000.00 was due on 24 April 2002.[5] Yu signed as Maxwell's co-maker in the Promissory Note covering the ₱8,000,000 loan. It appears that Yu did not sign as co-maker in the Promissory Note for ₱800,000.

Maxwell defaulted in the payment of the loans, forcing Yu to pay BPI ₱8,888,932.33 representing the principal loan

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 156-167. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

[3] *Id.* at 104-110. Penned by Judge Alfredo C. Flores.

[4] *Id.* at 74.

[5] *Id.* at 76.

amounts with interest, through funds borrowed from his mother, Mina Yu, to prevent the foreclosure of his real properties.

Thereafter, Yu demanded reimbursement from Maxwell of the entire amount paid to BPI. However, Maxwell failed to reimburse Yu. Consequently, Yu filed with the trial court a complaint for sum of money and damages.

Maxwell denied liability for Yu's claimed amount. Maxwell countered that the transactions with BPI were merely accommodation loans purely for Yu's benefit. Maxwell likewise pointed out that Yu, having signed as co-maker, is solidarily liable for the loans. Maxwell also insisted that Yu's mother is the real payor of the loans and thus, is the real party-in-interest to institute the complaint.

The trial court ruled in favor of Yu, disposing of the case as follows:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant Maxwell Heavy Equipment Corporation ordering the latter to pay the former the following sums of money:
>
> a) The sum of Php 8,888,932.33/00, representing the principal obligation, with legal interest thereon computed at the legal rate from the time of default on 2 April 2002 until full payment thereof;
> b) The sum of Php 200,000.00, for and as reasonable attorney's fees and;
> c) Costs of suit.
>
> Bereft of evidence, the claim for moral as well as exemplary damages is hereby DENIED.
>
> Also, for lack of sufficient factual and legal basis, the counterclaim is similarly DISMISSED.
>
> SO ORDERED.[6]

On appeal, the Court of Appeals affirmed with modification the ruling of the trial court, by deleting the award of attorney's fees and specifying the rate of interest on the allegedly reimbursable amount from Maxwell.

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[6] *Id.* at 110. Penned by Judge Alfredo C. Flores

Hence, this petition.

The Ruling of the Court of Appeals

In affirming the trial court's ruling, the Court of Appeals rejected Maxwell's contention that the transactions with BPI were accommodation loans solely for Yu's benefit since (1) Maxwell was paying for the loans' interest and (2) various demand letters from BPI were addressed to Maxwell as the borrower.

The Court of Appeals gave credence to the testimonies of Yu and his mother on the liability of Maxwell for the claimed amount. On the other hand, it disbelieved the testimony of Caroline Yu, then president of Maxwell, denying Yu's entitlement to reimbursement for the payment he made to BPI since it was uncorroborated by any documentary evidence.

The dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, the appealed Decision dated January 11, 2005 is affirmed, subject to the modification that:
>
> (1) the award of attorney's fees is deleted; and
> (2) the legal rate of interest on the principal amount of ₱8,800,000.00 is twelve per cent (12%) per annum from the filing of the complaint on August 19, 2003 until the finality of this Decision. After this Decision becomes final and executory, the applicable rate shall also be twelve per cent (12%) per annum until its full satisfaction.
>
> SO ORDERED.[7]

The Issue

The main issue in this case is whether Yu is entitled to reimbursement from Maxwell for the loan payment made to BPI. This issue in turn depends on whether the transactions with BPI were accommodation loans solely for Yu's benefit.

The Ruling of the Court

The petition lacks merit.

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[7] *Id.* at 166.

This Court is not a trier of facts.[8] It is not the Court's function to analyze or weigh the evidence all over again, its jurisdiction being limited to reviewing errors of law that might have been committed by the lower court.[9]

In this case, the question of whether Maxwell's transactions with BPI were accommodation loans for Yu's benefit is clearly factual, and thus, beyond the Court's review.

Moreover, factual findings of the trial court, when affirmed by the Court of Appeals, will not be disturbed by this Court.[10] As a rule, such findings by the lower courts are entitled to great weight and respect, and are deemed final and conclusive on this Court when supported by the evidence on record.[11] The foregoing principle applies to the present controversy.

In this case, the Court of Appeals affirmed the trial court's finding that "it was Yu who accommodated Maxwell by allowing the use of his real properties as collateral [for Maxwell's loans]." The appellate court concurred with the trial court that Maxwell is the principal borrower since it was Maxwell which paid interest on the loans. Additionally, various documents designated Maxwell as borrower and communications demanding payment of the loans sent by BPI were addressed to Maxwell as the borrower, with Yu indicated only as the owner of the real properties as loan collateral.

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[8] *De Guia v. Presiding Judge, RTC Br. 12, Malolos, Bulacan*, G.R. No. 161074, 22 March 2010, 616 SCRA 284, 292; *Madrigal v. Court of Appeals*, 496 Phil. 149, 156 (2005), citing *Bernardo v. CA*, G.R. No. 101680, 7 December 1992, 216 SCRA 224 and *Remalante v. Tibe*, No. 59514, 25 February 1988, 158 SCRA 138.

[9] *Madrigal v. Court of Appeals, supra.*

[10] *Pacific Airways Corporation v. Tonda*, 441 Phil. 156, 162 (2002); *Austria v. Court of Appeals*, 384 Phil. 408, 415 (2000).

[11] *Dimaranan v. Heirs of Spouses Hermogenes Arayata and Flaviana Arayata*, G.R. No. 184193, 29 March 2010, 617 SCRA 101, 112-113; *Espinosa v. People*, G.R. No. 181071, 15 March 2010, 615 SCRA 446, 454, citing *Republic v. Casimiro*, G.R. No. 166139, 20 June 2006, 491 SCRA 499, 523.

Furthermore, we affirm the finding that Maxwell gravely failed to substantiate its claim that the loans were purely for Yu's benefit. Maxwell's evidence consisting of the testimony of Caroline Yu, Yu's spouse and then president of Maxwell, was uncorroborated.

On the other hand, Yu's and his mother's testimonies were supported by various documents establishing the real nature of the loan, and belying Maxwell's allegations. Yu presented the following: (1) Corporate Resolution to Borrow, dated 21 August 2000, where Maxwell authorized Caroline Yu to loan from BPI on its behalf; (2) the two Promissory Notes, dated 3 April 2001 and 2 May 2001, signed by Caroline Yu as Maxwell's representative; and (3) two disclosure statements, dated 3 April 2001 and 2 May 2001, on "loan/credit transaction" signed by Caroline Yu, designating Maxwell as the borrower. Based on the foregoing, it is clear that Maxwell is the principal borrower solely liable for the payment of the loans.

While Maxwell is the real debtor, it was Yu who paid BPI the entire amount of Maxwell's loans. Hence, contrary to Maxwell's view, Article 1236 of the Civil Code applies. This provision reads:

> The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.
>
> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

The above provision grants the plaintiff (Yu) the right to recovery and creates an obligation on the part of the defendant (Maxwell) to reimburse the plaintiff. In this case, Yu paid BPI ₱8,888,932.33, representing the amount of the principal loans with interest, thereby extinguishing Maxwell's loan obligation with BPI. Pursuant to Article 1236 of the Civil Code, Maxwell,

which was indisputably benefited by Yu's payment, must reimburse Yu the same amount of ₱8,888,932.33.[12]

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the 21 June 2007 Decision of the Court of Appeals in CA-G.R. CV No. 84522.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180979. December 15, 2010]

NATIONAL POWER CORPORATION, *petitioner, vs.* **TERESITA DIATO-BERNAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— In *Santos v. Committee on Claims Settlement,* the Court had occasion to delineate the distinction between a question of law and a question of fact, thus: A **question of law** exists when there is doubt or controversy on what the law is on a certain state of facts. There is a **question of fact** when the doubt or difference arises from the truth or the falsity of the allegations of facts. The Court elucidated as follows: "A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain

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[12] See *R.F.C. v. Court of Appeals,* 94 Phil. 984 (1954), cited in Aquino, The Civil Code of the Philippines, Vol. 2, p. 301. See also *Philippine Commercial International Bank v. Court of Appeals,* G.R. No. 121989, 31 January 2006, 481 SCRA 127, 138.

[*] Designated additional member per Raffle dated 2 June 2010.

set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation."

2. ID.; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; WHEN ASCERTAINED.— It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.

3. ID.; ID.; ID.; ID.; DEFINED AS THE FULL AND FAIR EQUIVALENT OF THE PROPERTY TAKEN FROM ITS OWNER BY THE EXPROPRIATOR.— Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be **real**, substantial, full, and ample. Indeed, the "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.

4. ID.; ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION.— As to the resolution of the PAC-Cavite advanced by NAPOCOR, which pegged the fair market value of the property at ₱3,500.00 per sq. m. it can only serve as one of the factors in the judicial evaluation of just compensation, along with several other considerations. NAPOCOR cannot demand that the PAC-Cavite resolution be substituted for the report of court-appointed commissioners in consonance with the firm doctrine that the determination of just compensation is a judicial function.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Franco L. Loyola for respondent.

R E S O L U T I O N

NACHURA, *J.*:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking the reversal of the September 28, 2007 Decision[1] and the December 17, 2007 Resolution[2] of the Court of Appeals (CA).

The assailed issuances affirmed the January 14, 2000 Order[3] of the Regional Trial Court (RTC), Branch 20, Imus, Cavite, which fixed the just compensation at ₱10,000.00 per square meter (sq m), in relation to the expropriation suit, entitled *"National Power Corporation v. Teresita Diato-Bernal."*

The factual antecedents are undisputed.

Petitioner National Power Corporation (NAPOCOR) is a government owned and controlled corporation created by Republic Act No. 6395,[4] as amended, for the purpose of undertaking the development of hydroelectric power throughout the Philippines. To carry out the said purpose, NAPOCOR is authorized to exercise the power of eminent domain.[5]

Respondent Teresita Diato-Bernal (respondent) is the registered owner of a 946 sq m parcel of land situated along

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Noel G. Tijam, concurring; *rollo*, pp. 8-15.

[2] *Id.* at 17.

[3] CA *rollo*, pp. 37-38.

[4] Entitled "*An Act Revising the Charter of the National Power Corporation*," effective September 10, 2001.

[5] R.A. No. 6395, Sec. 3(h).

General Aguinaldo Highway, Imus, Cavite, covered by Transfer Certificate of Title No. T-384494.[6]

In order to complete the construction of structures and steel posts for NAPOCOR's "Dasmariñas-Zapote 230 KV Transmission Line Project," it had to acquire an easement of right of way over respondent's property.[7]

Thus, on January 8, 1997, NAPOCOR filed an expropriation suit against respondent, alleging, *inter alia*, that: the project is for public purpose; NAPOCOR negotiated with respondent for the price of the property, as prescribed by law, but the parties failed to reach an agreement; and NAPOCOR is willing to deposit the amount of Eight Hundred Fifty-Three Pesos and 72/100 (₱853.72), representing the assessed value of the property for taxation purposes.[8]

Respondent moved for the action's dismissal, arguing the impropriety of the intended expropriation, and claiming that the value of her property is Twenty Thousand Pesos (₱20,000.00) per sq m for the front portion, and Eighteen Thousand Pesos (₱18,000.00) per sq m for the rear portion, and that she will lose One Hundred Fifty Thousand Pesos (₱150,000.00) per month by way of expected income if the property is expropriated.[9]

On September 25, 1998, the parties filed with the RTC a partial compromise agreement,[10] which reads:

1. That the parties, after earnest and diligent efforts, have reached an amicable settlement regarding the location and size of Pole Site No. DZ-70 to be constructed on the property of (respondent);

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[6] Records, pp. 9-10.

[7] See RTC Order dated November 24, 1998, in relation to paragraph 5 of NAPOCOR's complaint; *id.* at 2, 63.

[8] *Id.* at 1-7.

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

[10] *Id.* at 56-59.

2. That the parties have agreed that the said Pole Site No. DZ-70 shall be constructed or located on (respondent's) Lot No. 6075-B covered by Transfer Certificate of Title No. T-384494 of the Registry of Deeds for Cavite, covering a total affected area of 29.25 square meters more or less as indicated in the Sketch hereto attached as Annex "A";

3. That the case shall[,] however, proceed to trial on its merits only with respect to the question of just compensation.

The agreement was approved by the RTC in its Order dated September 25, 1998.[11]

With the first phase of the expropriation proceedings having been laid to rest by the partial compromise agreement, the RTC proceeded to determine the amount of just compensation. To assist in the evaluation of the fair market value of the subject property, the RTC appointed three (3) commissioners, *viz.:* (1) the Provincial Assessor of Cavite; (2) the Municipal Assessor of Imus, Cavite, upon recommendation of NAPOCOR; and (3) Soledad Zamora, respondent's representative.[12] The commissioners submitted their report to the RTC on September 14, 1999. In the main, they recommended that the just compensation due from NAPOCOR be pegged at ₱10,000.00 per sq m, based on the property's fair market value.[13]

NAPOCOR filed an Opposition[14] to the Commissioner's Valuation Report, asserting that it was not substantiated by any official documents or registered deeds of sale of the subject property's neighboring lots. NAPOCOR invoked our ruling in *Rep. of the Phil. v. Santos,*[15] wherein we held that a commissioner's report that is not based on any documentary evidence is hearsay and should be disregarded by the court.

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

[12] *Id.* at 67, 78.

[13] *Rollo,* pp. 53-56.

[14] Records, pp. 93-95.

[15] 225 Phil. 29, 34 (1986).

Lastly, NAPOCOR claimed that the just compensation for the expropriated property should be ₱3,500.00 per sq m, based on Resolution No. 08-95 dated October 23, 1995, enacted by the Provincial Appraisal Committee of Cavite (PAC-Cavite).

On January 14, 2000, the RTC issued an Order adopting the recommendation of the commissioners, *viz.*:

> To the mind of the Court, the appraisal made by the Commissioners is just and reasonable. It is of judicial notice that land values in Cavite ha[ve] considerably increased. Such being the case, the just compensation is fixed at ₱10,000.00 per sq. meter.[16]

Dissatisfied, NAPOCOR sought recourse with the CA, reiterating the arguments raised in its Opposition.

On September 28, 2007, the CA rendered its Decision affirming the RTC's judgment.[17] Its motion for reconsideration[18] having been denied,[19] NAPOCOR interposed the present petition.

NAPOCOR, through the Office of the Solicitor General, repleads its contentions before the courts *a quo* and adds that the CA failed to explain why the value of the subject property went up by almost 200% in a span of two (2) years - ₱3,500.00 per sq m in 1995 to ₱10,000.00 per sq m at the time of the filing of the expropriation complaint in 1997.

For her part, respondent prays for the dismissal of the petition on the ground that it raises purely factual questions which are beyond the province of a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court.

The petition is meritorious.

We shall first address the procedural infirmity raised by respondent.

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[16] *Supra* note 3, at 38.

[17] *Supra* note 1.

[18] CA *rollo*, pp. 86-90.

[19] *Supra* note 2.

In *Santos v. Committee on Claims Settlement*,[20] the Court had occasion to delineate the distinction between a question of law and a question of fact, thus: A **question of law** exists when there is doubt or controversy on what the law is on a certain state of facts. There is a **question of fact** when the doubt or difference arises from the truth or the falsity of the allegations of facts.

The Court elucidated as follows:

> A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted. A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of the witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[21]

In this case, it is clear that NAPOCOR raises a question of law, that is, whether or not the resolution of the PAC-Cavite should prevail over the valuation report of the court-appointed commissioners. The issue does not call for a recalibration or reevaluation of the evidence submitted by the parties, but rather the determination of whether the pertinent jurisprudence and laws cited by NAPOCOR in support of its argument are applicable to the instant case.

On the substantive issue, the Court finds that the CA and the RTC erred in relying on the unsubstantiated and insufficient findings contained in the commissioners' report.

In arriving at the ₱10,000.00 per sq m market value of the expropriated property, the commissioners utilized the following factors:

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[20] G.R. No. 158071, April 2, 2009, 583 SCRA 152.

[21] *Id.* at 159-160.

I. PROPERTY LOCATION

The property subject of the appraisal is situated along Gen. Aguinaldo Highway, Brgy. Anabu, Municipality of Imus, Province of Cavite, consisting of 946 sq. m. more or less, identified as Lot 6075-B with Flat Terrain approximately 5 kms. Distance Southwest of Imus Town proper, about 500 to 600 m. from the entrance gate of Orchard Club and San Miguel Yamamura Corp. from Southeast around 1 km. [t]o 1.5 kms. From EMI (Yasaki), Makro, and Robinsons Department Store.

II. NEGHBORHOOD (sic) **DESCRIPTION**

The neighborhood particularly in the immediate vicinity, is within a mixed residential and commercial area situated in the Southern Section of the Municipality of Imus which is transversed by Gen. Emilio Aguinaldo Highway w[h]ere several residential subdivisions and commercial establishments are located.

Residential houses in the area are one to two storey in height constructed of concrete and wood materials belonging to families in the middle income bracket, while commercial buildings mostly located along Gen. Emilio Aguinaldo Highway.

Some of the important landmarks and commercial establishments in the immediate vicinity are:

Newly constructed Robinsons Department Store
Makro
Caltex Gasoline station and Shell Gasoline station
Goldbomb Const. Corp.
EMI (Yasaki)
Pallas Athena Subd.
and various Commercial and Savings Banks

Community [c]enters such as school, churches, public markets, shopping malls, banks and gasoline stations are easily accessible from the subject property.

Convenience facility such as electricity, telephone service as well as pipe potable water supply system are all available along Gen. Aguinaldo Highway

x x x x x x x x x

IV. VALUATION OF LAND MARKET DATA

This method of valuation involves the research and investigation of market and sales data of the properties comparable with the property under appraisal.

These other properties are compare[d] with the subject property as to location and physical characteristics. Adjustment of their selling prices [is] then made with respect to the said comparative elements as well as time compensate for the increase or decrease in value.

Based on our investigations and verifications of market sales data and price listings of the neighborhood where the property under appraisal is located indicates land value within the range of ₱10,000.00 to ₱15,000.00 per square meter for residential lots while commercial lots along Gen. E. Aguinaldo Highway are range[d] from ₱10,000.00 to ₱20,000.00 per square meters (*sic*).

With this data and making the proper adjustment with respect to the location, area, shape, accessibility, and the highest and best use of the subject property, we estimate the market value of the subject land at ₱10,000.00 per square meter, as of this date September 10, 1999.[22]

It is evident that the above conclusions are highly speculative and devoid of any actual and reliable basis. First, the market values of the subject property's neighboring lots were mere estimates and unsupported by any corroborative documents, such as sworn declarations of realtors in the area concerned, tax declarations or zonal valuation from the Bureau of Internal Revenue for the contiguous residential dwellings and commercial establishments. The report also failed to elaborate on how and by how much the community centers and convenience facilities enhanced the value of respondent's property.[23] Finally, the market sales data and price listings alluded to in the report were not even appended thereto.

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[22] *Rollo,* pp. 54-56.

[23] See *National Power Corporation v. Dela Cruz,* G.R. No. 156093, February 2, 2007, 514 SCRA 56.

As correctly invoked by NAPOCOR, a commissioners' report of land prices which is not based on any documentary evidence is manifestly hearsay and should be disregarded by the court.[24]

The trial court adopted the flawed findings of the commissioners hook, line, and sinker. It did not even bother to require the submission of the alleged "market sales data" and "price listings." Further, the RTC overlooked the fact that the recommended just compensation was gauged as of September 10, 1999 or more than two years after the complaint was filed on January 8, 1997. It is settled that just compensation is to be ascertained as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings. Where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.[25] Clearly, the recommended just compensation in the commissioners' report is unacceptable.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation" and to convey thereby the idea that the equivalent to be rendered for the property to be taken shall be **real**, substantial, full, and ample.[26] Indeed, the "just"-ness of the compensation can only be attained by using reliable and actual data as bases in fixing the value of the condemned property.

The trial court should have been more circumspect in its evaluation of just compensation due the property owner, considering that eminent domain cases involve the expenditure of public funds.

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[24] *Rep. of the Phil. v. Santos, supra* note 15, at 34.

[25] *B.H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, December 14, 1992, 216 SCRA 584, 586-587.

[26] *Republic v. Libunao*, G.R. No. 166553, July 30, 2009, 594 SCRA 363, 376.

As to the resolution of the PAC-Cavite advanced by NAPOCOR, which pegged the fair market value of the property at ₱3,500.00 per sq m, it can only serve as one of the factors in the judicial evaluation of just compensation, along with several other considerations.[27] NAPOCOR cannot demand that the PAC-Cavite resolution be substituted for the report of court-appointed commissioners in consonance with the firm doctrine that the determination of just compensation is a judicial function.[28]

Hence, the legal basis for the determination of just compensation being insufficient, the ruling of the RTC and the affirming Decision and Resolution of the CA ought to be set aside.

WHEREFORE, the petition is *GRANTED*. The January 14, 2000 Order of the Regional Trial Court, Branch 120, Imus, Cavite, and the September 28, 2007 Decision and the December 17, 2007 Resolution of the Court of Appeals are hereby *SET ASIDE*. This case is remanded to the trial court for the proper determination of just compensation, in conformity with this Resolution. No costs.

SO ORDERED.

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

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[27] *Id.*

[28] *Id.* at 378.

FIRST DIVISION

[G.R. No. 182147. December 15, 2010]

ARNEL U. TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY, and ALVIN TY, *petitioners, vs.* **NBI SUPERVISING AGENT MARVIN E. DE JEMIL, PETRON GASUL DEALERS ASSOCIATION, and TOTALGAZ DEALERS ASSOCIATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE FOR THE FILING OF INFORMATION IS SUBJECT TO JUDICIAL REVIEW WHERE THE SAME IS TAINTED WITH GRAVE ABUSE OF DISCRETION.— While it is the consistent principle in this jurisdiction that the determination of probable cause is a function that belongs to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing to the corresponding information or move for the dismissal of the case; such determination is subject to judicial review where it is established that grave abuse of discretion tainted the determination.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE IMPLIES "PROBABILITY" OF GUILT.— Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. After all, probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief—probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ACT INVOLVING PROHIBITED ACTS RELATIVE TO PETROLEUM (BP 33);

ILLEGAL TRADING IN PETROLEUM; PRESENT WHERE THE REFILLING OF BRANDED LPG CYLINDERS IS MADE WITHOUT AUTHORIZATION.— [T]hat the filled LPG cylinders were indeed already loaded on customers' trucks when confiscated, the fact that these refilled LPG cylinders consisting of nine branded LPG cylinders, specifically *Totalgaz, Petron Gasul* and *Shellane*, tends to show that Omni indeed refilled these branded LPG cylinders without authorization from Total, Petron and Pilipinas Shell. Such a fact is bolstered by the test-buy conducted by Agent De Jemil and NBI confidential agent Kawada: Omni's unauthorized refilling of branded LPG cylinders, contrary to Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended.

4. ID.; ID.; ID.; ID.; ID.; THE SAME CONSIDERED AN INFRINGEMENT OF PROPERTY RIGHTS AKIN TO UNAUTHORIZED SALE OF BRANDED LPG CYLINDERS. — In *Yao, Sr. v. People*, a case involving criminal infringement of property rights under Sec. 155 of RA 8293, in affirming the courts *a quo's* determination of the presence of probable cause, this Court held that from Sec. 155.1 of RA 8293 can be gleaned that "mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is *likely* to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement." The Court affirmed the presence of infringement involving the **unauthorized sale** of *Gasul* and *Shellane* LPG cylinders and the **unauthorized refilling** of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

5. ID.; ID.; ID.; ID.; ID.; SEARCH WARRANT MAY BE DIRECTED TO THE PERSON IN CONTROL OF THE BRANDED LPG TO BE SEIZED, AS OWNERSHIP THEREOF UNDER BP 33 IS OF NO CONSEQUENCE; FINDING OF PROBABLE CAUSE, UPHELD.— The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence. The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no

consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized. Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound. In fine, we also note that among those seized by the NBI are 16 LPG cylinders bearing the embossed brand names of *Shellane*, *Gasul* and *Totalgaz* but were marked as Omnigas. Evidently, this pernicious practice of tampering or changing the appearance of a branded LPG cylinder to look like another brand violates the brand owners' property rights as *infringement* under Sec. 155.1 of RA 8293. Moreover, tampering of LPG cylinders is a mode of perpetrating the criminal offenses under BP 33, as amended, and clearly enunciated under DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation. Foregoing considered, in the backdrop of the quantum of evidence required to support a finding of probable cause, we agree with the appellate court and the Office of the Chief State Prosecutor, which conducted the preliminary investigation, that there exists probable cause for the violation of Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended.

6. ID.; ID.; ID.; INCLUDES EVEN A SINGLE UNDERFILLING OF LPG CYLINDER.— [A] single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*, the Court affirmed the validity of DOE Circular No. 2000-06-010 which **provided penalties on a per cylinder basis for each violation.** x x x The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of **any act** as mandated under Sec. 4 of BP 33, as amended.

7. ID.; ID.; ID.; PERSONS CRIMINALLY LIABLE FOR THE VIOLATION OF BP 33.— Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus: x x x the persons who may be held liable for violations of the law, *viz*: (1) the president, (2) general manager, (3) managing partner, (4) such officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread

of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

APPEARANCES OF COUNSEL

Dulay Pagunsan & Ty Law Offices for petitioners.
Joaquin Adarlo & Caoile for respondents.
CVCLAW Center for respondent intervenor.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioners seek the reversal of the Decision[1] dated September 28, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 98054, which reversed and set aside the Resolutions dated October 9, 2006[2] and December 14, 2006[3] of the Secretary of Justice, and reinstated the November 7, 2005 Joint Resolution[4] of the Office of the Chief State Prosecutor. Petitioners assail also the CA Resolution[5] dated March 14, 2008, denying their motion for reconsideration.

The Facts

Petitioners are stockholders of Omni Gas Corporation (Omni) as per Omni's General Information Sheet[6] (GIS) dated March 6,

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[1] *Rollo*, pp. 72-92. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Andres B. Reyes and Arcangelita Romilla Lontok.

[2] *Id.* at 375-380. Penned by DOJ Undersecretary Ernesto L. Pineda.

[3] *Id.* at 417-418. Penned by DOJ Secretary Raul M. Gonzalez.

[4] *Id.* at 269-274.

[5] *Id.* at 61-63.

[6] *Id.* at 112-115.

2004 submitted to the Securities and Exchange Commission (SEC). Omni is in the business of trading and refilling of Liquefied Petroleum Gas (LPG) cylinders and holds Pasig City Mayor's Permit No. RET-04-001256 dated February 3, 2004.

The case all started when Joaquin Guevara Adarlo & Caoile Law Offices (JGAC Law Offices) sent a letter dated March 22, 2004[7] to the NBI requesting, on behalf of their clients Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc., and Totalgaz Dealers Association, Inc., for the surveillance, investigation, and apprehension of persons or establishments in Pasig City that are engaged in alleged illegal trading of petroleum products and underfilling of branded LPG cylinders in violation of *Batas Pambansa Blg*. (BP) 33,[8] as amended by Presidential Decree No. (PD) 1865.[9]

Earlier, the JGAC Law Offices was furnished by several petroleum producers/brand owners their respective certifications on the dealers/plants authorized to refill their respective branded LPG cylinders, to wit: (1) On October 3, 2003, Pilipinas Shell Petroleum Corporation (Pilipinas Shell) issued a certification[10] of the list of entities duly authorized to refill *Shellane* LPG cylinders; (2) on December 4, 2003, Petron Corporation (Petron) issued a certification[11] of their dealers in Luzon, Visayas, and Mindanao authorized to refill *Petron Gasul* LPG cylinders; and (3) on January 5, 2004, Total (Philippines) Corporation (Total)

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[7] *Id.* at 107-108.

[8] "An Act Defining and Penalizing certain Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties therefor and for Other Purposes," promulgated on June 6, 1979.

[9] "Amending Batas Pambansa Blg. 33, x x x, by Including Short-Selling and Adulteration of Petroleum and Petroleum Products and Other Acts in the Definition of Prohibited Acts, Increasing the Penalties therein, and for Other Purposes," issued on May 25, 1983.

[10] *Rollo*, p. 117.

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

issued two certifications[12] of the refilling stations and plants authorized to refill their *Totalgaz* and *Superkalan Gaz* LPG cylinders.

Agents De Jemil and Kawada attested to conducting surveillance of Omni in the months of March and April 2004 and doing a test-buy on April 15, 2004. They brought eight branded LPG cylinders of *Shellane*, *Petron Gasul*, *Totalgaz*, and *Superkalan Gaz* to Omni for refilling. The branded LPG cylinders were refilled, for which the National Bureau of Investigation (NBI) agents paid PhP 1,582 as evidenced by Sales Invoice No. 90040[13] issued by Omni on April 15, 2004. The refilled LPG cylinders were without LPG valve seals and one of the cylinders was actually underfilled, as found by LPG Inspector Noel N. Navio of the Liquefied Petroleum Gas Industry Association (LPGIA) who inspected the eight branded LPG cylinders on April 23, 2004 which were properly marked by the NBI after the test-buy.

The NBI's test-buy yielded positive results for violations of BP 33, Section 2(a) in relation to Secs. 3(c) and 4, *i.e.*, refilling branded LPG cylinders without authority; and Sec. 2(c) in relation to Sec. 4, *i.e.*, underdelivery or underfilling of LPG cylinders. Thus, on April 28, 2004, Agent De Jemil filed an Application for Search Warrant (With Request for Temporary Custody of the Seized Items)[14] before the Regional Trial Court (RTC) in Pasig City, attaching, among others, his affidavit[15] and the affidavit of Edgardo C. Kawada,[16] an NBI confidential agent.

On the same day of the filing of the application for search warrants on April 28, 2004, the RTC, Branch 167 in Pasig City

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[12] *Id.* at 120-122.

[13] *Id.* at 123.

[14] *Id.* at 127-129.

[15] *Id.* at 132-134.

[16] *Id.* at 135-137.

issued Search Warrants No. 2624[17] and 2625.[18] The NBI served the warrants the next day or on April 29, 2004 resulting in the seizure of several items from Omni's premises duly itemized in the NBI's Receipt/Inventory of Property/Item Seized.[19] On May 25, 2004, Agent De Jemil filed his Consolidated Return of Search Warrants with *Ex-Parte* Motion to Retain Custody of the Seized Items[20] before the RTC Pasig City.

Subsequently, Agent De Jemil filed before the Department of Justice (DOJ) his Complaint-Affidavits against petitioners for: (1) *Violation of Section 2(a), in relation to Sections 3(c) and 4, of B.P. Blg. 33, as amended by P.D. 1865*;[21] and (2) *Violation of Section 2(c), in relation to Section 4, of B.P. Blg. 33, as amended by P.D. 1865*,[22] docketed as I.S. Nos. 2004-616 and 2004-618, respectively.

During the preliminary investigation, petitioners submitted their Joint Counter-Affidavit,[23] which was replied[24] to by Agent De Jemil with a corresponding rejoinder[25] from petitioners.

The Ruling of the Office of the Chief State Prosecutor in I.S. No. 2004-616 and I.S. No. 2004-618

On November 7, 2005, the 3rd Assistant City Prosecutor Leandro C. Catalo of Manila issued a Joint Resolution,[26] later approved by the Chief State Prosecutor Jovencito R. Zuño upon the recommendation of the Head of the Task Force on Anti-

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

[18] *Id.* at 150-151.

[19] *Id.* at 140.

[20] *Id.* at 144-147, dated April 30, 2004.

[21] *Id.* at 102-106, dated May 31, 2004.

[22] *Id.* at 156-161, dated May 31, 2004.

[23] *Id.* at 214-217, dated June 28, 2004.

[24] *Id.* at 219-225, Reply-Affidavit, dated July 9, 2004.

[25] *Id.* at 226-229, Joint Rejoinder-Affidavit, dated July 30, 2004.

[26] *Supra* note 4.

Intellectual Property Piracy (TFAIPP), Assistant Chief State Prosecutor Leah C. Tanodra-Armamento, finding probable cause to charge petitioners with violations of pertinent sections of BP 33, as amended, resolving as follows:

> WHEREFORE, premises considered, it is hereby recommended that two (2) Informations for violations of Section 2 [a] (illegal trading in petroleum and/or petroleum products) and Section 2 [c] (underfilling of LPG cylinders), both of Batas Pambansa Bilang 33, as amended, be filed against respondents [herein petitioners] ARNEL TY, MARIE ANTONETTE TY, JASON ONG, WILLY DY and ALVIN TY.[27]

Assistant City Prosecutor Catalo found the existence of probable cause based on the evidence submitted by Agent De Jemil establishing the fact that Omni is not an authorized refiller of *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz* LPG cylinders. Debunking petitioners' contention that the branded LPG cylinders are already owned by consumers who are free to do with them as they please, the law is clear that the stamped markings on the LPG cylinders show who are the real owners thereof and they cannot be refilled sans authority from Pilipinas Shell, Petron or Total, as the case may be. On the underfilling of one LPG cylinder, the findings of LPG Inspector Navio of the LPGIA were uncontroverted by petitioners.

Petitioners' motion for reconsideration,[28] was denied through a Resolution[29] by the Office of the Chief State Prosecutor issued on May 3, 2006.

In time, petitioners appealed to the Office of the Secretary of Justice.[30]

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[27] *Rollo*, p. 273.

[28] *Id.* at 275-289, dated February 8, 2006.

[29] *Id.* at 318-320.

[30] *Id.* at 321-338, Petition for Review, dated June 1, 2006.

The Ruling of the DOJ Secretary in I.S. No. 2004-616 and I.S. No. 2004-618

On October 9, 2006, the Office of the Secretary of Justice issued a Resolution[31] reversing and setting aside the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor, the dispositive portion of which reads:

> WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The Chief State Prosecutor is directed to cause the withdrawal of the informations for violations of Sections 2(a) and 2(c) of B.P. Blg. 33, as amended by P.D. 1865, against respondents Arnel Ty, Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty and report the action taken within ten (10) days from receipt hereof.
>
> SO ORDERED.[32]

The Office of the Secretary of Justice viewed, *first*, that the underfilling of one of the eight LPG cylinders was an isolated incident and cannot give rise to a conclusion of underfilling, as the phenomenon may have been caused by human error, oversight or technical error. Being an isolated case, it ruled that there was no showing of a clear pattern of deliberate underfilling. *Second*, on the alleged violation of refilling branded LPG cylinders sans written authority, it found no sufficient basis to hold petitioners responsible for violation of Sec. 2 (c) of BP 33, as amended, since there was no proof that the branded LPG cylinders seized from Omni belong to another company or firm, holding that the simple fact that the LPG cylinders with markings or stamps of other petroleum producers cannot by itself prove ownership by said firms or companies as the consumers who take them to Omni fully owned them having purchased or acquired them beforehand.

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[31] *Supra* note 2.

[32] *Rollo*, p. 379.

Agent De Jemil moved but was denied reconsideration[33] through another Resolution[34] dated December 14, 2006 prompting him to repair to the CA via a petition for *certiorari*[35] under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 98054.

The Ruling of the CA

The Office of the Solicitor General (OSG), in its Comment[36] on Agent De Jemil's appeal, sought the dismissal of the latter's petition viewing that the determination by the Office of the Secretary of Justice of probable cause is entitled to respect owing to the exercise of his prerogative to prosecute or not.

On August 31, 2007, Petron filed a Motion to Intervene and to Admit Attached Petition-in-Intervention[37] and Petition-in-Intervention[38] before the CA in CA-G.R. SP No. 98054. And much earlier, the Nationwide Association of Consumers, Inc. (NACI) also filed a similar motion.

On September 28, 2007, the appellate court rendered the assailed Decision[39] revoking the resolutions of the Office of the Secretary of Justice and reinstated the November 7, 2005 Joint Resolution of the Office of the Chief State Prosecutor. The *fallo* reads:

WHEREFORE, the instant petition is **GRANTED**. The assailed resolutions dated October 9, 2006 and December 14, 2006 are hereby **REVERSED** and **SET ASIDE**. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor finding probable

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[33] *Id.* at 381-309, Motion for Reconsideration (Re: Resolution dated 9 October 2006), dated October 20, 2006.

[34] *Supra* note 3.

[35] *Rollo*, pp. 419-459.

[36] *Id.* at 490-499, dated May 8, 2007.

[37] *Id.* at 811-826, dated August 30, 2007.

[38] *Id.* at 827-855, dated August 30, 2007.

[39] *Supra* note 1.

cause against private respondents Arnel Ty, Marie Antonette Ty, Jason Ong, Willy Dy, and Alvin Ty is hereby REINSTATED.

SO ORDERED.[40]

Citing Sec. 1 (1) and (3) of BP 33, as amended, which provide for the presumption of underfilling, the CA held that the actual underfilling of an LPG cylinder falls under the prohibition of the law which does not require for the underfilling to be substantial and deliberate.

Moreover, the CA found strong probable violation of "refilling of another company's or firm's cylinders without such company's or firm's written authorization" under Sec. 3 (c) of BP 33, as amended. The CA relied on the affidavits of Agents De Jemil and Kawada, the certifications from various LPG producers that Omni is not authorized to refill their branded LPG cylinders, the results of the test-buy operation as attested to by the NBI agents and confirmed by the examination of LPG Inspector Navio of the LPGIA, the letter-opinion[41] of the Department of Energy (DOE) to Pilipinas Shell confirming that branded LPG cylinders are properties of the companies whose stamp markings appear thereon, and Department Circular No. 2000-05-007[42] of the DOE on the required stamps or markings by the manufacturers of LPG cylinders.

After granting the appeal of Agent De Jemil, however, the motions to intervene filed by Petron and NACI were simply noted by the appellate court.

Petitioners' motion for reconsideration was rebuffed by the CA through the equally assailed March 14, 2008 Resolution.[43]

Thus, the instant petition.

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[40] *Rollo*, pp. 91-92.

[41] *Id.* at 565-568, signed by DOE Secretary Vincent S. Perez, dated December 9, 2004.

[42] *Id.* at 361, issued by DOE Secretary Mario V. Tiaoqui.

[43] *Supra* note 5.

The Issues

I. WHETHER OR NOT RESPONDENTS WERE ENTITLED TO THE SPECIAL CIVIL ACTION OF *CERTIORARI* IN THE COURT OF APPEALS.

II. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(A) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

III. WHETHER OR NOT UNDER THE CIRCUMSTANCES THERE WAS PROBABLE CAUSE TO BELIEVE THAT PETITIONERS VIOLATED SECTION 2(C) OF BATAS PAMBANSA BLG. 33, AS AMENDED.

IV. WHETHER OR NOT PETITIONERS CAN BE HELD LIABLE UNDER BATAS PAMBANSA BLG. 33, AS AMENDED, FOR BEING MERE DIRECTORS, NOT ACTUALLY IN CHARGE OF THE MANAGEMENT OF THE BUSINESS AFFAIRS OF THE CORPORATION.[44]

The foregoing issues can be summarized into two core issues: *first*, whether probable cause exists against petitioners for violations of Sec. 2 (a) and (c) of BP 33, as amended; and *second*, whether petitioners can be held liable therefor. We, however, will tackle at the outset the sole procedural issue raised: the propriety of the petition for *certiorari* under Rule 65 availed of by public respondent Agent De Jemil to assail the resolutions of the Office of the Secretary of Justice.

Petron's Comment-in-Intervention

On April 14, 2009, Petron entered its appearance by filing a Motion for Leave to Intervene and to Admit Comment-in-Intervention[45] and its Comment-in-Intervention [To petition for Review on *Certiorari* dated 13 May 2008].[46] It asserted vested interest in the seizure of several *Gasul* LPG cylinders and the

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[44] *Rollo*, p. 44.

[45] *Id.* at 726-745, dated April 13, 2009.

[46] *Id.* at 749-772, dated April 13, 2009.

right to prosecute petitioners for unauthorized refilling of its branded LPG cylinders by Omni. Petitioners duly filed their Comment/Opposition[47] to Petron's motion to intervene. It is clear, however, that Petron has substantial interest to protect in so far as its business relative to the sale and refilling of *Petron Gasul* LPG cylinders is concerned, and therefore its intervention in the instant case is proper.

The Court's Ruling

We partially grant the petition.

Procedural Issue: Petition for *Certiorari* under Rule 65 Proper

Petitioners raise the sole procedural issue of the propriety of the legal remedy availed of by public respondent Agent De Jemil. They strongly maintain that the Office of the Secretary of Justice properly assumed jurisdiction and did not gravely abuse its discretion in its determination of lack of probable cause—the exercise thereof being its sole prerogative—which, they lament, the appellate court did not accord proper latitude. Besides, they assail the non-exhaustion of administrative remedies when Agent De Jemil immediately resorted to court action through a special civil action for *certiorari* under Rule 65 before the CA without first appealing the resolutions of the Office of the Secretary of Justice to the Office of the President (OP).

We cannot agree with petitioners.

For one, while it is the consistent principle in this jurisdiction that the determination of probable cause is a function that belongs to the public prosecutor[48] and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding

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[47] *Id.* at 961-971, Comment/Opposition (To the Motion for Leave to Intervene and to Admit Attached Comment-in-Intervention), dated June 29, 2009.

[48] *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 291.

information or move for the dismissal of the case;[49] such determination is subject to judicial review where it is established that grave abuse of discretion tainted the determination.

For another, there is no question that the Secretary of Justice is an alter ego of the President who may opt to exercise or not to exercise his or her power of review over the former's determination in criminal investigation cases. As aptly noted by Agent De Jemil, the determination of probable cause by the Secretary of Justice is, under the doctrine of qualified political agency, presumably that of the Chief Executive unless disapproved or reprobated by the latter.

Chan v. Secretary of Justice[50] delineated the proper remedy from the determination of the Secretary of Justice. Therein, the Court, after expounding on the policy of non-interference in the determination of the existence of probable cause absent any showing of arbitrariness on the part of the public prosecutor and the Secretary of Justice, however, concluded, citing *Alcaraz v. Gonzalez*[51] and *Preferred Home Specialties, Inc. v. Court of Appeals*,[52] that an aggrieved party from the resolution of the Secretary of Justice may directly resort to judicial review on the ground of grave abuse of discretion, thus:

> x x x [T]he **findings of the Justice Secretary may be reviewed through a petition for *certiorari* under Rule 65** based on the allegation that he **acted with grave abuse of discretion**. **This remedy is available to the aggrieved party**.[53] (Emphasis supplied.)

It is thus clear that Agent De Jemil, the aggrieved party in the assailed resolutions of the Office of the Secretary of Justice,

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[49] *Reyes v. Pearlbank Securities, Inc.*, G.R. No. 171435, July 30, 2008, 560 SCRA 518, 535; citing *Advincula v. Court of Appeals*, G.R. No. 131144, October 18, 2000, 343 SCRA 583, 589-290 and *Punzalan v. Dela Peña*, G.R. No. 158543, July 21, 2004, 434 SCRA 601.

[50] G.R. No. 147065, March 14, 2008, 548 SCRA 337.

[51] G.R. No. 164715, September 20, 2006, 502 SCRA 518.

[52] G.R. No. 163593, December 16, 2005, 478 SCRA 387.

[53] *Chan v. Secretary of Justice*, *supra* note 50, at 350.

availed of and pursued the proper legal remedy of a judicial review through a petition for *certiorari* under Rule 65 in assailing the latter's finding of lack of probable cause on the ground of grave abuse of discretion.

First Core Issue: Existence of Probable Cause

Petitioners contend that there is no probable cause that Omni violated Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended, prohibiting the refilling of another company's or firm's LPG cylinders without its written authorization. *First*, the branded LPG cylinders seized were not traded by Omni as its representative annotated in the NBI receipt of seized items that the filled LPG cylinders came from customers' trucks and the empty ones were taken from the warehouse or swapping section of the refilling plant and not from the refilling section. *Second*, the branded LPG cylinders are owned by end-user customers and not by the major petroleum companies, *i.e.*, Petron, Pilipinas Shell and Total. And even granting arguendo that Omni is selling these LPG cylinders, still there cannot be a *prima facie* case of violation since there is no proof that the refilled branded LPG cylinders are owned by another company or firm.

Third, granting that Petron, Total and Pilipinas Shell still own their respective branded LPG cylinders already sold to consumers, still such fact will not bind third persons, like Omni, who is not privy to the agreement between the buying consumers and said major petroleum companies. Thus, a subsequent transfer by the customers of Petron, Total and Pilipinas Shell of the duly marked or stamped LPG cylinders through swapping, for example, will effectively transfer ownership of the LPG cylinders to the transferee, like Omni.

Fourth, LPG cylinder exchange or swapping is a common industry practice that the DOE recognizes. They point to a series of meetings conducted by the DOE for institutionalizing the validity of swapping of all and any kind of LPG cylinders among the industry players. The meetings resulted in a draft Memorandum of Agreement (MOA) which unfortunately was not signed due to the withdrawal of petroleum major players

Petron, Total and Pilipinas Shell. Nonetheless, the non-signing of the MOA does not diminish the fact of the recognized industry practice of cylinder exchange or swapping. Relying on Republic Act No. (RA) 8479,[54] petitioners maintain that said law promotes and encourages the entry of new participants in the petroleum industry such as Omni. And in furtherance of this mandate is the valid practice of cylinder exchange or swapping in the LPG industry.

We are not persuaded by petitioners' strained rationalizations.

Probable violation of Sec. 2 (a) of BP 33, amended

First. The test-buy conducted on April 15, 2004 by the NBI agents, as attested to by their respective affidavits, tends to show that Omni illegally refilled the eight branded LPG cylinders for PhP 1,582. This is a clear violation of Sec. 2 (a), in relation to Secs. 3 (c) and 4 of BP 33, as amended. It must be noted that the criminal complaints, as clearly shown in the complaint-affidavits of Agent De Jemil, are not based solely on the seized items pursuant to the search warrants but also on the test-buy earlier conducted by the NBI agents.

Second. The written certifications from Pilipinas Shell, Petron and Total show that Omni has no written authority to refill LPG cylinders, embossed, marked or stamped *Shellane*, *Petron Gasul*, *Totalgaz* and *Superkalan Gaz*. In fact, petitioners neither dispute this nor claim that Omni has authority to refill these branded LPG cylinders.

Third. Belying petitioners' contention, the seized items during the service of the search warrants tend to show that Omni illegally refilled branded LPG cylinders without authority.

On April 29, 2004, the NBI agents who served the search warrants on Omni seized the following:

Quantity/Unit	Description
7 LPG cylinders	*Totalgaz*, 11.0 kg [filled]
1 LPG cylinder	*Petron Gasul*, 11.0 kg [filled]

[54] Downstream Oil Industry Deregulation Act of 1998.

1 LPG cylinder	*Shellane*, 11.0 kg [filled]
29 LPG cylinders	*Superkalan Gaz*, 2.7 kg [empty]
17 LPG cylinders	*Petron Gasul*, 11.0 kg [emptly]
8 LPG cylinders	Marked as *Omnigas* with *Shell* emboss, 11.0 kg [empty]
5 LPG cylinders	Marked as *Omnigas* with *Totalgaz* emboss, 11.0 kg [empty]
23 LPG cylinders	*Shellane*, 11.0 kg [empty]
3 LPG cylinders	Marked as *Omnigas* with *Gasul* emboss, 11.0 kg [empty]
21 LPG cylinders	*Totalgaz*, 11.0 kg [empty]

The foregoing list is embodied in the NBI's Receipt/Inventory of Property/Item Seized[55] signed by NBI Agent Edwin J. Roble who served and implemented the search warrants. And a copy thereof was duly received by Atty. Allan U. Ty, representative of Omni, who signed the same "under protest" and made the annotation at the bottom part thereon: "The above items/cylinders were taken at customers' trucks and the empty cylinders taken at the warehouse (swapping section) of the company."[56]

Even considering that the filled LPG cylinders were indeed already loaded on customers' trucks when confiscated, yet the fact that these refilled LPG cylinders consisting of nine branded LPG cylinders, specifically *Totalgaz, Petron Gasul* and *Shellane*, tends to show that Omni indeed refilled these branded LPG cylinders without authorization from Total, Petron and Pilipinas Shell. Such a fact is bolstered by the test-buy conducted by Agent De Jemil and NBI confidential agent Kawada: Omni's unauthorized refilling of branded LPG cylinders, contrary to Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Said provisos provide:

Sec. 2. Prohibited Acts.—The following acts are prohibited and penalized:

(a) **Illegal trading in petroleum and/or petroleum products**;

x x x x x x x x x

[55] *Supra* note 19.

[56] *Rollo*, p. 140.

Sec. 3. Definition of terms.—For the purpose of this Act, the following terms shall be construed to mean:

Illegal trading in petroleum and/or petroleum products—

x x x x x x x x x

(c) **Refilling of liquefied petroleum gas cylinders** without authority from said Bureau, or refilling **of another company's or firm's cylinders without such company's or firm's written authorization**; (Emphasis supplied.)

As petitioners strongly argue, even if the branded LPG cylinders were indeed owned by customers, such fact does not authorize Omni to refill these branded LPG cylinders without written authorization from the brand owners Pilipinas Shell, Petron and Total. In *Yao, Sr. v. People*,[57] a case involving criminal infringement of property rights under Sec. 155 of RA 8293,[58] in affirming the courts *a quo*'s determination of the presence of probable cause, this Court held that from Sec. 155.1[59] of RA 8293 can be gleaned that "mere unauthorized use of a container bearing a registered trademark in connection with the sale, distribution or advertising of goods or services which is *likely* to cause confusion, mistake or deception among the buyers/consumers can be considered as trademark infringement."[60] The Court affirmed the presence of infringement involving the **unauthorized sale** of *Gasul* and *Shellane* LPG

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[57] G.R. No. 168306, June 19, 2007, 525 SCRA 108.

[58] Intellectual Property Code of the Philippines, promulgated on June 6, 1997 and took effect on January 1, 1998.

[59] Sec. 155. *Remedies; Infringement.* - Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is **likely to cause confusion**, or to **cause mistake**, or **to deceive**; x x x (Emphasis supplied.)

[60] *Yao, Sr. v. People*, *supra* note 57, at 126.

cylinders and the **unauthorized refilling** of the same by Masagana Gas Corporation as duly attested to and witnessed by NBI agents who conducted the surveillance and test-buys.

Similarly, in the instant case, the fact that Omni refilled various branded LPG cylinders even if owned by its customers but without authority from brand owners Petron, Pilipinas Shell and Total shows palpable violation of BP 33, as amended. As aptly noted by the Court in *Yao, Sr. v. People,* only the duly authorized dealers and refillers of *Shellane, Petron Gasul* and, by extension, *Total* may refill these branded LPG cylinders. Our laws sought to deter the pernicious practices of unscrupulous businessmen.

Fourth. The issue of ownership of the seized branded LPG cylinders is irrelevant and hence need no belaboring. BP 33, as amended, does not require ownership of the branded LPG cylinders as a condition *sine qua non* for the commission of offenses involving petroleum and petroleum products. Verily, the offense of refilling a branded LPG cylinder without the written consent of the brand owner constitutes the offense regardless of the buyer or possessor of the branded LPG cylinder.

After all, once a consumer buys a branded LPG cylinder from the brand owner or its authorized dealer, said consumer is practically free to do what he pleases with the branded LPG cylinder. He can simply store the cylinder once it is empty or he can even destroy it since he has paid a deposit for it which answers for the loss or cost of the empty branded LPG cylinder. Given such fact, what the law manifestly prohibits is the refilling of a branded LPG cylinder by a refiller who has no written authority from the brand owner. Apropos, a refiller cannot and ought not to refill branded LPG cylinders if it has no written authority from the brand owner.

Besides, persuasive are the opinions and pronouncements by the DOE: brand owners are deemed owners of their duly embossed, stamped and marked LPG cylinders even if these are possessed by customers or consumers. The Court recognizes this right pursuant to our laws, *i.e.*, Intellectual Property Code of the Philippines. Thus the issuance by the DOE Circular

No. 2000-05-007,[61] the letter-opinion[62] dated December 9, 2004 of then DOE Secretary Vincent S. Perez addressed to Pilipinas Shell, the June 6, 2007 letter[63] of then DOE Secretary Raphael P.M. Lotilla to the LPGIA, and DOE Department Circular No. 2007-10-0007[64] on LPG Cylinder Ownership and Obligations Related Thereto issued on October 13, 2007 by DOE Secretary Angelo T. Reyes.

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[61] *Supra* note 42, DOE Department Circular No. 2000-05-07 provides:

Embossed Identifying Mark on LPG Cylinders and Installation of Collars with Distinctive Design or Markings on Existing LP Cylinders During Requalification

FOR: LPG REFILLERS ASSOCIATION (LPGRA) PHILIPPINE LPG ASSOCIATION (PLPGA) LPG INSTITUTE OF THE PHILIPPINES (LPGIP) SOUTHERN ISLANDS TASK FORCE (SILTF) LIQUIGAS PHILIPPINES CORPORATION (LPC) PETRONAS ENERGY PHILIPPINES, INC. (PEPI) PRYCE GASES INCORPORATED (PGI) NATION GAS (NATION) TOTAL LPG PHILIPPINES (TOTAL) PETRON CORPORATION (PETRON) PILIPINAS SHELL PETROLEUM CORP. (PSPC) CALTEX TRADING CORP. (CATGAS) MANILA GAS CORPORATION (MGC) PHILIPPINE ASSOCIATION OF LPG CYLINDERS MANUFACTURERS, INC. (PALCMI) ALL OTHERS CONCERNED

WHEREAS, pursuant to Section 2 and Section 5 (k) of Chapter 1 of RA No. 7638, the DEPARTMENT OF ENERGY (DOE) shall formulate rules and regulations as may be necessary to guide the operations of both government and private entities involved in energy resource supply and distribution.

WHEREAS, it has come to the attention of his Office that there is a **substantial number of LPG cylinders circulating without appropriate distinguishing marks to identify the owner or source for purposes of pinpointing responsibility in cases of underfilling and other violations related to said cylinders**;

WHEREAS, with the intensified drive against violators in the conduct of the downstream LPG industry the DOE finds that there is a need to address this problem of proper identification;

WHEREAS, premises considered, all concerned LPG industry players are hereby directed to strictly comply with the following:

In the **manufacture of new LPG cylinders the body shall be embossed with clear markings or signs indicating ownership**. New and locally manufactured cylinders shall conform to the required Product Standard (PS) mark. For imported cylinders the same shall be marked with the appropriate Import Commodity Clearance (ICC) prior to local circulation. For existing

LPG cylinders without the embossed markings or signs, including all imported cylinders, distinctive collars or collars with distinctive designs or markings of permanent character shall be installed upon requalification or prior to local circulation, as the case may be. The installation of the required collar or distinctive markings of permanent character shall be made only by government accredited cylinders manufacturers or requalifiers with the date of installation properly indicated thereon.

This Department Circular shall take effect one (1) month after its complete Publication in two (2) newspaper [sic] of general circulation.

MARIO V. TIAOQUI
Secretary
(Emphasis supplied.)

[62] *Supra* note 41.

[63] *Rollo*, pp. 563-564.

[64] *Id.* at 658-659, DOE Department Circular No. 2007-10-0007 provides:

LPG CYLINDER OWNERSHIP AND OBLIGATIONS RELATED THERETO

WHEREAS, pursuant to Republic Act Nos. 7368 (Department of Energy Act of 1992) and 8479 (Downstream Oil Industry Deregulation Act of 1998), Batas Pambansa Blg. 33 as amended by Presidential Decree 1865 (Defining and penalizing certain prohibited acts involving petroleum/petroleum products), and under pertinent rules and regulations, the DOE has the power to monitor, supervise and regulate the petroleum industry and impose corresponding administrative penalties for violations thereof;

WHEREAS, disputes and disagreements among industry players have increased in the recent years regarding generally, the ownership of liquefied petroleum gas (LPG) cylinders, owing to the absence of clear guidelines defining such ownership, misunderstanding by consumers and dealers alike, and the inordinate indifference of industry players to address this particular concern amongst themselves;

WHEREAS, the DOE has already issued Department Circular No. DC2000-05-07, requiring among others that the **owners or sources of LPG cylinders to emboss their brand and ownership markings on the LPG cylinders, in an attempt to identify the owners thereof for purposes of accountability**;

WHEREAS, **illegal practices in LPG industry are escalating, more particularly in the refilling LPG cylinders without the prior approval of consent of the owner of the LPG cylinders, in the process depriving the latter of reasonable business return, fomenting unsafe handling practice, and thus increasing risk and danger to the consuming public**;

WHEREAS, there is now a pressing need to establish clear directives in order to diminish, if not totally eliminate, illegal practices and abuses such as above, to prevent evasion of liability on the part of LPG industry players, and

to provide clear guidelines and reference on the ownership of LPG cylinders, to enable the Department to identify the proper liable persons and impose the appropriate penalty thereof;

WHEREAS, in consideration of the foregoing, the following guidelines are hereby promulgated to govern these concerns:

SECTION 1. The **brand owner whose permanent mark/markings appear/s on the LPG cylinder shall be presumed the owner thereof, irrespective of the party in custody or possession of the cylinder**, and regardless of whether such cylinder is, or continues to be, properly marked, stamped or identified to contain its LPG brand, or whether such cylinder is in compliance, or continues to comply with any other product or quality standard prescribed under law, by the DOE or by the Department of Trade and Industry (DTI), **unless there is any unequivocal proof or indication that such cylinder was sold, alienated, or otherwise disposed of by the brand owner to an unrelated third party under a written instrument**.

SECTION 2. The brand owner shall have the obligation to ensure that its cylinders comply with all required product quality, quantity and safety standards and specifications before they are released for sale/distribution and while they are in circulation; Provided that receipt by the DOE of a verified notice or report from the brand owner regarding any loss, stolen or missing LPG cylinders shall *prima facie* relieve the cylinder owner of the obligation to ensure the quality, safety and exact net content of such LPG cylinders. Such report may be rebutted by contrary evidence.

SECTION 3. The **brand owner shall issue authorization to entity/ firm authorized to refill their LPG cylinders**. Consequently, **an entity/ firm who shall refill LPG cylinders without authority from the brand owner shall be charged with "Illegal Refilling" and corresponding sanctions shall be applied**;

SECTION 4. Upon notice of this Circular, all brand owners shall immediately commence LPG cylinder audit and recovery program for a period not exceeding six (6) months from effectivity of this Circular; and report the same to OIMB.

Provisions to complement this definition may be issued subsequently, as necessary.

Penalties and sanctions for violations of this Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Fort Bonifacio, Taguig City, October 13, 2007.

ANGELO T. REYES
Secretary
Department of Energy

(Emphasis supplied.)

Fifth. The ownership of the seized branded LPG cylinders, allegedly owned by Omni customers as petitioners adamantly profess, is of no consequence.

The law does not require that the property to be seized should be owned by the person against whom the search warrants is directed. Ownership, therefore, is of no consequence, and it is sufficient that the person against whom the warrant is directed has control or possession of the property sought to be seized.[65] Petitioners cannot deny that the seized LPG cylinders were in the possession of Omni, found as they were inside the Omni compound.

In fine, we also note that among those seized by the NBI are 16 LPG cylinders bearing the embossed brand names of *Shellane, Gasul* and *Totalgaz* but were marked as Omnigas. Evidently, this pernicious practice of tampering or changing the appearance of a branded LPG cylinder to look like another brand violates the brand owners' property rights as *infringement* under Sec. 155.1 of RA 8293. Moreover, tampering of LPG cylinders is a mode of perpetrating the criminal offenses under BP 33, as amended, and clearly enunciated under DOE Circular No. 2000-06-010 which provided penalties on a per cylinder basis for each violation.

Foregoing considered, in the backdrop of the quantum of evidence required to support a finding of probable cause, we agree with the appellate court and the Office of the Chief State Prosecutor, which conducted the preliminary investigation, that there exists probable cause for the violation of Sec. 2 (a) in relation to Sec. 3 (c) of BP 33, as amended. Probable cause has been defined as the existence of such facts and circumstances as would excite belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged

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[65] *Yao, Sr. v. People, supra* note 57, at 138; citing *Burgos, Sr. v. Chief of Staff, AFP*, No. 64261, December 26, 1984, 133 SCRA 800.

was guilty of the crime for which he was prosecuted.[66] After all, probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief—probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[67]

Probable violation of Sec. 2 (c) of BP 33, as amended

Anent the alleged violation of Sec. 2 (c) in relation to Sec. 4 of BP 33, as amended, petitioners strongly argue that there is no probable cause for said violation based upon an underfilling of a lone cylinder of the eight branded LPG cylinders refilled during the test-buy. Besides, they point out that there was no finding of underfilling in any of the filled LPG cylinders seized during the service of the search warrants. Citing DOE's Bureau of Energy Utilization Circular No. 85-3-348, they maintain that some deviation is allowed from the exact filled weight. Considering the fact that an isolated underfilling happened in so many LPG cylinders filled, petitioners are of the view that such is due to human or equipment error and does not in any way constitute deliberate underfilling within the contemplation of the law.

Moreover, petitioners cast aspersion on the report and findings of LPG Inspector Navio of the LPGIA by assailing his independence for being a representative of the major petroleum companies and that the inspection he conducted was made without the presence of any DOE representative or any independent body having technical expertise in determining LPG cylinder underfilling beyond the authorized quantity.

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[66] *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 452; *Tan v. Ballena*, G.R. No. 168111, July 4, 2008, 557 SCRA 229, 251, citing *Cruz v. People*, G.R. No. 110436, June 27, 1994. 233 SCRA 439, 453-454 as cited in *Ladlad v. Velasco*, G.R. Nos. 172070-72, June 1, 2007, 523 SCRA 348, 335.

[67] *Chan v. Secretary of Justice*, *supra* note 50, at 352; citing *Ching v. The Secretary of Justice*, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629; *The Presidential Ad Hoc Fact-Finding Committee on Behest Loans (FFCBL) v. Desierto*, G.R. No. 136225, April 23, 2008, 552 SCRA 513, 528.

Again, we are not persuaded.

Contrary to petitioners' arguments, a single underfilling constitutes an offense under BP 33, as amended by PD 1865, which clearly criminalizes these offenses. In *Perez v. LPG Refillers Association of the Philippines, Inc.*,[68] the Court affirmed the validity of DOE Circular No. 2000-06-010 which **provided penalties on a per cylinder basis for each violation**, thus:

> B.P. Blg. 33, as amended, criminalizes **illegal trading**, adulteration, **underfilling**, hoarding, and overpricing of petroleum products. Under this general description of what constitutes criminal acts involving petroleum products, the Circular merely lists the various modes by which the said criminal acts may be perpetrated, namely: no price display board, no weighing scale, no tare weight or incorrect tare weight markings, **no authorized LPG seal**, no trade name, unbranded LPG cylinders, no serial number, no distinguishing color, no embossed identifying markings on cylinder, **underfilling LPG cylinders**, **tampering LPG cylinders**, and unauthorized decanting of LPG cylinders. These specific acts and omissions are obviously within the contemplation of the law, which seeks to curb the pernicious practices of some petroleum merchants.[69] (Emphasis supplied.)

Moreover, in denying the motion for reconsideration of the LPG Refillers Association of the Philippines, Inc., the Court upheld the basis of said DOE Circular No. 2000-06-010 on the **imposition of penalties on a per cylinder basis**, thus:

> Respondent's position is untenable. The Circular is not confiscatory in providing penalties on a per cylinder basis. Those penalties do not exceed the ceiling prescribed in Section 4 of B.P. Blg. 33, as amended, which penalizes "*any person who commits* ***any act*** *[t]herein prohibited*." Thus, violation on a per cylinder basis falls within the phrase "*any act*" as mandated in Section 4. To provide the same penalty for one who violates a prohibited act in B.P. Blg. 33, as amended, regardless of the number of cylinders involved would result

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[68] G.R. No. 159149, June 26, 2006, 492 SCRA 638.

[69] *Id.* at 649-650.

in an indiscriminate, oppressive and impractical operation of B.P. Blg. 33, as amended. The equal protection clause demands that "*all persons subject to such legislation shall be treated alike, **under like circumstances** and conditions, both in the privileges conferred and in the liabilities imposed*."[70]

The Court made it clear that a violation, like underfilling, on a per cylinder basis falls within the phrase of **any act** as mandated under Sec. 4 of BP 33, as amended. Ineluctably, the underfilling of one LPG cylinder constitutes a clear violation of BP 33, as amended. The finding of underfilling by LPG Inspector Navio of the LPGIA, as aptly noted by Manila Assistant City Prosecutor Catalo who conducted the preliminary investigation, was indeed not controverted by petitioners.

On the issue of manifest bias and partiality, suffice it to say that aside from the allegation by petitioners, they have not shown that LPG Inspector Navio is neither an expert nor qualified to determine underfilling. Besides, it must be noted that the inspection by LPG Inspector Navio was conducted in the presence of NBI agents on April 23, 2004 who attested to that fact through their affidavits. Moreover, no rules require and petitioners have not cited any that the inspection be conducted in the presence of DOE representatives.

Second Core Issue: Petitioners' Liability for Violations

Sec. 4 of BP 33, as amended, provides for the penalties and persons who are criminally liable, thus:

Sec. 4. Penalties. — Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than twenty thousand pesos (₱20,000) but not more than fifty thousand pesos (₱50,000), or imprisonment of at least two (2) years but not more than five (5) years, or both, in the discretion of the court. In cases of second and subsequent conviction under this Act, the penalty shall be both fine and imprisonment as provided herein. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, adulteration, shortselling, hoarding,

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[70] *Perez v. LPG Refillers Association of the Philippines, Inc.*, G.R. No. 159149, August 28, 2007, 531 SCRA 431, 435.

overpricing or misuse, shall be forfeited in favor of the Government: Provided, That if the petroleum and/or petroleum products have already been delivered and paid for, the offended party shall be indemnified twice the amount paid, and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer with an additional amount equivalent to such price; and in addition, if the offender is an oil company, marketer, distributor, refiller, dealer, sub-dealer and other retail outlets, or hauler, the cancellation of his license.

Trials of cases arising from this Act shall be terminated within thirty (30) days after arraignment.

When the offender is a **corporation**, partnership, or other juridical person, the **president**, the **general manager, managing partner**, or such other **officer charged with the management of the business affairs thereof**, or **employee responsible for the violation** shall be criminally liable; in case the offender is an alien, he shall be subject to deportation after serving the sentence.

If the offender is a government official or employee, he shall be perpetually disqualified from office. (Emphasis supplied.)

Relying on the third paragraph of the above statutory proviso, petitioners argue that they cannot be held liable for any perceived violations of BP 33, as amended, since they are mere directors of Omni who are not in charge of the management of its business affairs. Reasoning that criminal liability is personal, liability attaches to a person from his personal act or omission but not from the criminal act or negligence of another. Since Sec. 4 of BP 33, as amended, clearly provides and enumerates who are criminally liable, which do not include members of the board of directors of a corporation, petitioners, as mere members of the board of directors who are not in charge of Omni's business affairs, maintain that they cannot be held liable for any perceived violations of BP 33, as amended. To bolster their position, they attest to being full-time employees of various firms as shown by the Certificates of Employment[71] they submitted tending to show that they are neither involved in the day-to-day business of Omni nor managing it. Consequently, they posit

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

that even if BP 33, as amended, had been violated by Omni they cannot be held criminally liable thereof not being in any way connected with the commission of the alleged violations, and, consequently, the criminal complaints filed against them based solely on their being members of the board of directors as per the GIS submitted by Omni to SEC are grossly discriminatory.

On this point, we agree with petitioners except as to petitioner Arnel U. Ty who is indisputably the President of Omni.

It may be noted that Sec. 4 above enumerates the persons who may be held liable for violations of the law, *viz:* (1) the president, (2) general manager, (3) managing partner, (4) such other officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. A common thread of the first four enumerated officers is the fact that they manage the business affairs of the corporation or juridical entity. In short, they are operating officers of a business concern, while the last in the list is self-explanatory.

It is undisputed that petitioners are members of the board of directors of Omni at the time pertinent. There can be no quibble that the enumeration of persons who may be held liable for corporate violators of BP 33, as amended, excludes the members of the board of directors. This stands to reason for the board of directors of a corporation is generally a policy making body. Even if the corporate powers of a corporation are reposed in the board of directors under the first paragraph of Sec. 23[72] of the Corporation Code, it is of common knowledge and practice that the board of directors is not directly engaged or charged with the running of the recurring business affairs of the corporation. Depending on the powers granted to them by the

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[72] Sec. 23. *The board of directors or trustees*.—Unless otherwise provided in this Code, the **corporate powers** of all corporations formed under this Code shall be **exercised, all business conducted** and **all property** of such corporations **controlled and held by the board of directors** or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified. (Emphasis supplied.)

Articles of Incorporation, the members of the board generally do not concern themselves with the day-to-day affairs of the corporation, except those corporate officers who are charged with running the business of the corporation and are concomitantly members of the board, like the President. Section 25[73] of the Corporation Code requires the president of a corporation to be also a member of the board of directors.

Thus, the application of the legal maxim *expressio unius est exclusio alterius*, which means the mention of one thing implies the exclusion of another thing not mentioned. If a statute enumerates the thing upon which it is to operate, everything else must necessarily and by implication be excluded from its operation and effect.[74] The fourth officer in the enumerated list is the catch-all "such other officer charged with the management of the business affairs" of the corporation or juridical entity which is a factual issue which must be alleged and supported by evidence.

A scrutiny of the GIS reveals that among the petitioners who are members of the board of directors are the following who are likewise elected as corporate officers of Omni: (1) Petitioner Arnel U. Ty (Arnel) as President; (2) petitioner Mari Antonette Ty as Treasurer; and (3) petitioner Jason Ong as Corporate Secretary. Sec. 4 of BP 33, as amended, clearly indicated firstly the president of a corporation or juridical entity to be criminally liable for violations of BP 33, as amended.

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[73] Sec. 25. *Corporate officers, quorum*.—Immediately after their election, the directors of a corporation must formally organize by the election of a **president, who shall be a director**, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any tow (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

[74] *Municipality of Nueva Era, Ilocos Norte v. Municipality of Marcos, Ilocos Norte*, G.R. No. 169435, February 27, 2008, 547 SCRA 71, 93 (citations omitted).

Evidently, petitioner Arnel, as President, who manages the business affairs of Omni, can be held liable for probable violations by Omni of BP 33, as amended. The fact that petitioner Arnel is ostensibly the operations manager of Multi-Gas Corporation, a family owned business, does not deter him from managing Omni as well. It is well-settled that where the language of the law is clear and unequivocal, it must be taken to mean exactly what it says.[75] As to the other petitioners, unless otherwise shown that they are situated under the catch-all "such other officer charged with the management of the business affairs," they may not be held liable under BP 33, as amended, for probable violations. Consequently, with the exception of petitioner Arnel, the charges against other petitioners must perforce be dismissed or dropped.

WHEREFORE, premises considered, we *PARTIALLY GRANT* the instant petition. Accordingly, the assailed September 28, 2007 Decision and March 14, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 98054 are *AFFIRMED* with *MODIFICATION* that petitioners Mari Antonette Ty, Jason Ong, Willy Dy and Alvin Ty are excluded from the two Informations charging probable violations of Batas Pambansa Bilang 33, as amended. The Joint Resolution dated November 7, 2005 of the Office of the Chief State Prosecutor is modified accordingly.

No pronouncement as to costs.

SO ORDERED.

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

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[75] *Yu v. Orchard Golf & Country Club, Inc.*, G.R. No. 150335, March 1, 2007, 517 SCRA 169, 177 (citations omitted).

THIRD DIVISION

[G.R. No. 182229. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JUN-JUN ASUELA,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— It is well-settled that the trial court's evaluation of the testimonies of witnesses is accorded the highest respect in light of its opportunity to directly observe them on the witness stand and to determine if they are telling the truth.

2. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES. — Inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance, the veracity or the weight of the testimony, and even shows candor and truthfulness, more so in the absence of proof, as in the present case, that improper or ulterior motive impelled [witnesses] to wrongly implicate appellant in the commission of the crimes.

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.*:

The Court of Appeals having affirmed the decision[1] of the Regional Trial Court (RTC) of San Mateo, Rizal, Branch 76 convicting Jun-jun Asuela (appellant) of Slight Physical Injuries in Criminal Case No. 3365, and of Murder in Criminal Case

[1] C.A. *rollo*, pp. 6-21. Penned by Pairing Judge Elizabeth Balquin-Reyes.

No. 3366, appellant lodged the present petition for review on *certiorari*.

Appellant was, along with six others – Miguel, Marcos, Juanito, Alberto, and Roger, all surnamed Asuela, and Teofilo "Boyet" Capacillo, charged of Frustrated Murder in Criminal Case No. 3365 (first case), allegedly committed as follows:

> That on or about the 5th day of July, 2004, in Quezon City, Philippines, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with lead pipes and pieces of wood, with intent to kill and with abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one ANTHONY A. VILLANUEVA on his body, thus performing all the acts of execution which could have produced the crime of murder as a consequence but nevertheless did not produce it by reason of (sic) independent of his will, that is, due to the timely and able medical attendance rendered to said ANTHONY A. VILLANUEVA which prevented his death.
>
> Contrary to law.[2]

Appellant *et al.* were likewise charged of Murder in Criminal Case No. 3366 (second case), allegedly committed as follows:

> That on or about the 5th day of July, 2004, in Quezon City, Philippines, the above-named accused, conspiring and confederating together and all of them mutually helping and aiding one another, armed with lead pipes and pieces of wood, with intent to kill, employing means to weaken the defense of the victim, one WILFREDO VILLANUEVA, by spraying him with teargas in the eyes and taking advantage of their superior strength did then and there willfully, unlawfully and feloniously attack, assault and stab one WILFREDO VILLANUEVA, thereby inflicting upon the latter mortal wounds which directly caused his death.
>
> Contrary to law.[3]

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[2] Records Vol. I, pp. 1-2.

[3] Records Vol. II, pp. 1-2.

Appellant's and Miguel's five co-accused were earlier tried and convicted of Slight Physical Injuries in the first case, and of Murder in the second case. Appellant and Miguel were arrested later than the five and thus had a separate trial. The trial court acquitted Miguel but convicted appellant of the crimes charged. Appellant's conviction was, as reflected early on, affirmed by the appellate court, hence, this present petition.

From the testimony of Mark Villanueva (Mark), the brother of the victim Anthony Villanueva (Anthony) in the first case and son of the other victim Wilfredo Villanueva (Wilfredo) in the second case, the Court gathers the following tale:

In the early evening of September 7, 1997, Anthony and the accused Juanito had an altercation in front of a store a few meters away from the Villanueva family house at Valleyview Subdivision, Gulod Malaya, San Mateo, Rizal. On becoming aware of the altercation, Mark told the two to settle their problem in the *barangay*. Miguel, however, who was present, stabbed the victim, hence, he (Mark) went to get a lead pipe in their house and, on returning, he saw someone stoning his father Wilfredo in front of their gate.

Appellant and his co-accused thereafter assaulted Wilfredo in this manner: Capacillo sprayed tear gas on the eyes of Wilfredo; Juanito stabbed Wilfredo's eyes and cheek; Roger hit Wilfredo's back with a lead pipe; appellant stabbed Wilfredo's chest with a knife; Alberto stabbed Wilfredo with a pointed bamboo as the latter lay on the ground; Marcos also hit Wilfredo at the back with a lead pipe; and Miguel stabbed Wilfredo with a knife.

As Anthony was trying to help his father Wilfredo, Anthony fell down due to a sudden blow on his back following which Roger, Marcos and Juanito took turns in hitting Anthony on the back and before Anthony could flee, appellant and Marcos stabbed him with a knife.

Hayen Villanueva (Hayen), Anthony's sister and Wilfredo's daughter, corroborated the testimony of her brother Mark on how appellant and his co-accused ganged up on her father and

how her brother tried to help their father but was chased by Marcos, Roger and appellant.

Magdalena Villanueva (Magdalena), Wilfredo's wife, corroborated their children's testimonies, claiming that she witnessed the incident as she peeped through the window of their house.

Proffering alibi, appellant claimed as follows:

He was, on the day of the incident, with his family at St. Joseph Church in Cubao where they heard mass at 2:00 p.m. following which they went to a restaurant where they stayed until 6:00 p.m.; and they afterwards proceeded to the house of his parents-in-law in Escopa, Libis, Quezon City where they spent the night, after being informed by his sister about the incident in Valleyview.

By decision of October 4, 2004, the trial court, after noting that Marcos, Juanito, Alberto, Roger, and "Boyet" had earlier been found guilty of Slight Physical Injuries and of Murder, found appellant guilty beyond reasonable doubt of Slight Physical Injuries and of Murder. As stated earlier, the trial court acquitted Miguel.

In affirming appellant's conviction, the Court of Appeals held that, contrary to appellant's claim, there was no inconsistency in Hayen's and Magdalena's testimonies as far as the occurrence of the crimes and the positive identification of the assailants are concerned. And as did the trial court, the appellate court did not give credence to appellant's alibi which it held is inherently weak *vis-à-vis* the positive and categorical assertion of prosecution witnesses.

Noting the Court's Decision in *People v. Asuela*[4] where the conviction of five of appellant's co-accused was affirmed by this Court, the appellate court affirmed the presence of conspiracy and abuse of superior strength in the cases against appellant.

Hence, the present appeal.

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[4] G.R. Nos. 140393-94, February 4, 2002, 376 SCRA 51.

The appeal is bereft of merit.

It is well-settled that the trial court's evaluation of the testimonies of witnesses is accorded the highest respect in light of its opportunity to directly observe them on the witness stand and to determine if they are telling the truth. In the present case, the alleged discrepancies in the testimonies of prosecution witnesses – Hayen's failure to initially name Alberto Asuela during cross examination; Mark's alleged contradictory statement on who was stabbed first, he or his father, – do not disprove the *material* fact that they actually saw appellant and his convicted co-conspirators to have participated in the commission of the crimes.

Inconsistencies in the testimonies of witnesses with respect to minor details and collateral matters do not affect the substance, the veracity or the weight of the testimony, and even shows candor and truthfulness,[5] more so in the absence of proof, as in the present case, that improper or ulterior motive impelled Mark, Magdalena and Hayen to wrongly implicate appellant in the commission of the crimes.

WHEREFORE, the challenged Decision dated November 15, 2007 of the Court of Appeals is *AFFIRMED*.

SO ORDERED.

Bersamin, Villarama, Jr., Mendoza,[*] and *Sereno, JJ.,* concur.

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[5] Vide *People v. Vallador,* 327 Phil. 303, 310-311, 1996.

[*] Additional member per Special Order No. 921 dated December 13, 2010.

SECOND DIVISION

[G.R. No. 182367. December 15, 2010]

CHERRYL B. DOLINA, *petitioner, vs.* **GLENN D. VALLECERA,** *respondent.*

SYLLABUS

1. CIVIL LAW; ACT PROTECTING WOMEN AND CHILDREN AGAINST VIOLENCE (RA 9262); NOT THE APPLICABLE LAW FOR ACTION TO GET FINANCIAL SUPPORT FOR AN ILLEGITIMATE CHILD.— Dolina evidently filed the wrong action to obtain support for her child. The object of R.A. 9262 under which she filed the case is the protection and safety of women and children who are victims of abuse or violence. Although the issuance of a protection order against the respondent in the case can include the grant of legal support for the wife and the child, this assumes that both are entitled to a protection order and to legal support. x x x [T]he true object of [Dolina's] action was to get financial support from Vallecera for her child, her claim being that he is the father.

2. ID.; FAMILY CODE; SUPPORT BETWEEN PARENTS AND THEIR ILLEGITIMATE CHILDREN; FILIATION OF THE CHILD MUST BE FIRST ESTABLISHED.— To be entitled to legal support, petitioner must, in proper action, first establish the filiation of the child, if the same is not admitted or acknowledged. Since Dolina's demand for support for her son is based on her claim that he is Vallecera's illegitimate child, the latter is not entitled to such support if he had not acknowledged him, until Dolina shall have proved his relation to him. The child's remedy is to file through her mother a judicial action against Vallecera for compulsory recognition. If filiation is beyond question, support follows as matter of obligation. In short, illegitimate children are entitled to support and successional rights but their filiation must be duly proved. Dolina's remedy is to file for the benefit of her child an action against Vallecera for compulsory recognition in order to establish filiation and then demand support. Alternatively, she may directly file an action for support, where the issue of

> compulsory recognition may be integrated and resolved. x x x While the Court is mindful of the best interests of the child in cases involving paternity and filiation, it is just as aware of the disturbance that unfounded paternity suits cause to the privacy and peace of the putative father's legitimate family. Vallecera disowns Dolina's child and denies having a hand in the preparation and signing of its certificate of birth. This issue has to be resolved in an appropriate case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Vispero Ll. Mayor for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about a mother's claim for temporary support of an unacknowledged child, which she sought in an action for the issuance of a temporary protection order that she brought against the supposed father.

The Facts and the Case

In February 2008 petitioner Cherryl B. Dolina filed a petition with prayer for the issuance of a temporary protection order against respondent Glenn D. Vallecera before the Regional Trial Court (RTC) of Tacloban City in P.O. 2008-02-07[1] for alleged woman and child abuse under Republic Act (R.A.) 9262.[2] In filling out the blanks in the *pro-forma* complaint, Dolina added a handwritten prayer for financial support[3] from Vallecera for their supposed child. She based her prayer on the latter's Certificate of Live Birth which listed Vallecera as the child's

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[1] *Rollo*, pp. 12-23.

[2] "An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefore, And For Other Purposes."

[3] *Rollo*, p. 22.

father. The petition also asked the RTC to order Philippine Airlines, Vallecera's employer, to withhold from his pay such amount of support as the RTC may deem appropriate.

Vallecera opposed the petition. He claimed that Dolina's petition was essentially one for financial support rather than for protection against woman and child abuses; that he was not the child's father; that the signature appearing on the child's Certificate of Live Birth is not his; that the petition is a harassment suit intended to force him to acknowledge the child as his and give it financial support; and that Vallecera has never lived nor has been living with Dolina, rendering unnecessary the issuance of a protection order against him.

On March 13, 2008[4] the RTC dismissed the petition after hearing since no prior judgment exists establishing the filiation of Dolina's son and granting him the right to support as basis for an order to compel the giving of such support. Dolina filed a motion for reconsideration but the RTC denied it in its April 4, 2008 Order,[5] with an admonition that she first file a petition for compulsory recognition of her child as a prerequisite for support. Unsatisfied, Dolina filed the present petition for review directly with this Court.

The Issue Presented

The sole issue presented in this case is whether or not the RTC correctly dismissed Dolina's action for temporary protection and denied her application for temporary support for her child.

The Court's Ruling

Dolina evidently filed the wrong action to obtain support for her child. The object of R.A. 9262 under which she filed the case is the protection and safety of women and children who are victims of abuse or violence.[6] Although the issuance of a

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[4] *Id.* at 41.

[5] *Id.* at 40.

[6] *Go-Tan v. Tan*, G.R. No. 168852, September 30, 2008, 567 SCRA 231, 238.

protection order against the respondent in the case can include the grant of legal support for the wife and the child, this assumes that both are entitled to a protection order and to legal support.

Dolina of course alleged that Vallecera had been abusing her and her child. But it became apparent to the RTC upon hearing that this was not the case since, contrary to her claim, neither she nor her child ever lived with Vallecera. As it turned out, the true object of her action was to get financial support from Vallecera for her child, her claim being that he is the father. He of course vigorously denied this.

To be entitled to legal support, petitioner must, in proper action, first establish the filiation of the child, if the same is not admitted or acknowledged. Since Dolina's demand for support for her son is based on her claim that he is Vallecera's illegitimate child, the latter is not entitled to such support if he had not acknowledged him, until Dolina shall have proved his relation to him.[7] The child's remedy is to file through her mother a judicial action against Vallecera for compulsory recognition.[8] If filiation is beyond question, support follows as matter of obligation.[9] In short, illegitimate children are entitled to support and successional rights but their filiation must be duly proved.[10]

Dolina's remedy is to file for the benefit of her child an action against Vallecera for compulsory recognition in order to establish filiation and then demand support. Alternatively, she may directly file an action for support, where the issue of compulsory recognition may be integrated and resolved.[11]

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[7] Article 195, paragraph 4 of the Family Code requires support between parents and their illegitimate children.

[8] *Tayag v. Tayag-Gallor*, G.R. No. 174680, March 24, 2008, 549 SCRA 68, 74.

[9] *Montefalcon v. Vasquez*, G.R. No. 165016, June 17, 2008, 554 SCRA 513, 527.

[10] *De la Puerta v. Court of Appeals*, G.R. No. 77867, February 6, 1990, 181 SCRA 861, 869.

[11] *Agustin v. Court of Appeals*, 499 Phil. 307, 317 (2005).

It must be observed, however, that the RTC should not have dismissed the entire case based solely on the lack of any judicial declaration of filiation between Vallecera and Dolina's child since the main issue remains to be the alleged violence committed by Vallecera against Dolina and her child and whether they are entitled to protection. But of course, this matter is already water under the bridge since Dolina failed to raise this error on review. This omission lends credence to the conclusion of the RTC that the real purpose of the petition is to obtain support from Vallecera.

While the Court is mindful of the best interests of the child in cases involving paternity and filiation, it is just as aware of the disturbance that unfounded paternity suits cause to the privacy and peace of the putative father's legitimate family.[12] Vallecera disowns Dolina's child and denies having a hand in the preparation and signing of its certificate of birth. This issue has to be resolved in an appropriate case.

ACCORDINGLY, the Court *DENIES* the petition and *AFFIRMS* the Regional Trial Court of Tacloban City's Order dated March 13, 2008 that dismissed petitioner Cherryl B. Dolina's action in P.O. 2008-02-07, and Order dated April 4, 2008, denying her motion for reconsideration dated March 28, 2008.

SO ORDERED.

Carpio, Nachura, Peralta, and *Mendoza, JJ.,* concur.

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[12] *Nepomuceno v. Lopez,* G.R. No. 181258, March 18, 2010.

SPECIAL THIRD DIVISION

[G.R. No. 182645. December 15, 2010]

In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, Antonio Rodriguez, Macario J. Rodriguez, Delfin Rodriguez, and Consuelo M. Rodriguez and Settlement of their Estates, RENE B. PASCUAL, *petitioner, vs.* **JAIME M. ROBLES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESPONDENTS AND COSTS IN CERTAIN CASES.— Section 5, Rule 65 of the Rules of Court provides: Section 5. *Respondents and costs in certain cases*. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, **the petitioner shall join as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings**, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.

2. ID.; ID.; ID.; ID.; THAT INDISPENSABLE PARTY IN A PETITION FOR *CERTIORARI* MUST BE INCLUDED, DISCUSSED.— In *Lotte Phil. Co., Inc. v. Dela Cruz*, this Court

ruled as follows: An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present. In the case at bar, Robles is an indispensable party. He stands to be injured or benefited by the outcome of the petition. He has an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence. Moreover, as provided for under the aforequoted Section 5, Rule 65 of the Rules of Court, Robles is interested in sustaining the assailed CA Decision, considering that he would benefit from such judgment. As such, his non-inclusion would render the petition for *certiorari* defective. The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just. If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.

APPEARANCES OF COUNSEL

Larry Pernito for petitioner.

Sansaet Masendo Cadiz & Banosia Law Offices for Henry Rodriguez, *etc*.

R E S O L U T I O N

PERALTA, *J.*:

Before the Court is the Very Urgent Motion for Reconsideration of Jaime M. Robles (Robles) seeking to set aside this Court's Decision dated December 4, 2009 which nullified the April 16, 2002 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 57417 and the February 27, 2007 Order of the Regional Trial Court (RTC) of Iriga City, Branch 34 in SP No. IR-1110 and reinstated the August 13, 1999 Amended Decision of the same RTC in the same case.

Robles' Motion is based on the following arguments:

A.) THE HEREIN MOVANT – JAIME M. ROBLES, BEING A REAL PARTY-IN-INTEREST – WAS NEVER IMPLEADED AS RESPONDENT IN THE PETITION FOR *CERTIORARI* (WITH PRAYER TO CLARIFY JUDGMENT) DATED MAY 10, 2008 WHICH WAS FILED BEFORE THIS HONORABLE SUPREME COURT ON MAY 13, 2008 - - - BY PETITIONER-RENE B. PASCUAL;

B.) THE DECISION DATED DECEMBER 04, 2009 ISSUED BY THIS HONORABLE SUPREME COURT IN G.R. NO. 182645 WAS RENDERED BASED ON A PETITION FOR *CERTIORARI* AND MEMORANDUM DATED APRIL 7, 2009, WHOSE COPIES THEREOF WERE NEVER SERVED UPON THE HEREIN MOVANT;

C.) THE NAME OF HEREIN MOVANT-JAIME M. ROBLES APPEARS AS RESPONDENT IN THE TITLE OF THIS CASE AS CAPTIONED IN THE HONORABLE SUPREME COURT'S ASSAILED DECISION DATED DECEMBER 04, 2009. HOWEVER, HE WAS NOT REQUIRED TO FILE COMMENT NOR ANSWER TO THE PETITION, A CLEAR VIOLATION TO (sic) THE RULES OF COURT AND TO (sic) THE CONSTITUTION.

D.) THE PUBLIC RESPONDENT COURT OF APPEALS PRESENTED THE SALIENT CIRCUMSTANCES THAT WOULD JUSTIFY THE RELAXATION OF THE RULES ON THE PERFECTION OF AN APPEAL AND THE RULE THAT *CERTIORARI* IS NOT A SUBSTITUTE FOR A LOST APPEAL. THE DECISION ISSUED BY THE PUBLIC RESPONDENT

HONORABLE COURT OF APPEALS DATED APRIL 16, 2002 HAS ALREADY ATTAINED FINALITY BY WAY OF AN ENTRY OF JUDGMENT ISSUED BY THIS HONORABLE COURT ON NOVEMBER 10, 2005, IN G.R. NO. 168648 ENTITLED *JAIME M. ROBLES PETITIONER, VS. HENRY F. RODRIGUEZ, ET. AL.*, AS RESPONDENTS.[1]

Robles prays for the reversal of the presently assailed Decision and the entry of a new judgment requiring him to file his comment and memorandum to the petition. Robles also seeks the reinstatement of the December 15, 1994 Order of the RTC declaring him as the only forced heir and next of kin of Hermogenes Rodriguez.

For a clearer discussion and resolution of the instant Motion, it bears to restate the relevant antecedent facts as stated in the assailed Decision of this Court, to wit:

> On 14 September 1989, a petition for Declaration of Heirship and Appointment of Administrator and Settlement of the Estates of the Late Hermogenes Rodriguez (Hermogenes) and Antonio Rodriguez (Antonio) was filed before the RTC [of Iriga City]. The petition, docketed as Special Proceeding No. IR-1110, was filed by Henry F. Rodriguez (Henry), Certeza F. Rodriguez (Certeza), and Rosalina R. Pellosis (Rosalina). Henry, Certeza and Rosalina sought that they be declared the sole and surviving heirs of the late Antonio Rodriguez and Hermogenes Rodriguez. They alleged they are the great grandchildren of Antonio based on the following genealogy: that Henry and Certeza are the surviving children of Delfin M. Rodriguez (Delfin) who died on 8 February 1981, while Rosalina is the surviving heir of Consuelo M. Rodriguez (Consuelo); that Delfin and Consuelo were the heirs of Macario J. Rodriguez (Macario) who died in 1976; that Macario and Flora Rodriguez were the heirs of Antonio; that Flora died without an issue in 1960 leaving Macario as her sole heir.
>
> Henry, Certeza and Rosalina's claim to the intestate estate of the late Hermogenes Rodriguez, a former *gobernadorcillo*, is based on the following lineage: that Antonio and Hermogenes were brothers and the latter died in 1910 without issue, leaving Antonio as his sole heir.

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[1] *Rollo*, pp. 273-274.

At the initial hearing of the petition on 14 November 1989, nobody opposed the petition. Having no oppositors to the petition, the RTC entered a general default against the whole world, except the Republic of the Philippines. After presentation of proof of compliance with jurisdictional requirements, the RTC allowed Henry, Certeza and Rosalina to submit evidence before a commissioner in support of the petition. After evaluating the evidence presented, the commissioner found that Henry, Certeza and Rosalina are the grandchildren in the direct line of Antonio and required them to present additional evidence to establish the alleged fraternal relationship between Antonio and Hermogenes.

Taking its cue from the report of the commissioner, the RTC rendered a Partial Judgment dated 31 May 1990 declaring Henry, Certeza and Rosalina as heirs in the direct descending line of the late Antonio, Macario and Delfin and appointing Henry as regular administrator of the estate of the decedents Delfin, Macario and Antonio, and as special administrator to the estate of Hermogenes.

Henry filed the bond and took his oath of office as administrator of the subject estates.

Subsequently, six groups of oppositors entered their appearances either as a group or individually, namely:

(1) The group of Judith Rodriguez;
(2) The group of Carola Favila-Santos;
(3) Jaime Robles;
(4) Florencia Rodriguez;
(5) Victoria Rodriguez; and
(6) Bienvenido Rodriguez

Only the group of Judith Rodriguez had an opposing claim to the estate of Antonio, while the rest filed opposing claims to the estate of Hermogenes.

In his opposition, Jamie Robles likewise prayed that he be appointed regular administrator to the estates of Antonio and Hermogenes and be allowed to sell a certain portion of land included in the estate of Hermogenes covered by OCT No. 12022 located at Barrio Manggahan, Pasig, Rizal.

After hearing on Jamie Robles' application for appointment as regular administrator, the RTC issued an Order dated 15 December 1994 declaring him to be an heir and next of kin of decedent

Hermogenes and thus qualified to be the administrator. Accordingly, the said order appointed Jaime Robles as regular administrator of the entire estate of Hermogenes and allowed him to sell the property covered by OCT No. 12022 located at Barrio Manggahan, Pasig Rizal.

On 27 April 1999, the RTC rendered a decision declaring Carola Favila-Santos and her co-heirs as heirs in the direct descending line of Hermogenes and reiterated its ruling in the partial judgment declaring Henry, Certeza and Rosalina as heirs of Antonio. The decision dismissed the oppositions of Jamie Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez, for their failure to substantiate their respective claims of heirship to the late Hermogenes.

On 13 August 1999, the RTC issued an Amended Decision reversing its earlier finding as to Carola Favila-Santos. This time, the RTC found Carola Favila-Santos and company not related to the decedent Hermogenes. The RTC further decreed that Henry, Certeza and Rosalina are the heirs of Hermogenes. The RTC also re-affirmed its earlier verdict dismissing the oppositions of Jaime Robles, Victoria Rodriguez, Bienvenido Rodriguez, and Florencia Rodriguez.[2]

Robles then appealed the August 13, 1999 Decision of the RTC by filing a Notice of Appeal, but the same was denied by the trial court in its Order dated November 22, 1999 for Robles' failure to file a record on appeal.

Robles questioned the denial of his appeal by filing a petition for review on *certiorari* with this Court.

In a Resolution dated February 14, 2000, this Court referred the petition to the CA for consideration and adjudication on the merits on the ground that the said court has jurisdiction concurrent with this Court and that no special and important reason was cited for this Court to take cognizance of the said case in the first instance.

On April 16, 2002, the CA rendered judgment annulling the August 13, 1999 Amended Decision of the RTC.

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[2] *Id.* at 228-231.

Henry Rodriguez (Rodriguez) and his group moved for the reconsideration of the CA decision, but the same was denied in a Resolution dated January 21, 2004. Rodriguez and his co-respondents did not appeal the Decision and Resolution of the CA.

On the other hand, Robles filed an appeal with this Court assailing a portion of the CA Decision. On August 1, 2005, this Court issued a Resolution denying the petition of Robles and, on November 10, 2005, the said Resolution became final and executory.

On May 13, 2008, the instant petition was filed.

On December 4, 2009, this Court rendered the presently assailed Decision which held as follows:

> In special proceedings, such as the instant proceeding for settlement of estate, the period of appeal from any decision or final order rendered therein is 30 days, a notice of appeal and a record on appeal being required. x x x
>
> x x x x x x x x x
>
> The appeal period may only be interrupted by the filing of a motion for new trial or reconsideration. Once the appeal period expires without an appeal being perfected, the decision or order becomes final, x x x
>
> x x x x x x x x x
>
> In the case under consideration, it was on 13 August 1999 that the RTC issued an Amended Decision. On 12 October 1999, Jaime Robles erroneously filed a notice of appeal instead of filing a record on appeal. The RTC, in an order dated 22 November 1999, denied this for his failure to file a record on appeal as required by the Rules of Court. Petitioner failed to comply with the requirements of the rule; hence, the 13 August 1999 Amended Decision of the RTC lapsed into finality. It was, therefore, an error for the Court of Appeals to entertain the case knowing that Jaime Robles' appeal was not perfected and had lapsed into finality.
>
> This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal

as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. x x x Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. There are exceptions to this rule, unfortunately respondents did not present any circumstances that would justify the relaxation of said rule.[3]

The basic contention of Robles in the instant Motion is that he is a party-in-interest who stands to be adversely affected or injured or benefited by the judgment in the instant case. He also argues that the failure of service upon him of a copy of the instant petition as well as petitioner's memorandum, and the fact that he was not required or given the opportunity to file his comment or answer to the said petition nor served with any order, resolution or any other process issued by this Court in the instant petition, is a clear denial of his right to due process.

In his Comment and Opposition, petitioner contends that Robles has no legal standing to participate in the instant petition. Petitioner argues that in an original action for *certiorari*, the parties are the aggrieved party against the lower court and the prevailing party. Petitioner claims, however, that Robles was never impleaded, because he was not the prevailing party in the assailed Decision of the CA as well as the questioned Order of the RTC. Petitioner further avers that the inclusion of Robles' name as respondent in the caption of the instant petition was a result of a clerical error which was probably brought about by numerous cases filed with this Court involving Robles and the subject estate.

The Court finds partial merit in the instant motion.

Petitioner admitted in his Comment and Opposition to Robles' Motion that in the instant petition he filed, only the CA and the RTC were impleaded as respondents.

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[3] *Id.* at 198-200.

Section 5, Rule 65 of the Rules of Court provides:

Section 5. *Respondents and costs in certain cases*. – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, **the petitioner shall join as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings**, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondents shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.[4]

In *Lotte Phil. Co., Inc. v. Dela Cruz*,[5] this Court ruled as follows:

An indispensable party is a party-in-interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without the presence of indispensable parties to a suit or proceeding, judgment of a court cannot attain real finality. The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[6]

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[4] Emphasis supplied.

[5] G.R. No. 166302, July 28, 2005, 464 SCRA, 591.

[6] *Id.* at 595-596.

In the case at bar, Robles is an indispensable party. He stands to be injured or benefited by the outcome of the petition. He has an interest in the controversy that a final decree would necessarily affect his rights, such that the courts cannot proceed without his presence.[7] Moreover, as provided for under the aforequoted Section 5, Rule 65 of the Rules of Court, Robles is interested in sustaining the assailed CA Decision, considering that he would benefit from such judgment. As such, his non-inclusion would render the petition for *certiorari* defective.[8]

Petitioner, thus, committed a mistake in failing to implead Robles as respondent.

The rule is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action.[9] The remedy is to implead the non-party claimed to be indispensable.[10] Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or at such times as are just.[11] If petitioner refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the plaintiff's/petitioner's failure to comply therewith.[12]

Based on the foregoing, and in the interest of fair play, the Court finds it proper to set aside its decision and allow Robles to file his comment on the petition.

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[7] *Tay Chun Suy v. Court of Appeals*, G.R. Nos. 91004-05, August 20, 1992, 212 SCRA 713, 719.

[8] Regalado, *Remedial Law Compendium Vol. I* (Sixth Revised Edition), p. 724, citing *Amargo v. Court of Appeals*, 53 SCRA 64, 75 (1973).

[9] *Plasabas v. CA*, G.R. No. 166519, March 31, 2009, 582 SCRA 686, 692; 692; *Nocom v. Camerino*, G.R. No. 182984, February 10, 2009, 578 SCRA 390, 413; *Macababbad, Jr. v. Masirag*, G.R. No. 161237, January 14, 2009, 576 SCRA 70, 88; *Pepsico, Inc. v. Emerald Pizza, Inc.*, G.R. No. 153059, August 14, 2007, 530 SCRA 58, 67; *Pamplona Plantation Co., Inc. v. Tinghil*, G.R. No. 159121, February 3, 2005, 450 SCRA 421, 433.

[10] *Id.*

[11] *Id.*

[12] *Id.*

WHEREFORE, the Motion for Reconsideration is *PARTLY GRANTED*. The Decision dated December 4, 2009 is *SET ASIDE*. Petitioner is *ORDERED* to furnish Robles a copy of his petition for *certiorari* within a period of five (5) days from receipt of this Resolution. Thereafter, Robles is *DIRECTED* to file his comment on the petition within a period of ten (10) days from notice.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 184177. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANDRES C. FONTILLAS *alias* "ANDING",** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; INCESTUOUS RAPE OF A MINOR; ACTUAL FORCE OR INTIMIDATION SUBSTITUTED BY ABUSE OF MORAL ASCENDANCY.— The lack of evidence that AAA tried to fight off accused-appellant's sexual assault does not undermine AAA's credibility. Jurisprudence on incestuous rape of a minor has oft-repeated the rule that the father's abuse of his moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants. In *People v. Orillosa*, we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.

2. ID.; ID.; DENIAL CANNOT PREVAIL AGAINST POSITIVE TESTIMONY OF RAPE.— Accused-appellant's bare denial cannot overturn AAA's positive testimony. As we fittingly ruled in *People v. Mendoza:* It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness. x x x This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the dire consequence of a rape charge – unless she is, in fact, a rape victim." More in point is our pronouncement in *People v. Canoy*, to wit: . . . It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.

3. ID.; ALTERNATIVE CIRCUMSTANCES; INTOXICATION CONSIDERED A MITIGATING CIRCUMSTANCE WHEN NOT HABITUAL, OR SUBSEQUENT TO THE PLAN TO COMMIT A FELONY.— Section 15 of the Revised Penal Code, on alternative circumstances, provides: ART. 15. *Their concept.* – Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender. x x x The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance. Accused appellant did not present any evidence that his intoxication was not habitual or subsequent to the plan to commit the rape. The person pleading intoxication must likewise prove that he took

such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.

4. ID.; QUALIFIED RAPE; PROPER PENALTY AND DAMAGES. — [T]he conviction of the accused-appellant of qualified rape without any mitigating circumstance by the Court of Appeals must be affirmed. Regarding the penalty imposed for the crime committed by the accused-appellant, the appellate court properly imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole, instead of death, pursuant to Republic Act No. 9346. We also affirm the order of the appellate court that accused-appellant pay AAA the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, for being consistent with current jurisprudence on qualified rape. However, we increase the award of exemplary damages from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00) in line with recent case law.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

On appeal is the Decision[1] dated January 29, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01792, which affirmed with modification the Decision[2] dated October 28, 2005 of Branch 69 of the Regional Trial Court (RTC) of Iba, Zambales, convicting accused-appellant Andres Fontillas, also known as "Anding," of qualified rape as defined and penalized under Articles 266-A(1)(c) and 266-B(1) of the Revised Penal Code.

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[1] *Rollo*, pp. 2-15; penned by Associate Justice Ricardo R. Rosario with Associate Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring.

[2] CA *rollo*, pp. 11-23.

The real name of the private offended party and her immediate family members, as well as such other personal circumstances or any other information tending to establish or compromise her identity, are withheld pursuant to *People v. Cabalquinto*[3] and *People v. Guillermo*.[4] Thus, the initials AAA represent the private offended party while the initials BBB, CCC, DDD, and EEE refer to her relatives.

Accused-appellant was indicted for rape qualified by his relationship with and the minority of AAA. The criminal information filed with the RTC read:

> That on or about the 8th day of December 2001 at [Barangay] Bamban, Municipality of Masinloc, Province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with lewd design and with grave abuse of authority, did then and there, willfully, unlawfully and feloniously, have sexual intercourse with and carnal knowledge of his own daughter, 13-year old [AAA], without her consent and against her will, to the damage and prejudice of said [AAA].[5]

Accused-appellant pleaded not guilty on June 24, 2002. After the pre-trial conference on September 23, 2002, trial ensued.

The prosecution presented the testimonies of AAA, the private offended party; Dr. Liezl dela Llana Edaño (Dr. Edaño), the medico-legal who physically examined AAA for signs of sexual abuse; and Narcisa Cubian, a social worker from the Department of Social Welfare and Development, formerly assigned at the Home for Girls in Olongapo City, who testified that AAA was referred and placed under the protective custody of said institution. The prosecution dispensed with the testimonies of Senior Police Officer 3 Zaldy Apsay, the police officer who investigated AAA's complaint; and Ana A. Ecle (Ecle), the social worker who referred AAA for protective custody at the Home for Girls in Olongapo City, as the defense admitted the subject

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[3] G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] G.R. No. 173787, April 23, 2007, 521 SCRA 597.

[5] Records, p. 2.

matter of their testimonies. The documentary exhibits for the prosecution consisted of Dr. Edaño's Medico-Legal Report;[6] AAA's "Sinumpaang Salaysay" and Verified Complaint;[7] Ecle's Letter and Social Case Study Report;[8] and AAA's Certificate of Live Birth.[9]

The defense, on the other hand, presented the testimonies of accused-appellant who denied AAA's accusation; and EEE, accused-appellant's relative and neighbor, who testified that at around 8:30 p.m. on December 8, 2001, he saw accused-appellant under a tamarind tree, drunk, with his head bowed down.

In its Decision dated October 28, 2005, the RTC decreed:

> IN VIEW THEREOF, accused Andres Fontillas *y* Calpo is found **GUILTY** beyond reasonable doubt of the crime of Incestuous Rape and is hereby sentenced to suffer the supreme penalty of **DEATH**. Accused is ordered to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱25,000.00 as exemplary damages.[10]

The RTC transmitted the records of the case to the Court of Appeals for automatic review. Accused-appellant filed his *Brief*[11] on July 18, 2006 while the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed its *Brief*[12] on November 16, 2006.

The Court of Appeals summarized the evidence of the parties as follows:

> In the evening of 08 December 2001, while private complainant was sleeping in their house in Bamban, Masinloc, Zambales with

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[6] *Id.* at 251-252.

[7] *Id.* at 253-254.

[8] *Id.* at 255-257.

[9] *Id.* at 258.

[10] CA *rollo*, p. 23.

[11] *Id.* at 35-49.

[12] *Id.* at 73-95.

her younger brother [BBB], she was awakened by the arrival of their father, appellant Andres Fontillas, whom she heard coughing. She stood up and helped appellant enter their house because he was drunk. She let him sleep beside them. After a while, she was roused by appellant who was then taking off her short pants. She cried but he warned her not to make any noise. After removing his own pants, appellant pressed down ("*inipit*") both her hands and feet and covered her mouth with his hands. She kept quiet because she was afraid of him. Then he inserted his penis into her vagina causing complainant to feel pain in her private part.

After satisfying his lust, appellant went out of the house and proceeded to a store nearby while his daughter stayed in their house pretending that she was washing their clothes. When appellant left, she went to report the incident to her Aunt [CCC] who lived nearby. After hearing her story, her Aunt [CCC] did not allow her to go back to their house. Complainant also informed her Uncle [DDD] about the incident. He then brought her to the police station where she executed a sworn statement. After the investigation, complainant was brought to the Home for Girls where she still presently resides.

Dr. Liezl Dela Llana Edaño, the municipal health officer of the Rural Health Unit of Masinloc, Zambales, conducted the physical examination on the victim and made the following findings:

> "Pertinent Findings: Conscious, coherent, ambulatory not in any form of cardio respiratory distress.
>
> Genitalia: (+) old hymenal laceration at 6 & 8 o'clock position. Admits one finger with ease.
>
> No other physical injuries noted at the time of the examination.
>
> Laboratory Exam done: attached"

Denying the charge that he ravished his own daughter, [accused-appellant] testified that he worked as a fisherman and mango sprayer seven days a week because he did not want to waste any opportunity to earn. On cross-examination, he admitted that he had a drinking spree with friends on the night of 07 December and that he got too drunk. He likewise testified that he could not remember what happened that evening but only recalled that he woke up at 6:00 in the morning lying beside the door of their shanty.

The defense also presented [EEE] who testified that in the evening of 08 December 2001, he saw his cousin, accused-appellant herein,

under a tamarind tree with his head bowed resting on a bench. He approached appellant and found him very drunk so he left him there. He recounted that in the morning of 09 December 2001, his niece, the private complainant, went to his house and informed him that she was raped by her father.[13]

After its evaluation of the evidence, the Court of Appeals affirmed the finding of guilt by the RTC but modified the penalty imposed, thus:

> WHEREFORE, the decision of the Regional Trial Court (Branch 69) of Iba, Zambales, in Criminal Case No. RTC 3360-I finding accused-appellant Andres Fontillas *y* Calpo *alias* "Anding" GUILTY of the crime of incestuous rape is AFFIRMED with MODIFICATION. As modified, the penalty of death is hereby reduced to *reclusion perpetua*.[14]

Thereafter, accused-appellant appealed his conviction before us. In a Minute Resolution[15] dated October 6, 2008, we required the parties to file their respective supplemental briefs. The plaintiff-appellee filed a Manifestation[16] dated November 17, 2008, informing the Court that it was no longer filing a supplemental brief since it had already substantially and exhaustively refuted accused-appellant's arguments in its Brief before the Court of Appeals. On the other hand, accused-appellant filed his Supplemental Brief[17] dated December 5, 2008.

The Accused-Appellant's Brief assigns the following errors on the part of the RTC:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE ACCUSED-APPELLANT'S GUILT WAS PROVEN BEYOND REASONABLE DOUBT.

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[13] *Rollo*, pp. 3-5.

[14] *Id.* at 14.

[15] *Id.* at 21-22.

[16] *Id.* at 26-28.

[17] *Id.* at 29-33.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE WEAK EVIDENCE PRESENTED BY THE PROSECUTION.

III

ON THE ASSUMPTION THAT THE ACCUSED-APPELLANT COMMITTED THE ACTS COMPLAINED OF, THE TRIAL COURT ERRED IN NOT CONSIDERING THE SEVERE STATE OF INTOXICATION OF THE ACCUSED-APPELLANT.[18]

Accused-appellant asserts that the prosecution failed to prove his guilt beyond reasonable doubt. He puts AAA's credibility into question considering AAA's failure to defend herself or to resist the assault, even when accused-appellant supposedly had no weapon. The threat accused-appellant supposedly made was not even directed at AAA. In addition, it would have been impossible that BBB, AAA's brother, was not awakened during the rape, and that their close neighbors, who also happen to be their relatives, did not notice anything unusual on the night of December 8, 2001.

Accused-appellant further argues that his severe intoxication from consuming eight bottles of gin with two drinking buddies on the night of December 8, 2001 was corroborated by EEE, who saw accused-appellant drunk under a tamarind tree, and even by the testimonies of the prosecution witnesses themselves. The RTC and the Court of Appeals should have at least appreciated accused-appellant's intoxication as an extenuating circumstance that would absolve accused-appellant from any criminal liability.

Accused-appellant lastly points out that the physical evidence is irreconcilably inconsistent with AAA's version of the rape incident. Dr. Edaño's medical examination reveals that the lacerations on AAA's vagina were old, which may have been acquired weeks before.

Plaintiff-appellee, for its part, maintains that the prosecution had duly proven accused-appellant's guilt beyond reasonable

[18] CA *rollo,* p. 37.

doubt for the crime of qualified rape. AAA convincingly detailed in court how, when, and where she was raped by her own father. Accused-appellant's moral and physical dominion over AAA is sufficient to submit her to his bestial desire. Moreover, accused-appellant failed to present the required proof that his claim of extreme intoxication from alcohol seriously deprived him of his reasoning, and that such intoxication was not habitual nor intentional, *i.e.*, intended to fortify his resolve to commit the crime.

We affirm accused-appellant's conviction.

The prosecution was able to establish beyond reasonable doubt that accused-appellant, through force, threat or intimidation, had carnal knowledge of his daughter, AAA, who was only 13 years old at that time. AAA's birth certificate shows that she was born on August 15, 1988 and that accused-appellant is her biological father.

AAA was consistent, candid, and straightforward in her narration that she was raped by her own father, to wit:

Q: In the evening of December 8, 2001, what were you doing inside your house [AAA]?
A: I was sleeping, ma'am.

Q: About what time when you went to sleep?
A: I could not remember, ma'am.

Q: What about your brother [BBB], did he go to sleep with you?
A: Yes, ma'am.

Q: What part of the house did you sleep?
A: Inside of the bedroom, ma'am.

Q: So, how long did you sleep that night of December 8, 2001?
A: I have a long slept, ma'am.

Q: Did you wake-up?
A: Yes, ma'am.

Q: What made you wake-up?
A: When my papa arrived, ma'am.

Q: When you said "papa" you are referring to the accused in this case, Andres Fontillas?
A: Yes, ma'am.

Q: How did you come to know that he arrive in your house at that night?
A: I heard that he was coughing, ma'am.

Q: When you heard him coughing, what did you do?
A: I woke-up ma'am.

Q: What did you do next?
A: I stood up, ma'am.

Q: Where did you go?
A: I helped him enter the house because he was drunk, ma'am.

Q: Why, did you know that he was drunk?
A: Because he went to have drinking spree with his friends, ma'am.

Q: So, you helped him entered the house. Where did you bring him?
A: I let him slept, ma'am.

Q: Where did you bring him to sleep?
A: Beside us, ma'am.

Q: So, when you brought your father to your bedroom to sleep, what did you do next?
A: I continued my sleep, ma'am.

Q: And did you wake-up?
A: Not anymore, ma'am.

Q: What time did you wake-up [AAA]?
A: Early in the morning, ma'am.

Q: What made you [wake- up]?
A: My papa, ma'am.

Q: What did your papa do that make you wake-up?
A: He was taking off my short pants, ma'am.

Q: What did you do when you heard him taking off your short pants?
A: I cried, ma'am.

Q: What happened next?
A: He took off his short pants, ma'am.

Q: Was he saying anything to you [AAA] while he was doing that to you?
A: Yes, ma'am.

Q: What were these words?
A: He told me not to create any noise, ma'am.

Q: And did you obey him?
A: Yes, ma'am.

Q: Why did you obey him?
A: Because I was afraid, ma'am.

Q: Why were you afraid of him?
A: Because he threatened me that if I will report the incident he will kill the person whom I reported the incident ma'am.

Q: And did you believe him that he will kill the person to whom you reported the incident [AAA]?
A: Yes, ma'am.

Q: Was he able to remove his short pants?
A: Yes, ma'am.

Q: What happened after that?
A: He clasped both of my hands and my feet then covered my mouth, ma'am.

Q: With what hand did he cover your mouth?
A: With his hand, ma'am.

Q: And what did he use in *"iniipit"* your hands and feet?
A: His feet and his body, ma'am. (Witness demonstrating by crossing her arms over his chest.)

Q: What happened after that [AAA]?
A: He did what he wanted to me, ma'am.

Q: What did he do? Will you please tell us [AAA]?
A: He raped me, ma'am.

Q: When you said "he raped me" in what particular did he do?
A: He inserted his penis, ma'am.

Q: Where?
A: To my vagina, ma'am.

Q: And how did you feel when he was able to insert his penis to your vagina?
A: I felt pain, ma'am.

Q: In what part of your body did you feel the pain?
A: To my hips, ma'am.

Q: Where else?
A: My vagina, ma'am.

Q: And how many times [AAA] was he able to put inside his penis to your vagina?
A: Once, ma'am.[19]

The lack of evidence that AAA tried to fight off accused-appellant's sexual assault does not undermine AAA's credibility. Jurisprudence on incestuous rape of a minor has oft-repeated the rule that the father's abuse of his moral ascendancy and influence over his daughter can subjugate the latter's will thereby forcing her to do whatever he wants.[20] In *People v. Orillosa*,[21] we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.

The absence of any struggle on AAA's part while she was being raped may also be due to accused-appellant's threat that he will kill the person to whom AAA would report the incident. It is of no moment that the threat was not directed at AAA. The threat still instilled in AAA the fear that someone might be harmed because of her.

Neither do we give much weight to the alleged inconsistency between the physical evidence and AAA's version of the rape incident. We note that Dr. Edaño was able to examine AAA only on December 10, 2001, two days after the rape. During cross-examination, Dr. Edaño explained that the two old lacerations she found on AAA's vagina could have happened

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[19] TSN, April 2, 2003, pp. 3-7.

[20] *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 598.

[21] G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

several weeks or days before the examination. Hence, the old lacerations could still have been caused by and is not irreconcilably inconsistent with the rape of AAA two days earlier. As the Court of Appeals observed, the improbabilities or inconsistencies cited by accused-appellant refer to minor details that do not directly pertain to the elements of the crime of rape or to the identification of accused-appellant as the rapist; and do not detract from the proven fact that accused-appellant had sexual intercourse with AAA through force, intimidation, and grave abuse of authority.

Accused-appellant's bare denial cannot overturn AAA's positive testimony. As we fittingly ruled in *People v. Mendoza*[22]:

> It is well-settled that denial is essentially the weakest form of defense and it can never overcome an affirmative testimony particularly when it comes from the mouth of a credible witness. Accused-appellant's bare assertion that private complainant was just "using" him to allow her to freely frolic with other men, particularly with a certain Renato Planas, begs the credulity of this Court. This is especially true in the light of our consistent pronouncement that "no decent and sensible woman will publicly admit being a rape victim and thus run the risk of public contempt - the dire consequence of a rape charge – unless she is, in fact, a rape victim." More in point is our pronouncement in *People v. Canoy* [G.R. Nos. 148139-43, 15 October 2003, 413 SCRA 490], to wit:
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> > … It is unthinkable for a daughter to accuse her own father, to submit herself for examination of her most intimate parts, put her life to public scrutiny and expose herself, along with her family, to shame, pity or even ridicule not just for a simple offense but for a crime so serious that could mean the death sentence to the very person to whom she owes her life, had she really not have been aggrieved. Nor do we believe that the victim would fabricate a story of rape simply because she wanted to exact revenge against her father, appellant herein, for allegedly scolding and maltreating her.[23]

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[22] 490 Phil. 737 (2005).

[23] *Id.* at 746-747.

The Court of Appeals correctly rejected the accused-appellant's assertion that his extreme intoxication from alcohol on the night of the rape should be appreciated as a mitigating circumstance. Article 15 of the Revised Penal Code, on alternative circumstances, provides:

> ART. 15. *Their concept.* – Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.
>
> x x x x x x x x x
>
> The intoxication of the offender shall be taken into consideration as a mitigating circumstance when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony; but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

Accused appellant did not present any evidence that his intoxication was not habitual or subsequent to the plan to commit the rape. The person pleading intoxication must likewise prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.[24] Accused-appellant utterly failed to present clear and convincing proof of the extent of his intoxication on the night of December 8, 2001 and that the amount of liquor he had taken was of such quantity as to affect his mental faculties. Not one of accused-appellant's drinking buddies testified that they, in fact, consumed eight bottles of gin prior to the rape incident.

Hence, the conviction of the accused-appellant of qualified rape without any mitigating circumstance by the Court of Appeals must be affirmed. Regarding the penalty imposed for the crime committed by the accused-appellant, the appellate court properly imposed upon accused-appellant the penalty of *reclusion perpetua* without eligibility for parole, instead of death, pursuant

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[24] *People v. Bernal*, 437 Phil. 11, 25 (2002).

to Republic Act No. 9346. We also affirm the order of the appellate court that accused-appellant pay AAA the amount of Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and another Seventy-Five Thousand Pesos (₱75,000.00) as moral damages, for being consistent with current jurisprudence on qualified rape. However, we increase the award of exemplary damages from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00) in line with recent case law.[25]

WHEREFORE, in view of the foregoing, the Decision dated January 29, 2008 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01792, which affirmed with modification the Decision dated October 28, 2005 of the RTC, Branch 69, of Iba, Zambales, is *AFFIRMED* with further *MODIFICATION* to read as follows:

(1) Accused Andres C. Fontillas is held *GUILTY* beyond reasonable doubt for the crime of *QUALIFIED RAPE* and he is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole, and ordered to pay the private offended party civil indemnity in the amount of Seventy-Five Thousand Pesos (₱75,000.00), moral damages also in the amount of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages in the amount of Thirty Thousand Pesos (₱30,000.00); and

(2) Accused Andres C. Fontillas is further ordered to pay the private offended party interest on all damages awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No costs.

SO ORDERED.

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

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[25] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

SECOND DIVISION

[G.R. No. 186091. December 15, 2010]

EMMANUEL BABAS, DANILO T. BANAG, ARTURO V. VILLARIN, SR., EDWIN JAVIER, SANDI BERMEO, REX ALLESA, MAXIMO SORIANO, JR., ARSENIO ESTORQUE, and FELIXBERTO ANAJAO, *petitioners, vs.* **LORENZO SHIPPING CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; VERIFICATION AND CERTIFICATION; PETITION CAN BE GIVEN DUE COURSE ONLY AS TO THE PARTIES WHO SIGNED IT.— Before resolving the petition, we note that only seven (7) of the nine petitioners signed the *Verification and Certification.* Petitioners Maximo Soriano, Jr. (Soriano) and Felixberto Anajao (Anajao) did not sign the *Verification and Certification,* because they could no longer be located by their co-petitioners. In *Toyota Motor Phils. Corp. Workers Association (TMPCWA), et al. v. National Labor Relations Commission,* citing *Loquias v. Office of the Ombudsman,* we stated that the petition satisfies the formal requirements only with regard to the petitioner who signed the petition, but not his co-petitioner who did not sign nor authorize the other petitioner to sign it on his behalf. Thus, the petition can be given due course only as to the parties who signed it. The other petitioners who did not sign the verification and certificate against forum shopping cannot be recognized as petitioners and have no legal standing before the Court. The petition should be dismissed outright with respect to the non-conforming petitioners.

2. LABOR AND SOCIAL LEGISLATION; CHARACTER OF THE BUSINESS, WHETHER LABOR-ONLY OR A JOB CONTRACTOR, SHOULD BE DETERMINED BY THE CRITERIA SET BY STATUTE.— *De Los Santos v. NLRC* instructed us that the character of the business, *i.e.*, whether as labor-only contractor or as job contractor, should be measured in terms of, and determined by, the criteria set by statute. The

parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business. x x x Thus, in distinguishing between prohibited labor-only contracting and permissible job contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.

3. ID.; EMPLOYMENT CONTRACTS; LABOR-ONLY CONTRACTING; ELEMENTS.— Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied, or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal.

4. ID.; ID.; JOB CONTRACTING OR SUBCONTRACTING; REQUISITES.— [P]ermissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal. A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur: (a) The contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (b) The contractor has substantial capital or investment; and (c) The agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.

5. ID.; ID.; ID.; ID.; THAT CONTRACTOR HAS SUBSTANTIAL CAPITAL OR INVESTMENT; BURDEN OF PROOF.— In *Mandaue Galleon Trade, Inc. v. Andales*, we held: The law casts the burden on the contractor to prove that it has substantial capital, investment, tools, *etc*. Employees, on the other hand, need not prove that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.

6. ID.; ID.; LABOR-ONLY CONTRACTOR; CERTIFICATE OF REGISTRATION, NOT SUFFICIENT EVIDENCE THAT ONE IS AN INDEPENDENT CONTRACTOR; CASE AT BAR.— [A]s found by the NLRC, BMSI had no other client except for LSC, and neither BMSI nor LSC refuted this finding, thereby bolstering the NLRC finding that BMSI is a labor-only contractor. The CA erred in considering BMSI's Certificate of Registration as sufficient proof that it is an independent contractor. In *San Miguel Corporation v. Vicente B. Semillano, Nelson Mondejas, Jovito Remada, Alilgilan Multi-Purpose Coop (AMPCO), and Merlyn N. Policarpio,* we held that a Certificate of Registration issued by the Department of Labor and Employment is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising. Indubitably, BMSI can only be classified as a labor-only contractor. The CA, therefore, erred when it ruled otherwise. Consequently, the workers that BMSI supplied to LSC became regular employees of the latter. Having gained regular status, petitioners were entitled to security of tenure and could only be dismissed for just or authorized causes and after they had been accorded due process. Petitioners lost their employment when LSC terminated its *Agreement* with BMSI. However, the termination of LSC's *Agreement* with BMSI cannot be considered a just or an authorized cause for petitioners' dismissal.

APPEARANCES OF COUNSEL

Cristobal P. Fernandez for petitioners.
Montilla Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Petitioners Emmanuel Babas, Danilo T. Banag, Arturo V. Villarin, Sr., Edwin Javier, Sandi Bermeo, Rex Allesa, Maximo Soriano, Jr., Arsenio Estorque, and Felixberto Anajao appeal by *certiorari* under Rule 45 of the Rules of Court the October 10, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 103804, and the January 21, 2009 Resolution,[2] denying its reconsideration.

Respondent Lorenzo Shipping Corporation (LSC) is a duly organized domestic corporation engaged in the shipping industry; it owns several equipment necessary for its business. On September 29, 1997, LSC entered into a *General Equipment Maintenance Repair and Management Services Agreement*[3] (*Agreement*) with Best Manpower Services, Inc. (BMSI). Under the *Agreement*, BMSI undertook to provide maintenance and repair services to LSC's container vans, heavy equipment, trailer chassis, and generator sets. BMSI further undertook to provide checkers to inspect all containers received for loading to and/or unloading from its vessels.

Simultaneous with the execution of the *Agreement*, LSC leased its equipment, tools, and tractors to BMSI.[4] The period of lease was coterminous with the *Agreement*.

BMSI then hired petitioners on various dates to work at LSC as checkers, welders, utility men, clerks, forklift operators, motor pool and machine shop workers, technicians, trailer drivers,

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican, concurring; *rollo*, pp. 34-49.

[2] *Id.* at 53-54.

[3] *Id.* at 124-130.

[4] *Id.* at 131-134.

and mechanics. Six years later, or on May 1, 2003, LSC entered into another contract with BMSI, this time, a service contract.[5]

In September 2003, petitioners filed with the Labor Arbiter (LA) a complaint for regularization against LSC and BMSI. On October 1, 2003, LSC terminated the *Agreement*, effective October 31, 2003. Consequently, petitioners lost their employment.

BMSI asserted that it is an independent contractor. It averred that it was willing to regularize petitioners; however, some of them lacked the requisite qualifications for the job. BMSI was willing to reassign petitioners who were willing to accept reassignment. BMSI denied petitioners' claim for underpayment of wages and non-payment of 13th month pay and other benefits.

LSC, on the other hand, averred that petitioners were employees of BMSI and were assigned to LSC by virtue of the *Agreement*. BMSI is an independent job contractor with substantial capital or investment in the form of tools, equipment, and machinery necessary in the conduct of its business. The *Agreement* between LSC and BMSI constituted legitimate job contracting. Thus, petitioners were employees of BMSI and not of LSC.

After due proceedings, the LA rendered a decision[6] dismissing petitioners' complaint. The LA found that petitioners were employees of BMSI. It was BMSI which hired petitioners, paid their wages, and exercised control over them.

Petitioners appealed to the National Labor Relations Commission (NLRC), arguing that BMSI was engaged in labor-only contracting. They insisted that their employer was LSC.

On January 16, 2008, the NLRC promulgated its decision.[7] Reversing the LA, the NLRC held:

We find from the records of this case that respondent BMSI is not engaged in legitimate job contracting.

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[5] *Id.* at 135-138.

[6] *Id.* at 278-286.

[7] *Id.* at 81-92.

First, respondent BMSI has no equipment, no office premises, no capital and no investments as shown in the Agreement itself which states:

x x x x x x x x x

VI. RENTAL OF EQUIPMENT

[6.01.] That the CLIENT has several forklifts and truck tractor, and has offered to the CONTRACTOR the use of the same by way of lease, the monthly rental of which shall be deducted from the total monthly billings of the CONTRACTOR for the services covered by this Agreement.

6.02. That the CONTRACTOR has agreed to rent the CLIENT's forklifts and truck tractor.

6.03. The parties herein have agreed to execute a Contract of Lease for the forklifts and truck tractor that will be rented by the CONTRACTOR. (p. 389, Records)

True enough, parties signed a Lease Contract (p. 392, Records) wherein respondent BMSI leased several excess equipment of LSC to enable it to discharge its obligation under the Agreement. So without the equipment which respondent BMSI leased from respondent LSC, the former would not be able to perform its commitments in the Agreement.

In *Phil. Fuji Xerox Corp. v. NLRC* (254 SCRA 294) the Supreme Court held:

> x x x. *The phrase "substantial capital and investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business," in the Implementing Rules clearly contemplates tools, equipment, etc., which are directly related to the service it is being contracted to render. <u>One who does not have an independent business for undertaking the job contracted for is just an agent of the employer</u>. (underscoring ours)*

Second, respondent BMSI has no independent business or activity or job to perform in respondent LSC free from the control of respondent LSC except as to the results thereof. In view of the

absence of such independent business or activity or job to be performed by respondent BMSI in respondent LSC [petitioners] performed work that was necessary and desirable to the main business of respondent LSC. Respondents were not able to refute the allegations of [petitioners] that they performed the same work that the regular workers of LSC performed and they stood side by side with regular employees of respondent LSC performing the same work. Necessarily, the control on the manner and method of doing the work was exercised by respondent LSC and not by respondent BMSI since the latter had no business of its own to perform in respondent LSC.

Lastly, respondent BMSI has no other client but respondent LSC. If respondent BMSI were a going concern, it would have other clients to which to assign [petitioners] after its Agreement with LSC expired. Since there is only one client, respondent LSC, it is easy to conclude that respondent BMSI is a mere supplier of labor.

After concluding that respondent BMSI is engaged in prohibited labor-only contracting, respondent LSC became the employer of [petitioners] pursuant to DO 18-02.

[Petitioners] therefore should be reinstated to their former positions or equivalent positions in respondent LSC as regular employees with full backwages and other benefits without loss of seniority rights from October 31, 2003, when they lost their jobs, until actual reinstatement (*Vinoya v. NLRC*, 324 SCRA 469). If reinstatement is not feasible, [petitioners] then should be paid separation pay of one month pay for every year of service or a fraction of six months to be considered as one year, in addition to full backwages.

Concerning [petitioners'] prayer to be paid wage differentials and benefits under the CBA, We have no doubt that [petitioners] would be entitled to them if they are covered by the said CBA. For this purpose, [petitioners] should first enlist themselves as union members if they so desire, or pay agency fee. Furthermore, only [petitioners] who signed the appeal memorandum are covered by this Decision. As regards the other complainants who did not sign the appeal, the Decision of the Labor Arbiter dismissing this case became final and executory.[8]

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

The NLRC disposed thus:

WHEREFORE, the appeal of [petitioners] is GRANTED. The Decision of the Labor Arbiter is hereby REVERSED, and a NEW ONE rendered finding respondent Best Manpower Services, Inc. is engaged in prohibited labor-only-contracting and finding respondent Lorenzo Shipping Corp. as the employer of the following [petitioners]:

1. Emmanuel B. Babas
2. Danilo Banag
3. Edwin L. Javier
4. Rex Allesa
5. Arturo Villarin, [Sr.]
6. Felixberto C. Anajao
7. Arsenio Estorque
8. Maximo N. Soriano, Jr.
9. Sandi G. Bermeo

Consequently, respondent Lorenzo Shipping Corp. is ordered to reinstate [petitioners] to their former positions as regular employees and pay their wage differentials and benefits under the CBA.

If reinstatement is not feasible, both respondents Lorenzo Shipping Corp. and Best Manpower Services are adjudged jointly and solidarily to pay [petitioners] separation pay of one month for every year of service, a fraction of six months to be considered as one year.

In addition, respondent LSC and BMSI are solidarily liable to pay [petitioners'] full backwages from October 31, 2003 until actual reinstatement or, if reinstatement is not feasible, until finality of this Decision.

Respondent LSC and respondent BMSI are likewise adjudged to be solidarily liable for attorney's fees equivalent to ten (10%) of the total monetary award.

x x x x x x x x x

SO ORDERED.[9]

LSC went to the CA via *certiorari*. On October 10, 2008, the CA rendered the now challenged Decision,[10] reversing the

[9] *Id.* at 89-91.

[10] *Supra* note 1.

NLRC. In holding that BMSI was an independent contractor, the CA relied on the provisions of the *Agreement*, wherein BMSI warranted that it is an independent contractor, with adequate capital, expertise, knowledge, equipment, and personnel necessary for the services rendered to LSC. According to the CA, the fact that BMSI entered into a contract of lease with LSC did not *ipso facto* make BMSI a labor-only contractor; on the contrary, it proved that BMSI had substantial capital. The CA was of the view that the law only required substantial capital *or* investment. Since BMSI had substantial capital, as shown by its ability to pay rents to LSC, then it qualified as an independent contractor. It added that even under the control test, BMSI would be the real employer of petitioners, since it had assumed the entire charge and control of petitioners' services. The CA further held that BMSI's Certificate of Registration as an independent contractor was sufficient proof that it was an independent contractor. Hence, the CA absolved LSC from liability and instead held BMSI as employer of petitioners.

The *fallo* of the CA Decision reads:

> WHEREFORE, premises considered, the instant petition is **GRANTED** and the assailed decision and resolution of public respondent NLRC are **REVERSED** and **SET ASIDE**. Consequently, the decision of the Labor Arbiter dated September 29, 2004 is **REINSTATED**.
>
> SO ORDERED.[11]

Petitioners filed a motion for reconsideration, but the CA denied it on January 21, 2009.[12]

Hence, this appeal by petitioners, positing that:

> THE HONORABLE COURT OF APPEALS ERRED IN IGNORING THE CLEAR EVIDENCE OF RECORD THAT RESPONDENT WAS ENGAGED IN LABOR-ONLY CONTRACTING TO DEFEAT PETITIONERS' RIGHT TO SECURITY OF TENURE.[13]

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[11] *Id.* at 48.

[12] *Supra* note 2.

[13] *Rollo*, p. 21.

Before resolving the petition, we note that only seven (7) of the nine petitioners signed the *Verification and Certification*.[14] Petitioners Maximo Soriano, Jr. (Soriano) and Felixberto Anajao (Anajao) did not sign the *Verification and Certification*, because they could no longer be located by their co-petitioners.[15]

In *Toyota Motor Phils. Corp. Workers Association (TMPCWA), et al. v. National Labor Relations Commission*,[16] citing *Loquias v. Office of the Ombudsman*,[17] we stated that the petition satisfies the formal requirements only with regard to the petitioner who signed the petition, but not his co-petitioner who did not sign nor authorize the other petitioner to sign it on his behalf. Thus, the petition can be given due course only as to the parties who signed it. The other petitioners who did not sign the verification and certificate against forum shopping cannot be recognized as petitioners and have no legal standing before the Court. The petition should be dismissed outright with respect to the non-conforming petitioners.

Thus, we dismiss the petition insofar as petitioners Soriano and Anajao are concerned.

Petitioners vigorously insist that they were employees of LSC; and that BMSI is not an independent contractor, but a labor-only contractor. LSC, on the other hand, maintains that BMSI is an independent contractor, with adequate capital and investment. LSC capitalizes on the ratiocination made by the CA.

In declaring BMSI as an independent contractor, the CA, in the challenged Decision, heavily relied on the provisions of the *Agreement*, wherein BMSI declared that it was an independent contractor, with substantial capital and investment.

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[14] *Id.* at 31-32.

[15] See Compliance; *id.* at 335-336.

[16] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171, 198-199.

[17] 392 Phil. 596, 603-604 (2000).

De Los Santos v. NLRC[18] instructed us that the character of the business, *i.e.*, whether as labor-only contractor or as job contractor, should be measured in terms of, and determined by, the criteria set by statute. The parties cannot dictate by the mere expedience of a unilateral declaration in a contract the character of their business.

In *San Miguel Corporation v. Vicente B. Semillano, Nelson Mondejas, Jovito Remada, Alilgilan Multi-Purpose Coop (AMPCO), and Merlyn N. Policarpio*,[19] this Court explained:

> Despite the fact that the service contracts contain stipulations which are earmarks of independent contractorship, they do not make it legally so. The language of a contract is neither determinative nor conclusive of the relationship between the parties. Petitioner SMC and AMPCO cannot dictate, by a declaration in a contract, the character of AMPCO's business, that is, whether as labor-only contractor, or job contractor. AMPCO's character should be measured in terms of, and determined by, the criteria set by statute.

Thus, in distinguishing between prohibited labor-only contracting and permissible job contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.

Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies, or places workers to perform a job, work, or service for a principal. In labor-only contracting, the following elements are present: (a) the contractor or subcontractor does not have substantial capital or investment to actually perform the job, work, or service under its own account and responsibility; and (b) the employees recruited, supplied, or placed by such contractor or subcontractor perform activities which are directly related to the main business of the principal.[20]

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[18] 423 Phil. 1020, 1032 (2001).

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

[20] *Iligan Cement Corporation v. ILIASCOR Employees and Workers Union-Southern Philippines Federation of Labor (IEWU-SPFL)*, G.R. No. 158956, April 24, 2009, 586 SCRA 449, 464-465.

On the other hand, permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with the contractor or subcontractor the performance or completion of a specific job, work, or service within a definite or predetermined period, regardless of whether such job, work, or service is to be performed or completed within or outside the premises of the principal.[21]

A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

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

(b) The contractor has substantial capital or investment; and

(c) The agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits.[22]

Given the above standards, we sustain the petitioners' contention that BMSI is engaged in labor-only contracting.

First, petitioners worked at LSC's premises, and nowhere else. Other than the provisions of the *Agreement*, there was no showing that it was BMSI which established petitioners' working procedure and methods, which supervised petitioners in their work, or which evaluated the same. There was absolute lack of evidence that BMSI exercised control over them or their work, except for the fact that petitioners were hired by BMSI.

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[21] *Purefoods Corporation (now San Miguel Purefoods Company, Inc.) v. National Labor Relations Commission*, G.R. No. 172241, November 20, 2008, 571 SCRA 406, 413.

[22] *Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 472-473 (2000).

Second, LSC was unable to present proof that BMSI had substantial capital. The record before us is bereft of any proof pertaining to the contractor's capitalization, nor to its investment in tools, equipment, or implements actually used in the performance or completion of the job, work, or service that it was contracted to render. What is clear was that the equipment used by BMSI were owned by, and merely rented from, LSC.

In *Mandaue Galleon Trade, Inc. v. Andales*,[23] we held:

> The law casts the burden on the contractor to prove that it has substantial capital, investment, tools, *etc.* Employees, on the other hand, need not prove that the contractor does not have substantial capital, investment, and tools to engage in job-contracting.

Third, petitioners performed activities which were directly related to the main business of LSC. The work of petitioners as checkers, welders, utility men, drivers, and mechanics could only be characterized as part of, or at least clearly related to, and in the pursuit of, LSC's business. Logically, when petitioners were assigned by BMSI to LSC, BMSI acted merely as a labor-only contractor.

Lastly, as found by the NLRC, BMSI had no other client except for LSC, and neither BMSI nor LSC refuted this finding, thereby bolstering the NLRC finding that BMSI is a labor-only contractor.

The CA erred in considering BMSI's Certificate of Registration as sufficient proof that it is an independent contractor. In *San Miguel Corporation v. Vicente B. Semillano, Nelson Mondejas, Jovito Remada, Alilgilan Multi-Purpose Coop (AMPCO), and Merlyn N. Policarpio*,[24] we held that a Certificate of Registration issued by the Department of Labor and Employment is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising.[25]

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[23] G.R. No. 159668, March 7, 2008, 548 SCRA 17, 28.

[24] *Supra* note 19.

[25] *Id.*

Indubitably, BMSI can only be classified as a labor-only contractor. The CA, therefore, erred when it ruled otherwise. Consequently, the workers that BMSI supplied to LSC became regular employees of the latter.[26] Having gained regular status, petitioners were entitled to security of tenure and could only be dismissed for just or authorized causes and after they had been accorded due process.

Petitioners lost their employment when LSC terminated its *Agreement* with BMSI. However, the termination of LSC's *Agreement* with BMSI cannot be considered a just or an authorized cause for petitioners' dismissal. In *Almeda v. Asahi Glass Philippines. Inc. v. Asahi Glass Philippines, Inc.*,[27] this Court declared:

> The sole reason given for the dismissal of petitioners by SSASI was the termination of its service contract with respondent. But since SSASI was a labor-only contractor, and petitioners were to be deemed the employees of respondent, then the said reason would not constitute a just or authorized cause for petitioners' dismissal. It would then appear that petitioners were summarily dismissed based on the aforecited reason, without compliance with the procedural due process for notice and hearing.
>
> Herein petitioners, having been unjustly dismissed from work, are entitled to reinstatement without loss of seniority rights and other privileges and to full back wages, inclusive of allowances, and to other benefits or their monetary equivalents computed from the time compensation was withheld up to the time of actual reinstatement. Their earnings elsewhere during the periods of their illegal dismissal shall not be deducted therefrom.

Accordingly, we hold that the NLRC committed no grave abuse of discretion in its decision. Conversely, the CA committed a reversible error when it set aside the NLRC ruling.

WHEREFORE, the petition is *GRANTED*. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP. No. 103804 are *REVERSED* and *SET ASIDE*. Petitioners Emmanuel Babas,

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[26] See *PCI Automation Center Inc. v. NLRC*, 322 Phil. 536 (1996).

[27] G.R. No. 177785, September 3, 2008, 564 SCRA 115, 132-134.

Danilo T. Banag, Arturo V. Villarin, Sr., Edwin Javier, Sandi Bermeo, Rex Allesa, and Arsenio Estorque are declared regular employees of Lorenzo Shipping Corporation. Further, LSC is ordered to reinstate the seven petitioners to their former position without loss of seniority rights and other privileges, and to pay full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time compensation was withheld up to the time of actual reinstatement.

No pronouncement as to costs.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188560. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RICKY ALFREDO *y* NORMAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ALIBI; SUFFICIENCY AND APPRECIATION THEREOF.— [F]or alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. x x x Moreover, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses. It is

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[*] Additional member in lieu of Associate Justice Roberto A. Abad per Raffle dated December 15, 2010.

evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence. x x x. In addition, x x x it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself and his or her relatives, friends, and comrades-in-arms, and not by credible persons.

2. ID.; ID.; TESTIMONIAL EVIDENCE SUPERIOR AS AGAINST AFFIDAVITS.— [D]iscrepancies do not necessarily impair the credibility of a witness, for affidavits, being taken *ex parte*, are almost always incomplete and often inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions, and are, thus, generally considered to be inferior to the testimony given in open court.

3. ID.; CIVIL PROCEDURE; JUDGMENT; THAT JUDGE WHO RENDERED THE DECISION WAS NOT THE SAME WHO HEARD THE CASE, DOES NOT RENDER THE DECISION ERRONEOUS.— The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial, but merely relied on the records of the case, does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.

4. CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.— In reviewing the evidence in rape cases, the following considerations should be made: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Nonetheless, it is also worth noting that rape is essentially committed in relative isolation or secrecy; thus, it is most often only the victim who can testify with regard to the fact of forced coitus.

5. ID.; ID.; ELEMENTS.— Pertinently, the elements of rape under par. 1(a) of Art. 266-A of the Code are the following: (1) that the offender is a man; (2) that the offender had carnal knowledge

of a woman; and (3) that such act is accomplished by using force or intimidation. On the other hand, the elements of rape under par. 2 of Art. 266-A of the Code are as follows: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.

6. ID.; ID.; MEDICAL EXAMINATION AND CERTIFICATE ARE CONSIDERED VERITABLE CORROBORATIVE EVIDENCE OF RAPE.— It should be noted that the findings in the medical examination of Dr. Ged-ang corroborated the testimony of AAA. While a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster AAA's testimony.

7. ID.; ID.; DAMAGES.— For rape under Art. 266-A, par. 1(d) of the Revised Penal Code, the CA was correct in awarding PhP 50,000 as civil indemnity and PhP 50,000 as moral damages. However, for rape through sexual assault under Art. 266-A, par. 2 of the Code, the award of damages should be PhP 30,000 as civil indemnity and PhP 30,000 as moral damages.

8. ID.; ID.; EXEMPLARY DAMAGES MADE PROPER FOR SEXUALLY ASSAULTING A PREGNANT MARRIED WOMAN.— We explained in *People v. Cristobal* that "for sexually assaulting a pregnant married woman, the accused has shown moral corruption, perversity, and wickedness. He has grievously wronged the institution of marriage. The imposition then of exemplary damages by way of example to deter others from committing similar acts or for correction for the public good is warranted." Notably, there were instances wherein exemplary damages were awarded despite the absence of an aggravating circumstance. As we held in *People v. Dalisay*: x x x **Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous**

conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. x x x Concomitantly, exemplary damages in the amount of the PhP 30,000 should be awarded for each count of rape, in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Basa Balagtey Law Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the September 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02135 entitled *People of the Philippines v. Ricky Alfredo y Norman*,

[1] *Rollo*, pp. 2-13. Penned by Associate Justice Edgardo P. Cruz and concurred in by Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring.

which affirmed an earlier decision[2] in Criminal Case Nos. 01-CR-4213 and 01-CR-4214 of the Regional Trial Court (RTC), Branch 62 in La Trinidad, Benguet. The RTC found accused-appellant Ricky Alfredo *y* Norman guilty beyond reasonable doubt of two counts of rape.

The Facts

Accused-appellant was charged in two (2) separate Informations, the accusatory portions of which read:

Criminal Case No. 01-CR-4213

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[3] a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[4]

Criminal Case No. 01-CR-4214

That sometime in the period from April 28-29, 2001, at Cadian, Topdac, Municipality of Atok, Province of Benguet, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, by means of force, intimidation and threats, did then and there willfully, unlawfully and feloniously commit an act of sexual assault by inserting a flashlight into the vagina of one [AAA], a thirty six (36) year old woman, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.[5]

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[2] CA *rollo*, pp. 16-56. Penned by Judge Agapito K. Laoagan, Jr.

[3] The real names of the victim and her immediate family members are withheld to protect their identity and privacy pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] CA *rollo*, p. 16.

[5] *Id.*

On June 21, 2001, accused-appellant, with the assistance of counsel, pleaded not guilty to both charges. Thereafter, trial on the merits ensued.

During the trial, the prosecution offered the oral testimonies of the victim, AAA; her 10-year old son, BBB; Ernesto dela Cruz; Police Officer 3 James Ruadap; and Dr. Alma Ged-ang. On the other hand, the defense presented as its witnesses accused-appellant himself; his mother, Remina; his sister, Margaret; Hover Cotdi; Jona Canuto; and Pina Mendoza.[6]

The Prosecution's Version of Facts

In March 2001, AAA, who was six months pregnant, went home to Butiyao, Benguet, along with her family, to harvest the peppers planted in their garden. On April 27, 2001, AAA and her son, BBB, returned to their sayote plantation in Cadian, Topdac, Atok, Benguet to harvest sayote. The following day, or on April 28, 2001, AAA had the harvested sayote transported to Baguio City. Later that night, she and her son stayed at their rented shack and retired early to bed.[7]

In the middle of the night, AAA was awakened by a beam of light coming from the gaps in the walls of the shack directly illuminating her face. She then inquired who the person was, but nobody answered. Instead, the light was switched off. After a few minutes, the light was switched on again.[8] Thereafter, a male voice shouted, "*Rumwar kayo ditta no saan kayo nga rumwar paletpeten kayo iti bala!*"[9] AAA remained seated. Then, the male voice uttered, "*Lukatam daytoy no saan mo nga lukatan bilangan ka, maysa, duwa…*"[10] AAA immediately woke BBB

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[6] *Rollo*, p. 3.

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

[8] *Id.* at 4.

[9] "You better come out if you will not come out I will riddle you with bullets."

[10] "You better get out or else I will count, one, two…"

up. Just then, the male voice said, "*Pabitaken kayo iti bala.*"[11] AAA cried out of fear.[12]

Anxious that the person outside would kill her and her son, AAA lit the gas lamp placed on top of the table, and opened the door while her son stood beside it. As the door opened, she saw accused-appellant directly in front of her holding a flashlight. AAA did not immediately recognize accused-appellant, as his hair was long and was covering his face. She invited him to come inside the shack, but the latter immediately held her hair and ordered her to walk uphill.[13] Helpless and terrified, AAA obeyed him. All the while, accused-appellant was behind her.[14]

Upon reaching a sloping ground, accused-appellant ordered AAA to stop. Thereafter, accused-appellant placed the lit flashlight in his pocket and ordered AAA to remove her clothes. When she refused, accused-appellant boxed her left eye and removed her clothes. When she also attempted to stop accused-appellant, the latter angrily slapped her face. Completely naked, AAA was again ordered to walk uphill.[15]

Upon reaching a grassy portion and a stump about one foot high, accused-appellant ordered AAA to stop and lie on top of the stump, after accused-appellant boxed her thighs. Accused-appellant then bent down and spread open AAA's legs. After directing the beam of the flashlight on AAA's naked body, accused-appellant removed his pants, lowered his brief to his knees, went on top of her, and inserted his penis into her vagina. Accused-appellant threatened to box her if she moves.[16]

Accused-appellant also held AAA's breast, as well as the other parts of her body. He shifted the flashlight from one hand

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[11] "I will explode the bullet."

[12] *Rollo*, p. 4.

[13] *Id.*

[14] CA *rollo*, p. 20.

[15] *Rollo*, p. 4.

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

to another while he moved his buttocks up and down. AAA cried as she felt severe pain in her lower abdomen. Accused-appellant stood up and directed the beam of the flashlight on her after he was satisfied.[17]

Ten minutes later, accused-appellant went on top of AAA again and inserted his penis into her vagina and moved his buttocks up and down. After being satisfied, accused-appellant stood up and lit a cigarette.[18]

Afterwards, accused-appellant went on top of AAA again and tried to insert his penis in the latter's vagina. His penis, however, has already softened. Frustrated, accused-appellant knelt and inserted his fingers in her vagina. After removing his fingers, accused-appellant held a twig about 10 inches long and the size of a small finger in diameter which he used to pierce her vagina. Dissatisfied, accused-appellant removed the twig and inserted the flashlight in her vagina.[19]

After accused-appellant removed the flashlight from AAA's vagina, he went on top of her again, pressing his elbows on her upper breasts and boxing her shoulders and thighs. Subsequently, accused-appellant stood up and warned her not to report the incident to the authorities. Immediately after, he left her at the scene.[20]

Since she was too weak to walk, AAA rested for about 15 minutes before she got up and went back to the shack where she immediately woke her son up. Thereafter, they proceeded to the highway and boarded a jeep to Camp 30, Atok, Benguet. She also went to Sayangan, Atok, Benguet the following day to report the incident to the police authorities.[21]

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[17] *Id.* at 5.

[18] *Id.*

[19] *Id.*

[20] *Id.*

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

Upon medical examination, Dr. Ged-ang found that AAA had a subconjunctival hemorrhage on the right eye and multiple head injuries, which may have been caused by force such as a blow, a punch, or a hard object hitting the eye. There was also tenderness on the upper part of the back of AAA, as well as on her left infraclavicular area below the left clavicle, left flank area or at the left side of the waist, and medial aspect on the inner part of the thigh. Moreover, there were also multiple linear abrasions, or minor straight open wounds on the skin of her forearms and legs caused by sharp objects with rough surface.[22]

Apart from the external examination, Dr. Ged-ang also conducted an internal examination of the genitalia of AAA. Dr. Ged-ang found that there was confluent abrasion on the left and medial aspects of her *labia minora* about five centimeters long and a confluent circular abrasion caused by a blunt, rough object that has been forcibly introduced into the genitalia.[23]

Version of the Defense

In the morning of April 28, 2001, accused-appellant was allegedly working in the *sayote* plantation near his house. At noontime, he went home to eat his lunch. After having lunch, his mother told him to bring the pile of *sayote* she harvested to the edge of the road. Accused-appellant went to the place where the pile of harvested *sayote* was placed. However, when he reached that place, he claimed that he saw AAA gathering the *sayote* harvested by his mother and placing them in a sack.[24]

Upon seeing what AAA was doing, accused-appellant shouted at her, prompting AAA to run away with her son and leave the sack of *sayote*. When they left, accused-appellant started placing the harvested *sayote* in the sack. He was able to fill eight sacks. Remembering that his mother told him that he would be able to fill 10 sacks all in all, accused-appellant went to the shack of AAA after bringing the eight sacks near the road. He suspected

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

[23] *Id.*

[24] *Rollo*, p. 6.

that she and her son were the ones who took the two missing sacks of *sayote*.[25]

When he arrived at the place where AAA and her son were staying, accused-appellant allegedly saw them packing *sayote*, and he also supposedly saw a sack of *sayote* with the name of his father printed on it. For this reason, accused-appellant got mad and told AAA to go away and leave the place because what they were doing was wrong. AAA replied by saying that she would wait for Hover Cotdi, the owner of the *sayote* plantation and the shack, to ask for permission to leave. All this time, accused-appellant was allegedly speaking in an angry but non-threatening voice. Nonetheless, while he was confronting AAA, her son ran into the shack and stayed there.[26]

Before leaving the place, accused-appellant told AAA that the sacks of *sayote* belonged to his family, although he decided not to take them back anymore. He supposedly left after five o'clock in the afternoon and arrived at their house at around seven o'clock in the evening. During this time, all his family members were watching television on Channel 3. Accused-appellant joined them in watching a Tagalog movie. He then allegedly went to bed at 10 o'clock in the evening, while his parents continued to watch television until 11 o'clock in the evening.[27]

The following morning, on April 29, 2001, accused-appellant woke up between six to seven o'clock in the morning. After having breakfast, he helped his mother clean the *sayote* farm. At around eight o'clock in the morning, he saw AAA by the road waiting for a ride with a baggage placed in a carton box. His mother then went down the road and talked to AAA, leaving accused-appellant behind. He claimed to pity AAA upon seeing her but could not do anything.[28]

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[25] *Id.*

[26] *Id.* at 6-7.

[27] *Id.* at 7.

[28] *Id.*

Ruling of the Trial Court

Between the two conflicting versions of the incident, the trial court gave credence to the version of the prosecution and rendered its Decision dated February 17, 2006, finding accused-appellant guilty of two counts of rape. The decretal portion reads:

> WHEREFORE, in view of the foregoing, the Court finds RICKY ALFREDO *y* NORMAN guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 01-CR-4213 and sentences him to suffer the penalty of *reclusion perpetua* including all the accessory penalties imposed by law.
>
> The Court, likewise, finds him guilty beyond reasonable doubt of the crime of Rape in Criminal Case No. 01-CR-4214 and sentences him to suffer the indeterminate penalty of imprisonment of three (3) years, two (2) months and one (1) day of *prision correccional*, as minimum, and eight (8) years, two (2) months and one (1) day of *prision mayor*, as maximum.
>
> For each count of rape, he shall pay [AAA] the sum of Fifty Thousand Pesos (Php50,000.00) by way of civil indemnity and the sum of Fifty Thousand Pesos (₱50,000.00) by way of moral damages.
>
> Pursuant to Administrative Circular No. 4-92-A of the Court Administrator, the Provincial Jail Warden of Benguet Province is directed to immediately transfer the said accused, Ricky Alfredo y Norman to the custody of the Bureau of Corrections, Muntinlupa City, Metro Manila after the expiration of fifteen (15) days from date of promulgation unless otherwise ordered by the court.
>
> Let a copy of this Judgment be furnished the Provincial Jail Warden of Benguet Province for his information, guidance and compliance.
>
> SO ORDERED.[29]

Pursuant to our pronouncement in *People v. Mateo*,[30] modifying the pertinent provisions of the Revised Rules on Criminal Procedure insofar as they provide for direct appeals from the Regional Trial Court to this Court in cases in which the penalty imposed

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[29] CA *rollo*, p. 56.

[30] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640, 657-658.

by the trial court is death, *reclusion perpetua*, or life imprisonment, the case was transferred, for appropriate action and disposition, to the CA.

On August 17, 2006, accused-appellant filed his Brief for Accused-Appellant,[31] while the People of the Philippines, through the Office of the Solicitor General, filed its Brief for the Plaintiff-Appellee[32] on January 18, 2007.

Ruling of the Appellate Court

As stated above, the CA, in its Decision dated September 30, 2008, affirmed the judgment of conviction by the trial court.[33]

Undaunted, accused-appellant filed a motion for reconsideration, which was denied by the CA in its Resolution dated March 19, 2009.[34]

On April 21, 2009, accused-appellant filed his Notice of Appeal[35] from the CA Decision dated September 30, 2008.

In our Resolution dated September 14, 2009,[36] we notified the parties that they may file their respective supplemental briefs if they so desired. On November 9, 2009, the People of the Philippines manifested that it is no longer filing a supplemental brief, as it believed that all the issues involved in the present controversy have been succinctly discussed in the Brief for the Appellee.[37] On the other hand, on January 26, 2010, accused-appellant filed his supplemental brief.

The Issues

Accused-appellant contends in his supplemental brief that:

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[31] CA *rollo*, pp. 62-83.

[32] *Id.* at 139-160.

[33] *Rollo*, p. 13.

[34] *Id.* at 50-51.

[35] *Id.* at 205-208.

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

[37] *Id.* at 21-22.

I.

BY THE NATURE OF THE OFFENSE IN THE TWO (2) INFORMATIONS FILED AGAINST ACCUSED-APPELLANT, THE LATTER HAS NO OTHER PLAUSIBLE DEFENSE EXCEPT ALIBI THAT SHOULD NOT JUST BE BRUSHED ASIDE IF THERE ARE MATERIAL INCONSISTENSIES IN THE CLAIMS OF THE WITNESSES FOR THE PROSECUTION;

II.

THE DECISION CONVICTING ACCUSED-APPELLANT HEAVILY RELIED ON THE DEMEANOR OF THE WITNESSES FOR THE PROSECUTION DURING THE TRIAL WHEN THE *PONENTE* OF THE DECISION DID NOT HAVE ANY OPPORTUNITY TO HEAR THE WITNESSES;

III.

THE THEN AND THERE CONDUCT OF ACCUSED-APPELLANT IS UNLIKELY TO YIELD A GUILTY VERDICT.[38]

The Court's Ruling

We sustain accused-appellant's conviction.

Alibi is an inherently weak defense

In his supplemental brief, accused-appellant contends that he could not offer any other defense except denial and alibi, as he could not distort the truth that he was in his house at the time of the alleged rape in the evening of April 28, 2001 up to the wee hours of April 29, 2001. He contends that although denial and alibi are the weakest defenses in criminal cases, consideration should also be given to the fact that denial becomes the most plausible line of defense considering the nature of the crime of rape where normally only two persons are involved.[39]

It should be noted that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was

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[38] CA *rollo*, pp. 68-69.

[39] *Rollo*, p. 32.

physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[40]

A review of the records in the instant case would reveal that accused-appellant failed to present convincing evidence that he did not leave his house, which is only about 150 meters away from the shack of AAA, in the evening of April 28, 2001. Significantly, it was also not physically impossible for accused-appellant to be present on the mountain where he allegedly raped AAA at the time it was said to have been committed.

Moreover, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in light of positive identification by truthful witnesses.[41] It is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[42] Thus, there being no strong and credible evidence adduced to overcome the testimony of AAA, no weight can be given to the alibi of accused-appellant.

In addition, even if the alibi of accused-appellant appears to have been corroborated by his mother, Remina, and his sister, Margaret, said defense is unworthy of belief not only because accused-appellant was positively identified by AAA, but also because it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself and his or her relatives, friends, and comrades-in-arms,[43] and not by credible persons.[44]

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[40] *People v. Guerrero*, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683; *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.

[41] *People v. dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91; *Velasco v. People*, G.R. No. 166479, February 28, 2006, 483 SCRA 649, 664-665.

[42] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309; *Velasco v. People*, *supra* note 41.

[43] *People v. Manzano*, G.R. No. 108293, September 15, 1995, 248 SCRA 239, 248.

[44] *People v. Panganiban*, G.R. No. 97969, February 6, 1995, 241 SCRA 91, 100-101.

As between the statement made in an affidavit and that given in open court, the latter is superior

Accused-appellant contends also that there were material inconsistencies in the testimonies of the prosecution witnesses and in the latter's respective affidavits, to wit: (1) whether accused-appellant's penis was erect or not; and (2) whether AAA indeed recognized accused-appellant when they were already on the mountain or while they were still in the shack.[45]

AAA testified in open court that accused-appellant tried to insert his penis into her vagina several times but was unable to do so since his penis has already softened.[46] On the other hand, AAA stated in her affidavit that "the suspect ordered me to lay [sic] flatly on the ground and there he started to light and view my whole naked body while removing his pant [sic] and tried to insert his pennis [sic] on [sic] my vagina but I wonder it does not errect [sic]."[47] There is no inconsistency between AAA's testimony and her affidavit. The only difference is that she failed to state in her affidavit that before accused-appellant unsuccessfully tried to insert his penis into AAA's vagina, he had already succeeded twice in penetrating her private organ.

There is likewise no incompatibility between AAA's affidavit stating that she came to know of accused-appellant as the culprit when they were on the mountain and his flashlight illuminated his face as he lay on top of her, and her testimony that while they were still in the shack, AAA was "not then sure" but already suspected that her rapist was accused-appellant "because of his hair."[48] In other words, AAA was not yet sure whether accused-appellant was the culprit while they were still in the shack, as she only became positively certain that it was him when the flashlight illuminated his face while they were on the mountain.[49]

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[45] *Rollo*, pp. 36-38.

[46] TSN, March 11, 2003, p. 6.

[47] *Rollo*, p. 48.

[48] TSN, June 16, 2003, p. 8.

[49] *Rollo*, p. 10.

Nevertheless, discrepancies do not necessarily impair the credibility of a witness, for affidavits, being taken *ex parte*, are almost always incomplete and often inaccurate for lack of searching inquiries by the investigating officer or due to partial suggestions, and are, thus, generally considered to be inferior to the testimony given in open court.[50]

The validity of conviction is not adversely affected by the fact that the judge who rendered judgment was not the one who heard the witnesses

Accused-appellant contends further that the judge who penned the appealed decision is different from the judge who heard the testimonies of the witnesses and was, thus, in no position to render a judgment, as he did not observe firsthand their demeanor during trial.

We do not agree. The fact that the trial judge who rendered judgment was not the one who had the occasion to observe the demeanor of the witnesses during trial, but merely relied on the records of the case, does not render the judgment erroneous, especially where the evidence on record is sufficient to support its conclusion.[51] As this Court held in *People v. Competente*:

The circumstance that the Judge who rendered the judgment was not the one who heard the witnesses, does not detract from the validity of the verdict of conviction. Even a cursory perusal of the Decision would show that it was based on the evidence presented during trial and that it was carefully studied, with testimonies on direct and cross examination as well as questions from the Court carefully passed upon.[52] (Emphasis supplied.)

Further, the transcripts of stenographic notes taken during the trial were extant and complete. Hence, there was no impediment for the judge to decide the case.

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[50] *People v. Sara*, G.R. No. 140618, December 10, 2003, 417 SCRA 431, 443.

[51] *People v. Hatani*, G.R. Nos. 78813-14, November 8, 1993, 227 SCRA 497, 508.

[52] G.R. No. 96697, March 26, 1992, 207 SCRA 591, 598.

The guilt of accused-appellant has been established beyond reasonable doubt

After a careful examination of the records of this case, this Court is satisfied that the prosecution's evidence established the guilt of accused-appellant beyond reasonable doubt.

In reviewing the evidence in rape cases, the following considerations should be made: (1) an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[53] Nonetheless, it is also worth noting that rape is essentially committed in relative isolation or secrecy; thus, it is most often only the victim who can testify with regard to the fact of forced coitus.[54]

In the instant case, accused-appellant is charged with two counts of rape—one under paragraph 1(a) of Article 266-A of the Revised Penal Code and the other under par. 2 of Art. 266-A.

Pertinently, the elements of rape under par. 1(a) of Art. 266-A of the Code are the following: (1) that the offender is a man; (2) that the offender had carnal knowledge of a woman; and (3) that such act is accomplished by using force or intimidation.[55]

On the other hand, the elements of rape under par. 2 of Art. 266-A of the Code are as follows: (1) that the offender commits an act of sexual assault; (2) that the act of sexual assault is

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[53] *People v. San Diego*, G.R. No. 129297, March 17, 2000, 328 SCRA 477, 486-487; citing *People v. Gozano*, G.R. No. 125965, January 21, 2000, 323 SCRA 1, 6.

[54] *People v. Resurreccion*, G.R. No. 185389, July 7, 2009, 592 SCRA 269, 276; citing *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.

[55] Luis B. Reyes, *REVISED PENAL CODE 525* (16th ed., 2006).

committed by inserting his penis into another person's mouth or anal orifice or by inserting any instrument or object into the genital or anal orifice of another person; and that the act of sexual assault is accomplished by using force or intimidation, among others.[56]

Notably, the prosecution has sufficiently established the existence of the foregoing elements. When AAA was called to the witness stand, she gave a detailed narration of the incident that transpired in the evening of April 28, 2001 and early morning of April 29, 2001. AAA categorically asserted that accused-appellant had carnal knowledge of her and even sexually assaulted her against her will with the use of force, threat, or intimidation.

Particularly, AAA testified that accused-appellant threatened to riddle her and her son with bullets if they do not open the door of their shack. Accused-appellant thereafter forcibly pulled her hair and dragged her to the mountains. AAA pleaded for her life. Nonetheless, accused-appellant boxed her every time she did not yield to his demands. He boxed her thighs forcing AAA to sit, and he threatened to box her if she moves while he carried out his bestial desires.[57]

AAA testified further that after accused-appellant satisfied his lust, he sexually assaulted her. He inserted his fingers into her vagina and then he tried to pierce the same with a twig. Subsequently, he inserted his flashlight into her vagina.[58] AAA was too weak to stop him. She had struggled to free herself from accused-appellant from the moment she was dragged from the shack until they reached the mountains. However, accused-appellant still prevailed over her. Notably, AAA was six months pregnant at that time. She was frightened and hopeless.[59]

Also, it should be noted that the findings in the medical examination of Dr. Ged-ang corroborated the testimony of AAA.

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[56] *Id.* at 525-526.

[57] CA *rollo,* pp. 44-45.

[58] *Id.* at 43.

[59] *Id.* at 45.

While a medical examination of the victim is not indispensable in the prosecution of a rape case, and no law requires a medical examination for the successful prosecution of the case, the medical examination conducted and the medical certificate issued are veritable corroborative pieces of evidence, which strongly bolster AAA's testimony.[60]

Moreover, the police found the red t-shirt and blue shorts of AAA in the place where accused-appellant was said to have removed her clothes. In addition, AAA's son, BBB, testified as to how accused-appellant threatened them in the evening of April 28, 2001, how he was able to identify accused-appellant as the perpetrator, and what his mother looked like when she returned home in the early morning of April 29, 2001. According to BBB, his mother was naked except for a dirty white jacket she was wearing. He also noticed that his mother had wounds and blood all over her body. All these are consistent with the testimony of AAA.[61]

All told, we accordingly sustain accused-appellant's conviction.

Award of Damages

The decision of the CA as to the damages awarded must be modified. For rape under Art. 266-A, par. 1(d) of the Revised Penal Code, the CA was correct in awarding PhP 50,000 as civil indemnity and PhP 50,000 as moral damages. However, for rape through sexual assault under Art. 266-A, par. 2 of the Code, the award of damages should be PhP 30,000 as civil indemnity and PhP 30,000 as moral damages.[62]

We explained in *People v. Cristobal* that "for sexually assaulting a pregnant married woman, the accused has shown moral corruption, perversity, and wickedness. He has grievously wronged the institution of marriage. The imposition then of exemplary damages by way of example to deter others from

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[60] See *People v. Ferrer*, G.R. No. 142662, August 14, 2001, 362 SCRA 778, 788.

[61] CA *rollo*, p. 46.

[62] *People v. Lindo*, G.R. No. 189818, August 9, 2010.

committing similar acts or for correction for the public good is warranted."[63] Notably, there were instances wherein exemplary damages were awarded despite the absence of an aggravating circumstance. As we held in *People v. Dalisay*:

> Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating circumstance has been proven, but was not alleged, courts will not award exemplary damages. x x x
>
> x x x x x x x x x
>
> Nevertheless, *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. Catubig reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.
>
> Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of Catubig; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste, People v. Victor, People v. Orilla, People v. Calongui, People v. Magbanua, People of the Philippines v. Heracleo Abello y Fortada, People of the Philippines v. Jaime Cadag Jimenez,* and *People of the Philippines v. Julio Manalili.* And in the second set are *People v. Llave, People of the Philippines v. Dante Gragasin y Par,* and *People of the Philippines*

[63] G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517-518.

v. Edwin Mejia. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

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Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages — taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus —

> **Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.**

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing

their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "**[t]he application of Article 2230 of the Civil Code *strictissimi juris* in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages — to set a public example or correction for the public good**."[64] (Emphasis supplied.)

Concomitantly, exemplary damages in the amount of PhP 30,000 should be awarded for each count of rape, in line with prevailing jurisprudence.[65]

WHEREFORE, the appeal is *DENIED*. The CA Decision dated September 30, 2008 in CA-G.R. CR-H.C. No. 02135 finding accused-appellant Ricky Alfredo guilty of rape is *AFFIRMED* with *MODIFICATIONS*. As thus modified, accused-appellant in Criminal Case No. 01-CR-4213 is ordered to pay PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages. In Criminal Case No. 01-CR-4214, accused-appellant is likewise ordered to pay PhP 30,000 as civil indemnity, PhP 30,000 as moral damages, and PhP 30,000 as exemplary damages.

SO ORDERED.

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

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[64] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 817-821.

[65] *People v. Lindo, supra* note 62; citing *Flordeliz v. People*, G.R. No. 186441, March 1, 2010.

THIRD DIVISION

[G.R. No. 188637. December 15, 2010]

ARNALDO G. GABUNAS, SR., *petitioner, vs.* **SCANMAR MARITIME SERVICES, INC., MR. VICENTE BRILLANTES and IUM SHIP MANAGEMENT,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION; FACTUAL FINDINGS OF THE NLRC, RESPECTED.— We have no compelling reason to deviate from the factual findings of the NLRC stating that petitioner has failed to establish that his illness was work-related. Hence, he is not entitled to claim permanent disability benefits. This Court has, time and again, held that the factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court. This dictum is consistent with the settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACTS ARE NOT PROPER.— In *De Jesus v. National Labor Relations Commission*, judicial review by the Supreme Court does not extend to a re-evaluation of the sufficiency of the evidence that served as the basis for the proper labor tribunals's determination. The doctrine that this Court is not a trier of facts is firm and applies with greater force to labor cases.

3. ID.; EVIDENCE; RULES OF ADMISSIBILITY; DOCUMENTARY EVIDENCE; NOTARIZED DOCUMENT PRESUMES ITS DUE EXECUTION.— In *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, et al.*, we held that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. It has in its favor the presumption of regularity, which may only be rebutted by

evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.

4. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT AGENCY (POEA) STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; COMPENSABILITY OF WORK-RELATED ILLNESS REQUIRES SUBSTANTIAL EVIDENCE.— Petitioner faults the ruling of the appellate court that his illness is not work-related. Petitioner stresses that the law only requires a probability of the connection between the risk of contracting the illness and its aggravation due to the working conditions – not absolute certainty or direct causal relation – to prove compensability. However, while petitioner correctly cites the principle, he must still adduce substantial evidence to prove that the principle can be applied to his case.

5. ID.; ID.; ID.; PROBABILITY OF CONNECTION BETWEEN ILLNESS AND THE WORKING CONDITIONS, ELUCIDATED.— We agree with petitioner's argument that to establish whether the illness is work-related, probability – not certainty – is the touchstone. However, the probability referred to must be founded on facts and reason. *Government Service Insurance System v. Emmanuel P. Cuntapay* is instructive as regards the burden resting on a claimant's shoulder – that of proving the causal link between a claimant's work and the ailment suffered: x x x **Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only possibility that the employment caused the disease.**

APPEARANCES OF COUNSEL

Constantino L. Reyes for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

SERENO, *J.*:

Before us is a Petition for review on *certiorari* filed under Rule 45 of the Revised Rules of Court. The Petition seeks to reverse the Decision[1] dated 24 December 2008 of the Court of Appeals (CA) in C.A. G.R. SP No. 99242. The CA Decision affirmed the Decision[2] dated 24 August 2006 of the National Labor Relations Commission (NLRC) in CA G.R. No. 045232-05.

The following are the established facts of the case:

Petitioner Arnaldo G. Gabunas, Sr. was a seafarer registered with the Philippine Overseas Employment Agency (POEA) under Seafarer's Registration Certificate No. 0263209-95 and also with the Maritime Industry Authority (MARINA).[3]

On 22 December 2000, petitioner signed a contract with respondent Scanmar Maritime Services, Inc. (Scanmar) to work as 2nd Assistant Engineer for its principal, IUM Ship Management, on board the ocean vessel *M/V Chaiten* for nine months.[4]

Prior to boarding his assigned vessel, petitioner was subjected to a pre-employment medical examination, on the basis of which he was declared by the company-designated physician "fit to work."[5] On 27 December 2000, petitioner left the Philippines to commence work on his assigned vessel.[6]

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[1] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by then Court of Appeals Associate Justice Mariano C. del Castillo and Associate Justice Romeo F. Barza.

[2] Penned by NLRC Second Division Presiding Commissioner Raul T. Aquino and concurred in by Commissioners Victoriano R. Calaycay and Angelita A. Gacutan.

[3] *Rollo*, p. 6.

[4] *Id.*

[5] *Id.* at 38.

[6] *Id.* at 47.

Sometime in July 2001, petitioner experienced a throbbing pain in his left leg while on board his vessel of assignment. He informed his officer about it and requested medical attention, but was ignored.[7]

After his contract expired, petitioner disembarked from the vessel on 16 October 2001 and arrived in the Philippines on the following day.[8] On 19 October 2001, he reported to the office of Scanmar to receive his final wages and to inform respondent of his preferred dates for next deployment.[9] He also asked for a medical check-up, but his request was ignored. Instead, respondent requested that he renew his license and attend a three-day seminar to upgrade his International Maritime Organization Certificate. On 19 September 2001, he underwent a pre-employment medical examination for future deployment and was declared "physically fit."[10] Thereafter, he awaited his reemployment.

On 02 February 2002, petitioner felt pain and numbness in his left leg. He sought medical attention at the Philippine Heart Center, where he was diagnosed with "Critical Limb Ischemia." Petitioner sought medical assistance from respondent Scanmar, but he was ignored.[11]

On 20 February 2002, petitioner underwent a femoro-popliteal bypass surgery on his left leg. Due to the failure of the first operation, he was required to undergo a "redo" of the femoro-popliteal bypass. Despite undergoing these medical procedures, petitioner's condition did not improve. He finally underwent a below-knee amputation of his left leg.[12]

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[7] *Id.* at 7.

[8] *Id.* at 38.

[9] *Id.* at 146.

[10] *Id.* at 175.

[11] *Id.* at 38.

[12] *Id.* at 180.

Due to the amputation of his leg, petitioner was prevented from engaging in his line of work. He consulted Dr. Efren Vicaldo, an internist-cardiologist at the Philippine Heart Center. Dr. Vicaldo opined that petitioner's disease incapacitated the latter from engaging in normal work, and that it was "work-aggravated."[13] Hence, petitioner demanded sickness allowance and permanent disability benefits from respondent. His demands were, however, ignored by respondent.[14]

On 10 June 2004, petitioner filed a Complaint with the National Labor Relations Commission, docketed as Case No. (M) 04-06-01636-00. On 25 May 2005, the Labor Arbiter found for petitioner and rendered the following monetary awards:

> WHEREFORE, premises considered, judgment is hereby rendered ordering respondents to pay complainant Arnaldo G. Gabunas his Permanent Disability Benefit in the amount of EIGHTY THOUSAND US DOLLARS (US $ 80,000.00), Sickness Allowance in the amount of US$3,800.00 or its equivalent in local currency at the time of actual payment plus ten (10%) percent of the total award as Attorney's Fees.[15]

Respondent Scanmar appealed the adverse Decision of the Labor Arbiter at the NLRC. On 24 August 2006, the NLRC reversed the Labor Arbiter's Decision and dismissed petitioner's Complaint as follows:

> WHEREFORE, premises considered, the appealed Decision is hereby ordered SET ASIDE and a new one entered declaring the DISMISSAL of complainant-appellee's complaint for lack of merit.[16]

Aggrieved by the NLRC's Decision, petitioner appealed to the Court of Appeals raising the following issues:

1. Whether or not the Honorable Commission erred in holding that the sickness of petitioner was not work-related and not

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[13] *Id.* at 177.

[14] *Id.* at 39.

[15] *Id.* at 135.

[16] *Id.* at 53.

acquired during the term of his contract contrary to the ruling of the Labor Arbiter;

2. Whether or not the Honorable Commission erred in holding that the petitioner is not entitled to disability benefits for failure to comply with the mandatory reporting requirement;

3. Whether or not the Honorable Commission erred in giving credence to the affidavit of Mr. Esta while disregarding the assertion of petitioner;

4. Whether or not the Honorable Commission erred in ruling that the belated filing of petitioner's complaint weakens his claim for disability benefit;

5. Whether or not the Honorable Commission erred in considering the assessment of the company-designated physician in the PEME of petitioner as physically fit;

6. Petitioner is entitled to permanent disability; and

7. Petitioner is entitled to attorney's fees.[17]

On 24 December 2008, the Court of Appeals, through its Twelfth Division, rendered a Decision affirming the ruling of the NLRC. The penultimate part of the Decision is worded as follows:

The claim that the complaint was filed based merely on surmises and conjectures does not deserve belief. The clinical abstracts issued by the attending physicians of petitioner Gabuans, Sr. showed that his sickness was a reality, however, petitioner's claim thereon has prescribed.

WHEREFORE, in view of the foregoing, the petition is DISMISSED. The decision of the NLRC in NLRC-NCR OFW Case No. (M) 04006-01636-00 (sic) is hereby AFFIRMED.

SO ORDERED.[18]

Petitioner moved for the reconsideration of the CA's Decision, but his Motion was denied through a Resolution dated 22 June

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[17] CA *rollo*, pp. 332-333.

[18] CA *rollo*, pp. 392.

2009.[19] Hence, this instant Petition for *certiorari* assailing the appellate court's Decision.

Petitioner argues before this Court that he is entitled to claim permanent disability and other benefits, because his illness was work-related and his claim has not yet prescribed. In addition, he also prays for the award of damages and attorney's fees as a consequence of his instituting the suit to enforce his claims against respondents.

After a careful perusal of the records of the case, we rule to DENY the Petition.

The validity of petitioner's claim for permanent disability benefits against respondents hinges on whether or not his illness was work-related. The rest of his prayers likewise depend on the resolution of the main issue mentioned.

We have no compelling reason to deviate from the factual findings of the NLRC stating that petitioner has failed to establish that his illness was work-related. Hence, he is not entitled to claim permanent disability benefits. This Court has, time and again, held that the factual findings of quasi-judicial agencies like the NLRC, when affirmed by the Court of Appeals, are conclusive upon the parties and binding on this Court.[20] This dictum is consistent with the settled rule that under Rule 45 of the Rules of Court, only questions of law may be raised before this Court.[21]

In *De Jesus v. National Labor Relations Commission*,[22] judicial review by the Supreme Court does not extend to a re-evaluation of the sufficiency of the evidence that served as the

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[19] Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by then Court of Appeals Associate Justice Mariano C. del Castillo and Associate Justice Romeo F. Barza.

[20] *Coastal Safeway Marine Services, Inc. v. Leonisa Delgado*, G.R. No. 168210, 17 June 2008, 555 SCRA 590.

[21] *Danny Mame v. Court of Appeals*, G.R. No. 167953, 03 April 2007, 520 SCRA 552.

[22] G.R. No. 151158, 17 August 2007, 530 SCRA 489.

basis for the proper labor tribunal's determination. The doctrine that this Court is not a trier of facts is firm and applies with greater force to labor cases.[23]

The NLRC dismissed the complaint after finding that petitioner's claims were not supported by substantial evidence. It noted that the records showed petitioner's failure to present credible evidence to prove that his illness was work-related. In fact, the NLRC regarded as mere allegation, his statement that "while busy doing his task, (he) felt a throbbing pain on his left leg," because he failed to support it with credible evidence, such as medical records and the daily logbook of the vessel.[24] Its finding was sustained by the Court of Appeals.

In affirming the findings of the NLRC, the appellate court found that the clinical abstracts presented by petitioner to support his permanent disability claims were taken only after his disembarkation from his assigned vessel.[25] The CA also noted that petitioner failed to present evidence that he had notified the ship captain about his alleged medical complaint while on board the vessel. Further, it found no proof, aside from mere allegations in the Complaint of petitioner,[26] that he had notified respondent of any medical problem upon disembarkation.

Contrary to petitioner's position, we do not find any error on the part of the appellate court, which gave credence to the Affidavit of witness Victorio Q. Esta, respondent Scanmar's Manning Manager. The Affidavit attests to the fact that respondent did not receive any complaint from petitioner, either while on board the vessel or after disembarkation.[27]

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[23] *PCL Shipping Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 153031, 14 December 2006, 511 SCRA 44 as cited in *De Jesus v. National Labor Relations Commission*, *supra*.

[24] *Rollo*, p. 50.

[25] *Id.* at 64.

[26] *Id.* at 66.

[27] *Supra*.

We scoured the records of the proceedings on the level of the Labor Arbiter and the NLRC and agree that petitioner could not substantiate his claim that he had complained of pain in his left leg while on board the vessel or upon his disembarkation. We also note that even the Labor Arbiter's Decision on this matter is wanting in reference to any evidence that would support findings in favor of petitioner. As between petitioner's bare allegation and the Affidavit of a witness to the contrary, we give credence to the latter.

In *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals, et al.*,[28] we held that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution. It has in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversy as to the falsity of the certificate. Absent such evidence, the presumption must be upheld. The burden of proof to overcome the presumption of due execution of a notarial document lies in the one contesting the same.

Petitioner failed to present convincing evidence to rebut the assertions made by Mr. Esta on a crucial point. The CA stated that while it was ready to construe in favor of labor in case of doubt, and while the Affidavit of Mr. Esta could be considered self-serving, there was absolutely no evidence to rebut this Affidavit; hence, the Affidavit must be believed.

On another point, petitioner faults the ruling of the appellate court that his illness is not work-related. Petitioner stresses that the law only requires a probability of the connection between the risk of contracting the illness and its aggravation due to the working conditions – not absolute certainty or direct causal relation – to prove compensability.[29] However, while petitioner correctly cites the principle, he must still adduce substantial evidence to prove that the principle can be applied to his case.

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[28] G.R. No. 125283, 10 February 2006, 482 SCRA 164.

[29] *Rollo*, p. 14.

In *Spouses Ponciano Aya-ay, Sr. and Clemencia Aya-ay v. Arpaphil Shipping Corp. and Magna Marina, Inc.*,[30] the issue resolved by the Court was whether the petitioners therein were entitled to death benefits provided under the POEA Standard Employment Contract. Parenthetically, it was crucial to determine whether the death of the deceased was reasonably connected with his work, or whether the working conditions increased the risk of contracting the disease that resulted in the employee's death. In resolving the issue, the Court made this pronouncement:

> Hence, it was incumbent on petitioners to present substantial evidence, or such relevant evidence which a reasonable mind might accept as adequate to justify a conclusion, that the eye injury sustained by Aya-ay during the term of his employment with respondents caused, or increased the risk of, CVA.
>
> **Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent; for the duty to prove work-causation or work-aggravation imposed by law is real and not merely apparent.**
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> x x x x x x x x x
>
> This Court finds that under the circumstances petitioners' bare allegations do not suffice to discharge the required quantum of proof of compensability. Awards of compensation cannot rest on speculations or presumptions. The beneficiaries must present evidence to prove a positive proposition.[31] (Emphasis supplied.)

In the instant case, it is apparent that petitioner's allegations in his supplications are bereft of any substantial proof that his illness was contracted while working as a 2nd Assistant Engineer on board the vessel, or that his illness was aggravated by his working conditions then. At best, his allegations were mere conjectures. Paragraph 7 of his Position Paper submitted to the Labor Arbiter states:

> 7. Sometime in July 2001, while busy doing his task, complainant felt a throbbing pain on his left leg. Immediately, he

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[30] G.R. No. 155359, 31 January 2006, 481 SCRA 282.

[31] *Id.*

decided to inform his officer what he experienced. He requested for a medical check up hoping that he would be referred to a physician and be given the appropriate medical attention but such was not the case. No medical attention was extended and was left with no recourse so he continued to work until he was repatriated and was disembarked on board on 16 October 2001 and arrived in the Philippines on 17 October 2001. The date of his arrival is reflected in his seaman's book, the pertinent portion of which is hereto attached as Annex "D".[32]

Attached to the above paragraph is a record of his date of arrival upon disembarkation from his assigned vessel. This fact is admitted by the parties and is undisputed. The allegation that he complained of pain and numbness while on board the vessel in July 2001 remains a bare allegation without any supporting evidence. This fact is reflected in the Labor Arbiter's overturned Decision, which summarily ruled that petitioner's sickness occurred during the term and validity of his contract. There was a palpable lack of reference to any basis for that ruling in the Labor Arbiter's Decision.

The proceedings before the NLRC and the CA reveal that even on appeal, petitioner failed to produce any evidence to substantiate his claim that his illness was work-related. The medical abstracts he introduced to support his case were all taken after his disembarkation from his vessel of assignment. Unfortunately, the pieces of documentary evidence that petitioner presented do not help in establishing that his illness was work-related so as to sustain a finding entitling him to compensation under his contract with respondents.

We agree with petitioner's argument that to establish whether the illness is work-related, probability – not certainty – is the touchstone.[33] However, the probability referred to must be founded on facts and reason. *Government Service Insurance System v. Emmanuel P. Cuntapay*[34] is instructive as regards the

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[32] National Labor Relations Commission *rollo*, pp. 25-26.

[33] *Rollo*, p. 14.

[34] G.R. No. 168862, 30 April 2008, 553 SCRA 520.

burden resting on a claimant's shoulder – that of proving the causal link between a claimant's work and the ailment suffered:

> The claimant must show, at least, by substantial evidence that the development of the disease was brought about largely by the conditions present in the nature of the job. What the law requires is a reasonable work connection and not a direct causal relation. It is enough that the hypothesis on which the workmen's claim is based is probable. **Probability, not the ultimate degree of certainty, is the test of proof in compensation proceedings. And probability must be reasonable; hence it should, at least, be anchored on credible information. Moreover, a mere possibility will not suffice; a claim will fail if there is only a possibility that the employment caused the disease.** (Emphasis and underscoring supplied.)

Petitioner clearly failed to discharge the duty imposed upon him by law to claim the benefits as prayed for in his Petition. Section 20 (B) of the 2000 POEA Standard Employment Contract provides:

> B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS
>
> The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract** are as follows:
>
> x x x x x x x x x
>
> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician but in no case shall this period exceed one hundred twenty (120) days.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis supplied.)

The wording of the section cited above clearly states that for an injury or illness to be compensable under the POEA Standard Employment Contract, it must be work-related. Petitioner has failed to convince this Court that the illness he suffered can be reasonably linked to the performance of his work as 2nd Assistant Engineer on board *M/V Chaiten* or to prove that it was aggravated during his stint in the vessel. We therefore find that the Court of Appeals correctly affirmed the findings of the NLRC dismissing his appeal for lack of merit.

We now address the issue raised by petitioner – whether the Court of Appeals correctly ruled on the law governing the contract he executed with respondents to determine the prescriptive period for his claim.

The CA dismissed petitioner's appeal on the ground that his Complaint was filed out of time. It applied Section 30 of POEA Circular No. 055, Series of 1996, and ruled that the prescription period for filing claims is one year from disembarkation. Hence, petitioner, having disembarked from his assigned vessel on 17 October 2001 and having filed his complaint on 10 June 2004, the Complaint was deemed to have been filed out of time.[35]

Petitioner, on the other hand, contends that the law under which his contract should be governed in relation to the prescription period for filing his action should be drawn from the terms of the 2000 POEA Standard Employment Contract, which grants him three years from disembarkation within which to file his action.

The Court of Appeals erred in applying POEA Circular No. 55, Series of 1996, to petitioner's contract in relation to the

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[35] *Rollo*, p. 69.

prescription period within which he should have filed his money claim. Section 30 of the 2000 POEA Standard Employment Contract, which took effect on 25 June 2000, provides for the prescriptive period for filing claims arising from the said contract:

> SECTION 30. PRESCRIPTION OF ACTION
>
> All claims arising from this Contract shall be made within three (3) years from the date the cause of action arises, otherwise the same shall be barred.

Thus, when petitioner signed his contract with respondent on 22 December 2001, it was the 2000 POEA Standard Employment Contract that was already in effect. Consequently, his action, which was filed on 10 June 2004, was filed within the three year prescription period under the 2000 POEA Standard Employment Contract. Despite having filed his action within the prescriptive period, his action must fail.

As regards the prayer for damages and attorney's fees, we deny it for lack of legal basis.

WHEREFORE, the Petition is *DENIED.* The Decision (dated 24 December 2008) of the Court of Appeals in C.A. G.R. SP No. 99242 is hereby *AFFIRMED.*

SO ORDERED.

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

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[*] Additional member per Special Order No. 921 dated 13 December 2010.

FIRST DIVISION

[G.R. No. 188901. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GILBERT CASTRO *y* AGUILAR,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; COMMISSION THEREOF; ON SEXUAL INTERCOURSE WITH A MENTAL RETARDATE. — Article 266-A of the Revised Penal Code, as amended, provides that rape is committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present. x x x Clearly, "sexual intercourse with a woman who is a mental retardate with the mental age of a child below 12 years old constitutes statutory rape." Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES.— The inconsistencies raised by appellant are insignificant matters which are not material ingredients of the crime of rape. We maintain that inconsistencies on minor details do not lessen a victim's credibility; are common and may be expected from an uncoached witness.

3. ID.; ID.; DENIAL AND ALIBI; WEAK DEFENSES THAT WILL NOT UNDERMINE CATEGORICAL DECLARATIONS.— This Court has consistently ruled that bare denial and alibi are inherently weak defenses because these are self-serving and easy to fabricate. For not being substantiated by sufficient evidence, appellant's defenses failed to overcome or undermine the positive categorical declarations of AAA.

4. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— We must reiterate that, ultimately, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. This is so because the trial court is in a better position to decide the question, having heard the witnesses and observed their deportment and manner of testifying during the trial.

5. CRIMINAL LAW; RAPE; PENALTY; PROPRIETY OF DEATH PENALTY WHERE THE VICTIM IS A MENTAL RETARDATE.— Article 266-B of the Revised Penal Code as amended by The Anti-Rape Law of 1997 provides: 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: x x x 10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime. The information in this case alleges that AAA is a mental retardate and such fact was known to the appellant at the time of the commission of the crime. These allegations were duly established by the prosecution during trial. The trial court which had the opportunity to observe the demeanor and conduct of the witnesses during the trial ratiocinated the conviction of the accused. x x x We affirm the trial and appellate court's findings that it was highly improbable for Castro not to have known that AAA was a mental retardate considering that they were cousins and their residences were just two meters apart. The cause of the prosecution was further strengthened by the testimony of XYZ, the uncle of AAA and appellant. Unlike other rape cases where the Court's evaluation is limited to the testimony of the victim and the accused, the instant case had a witness who testified that he personally saw the commission of the crime. Thus, the imposition of the death penalty would have been proper.

6. ID.; ID.; ID.; *RECLUSION PERPETUA* MADE PROPER UNDER RA 9346 WHICH PROHIBITS THE IMPOSITION OF DEATH PENALTY.— With the enactment of R.A. 9346 on 24 June 2006, however, the imposition of death penalty has been prohibited. Pursuant to Section 2 thereof, the proper

penalty to be imposed on appellant is *reclusion perpetua*. RA 9346 should be applied even if the crime was committed prior to the enactment of the law in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda.* Penal laws which are favorable to the accused are given retroactive effect. In addition, appellant shall not be eligible for parole. Under Section 3 of RA 9346, "persons convicted with *reclusion perpetua*, or those 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."

7. ID.; ID.; ID.; CIVIL PENALTIES; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES.— We likewise affirm the CA's ruling with regard to the amount of civil indemnity and moral damages awarded. We sustain the amount of ₱75,000.00 as civil indemnity despite the reduction of the penalty imposed on appellant from death to *reclusion perpetua*. As explained by this Court in *People v. Victor*, the said award does not depend upon the imposition of the death penalty; rather, it is awarded based on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. We also find proper the CA's ruling increasing the award of moral damages from ₱50,000.00 to ₱75,000.00. Moral damages are awarded without need of proof for mental, physical and psychological suffering undeniably sustained by a rape victim because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award. We, however, increase the amount of exemplary damages awarded from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence on the matter. The Court, in the case of *People v. Lorenzo Layco, Sr.*, awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

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.*:

Before this Court is an Appeal,[1] seeking the reversal and setting aside of the Decision[2] dated 11 May 2009 of the Court of Appeals (CA) which affirmed the Decision[3] of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 12 convicting appellant Gilbert Castro *y* Aguilar (Castro) of the crime of rape, with modification as to the amount of damages awarded to the victim.

In line with the ruling of this Court in *People v. Cabalquinto*,[4] the real name and identity of the rape victim, is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family, are not disclosed in this decision. Instead, the rape victim shall herein be referred to as AAA; her mother XYZ; and her uncle, BBB.

THE FACTS

The victim in this case is an 18-year old lass with a mental capacity akin to a 5-year old child. Due to her poor learning capacity, she has not even finished Grade 1 and is unable to read and write.

The accused, on the other hand, was then 22 years old and a second cousin of the victim. He testified that he has known the victim for 3 years prior to 5 February 2002, the alleged first

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[1] CA *rollo*, pp. 117-118.

[2] Particularly docketed as CA-G.R. CR-HC No. 02733, penned by Associate Justice Priscilla J. Baltazar-Padilla, with Associate Justices Juan Q. Enriquez, Jr. and Monina Arevalo-Zenarosa, concurring; *id.* at 104-116.

[3] CA *rollo*, pp. 35-40.

[4] G.R. No. 167693, 19 September 2006, 502 SCRA 419.

rape incident.[5] They are neighbors whose residences are just two meters apart.[6]

On 14 February 2003, Castro was charged with two counts of rape before the RTC in informations[7] the accusatory portions of which read:

Criminal Case No. 771-M-2003

That on or about the 5th day of February, 2002, in the municipality of San Ildefonso, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with the use of bladed weapon, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge of the said AAA, a mentally retarded, a fact known to the accused, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 772-M-2003

That on or about the 27th day November, 2002, in the municipality of San Ildefonso, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge of the said AAA, a mentally retarded, a fact known to the accused, against her will and without her consent.

CONTRARY TO LAW.

Upon arraignment, Castro, with the assistance of counsel, entered separate pleas of not guilty to the charges. Thereafter, the cases were consolidated and trial on the merits ensued. In the course of the trial, two versions arose.

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[5] TSN, 22 June 2006, p. 6.

[6] TSN, 23 March 2006, p. 4.

[7] Records, pp. 1 and 4.

Version of the Prosecution

As summarized by the RTC and adopted for the most part by the CA, the version of the prosecution[8] is as follows:

This resolves the alleged rape committed twice on an 18-year old woman named AAA whose IQ & Projected Test concluded at the National Center for Mental Health by psychologist Nimia C. de Guzman resulted to a finding that "Level of intelligence is appraised under the Moderate Level of Mental Retardation (Imbecile) with a numerical IQ of 43 and mental age of 5 years 6 months. xxx Personality profile pictures an immature and inadequate person who has not achieved full development of her learning and social skills." xxx (See Exh. "D", Psychological Report) (at pp. 6-20; TSN, April 14, 2005).

The medico-legal examination conducted on November 29, 2002, to determine the presence of physical signs of sexual abuse has shown that she "is in non-virgin state, physically," although "there are no signs of application of any form of trauma at the time of examination" (See Exh. "A", Medico-Legal Report) (at pp. 2-10; TSN, June 26, 2003).

x x x x x x x x x

The accused, Gilbert Castro *y* Aguilar, then 22 years old, single, was AAA's neighbor whose house was just more than two (2) meters away. Despite that proximity between their houses and knowing her for years, he denied on the witness stand ever talking to her or to any member of her family. He was arrested at his house on November 28, 2002, where he contended to be on those dates and time he allegedly had carnal knowledge of the mentally retarded victim (at pp. 3-5, TSN, March 23, 2006; pp. 4-7, TSN, June 22, 2006).

From the witness stand AAA pointed to accused Castro as the man who raped her for two times, first, during the wake for a deceased neighbor or supposedly on February 5, 2002, when he brought her under a mango tree where he made her lie down on banana leaves and stripped her off her clothings before inserting his penis inside her vagina, and, second, on November 27, 2002, when he did same things to her at the same place under the mango tree. She said that before that happened the accused used to frequent her place, giving her peanuts and some money (at pp. 2-7, TSN, April 20, 2004).

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[8] CA *rollo,* pp. 89-91.

What they did on November 27, 2002, was discovered when prosecution witness BBB, their 55-year old neighbor who claimed on the stand to be their uncle and that the two of them were second cousins, caught them in the act of sexual intercourse behind the unoccupied house of her parents at that time under a mango tree, both fully naked. He had been watching them for three (3) days before, suspicious that they were up to doing something bad. So when he saw them from his house by the door outside, he approached them making the accused run off away as soon as he saw him coming. Left behind in her nakedness AAA admitted that she was doing the act with the accused. So, he covered her with her clothings and walked her to her house and left her parents at the market where they were vegetable vendors. As soon as told of what he discovered, her parents went home with him and, together that afternoon of the following day, they reported their complaint to the local police where AAA and witness BBB gave their respective statements on the incident (Exhs. "C" and "E") (at pp. 2-6, TSN, September 29, 2005; pp. 2-13, TSN, October 13, 2005).

Version of the Defense

To exculpate himself from liability, accused Castro offered both denial and alibi as his defense. He denied raping the private complainant. He averred that on 5 February 2002, between 5:00 in the afternoon to 12:00 in the morning, he was attending a funeral wake of a neighbor. During the alleged second rape, he contended that he was inside their house having lunch with his sister. After lunch at around 2:00 in the afternoon, he allegedly went to the field to harvest *palay*.[9]

Ruling of the RTC

On 2 January 2007, the RTC rendered a decision acquitting Castro in Criminal Case No. 771-M-2003 for failure of the prosecution to clearly establish that accused, with the use of a bladed weapon, assaulted and had carnal knowledge of AAA on 5 February 2002. The trial court, however, found Castro guilty of the crime of rape in Criminal Case No. 772-M-2003. The dispositive portion of the latter decision reads:

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[9] CA *rollo*, pp. 68-69.

WHEREFORE, finding herein accused Gilbert Castro *y* Aguilar guilty as principal beyond reasonable doubt of the crime of rape as charged in Criminal Case No. 772-M-2003, without any circumstance, aggravating or mitigating, found attendant in its commission, he is hereby sentenced to suffer the penalty of *reclusion perpetua*, to indemnify victim AAA in the amount of ₱50,000.00, plus another ₱50,000.00 as moral damages subject to the corresponding filing fees as a first lien, and to pay the costs of the proceedings.

x x x x x x x x x

Aggrieved, Castro appealed to the CA,[10] assigning the following error:

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT

Accused-appellant argued that the lower court failed to appreciate the fact that the testimony of private complainant was full of contradictions. The trial court allegedly gave credence to the inconsistent statements made by AAA which when analyzed are highly illogical.

Accused Castro averred that the inconsistent statements of AAA were made apparent during the cross-examination. She allegedly denied that the accused was courting her despite her previous statement in court that she was being courted by accused-appellant. Accused also submitted that the failure of AAA to offer any resistance when she was allegedly being sexually molested belies the charge of rape.

Ruling of the CA

In its decision dated 11 May 2009, the CA affirmed with modification the findings of the RTC, to wit:

WHEREFORE, the assailed Decision of the Regional Trial Court dated January 2, 2007 and its subsequent Order dated March 2, 2007 finding accused-appellant Gilbert Castro guilty beyond reasonable doubt of the crime of Rape are hereby AFFIRMED with

[10] *Id.*

MODIFICATION as to the damages awarded. Accordingly, accused-appellant is ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱25,000.00 as exemplary damages.[11]

Hence, this appeal.

In a resolution dated 1 February 2010, the Court required the parties to simultaneously file their supplemental briefs, if they so desire, within thirty (30) days from notice. In their respective pleadings, both the appellee, represented by the Office of the Solicitor General, and the appellant, represented by the Public Attorney's Office, manifested that they will no longer be filing any supplemental briefs in support of their respective positions. The appellant merely repleaded and adopted all the defenses and arguments raised in his Appellant's Brief.

The vital issue before this Court is whether the pieces of evidence adduced by the prosecution is sufficient to convict Castro beyond reasonable doubt of the crime of rape committed against AAA. In fine, assailed in this recourse are the credibility of the prosecution's witnesses and the adequacy of its evidence.

This Court has painstakingly perused over the records as well as the transcripts of stenographic notes of this case and found no reason to reverse and set aside the findings of the trial court and the CA. We affirm Castro's conviction.

Article 266-A of the Revised Penal Code, as amended, provides that rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

    a) Through force, threat, or intimidation;
    b) When the offended party is deprived of reason or otherwise unconscious;
    c) By means of fraudulent machination or grave abuse of authority; and

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[11] CA *rollo*, pp. 115-116.

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Clearly, "sexual intercourse with a woman who is a mental retardate with the mental age of a child below 12 years old constitutes statutory rape."[12] Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.[13]

In the case before us, the prosecution was able to establish through clinical and testimonial evidence that AAA is a mental retardate. It presented and offered the psychological report of Dr. Nimia de Guzman of the National Center for Mental Health stating that AAA was suffering from moderate mental retardation (imbecile) with an IQ of 43 and a mental age equivalent to that of a five and a half year old child.[14] Likewise, the testimonies of XYZ[15] and the psychologist[16] confirmed the victim's mental retardation.

The aforesaid facts support the allegation in the information that AAA is a mental retardate. It was even noted by the appellate court that the defense admitted the fact that the victim is suffering from mental retardation, as stated in the accused-appellant's *Kontra Salaysay*.[17]

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[12] *People v. Andaya*, G.R. No. 126545, 21 April 1999, 306 SCRA 202, 216.

[13] *People v. Dela Paz*, G.R. No. 177294, 19 February 2008, 546 SCRA 363, 376.

[14] Records, pp. 119-120, Exhibit "D" for the prosecution.

[15] TSN, 26 June 2003, pp. 3-4.

[16] TSN, 14 April 2005, pp. 55-74.

[17] Records, p. 148, Exhibit "1".

The prosecution has likewise established beyond reasonable doubt that accused-appellant had carnal knowledge of AAA. We have thoroughly examined the testimony of AAA and found no reason to cast doubt on her categorical and positive declarations of the sexual assault committed against her. Her narration of the sexual act was straightforward and categorical. We quote the pertinent portion of her testimony:

Direct examination by Fiscal Geronimo

Q: Do you recall when was the first time that he raped you?

A: Yes, sir.

Q: Tell us.

A: Long time ago, sir.

Q: And immediately prior to that incident when you said he raped you, tell us what did Castro do?

x x x x x x x x x

A: He laid me down on a banana leaves (sic) on the ground under a mango tree, sir.

x x x x x x x x x

Q: Do you recall when was the second time that you said Castro raped you?

A: I do not know, sir.

Q: When Castro raped you the second time around, before that rape took place, what did Castro do to you?

A: I was stripped of my clothes, sir. (*Hinubuan*)

Q: And where was that? What place was that?

A: The same place, Your Honor.

Q: And after Castro stripped of your clothes, what did Castro do?

A: *Hinipuan po.*

Q: What part of your body was touched by Castro?

A: On my breast and my private organ, sir.

Q: After that, what did Castro do?

A: He laid down, sir.

Q: At that time were you also laying down?

A: Yes, sir.

Q: That is also under the mango tree?

A: Yes, sir.

Q: When Castro laid down, what did Castro do?

A: He came on top of me, sir.

Q: Was Castro at that time without clothes?

A: He was wearing his short, sir.

Q: Was that short removed from his body when he went on top of you?

A: Yes, sir.

Q: When he came on top of you, what did you feel?

A: I feel pain, sir.

Court: Are you saying he again inserted his penis inside your vagina?

A: Yes, Your Honor.

Fiscal: After that, what did you do?

A: I was the one who is being pushed, sir.

Q: Would you please show us the manner by which you were pushed by Castro?

A: His body is being press (sic) over my body, sir.

Q: When you felt pain, after that, what transpired?

A: He left me, sir.

Q: What about you, what did you do?

A: I went home, sir.

Q: After that you said, was that after two days you reported the two incidents to your mother?

A: Two days after I was raped, the second time, I reported the matter to my mother and to the police, sir.[18]

Appellant's contention which essentially assails the credibility of the prosecution witnesses' testimony is untenable. It was observed that on the witness stand AAA remained steadfast and never wavered in her testimony. She maintained even on cross-examination that it was appellant who defiled her. The inconsistencies raised by appellant are insignificant matters which are not material ingredients of the crime of rape. We maintain that inconsistencies on minor details do not lessen a victim's credibility; are common and may be expected from an uncoached witness.[19]

On the other hand, We give scant consideration on the defenses proffered by appellant. This Court has consistently ruled that bare denial and alibi are inherently weak defenses because these are self-serving and easy to fabricate. For not being substantiated by sufficient evidence, appellant's defenses failed to overcome or undermine the positive and categorical declarations of AAA. Notably, appellant contended that on 27 November 2002 at 12 in the afternoon, he was having lunch with his sister. He, however, failed to present his sister to testify on the truthfulness of his allegation. Moreover, the incident in question occurred in a place which was just a few meters from his house. Thus, it was not impossible for him to be at the crime scene during the period alleged by the prosecution witnesses.

We must reiterate that, ultimately, when the issue is one of credibility of witnesses, appellate courts will generally not disturb the finding of the trial court unless it has plainly overlooked certain facts of substance and value that, if considered, might affect the result of the case. This is so because the trial court is in a better position to decide the question, having heard the

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[18] TSN, 20 April 2004, pp. 28, 31-33.

[19] *People v. Barcelona*, G.R. No. 82589, 31 October 1990, 191 SCRA 100, 107.

witnesses and observed their deportment and manner of testifying during the trial.[20]

This Court likewise affirms the CA's ruling on the penalty to be imposed on appellant Castro.

Article 266-B of the Revised Penal Code as amended by The Anti-Rape Law of 1997 provides:

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:

x x x x x x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.

The information in this case alleges that AAA is a mental retardate and such fact was known to the appellant at the time of the commission of the crime. These allegations were duly established by the prosecution during trial. The trial court which had the opportunity to observe the demeanor and conduct of the witnesses during the trial ratiocinated the conviction of the accused with the following statement:

The Court is convinced that indeed herein accused on 27 November 2002, had carnal knowledge of AAA, an 18-year-old woman with a weak mind that her mental age was only that of a five and a half (5 ½) year old child. Her abnormality as a retardate was known to their neighborhood, including the accused, an immediate neighbor. His obstinate denial of ever talking to her and her family is, therefore, a lie.[21]

We affirm the trial and appellate court's findings that it was highly improbable for Castro not to have known that AAA was a mental retardate considering that they were cousins and their

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[20] *People v. Laceste*, G.R. No. 127127, 30 July 1998, 293 SCRA 397, 407.

[21] RTC Decision, CA *rollo*, pp. 38-39.

residences were just two meters apart. The cause of the prosecution was further strengthened by the testimony of XYZ, the uncle of AAA and appellant. Unlike other rape cases where the Court's evaluation is limited to the testimony of the victim and the accused, the instant case had a witness who testified that he personally saw the commission of the crime. Thus, the imposition of the death penalty would have been proper.

With the enactment of R.A. 9346[22] on 24 June 2006, however, the imposition of death penalty has been prohibited. Pursuant to Section 2 thereof, the property penalty to be imposed on appellant is *reclusion perpetua*. RA 9346 should be applied even if the crime was committed prior to the enactment of the law in view of the principle in criminal law that *favorabilia sunt amplianda adiosa restrigenda*. Penal laws which are favorable to the accused are given retroactive effect.[23]

In addition, appellant shall not be eligible for parole. Under Section 3 of RA 9346, "persons convicted with *reclusion perpetua,* or those 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."

We likewise affirm the CA's ruling with regard to the amount of civil indemnity and moral damages awarded. We sustain the amount of ₱75,000.00 as civil indemnity despite the reduction of the penalty imposed on appellant from death to *reclusion perpetua.* As explained by this Court in *People v. Victor,*[24] the said award does not depend upon the imposition of the death penalty; rather, it is awarded based on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[25]

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

[23] *People v. Canuto*, G.R. No. 166544, 27 July 2007, 528 SCRA 366, 377.

[24] 354 Phil 195, 209 (1998).

[25] *People v. Ortoa*, G.R. No. 176266, 8 August 2007, 529 SCRA 555-556.

We also find proper the CA's ruling increasing the award of moral damages from ₱50,000.00 to ₱75,000.00. Moral damages are awarded without need of proof for mental, physical and psychological suffering undeniably sustained by a rape victim because it is assumed that a rape victim has actually suffered moral injuries entitling her to such award.[26]

We, however, increase the amount of exemplary damages awarded from ₱25,000.00 to ₱30,000.00 in line with prevailing jurisprudence[27] on the matter. The Court, in the case of *People v. Lorenzo Layco, Sr.*,[28] awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

WHEREFORE, the 11 May 2009 decision of the Court of Appeals in CA-G.R. CR-HC No. 02733 is hereby *AFFIRMED WITH MODIFICATION*. Appellant Gilbert A. Castro is hereby found *GUILTY* beyond reasonable doubt of the crime of qualified rape committed against AAA for which he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole. He is further ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity *ex delicto*; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[26] *People v. Calongui*, G.R. No. 170566, 3 March 2006, 484 SCRA 76, 88.

[27] *People v. Rante*, G.R. No. 184809, 29 March 2010; *People v. Dalisay*, G.R. No. 188106, 15 November 2009; *People v. Peralta*, G.R. No. 187531, 16 October 2009.

[28] G.R. No. 182191, 8 May 2009, 587 SCRA 803, 808.

FIRST DIVISION

[G.R. No. 189301. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE PEPITO D. COMBATE *a.k.a.* "PEPING",** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— Time-tested is the doctrine that the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality. The Supreme Court will not interfere with that assessment, absent any indication that the lower court has overlooked some material facts or gravely abused its discretion.

2. ID.; ID.; ID.; NOT AFFECTED BY MINOR INCONSISTENCIES. — [E]qually established [is the] rule that minor and insignificant inconsistencies in the testimony tend to bolster, rather than weaken, the credibility of witnesses, for they show that the testimony is not contrived or rehearsed. As the Court put it in *People v. Cristobal*, "Trivial inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming."

3. ID.; ID.; TESTIMONIAL EVIDENCE; APPRECIATION THEREOF.— [T]he testimony of a witness must be considered in its entirety and not merely on its 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. In ascertaining the facts established by witnesses, everything stated by them on direct, cross and redirect examinations must be calibrated and considered. It must be stressed in this regard that facts imperfectly or erroneously stated in an answer to one question may be supplied or explained as qualified by the answer to other question. The principle *falsus in uno, falsus in omnibus* is not strictly applied to this jurisdiction. As explained in *People v. Osias*: It is perfectly

reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars**, it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited. The primordial consideration is that the witness was present at the scene of the crime and that he positively identified [the accused] as one of the perpetrators of the crime charged** x x x.

4. ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE IDENTIFICATION OF ACCUSED ABSENT ANY SHOWING OF ILL MOTIVE.— Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial. Accused-appellant was positively and categorically identified by the witnesses. They have no reason to perjure and accused-appellant was unable to prove that the prosecution witnesses were moved by any consideration other than to see that justice is done. Thus, the presumption that their testimonies were not moved by any illl will and bias stands, and, therefore, their testimonies are entitled to full faith and credit.

5. ID.; ID.; FLIGHT OF ACCUSED; AN INDICATION OF GUILT.— Lest it be overlooked, accused-appellant fled to Victorias City, Negros Occidental right after the incident, an act that is evidence of his guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.

6. CRIMINAL LAW; PENALTIES; *RECLUSION PERPETUA* OR DEATH; DAMAGES AWARDED.— This Court will endeavor to end, once and for all, the confusion as to the proper award of damages in criminal cases where the imposable penalty for the crime is *reclusion perpetua* or death. As a rule, the Court awards three kinds of damages in these types of criminal cases: civil indemnity and moral and exemplary damages.

7. ID.; ID.; ID.; ID.; CIVIL INDEMNITY; DISCUSSED.— Civil indemnity *ex delicto* is the indemnity authorized in our criminal

law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law. This award stems from Art. 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable." Civil liability *ex delicto* may come in the form of restitution, reparation, and indemnification. Restitution is defined as the compensation for loss; it is full or partial compensation paid by a criminal to a victim ordered as part of a criminal sentence or as a condition for probation. Likewise, reparation and indemnification are similarly defined as the compensation for an injury, wrong, loss, or damage sustained. Clearly, all of these correspond to actual or compensatory damages defined under the Civil Code. The other kinds of damages, *i.e.*, moral and exemplary or corrective damages, have altogether different jural foundations.

8. ID.; ID.; ID.; ID.; MORAL DAMAGES; DISCUSSED.— The second type of damages the Court awards [in criminal cases where the imposable penalty is *reclusion perpetua* or death] are moral damages, which are also compensatory in nature. *Del Mundo v. Court of Appeals* explained the nature and purpose of moral damages, *viz:* x x x Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress." The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted."

9. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; DISCUSSED.— The Court awards exemplary damages as provided for in Arts. 2229 and 2230 of the Civil Code, *viz:* x x x [A]s a general rule, exemplary damages are only imposed in criminal offenses when the crime was committed with one or more aggravating

circumstances, be they generic or qualifying. However, there have been instances wherein exemplary damages were awarded despite the lack of an aggravating circumstance. This led the Court to clarify this confusion in *People v. Dalisay*, where it categorically stated that **exemplary damages may be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender.** to wit: x x x **Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.**

10. ID.; AN ACT IMPOSING DEATH PENALTY ON CERTAIN HEINOUS CRIMES (RA 7659); CRIMES PUNISHABLE BY *RECLUSION PERPETUA* AND CRIMES PUNISHABLE BY *RECLUSION PERPETUA* TO DEATH.— Under Republic Act No. (RA) 7659 or *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes*, certain crimes under the RPC and special penal laws were amended to impose the penalty of death under certain circumstances. For a full appreciation of the award on damages, it is imperative that a thorough discussion of RA 7659 be undertaken. x x x Under

RA 7659, the following crimes are punishable by *reclusion perpetua*: piracy in general, mutiny on the high seas, and simple rape. For the following crimes, RA 7659 has imposed the penalty of *reclusion perpetua* to death: qualified piracy; qualified bribery under certain circumstances; parricide; murder; infanticide, except when committed by the mother of the child for the purpose of concealing her dishonor or either of the maternal grandparents for the same purpose; kidnapping and serious illegal detention under certain circumstances; robbery with violence against or intimidation of persons under certain circumstances; destructive arson, except when death results as a consequence of the commission of any of the acts penalized under the article; attempted or frustrated rape, when a homicide is committed by reason or on occasion thereof; plunder; and carnapping, when the driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

11. ID.; ID.; CRIMES PUNISHABLE BY DEATH.— RA 7659 imposes the penalty of death on the following crimes: (a) In qualified bribery, when it is the public officer who asks or demands the gift or present. (b) In kidnapping and serious illegal detention: (i) when the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person; (ii) when the victim is killed or dies as a consequence of the detention; (iii) when the victim is raped, subjected to torture or dehumanizing acts. (c) In destructive arson, when as a consequence of the commission of any of the acts penalized under Article 320, death results. (d) In rape: (i) when by reason or on occasion of the rape, the victim becomes insane or homicide is committed; (ii) when committed with any of the following attendant 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; (2) when the victim is under the custody of the police or military authorities; (3) when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity; (4) when the victim is a religious or a child below seven years old; (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome

(AIDS) disease; (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency; and (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

12. ID.; PENALTIES; APPLICATION OF INDIVISIBLE PENALTIES.— All these [discussions on crimes and their penalties under RA 7659] must be taken in relation to Art. 63 of the RPC, which provides: x x x Thus, in order to impose the proper penalty, especially in cases of indivisible penalties, the court has the duty to ascertain the presence of any mitigating or aggravating circumstances. Accordingly, in crimes where the imposable penalty is *reclusion perpetua* to death, the court can impose either *reclusion perpetua* or death, depending on the mitigating or aggravating circumstances present.

13. ID.; AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES (RA 9346); EFFECT ON THE AWARD OF DAMAGES.— [W]ith the enactment of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. It provides that in lieu of the death penalty, the penalty of *reclusion perpetua* shall be imposed when the law violated makes use of the nomenclature of the penalties of the RPC. As a result, courts now cannot impose the penalty of death. Instead, they have to impose *reclusion perpetua*. Despite this, the principal consideration for the award of damages, following the ruling in *People v. Salome* and *People v. Quiachon*, is "the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender." When the circumstances surrounding the crime would justify the imposition of the penalty of death were it not for RA 9346, the Court has ruled, as early as July 9, 1998 in *People v. Victor*, that the award of civil indemnity for the crime of rape when punishable by death should be PhP 75,000. x x x In addition to this, the Court likewise awards moral damages. In *People v. Arizapa*, PhP 50,000 was awarded as moral damages without need of pleading or proving them, for in rape cases, it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to warrant

per se the award of moral damages. Subsequently, the amount was increased to PhP 75,000 in *People v. Soriano.* As to exemplary damages, existing jurisprudence has pegged its award at PhP 30,000, despite the lack of any aggravating circumstance. x x x Essentially, despite the fact that the death penalty cannot be imposed because of RA 9346, the imposable penalty as provided by the law for the crime, such as those found in RA 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

14. ID.; PENALTIES; *RECLUSION PERPETUA*; PROPER CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES.— [W]hen the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages.

15. ID.; CIVIL PENALTIES; COMPENSATORY DAMAGES FOR UNEARNED INCOME.— This Court pronounced in *People v. Mallari*: The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.

16. ID.; ID.; WHEN DEATH OCCURS DUE TO A CRIME; INTEREST ON DAMAGES.— When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) **interest, in proper cases**. In *People v. Tubongbanua*, interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases x x x Thus, we likewise adopt this rule in the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all

damages, *i.e.*, actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the January 30, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB CR-H.C. No. 00294 entitled *People of the Philippines v. Jose Pepito D. Combante a.k.a. "Peping,"* which affirmed with modification the July 2, 2003 Decision[2] in Criminal Case Nos. 95-17070 & 95-17071 of the Regional Trial Court (RTC), Branch 50 in Bacolod City.

Accused-appellant Jose Pepito D. Combate stands convicted of the crime of Murder and Homicide, as defined and penalized under Articles 248 and 249 of the Revised Penal Code (RPC), respectively. He was sentenced to suffer the penalties of *reclusion temporal* and *reclusion perpetua*.

The Facts

The charge against accused-appellant stemmed from two Informations:

Criminal Case No. 95-17070

That on or about 16th day of March, 1995, in the Municipality of Murcia, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed

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[1] *Rollo*, pp. 2-12. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Stephen C. Cruz and Amy Lazaro-Javier.

[2] CA *rollo*, pp. 19-60. Penned by Judge Roberto S. Choingson.

with a firearm, with treachery, with intent to kill and taking advantage of nighttime, did then and there, willfully, unlawfully and feloniously attack, assault and shoot on EDMUND PRAYCO *y* OSABEL, thereby inflicting gunshot wounds upon the body of the latter which caused the death of the said victim.

Contrary to law.[3]

Criminal Case No. 95-17071

That on or about 16th day of March, 1995, in the Municipality of Murcia, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a firearm, with treachery, with intent to kill and taking advantage of nighttime, did then and there, willfully, unlawfully and feloniously attack, assault and shoot on LEOPOLDO GUIRO, JR. *y* PEREZ *alias* "Nene" thereby inflicting gunshot wounds upon the body of the latter which caused the death of the said victim.

Contrary to law.[4]

On November 28, 2001, the trial court ordered the consolidation of the two cases. When arraigned with assistance of counsel, accused-appellant pleaded "not guilty" to both charges. Thereafter, a joint trial ensued.

During the trial, the prosecution offered the testimonies of Shenette Guiro, the wife of the deceased victim Leopoldo Guiro; Jose Tomaro; Rebecca Montino Apdo; Senior Police Officer 1 (SPO1) Rolando Salamisan; Inspector Jose Labuyo; Police Inspector William Senoron; PO1 Rommel Pregil; Dr. Jimmy Nadal; and Dr. Emmanuel Bando. On the other hand, the defense presented as its witnesses Magno Montinola and accused-appellant.

The Prosecution's Version of Facts

On March 16, 1995, at around 9 o'clock in the evening, Tomaro parked his passenger jeepney at the garage of Leopoldo's mother, Patria Guiro, located at Purok 2, *Barangay* Minoyan

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[3] *Id.* at 4.

[4] *Id.* at 6.

in Murcia, Negros Occidental. He then proceeded to the house of Leopoldo where he usually sleeps after driving the jeepney owned by Leopoldo's parents.

Upon entering the gate, Tomaro met Leopoldo and Edmund Prayco, who were on their way out. Leopoldo invited him to join them in drinking liquor but he declined saying he was already tired. He continued on his way and was about to ascend the stairs when he heard a gunshot. He rushed back to the road and there he saw accused-appellant pointing a gun at the fallen Leopoldo. When Edmund was about to intervene, accused-appellant also shot Edmund at a very close range. After shooting Edmund, accused-appellant turned his attention back to Leopoldo and shot him for a second time.

Tomaro then rushed to help Leopoldo and pleaded for his life. Instead of heeding his plea, accused-appellant pointed his gun towards Tomaro and pulled the trigger but the gun did not fire. At that instant, Tomaro jumped on accused-appellant and was able to grab the gun. Tomaro tried to shoot accused-appellant but the gun still did not fire. Hastily, accused-appellant fled to the direction of Bacolod City.

Leopoldo and Edmund were later brought to the Bacolod Sanitarium and Hospital. Edmund was declared dead on arrival, while Leopoldo died the following day.

Version of the Defense

Accused-appellant's defense, on the other hand, was confined to a denial, to wit:

In the evening of March 16, 1995, accused-appellant was in his house drinking liquor when Montinola, a close friend, arrived to fetch him. He was told to report to the *barangay* hall and to render duty as a *tanod*. Before leaving, Montinola also partook of a small quantity of liquor.

On their way to the *barangay* hall, they passed by the house of Leopoldo, who was drinking liquor by the side of the street fronting his house, along with Tomaro, Edmund, and someone else who accused-appellant could not identify. He and Montinola

were walking on the left side of the street going towards the direction of the Mambucal Resort, while Leopoldo and his group were on the right side. Accused-appellant then extended a greeting to Leopoldo, who responded with a sarcastic remark. Accused-appellant and Montinola ignored the rudeness thrown their way and just continued walking.

They, however, soon noticed Leopoldo crossing the street and started to follow them. Edmund likewise also followed them but on the other side of the street. Suddenly, accused-appellant saw Leopoldo pull something out from his waist. He then heard a gunshot and saw Leopoldo fall to the ground. He pushed Montinola aside and they ran away.

After a few moments, he heard more gunshots coming from the direction of where Leopoldo and his group were situated. He was stricken with fear so he went home. Later, he learned that he was the suspect in the killing of Leopoldo and Edmundo. Thus, to avoid trouble, he fled to Victorias City, Negros Occidental where he was arrested by the Murcia police on October 13, 2001.

The story of accused-appellant was corroborated by Montinola.

Ruling of the Trial Court

After trial, the RTC convicted accused-appellant. The dispositive portion of its July 2, 2003 Decision reads:

FOR ALL THE FOREGOING, judgment is hereby rendered finding the accused Jose Combate, Jr. *y* Dallarte *alias* Peping, GUILTY beyond reasonable doubt of the crime of HOMICIDE in Criminal Case NO. 95-17071 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of *RECLUSION TEMPORAL* in its medium period. Applying the Indeterminate Sentence Law, the accused shall serve a prison term of Eight (8) Years and One (1) Day of *Prision Mayor* to Fifteen (15) years of *Reclusion Temporal*.

By way of civil liability, the accused is condemned to pay the heirs of the late Leopoldo Guiro the following:

1. The sum of ₱50,000.00 as death indemnity.
2. The sum of ₱932,712.00 as compensatory damages and;
3. The sum of ₱56,319.59 as reimbursement for the burial expenses.

In addition, the accused is ordered to pay Shenette Guiro the sum of ₱50,000.00 as moral damages.

The accused is also declared GUILTY of MURDER for the death of Edmund Prayco as charged in the Information in Criminal Case No. 95-17070 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of *RECLUSION PERPETUA*. He is condemned to pay the heirs of the late Edmund Prayco the sum of ₱50,000.00 as death indemnity and the sum of ₱30,000.00 as compensatory damages.[5]

Ruling of the Appellate Court

On January 30, 2008, the CA affirmed the judgment of the lower court and modified the award of damages. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the Decision of the Regional Trial court, Branch 50 of Bacolod City dated 2 July 200[3] is AFFIRMED WITH MODIFICATIONS. The award of compensatory damages in both cases is deleted, and in lieu thereof, exemplary damages of ₱25,000.00 is awarded to the heirs of Leopoldo Guiro and another ₱25,000.00 to the heirs of Edmund Prayco. In all other respects, the assailed decision is affirmed.

SO ORDERED.[6]

The Issue

Hence, this appeal is before us, with accused-appellant maintaining that the trial court erred in convicting him of the crimes of homicide and murder, despite the fact that his guilt was not proved beyond reasonable doubt.

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[5] *Id.* at 58-60.

[6] *Rollo*, p. 11.

The Court's Ruling

We sustain accused-appellant's conviction.

Factual findings of the trial court should be respected

In his *Brief*, accused-appellant says that the trial court failed to consider several inconsistencies in the testimonies of the prosecution witnesses. *First*, as to Tomaro, who directly implicated accused-appellant, his testimony was unsubstantiated and did not conform to the physical evidence. According to Tomaro, Edmund was shot at close range yet no powder burns were found around the entry wound. *Second*, as to the testimony of Shenette Guiro, accused-appellant harps on the fact that she never mentioned Tomaro being present at the scene of the crime and that she only heard one gunshot while the other witnesses heard three or four. *Lastly*, as to the testimony of SPO1 Salamisan, accused-appellant points out that SPO1 Salamisan testified that he only saw one spot of blood when there were two victims.

To accused-appellant, the inconsistencies thus described erode the credibility of the witnesses when taken as a whole.

We do not agree.

Time-tested is the doctrine that the trial court's assessment of the credibility of a witness is entitled to great weight, sometimes even with finality.[7] The Supreme Court will not interfere with that assessment, absent any indication that the lower court has overlooked some material facts or gravely abused its discretion.[8]

Complementing the above doctrine is the equally established rule that minor and insignificant inconsistencies in the testimony tend to bolster, rather than weaken, the credibility of witnesses, for they show that the testimony is not contrived or rehearsed.[9] As the Court put it in *People v. Cristobal*, "Trivial inconsistencies

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[7] *People v. Sagun*, February 19, 1999, 303 SCRA 382; *People v. Villanueva*, January 29, 1999, 302 SCRA 380.

[8] *People v. Gado*, 358 Phil. 956 (1998).

[9] *People v. Sagun*, *supra* note 7, at 397.

do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming."[10]

A careful review of the records shows that the RTC, as well as the CA, committed no reversible error when it gave credence to the testimonies of the prosecution witnesses, as opposed to accused-appellant's bare denials.

Moreover, the testimony of a witness must be considered in its entirety and not merely on its 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. In ascertaining the facts established by witnesses, everything stated by them on direct, cross, and redirect examinations must be calibrated and considered.[11] It must be stressed in this regard that facts imperfectly or erroneously stated in an answer to one question may be supplied or explained as qualified by the answer to other question. The principle *falsus in uno, falsus in omnibus* is not strictly applied to this jurisdiction.[12] As explained in *People v. Osias*:

> It is perfectly reasonable to believe the testimony of a witness with respect to some facts and disbelieve it with respect to other facts. And it has been aptly said that even when witnesses are found to have deliberately falsified in some material particulars, **it is not required that the whole of their uncorroborated testimony be rejected but such portions thereof deemed worthy of belief may be credited.**
>
> **The primordial consideration is that the witness was present at the scene of the crime and that he positively identified [the accused] as one of the perpetrators of the crime charged** x x x.[13] (Emphasis supplied.)

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[10] *People v. Cristobal*, G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517.

[11] *Leyson v. Lawa*, G.R. No. 150756, October 11, 2006, 504 SCRA 147.

[12] *People v. Montemayor*, 452 Phil. 283, 300 (2003).

[13] G.R. No. 88872, July 25, 1991, 199 SCRA 574.

In this case, we agree with the trial court that the alleged inconsistencies merely refer to minor details which do not affect the witnesses' credibility. In disregarding the alleged inconsistent statements, the trial court explained:

> The inconsistencies are more imagined than real. The inconsistencies, like the ownership of the passenger jeepney, whether said jeepney is owned by Guiro or his mother, are so trivial and does not at all affect credibility.
>
> The accused also makes much fuss about the fact that Shenette Guiro heard only one (1) shot while the other prosecution witnesses as well as the accused and his witness Magno Montinola, heard three (3) to four (4) shots. The accused conveniently forgot that Shenette Guiro was asleep when the shooting took place. She was awakened by the shot she heard and that shot might have been the last shot.
>
> The accused flays the testimony of Jose Tomaro as incredible and unbelievable when the said witness testified that he ran and cradled Guiro in his arms after the latter was shot. The accused asserts that it is unnatural for a person to unnecessarily expose himself to danger.
>
> The argument need not detain the Court. It is a settled rule on evidence that witnesses to a crime react in different ways. (*Pp. vs. Paynor*, 261 SCRA 615).
>
> > "There is no standard behavior when one is considered with a strange, startling or frightening situation." (*Pp. v. De Leon*, 262 SCRA 445)
>
> Moreover, Jose Tomaro has no quarrel with the accused. He has every reason to expect that he will not be assaulted as he was not making any aggressive move against him.[14]

Likewise, we are not persuaded as to the alleged inconsistency of Tamaro's testimony that Edmund was shot at close range but the physical evidence revealed that there were no powder burns around the entry wounds. In his testimony, Tamaro described the incident as follows:

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[14] CA *rollo*, pp. 48-50.

COURT:

Q: Now according to your testimony, the next time around, Combate was pointing his gun at Prayco?

WITNESS

A: Yes, sir.

Q: He pointed his gun to Prayco and fired his gun. At the time he fired his gun, how far was he from Prayco?

COURT

Witness indicating a very short distance where the Court Interpreter is situated which is **less than (1) meter away**.[15] (Emphasis supplied.)

As aptly held by the CA, such testimony is in fact consistent with the lack of powder burns on Edmund's body, *viz*:

The distance from which a shot is fired affects the nature and extent of the injury caused on the victim. In close range fire, the injury is not only due to the missile but also due to the pressure of the expanded gases, flame and other solid products of combustion. In contrast, distant fire usually produces the characteristic effect of the bullet alone. A shot fired from a distance of more than 60 cm or about two (2) feet does not produce the burning, smudging or tattooing typically present in loose contact or near fire, short range fire and medium range fire.

Powder burns is a term commonly used by physicians whenever there is blackening of the margin at the entrance of the gunshot wound. The blackening is due to smoke smudging, gunpowder tattooing and, to a certain extent, burning of the wound margin.

In this case, the fact that there were no powder burns found in EDMUND's body indicates that the shots were fired at a distance of more than two (2) feet which is consistent with Jose Tomaro's testimony that Edmund was shot at about less than 1 meter away from appellant.[16]

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[15] TSN, April 5, 2002, p. 58.

[16] *Rollo*, pp. 9-10.

Defense of denial cannot prevail over positive identification

For his defense, accused-appellant wants this Court to believe his innocence and offers his version of the facts wherein he did not commit the crime. This Court is not persuaded.

Categorical and consistent positive identification, absent any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over the defense of denial.[17]Accused-appellant was positively and categorically identified by the witnesses. They have no reason to perjure and accused-appellant was unable to prove that the prosecution witnesses were moved by any consideration other than to see that justice is done. Thus, the presumption that their testimonies were not moved by any ill will and bias stands, and, therefore, their testimonies are entitled to full faith and credit.[18]

Lest it be overlooked, accused-appellant fled to Victorias City, Negros Occidental right after the incident, an act that is evidence of his guilt. It is well-established that the flight of an accused is competent evidence to indicate his guilt; and flight, when unexplained, is a circumstance from which an inference of guilt may be drawn.[19] Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion.[20]

Award of damages

This Court will now endeavor to end, once and for all, the confusion as to the proper award of damages in criminal cases where the imposable penalty for the crime is *reclusion perpetua* or death. As a rule, the Court awards three kinds of damages in these types of criminal cases: civil indemnity and moral and exemplary damages. We shall discuss all three.

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[17] *People v. Padilla*, G.R. No. 167955, September 30, 2009, 601 SCRA 385.

[18] *People v. Quilang*, G.R. Nos. 123265-66, August 12, 1999, 312 SCRA 314.

[19] *People v. Castillo*, G.R. No. 172695, June 29, 2007, 526 SCRA 215, 224.

[20] *People v. Deduyo*, G.R. No. 138456, October 23, 2003, 414 SCRA 146, 162.

First, civil indemnity *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law.[21] This award stems from Art. 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."

Civil liability *ex delicto* may come in the form of restitution, reparation, and indemnification.[22] Restitution is defined as the compensation for loss; it is full or partial compensation paid by a criminal to a victim ordered as part of a criminal sentence or as a condition for probation.[23] Likewise, reparation and indemnification are similarly defined as the compensation for an injury, wrong, loss, or damage sustained.[24] Clearly, all of these correspond to actual or compensatory damages defined under the Civil Code.[25]

The other kinds of damages, *i.e.*, moral and exemplary or corrective damages,[26] have altogether different jural foundations.

The second type of damages the Court awards are moral damages, which are also compensatory in nature. *Del Mundo v. Court of Appeals* explained the nature and purpose of moral damages, *viz*:

> Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. **These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered.** Although incapable of exactness and no proof of pecuniary loss is necessary

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[21] *People v. Victor*, G.R. No. 127903, July 9, 1998, 292 SCRA 186, 200-201.

[22] REVISED PENAL CODE, Arts. 104-107.

[23] BLACK'S *LAW DICTIONARY* (8th ed., 2004).

[24] *Id*.

[25] CIVIL CODE, Arts. 2194-2215.

[26] *Id.*, Arts. 2216-2235.

in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219[27] and Article 2220[28] of the Civil Code. (Emphasis supplied.)

Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong."[29] They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress."[30]

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[27] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[28] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[29] *Bagumbayan Corp v. Intermediate Appellate Court*, No. L-66274, September 30, 1984, 132 SCRA 441, 446.

[30] 6A C.J.S. Assault § 68.

The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted."[31]

And lastly, the Court awards exemplary damages as provided for in Arts. 2229 and 2230 of the Civil Code, *viz*:

> Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.
>
> Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

Clearly, as a general rule, exemplary damages are only imposed in criminal offenses when the crime was committed with one or more aggravating circumstances, be they generic or qualifying. However, there have been instances wherein exemplary damages were awarded despite the lack of an aggravating circumstance. This led the Court to clarify this confusion in *People v. Dalisay*, where it categorically stated that **exemplary damages may be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender**, to wit:

> Prior to the effectivity of the Revised Rules of Criminal Procedure, courts generally awarded exemplary damages in criminal cases when an aggravating circumstance, whether ordinary or qualifying, had been proven to have attended the commission of the crime, even if the same was not alleged in the information. This is in accordance with the aforesaid Article 2230. However, with the promulgation of the Revised Rules, courts no longer consider the aggravating circumstances not alleged and proven in the determination of the penalty and in the award of damages. Thus, even if an aggravating

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[31] G.R. No. 160709, February 23, 2005, 452 SCRA 285, 296.

circumstance has been proven, but was not alleged, courts will not award exemplary damages. x x x

x x x x x x x x x

Nevertheless, *People v. Catubig* laid down the principle that courts may still award exemplary damages based on the aforementioned Article 2230, even if the aggravating circumstance has not been alleged, so long as it has been proven, in criminal cases instituted before the effectivity of the Revised Rules which remained pending thereafter. Catubig reasoned that the retroactive application of the Revised Rules should not adversely affect the vested rights of the private offended party.

Thus, we find, in our body of jurisprudence, criminal cases, especially those involving rape, dichotomized: one awarding exemplary damages, even if an aggravating circumstance attending the commission of the crime had not been sufficiently alleged but was consequently proven in the light of Catubig; and another awarding exemplary damages only if an aggravating circumstance has both been alleged and proven following the Revised Rules. Among those in the first set are *People v. Laciste*, *People v. Victor*, *People v. Orilla*, *People v. Calongui*, *People v. Magbanua*, *People of the Philippines v. Heracleo Abello y Fortada*, *People of the Philippines v. Jaime Cadag Jimenez*, and *People of the Philippines v. Julio Manalili*. And in the second set are *People v. Llave*, *People of the Philippines v. Dante Gragasin y Par*, and *People of the Philippines v. Edwin Mejia*. Again, the difference between the two sets rests on when the criminal case was instituted, either before or after the effectivity of the Revised Rules.

x x x x x x x x x

Nevertheless, by focusing only on Article 2230 as the legal basis for the grant of exemplary damages — taking into account simply the attendance of an aggravating circumstance in the commission of a crime, courts have lost sight of the very reason why exemplary damages are awarded. Catubig is enlightening on this point, thus —

> **Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous**

conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant — associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud — that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*, the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*, the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. Recently, in *People of the Philippines v. Cristino Cañada*, *People of the Philippines v. Pepito Neverio* and *The People of the Philippines v. Lorenzo Layco, Sr.*, the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

It must be noted that, in the said cases, the Court used as basis Article 2229, rather than Article 2230, to justify the award of exemplary damages. Indeed, to borrow Justice Carpio Morales' words in her separate opinion in *People of the Philippines v. Dante Gragasin y Par*, "[t]he application of Article 2230 of the Civil Code

strictissimi juris in such cases, as in the present one, defeats the underlying public policy behind the award of exemplary damages — to set a public example or correction for the public good."[32]

Before awarding any of the above-mentioned damages, the Court, however, must first consider the penalty imposed by law. Under Republic Act No. (RA) 7659 or *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for Other Purposes*, certain crimes under the RPC and special penal laws were amended to impose the penalty of death under certain circumstances.

For a full appreciation of the award on damages, it is imperative that a thorough discussion of RA 7659 be undertaken. Each crime will be discussed as well as the proper amount of damages for each crime.

Under RA 7659, the following crimes are punishable by *reclusion perpetua*: piracy in general,[33] mutiny on the high seas,[34] and simple rape.[35]

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[32] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 817-821.

[33] Art. 122. Piracy in general and mutiny on the high seas or in Philippine waters. - The penalty of *reclusion perpetua* shall be inflicted upon any person who, on the high seas, or in Philippine waters, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or passengers.

The same penalty shall be inflicted in case of mutiny on the high seas or in Philippine waters.

[34] *Id.*

[35] Art. 335. When and how rape is committed. - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion perpetua*. x x x

For the following crimes, RA 7659 has imposed the penalty of *reclusion perpetua* to death: qualified piracy;[36] qualified bribery under certain circumstances;[37] parricide;[38] murder;[39]

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[36] Art. 123. Qualified piracy. - The penalty of reclusion perpetua to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

1. Whenever they have seized a vessel by boarding or firing upon the same;

2. Whenever the pirates have abandoned their victims without means of saving themselves or;

3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

[37] Art. 211-A. Qualified Bribery. - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted. x x x

[38] Art. 246. Parricide. - Any person who shall kill his father, mother, or child, whether legitimate of illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

[39] 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.

2. In consideration of a price, reward or promise.

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.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

infanticide, except when committed by the mother of the child for the purpose of concealing her dishonor or either of the maternal grandparents for the same purpose;[40] kidnapping and serious illegal detention under certain circumstances;[41] robbery with violence against or intimidation of persons under certain circumstances;[42] destructive arson, except when death results as a consequence of the commission of any of the acts penalized under the article;[43] attempted or frustrated rape, when a homicide

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[40] Art. 255. Infanticide. - The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

[41] Art. 267. Kidnapping and serious illegal detention. - Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

[42] Art. 294. Robbery with violence against or intimidation of persons - Penalties. - Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson. x x x

[43] Art. 320. Destructive Arson. - The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.

2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice

is committed by reason or on occasion thereof; plunder;[44] and carnapping, when the driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.[45]

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at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of reclusion perpetua to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.

The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance, storehouse, archives or general museum of the Government.

2. In an inhabited place, any storehouse or factory of inflammable or explosive materials. x x x

[44] Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[45] Sec. 14. Penalty for Carnapping. - Any person who is found guilty of

RA 7659 imposes the penalty of death on the following crimes:

(a) In qualified bribery, when it is the public officer who asks or demands the gift or present.

(b) In kidnapping and serious illegal detention: (i) when the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person; (ii) when the victim is killed or dies as a consequence of the detention; (iii) when the victim is raped, subjected to torture or dehumanizing acts.

(c) In destructive arson, when as a consequence of the commission of any of the acts penalized under Article 320, death results.

(d) In rape: (i) when by reason or on occasion of the rape, the victim becomes insane or homicide is committed; (ii) when committed with any of the following attendant 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; (2) when the victim is under the custody of the police or military authorities; (3) when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity; (4) when the victim is a religious or a child below seven years old; (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease; (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency; and (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

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carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by x x x the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

Nevertheless, all these must be taken in relation to Art. 63 of the RPC, which provides:

> Article 63. *Rules for the application of indivisible penalties*.— In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.
>
> 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.
> 2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
> 3. When the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.
> 4. When both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Thus, in order to impose the proper penalty, especially in cases of indivisible penalties, the court has the duty to ascertain the presence of any mitigating or aggravating circumstances. Accordingly, in crimes where the imposable penalty is *reclusion perpetua* to death, the court can impose either *reclusion perpetua* or death, depending on the mitigating or aggravating circumstances present.

But with the enactment of Republic Act No. (RA) 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. It provides that in lieu of the death penalty, the penalty of

reclusion perpetua shall be imposed when the law violated makes use of the nomenclature of the penalties of the RPC.[46]

As a result, courts now cannot impose the penalty of death. Instead, they have to impose *reclusion perpetua*. Despite this, the principal consideration for the award of damages, following the ruling in *People v. Salome*[47] and *People v. Quiachon*,[48] is "the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender."[49]

When the circumstances surrounding the crime would justify the imposition of the penalty of death were it not for RA 9346, the Court has ruled, as early as July 9, 1998 in *People v. Victor*,[50] that the award of civil indemnity for the crime of rape when punishable by death should be PhP 75,000. We reasoned that "[t]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity."[51] Such reasoning also applies to all heinous crimes found in RA 7659.

In addition to this, the Court likewise awards moral damages. In *People v. Arizapa*,[52] PhP 50,000 was awarded as moral damages without need of pleading or proving them, for in rape cases, it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to

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[46] RA 9346, Sec. 2.

[47] G.R. No. 169077, August 31, 2006, 500 SCRA 659, 676.

[48] G.R. No. 170236, August 31, 2006, 500 SCRA 704, 720.

[49] See *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 44.

[50] G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[51] *Id.* at 200-201.

[52] G.R. No. 131814, March 15, 2000, 328 SCRA 214.

warrant per se the award of moral damages.[53] Subsequently, the amount was increased to PhP 75,000 in *People v. Soriano*.[54]

As to exemplary damages, existing jurisprudence has pegged its award at PhP 30,000,[55] despite the lack of any aggravating circumstance. The reason, as previously discussed, is to deter similar conduct and to serve as an example for public good.

Essentially, despite the fact that the death penalty cannot be imposed because of RA 9346, the imposable penalty as provided by the law for the crime, such as those found in RA 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

On the other hand, when the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, the Court has ruled that the proper amounts should be PhP 50,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 30,000 as exemplary damages.[56]

Accordingly, in Criminal Case Nos. 95-17070 and 95-17071, the exemplary damages awarded by the CA in the amount of PhP 25,000 should be increased to PhP 30,000.00 in line with prevailing jurisprudence.

Moreover, the deletion of the award of compensatory damages for unearned income by the CA in Criminal Case No. 95-17071 is proper. This Court pronounced in *People v. Mallari*:[57]

> The rule is that documentary evidence should be presented to substantiate a claim for damages for loss of earning capacity. By way of exception, damages therefore may be awarded despite the absence of documentary evidence provided that there is testimony that the victim was either (1) self-employed earning less than the minimum wage under current labor laws, and judicial notice may be

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[53] *Id*.

[54] *People v. Soriano*, G.R. No. 142779-95, August 29, 2002, 388 SCRA 140.

[55] *People v. Abellera*, G.R. No. 166617, July 3, 2007, 526 SCRA 329.

[56] *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 254.

[57] G.R. No. 145993, June 17, 2003, 404 SCRA 170.

taken of the fact that in the victim's line of work no documentary evidence is available; or (2) employed as a daily-wage worker earning less than the minimum wage under current labor laws.

In this case, neither of the exemption applies. The earnings of Leopoldo at the time of his death were above minimum wage set by labor laws in his respective place at the time of his death.[58] As testified to by his wife, Shenette Guiro, Leopoldo was earning between PhP 200 to PhP 300 per day. This is more than minimum wage. Hence, absent any documentary evidence, the award of compensatory damages must be deleted.

Likewise, the deletion of the award of compensatory damages by the CA in Criminal Case No. 95-17070 is proper for lack of any basis. The trial court did not discuss why it awarded compensatory damages to the heirs of Edmund.

Interest on damages

When death occurs due to a crime, the following may be recovered: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) **interest, in proper cases**.[59] In *People v. Tubongbanua*,[60] interest at the rate of six percent (6%) was ordered to be applied on the award of damages. This rule would be subsequently applied by the Court in several cases such as *Mendoza v. People*,[61] *People v. Buban*,[62] *People v. Guevarra*,[63] and *People v. Regalario*.[64] Thus, we likewise adopt this rule in

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[58] Under Wage Order No. VI-03 which covered Leopoldo Guiro (and which took effect on December 4, 1993), the minimum wage at the time of his death was PhP 114.35 per day.

[59] *Nueva España v. People*, G.R. No. 163351, June 21, 2005, 460 SCRA 547.

[60] G.R. No. 171271, August 31, 2006, 500 SCRA 727.

[61] G.R. No. 173551, October 4, 2007, 534 SCRA 668.

[62] G.R. No. 170471, May 11, 2007, 523 SCRA 118.

[63] G.R. No. 182192, October 29, 2008, 570 SCRA 288.

[64] G.R. No. 174483, March 31, 2009, 582 SCRA 738.

the instant case. Interest of six percent (6%) per annum should be imposed on the award of civil indemnity and all damages, *i.e.*, actual or compensatory damages, moral damages and exemplary damages, from the date of finality of judgment until fully paid.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CEB CR-H.C. No. 00294 finding accused-appellant Jose Pepito D. Combate guilty of the crimes charged is *AFFIRMED* with *MODIFICATION*. As modified, the ruling of the trial court should read as follows:

> FOR ALL THE FOREGOING, judgment is hereby rendered finding the accused Jose Combate, Jr. *y* Dallarte *alias* Peping, GUILTY beyond reasonable doubt of the crime of HOMICIDE in Criminal Case NO. 95-17071 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of *RECLUSION TEMPORAL* in its medium period. Applying the Indeterminate Sentence Law, the accused shall serve a prison term of Eight (8) Years and One (1) Day of *Prision Mayor* to Fifteen (15) years of *Reclusion Temporal*.
>
> By way of civil liability, the accused is condemned to pay the heirs of the late Leopoldo Guiro the following:
>
> 1. The sum of ₱50,000.00 as **civil indemnity**; and
> 2. The sum of ₱56,319.59 as reimbursement for the burial expenses.
>
> In addition, the accused is ordered to pay Shenette Guiro the sum of ₱50,000.00 as moral damages and **₱30,000.00 as exemplary damages**.
>
> The accused is also declared GUILTY of MURDER for the death of Edmund Prayco as charged in the Information in Criminal Case No. 95-17070 as Principal thereof. There being no modifying circumstances, the accused is sentenced to suffer the penalty of *RECLUSION PERPETUA*. **He is condemned to pay the heirs of the late Edmund Prayco the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages**.

Finally, interest at the rate of six percent (6%) per annum shall be applied to the award of civil indemnity, moral damages and exemplary damages from the finality of judgment until fully paid in the two (2) aforementioned criminal cases.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 189776. December 15, 2010.]

AMELIA P. ARELLANO, represented by her duly appointed guardians, AGNES P. ARELLANO and NONA P. ARELLANO, *petitioner, vs.* **FRANCISCO PASCUAL and MIGUEL PASCUAL,** *respondents.*

SYLLABUS

1. CIVIL LAW; DIFFERENT MODES OF ACQUIRING OWNERSHIP; SUCCESSION; COLLATION; TWO DISTINCT CONCEPTS.— The term collation has two distinct concepts: *first*, it is a mere mathematical operation by the addition of the value of donations made by the testator to the value of the hereditary estate; and *second*, it is the return to the hereditary estate of property disposed of by lucrative title by the testator during his lifetime.

2. ID.; ID.; ID.; ID.; APPLIED FOR THE PROTECTION OF LEGITIME, ONLY WHEN THERE ARE COMPULSORY HEIRS; ABSENT THE COMPULSORY HEIRS, DECEDENT'S DONATED PROPERTY NOT SUBJECT TO COLLATION.— The purposes of collation are to secure equality among the compulsory heirs in so far as is possible,

and to determine the free portion, after finding the legitime, so that inofficious donations may be reduced. Collation takes place when there are *compulsory* heirs, one of its purposes being to determine the legitime and the free portion. If there is no compulsory heir, there is no legitime to be safeguarded. The records do not show that the decedent left any primary, secondary, or concurring compulsory heirs. He was only survived by his siblings, who are his collateral relatives and, therefore, are not entitled to any legitime – that part of the testator's property which he cannot dispose of because the law has reserved it for *compulsory* heirs. x x x The decedent not having left any compulsory heir who is entitled to any legitime, he was at liberty to donate all his properties, even if nothing was left for his siblings-collateral relatives to inherit. His donation to petitioner, assuming that it was valid, is deemed as donation made to a "stranger," chargeable against the free portion of the estate. There being no compulsory heir, however, the donated property is not subject to collation.

3. ID.; ID.; ID.; ORDER OF INTESTATE SUCCESSION; COLLATERAL RELATIVES; WHERE THE ONLY SURVIVORS OF DECEDENT BE SIBLINGS OF FULL BLOOD, THEY SHALL INHERIT IN EQUAL SHARES.— The decedent's remaining estate should thus be partitioned *equally* among his heirs-siblings-collateral relatives, herein petitioner and respondents, pursuant to the provisions of the Civil Code, *viz:* x x x **Art. 1004.** Should the only survivors be brothers and sisters of the full blood, they shall **inherit in equal shares**.

APPEARANCES OF COUNSEL

Ruben Purisima for petitioner.
Danilo P. Cariaga for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Angel N. Pascual Jr. died intestate on January 2, 1999 leaving as heirs his siblings, namely: petitioner Amelia P. Arellano who is represented by her daughters[1] Agnes P. Arellano (Agnes) and Nona P. Arellano, and respondents Francisco Pascual and Miguel N. Pascual.[2]

In a petition for "Judicial Settlement of Intestate Estate and Issuance of Letters of Administration," docketed as Special Proceeding Case No. M-5034, filed by respondents on April 28, 2000 before the Regional Trial Court (RTC) of Makati, respondents alleged, *inter alia*, that a parcel of land (the donated property) located in Teresa Village, Makati, which was, by Deed of Donation, transferred by the decedent to petitioner the validity of which donation respondents assailed, "may be considered as an advance legitime" of petitioner.

Respondent's nephew Victor was, as they prayed for, appointed as Administrator of the estate by Branch 135 of the Makati RTC.[3]

Respecting the donated property, now covered in the name of petitioner by Transfer Certificate of Title No. 181889 of the Register of Deeds of Makati, which respondents assailed but which they, in any event, posited that it "may be considered as an advance legitime" to petitioner, the trial court, acting as probate court, held that it was precluded from determining the validity of the donation.

Provisionally passing, however, upon the question of title to the donated property only for the purpose of determining whether it formed part of the decedent's estate,[4] the probate court found

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[1] Records (Vol. II), p. 646.

[2] *Id.* at 542.

[3] Records (Vol. I), p. 137.

[4] CA *rollo* at p. 29.

the Deed of Donation valid in light of the presumption of validity of notarized documents. It thus went on to hold that it is subject to collation following Article 1061 of the New Civil Code which reads:[5]

> Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition.

The probate court thereafter partitioned the properties of the intestate estate. Thus it disposed:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that:
>
> 1. The property covered by TCT No. 181889 of the Register of Deeds of Makati as part of the estate of Angel N. Pascual;
> 2. The property covered by TCT No. 181889 to be subject to collation;
> 3. 1/3 of the rental receivables due on the property at the mezzanine and the 3rd floor of Unit 1110 Tanay St., Makati City form part of the estate of Angel N. Pascual;
> 4. The following properties form part of the estate of Angel N. Pascual:
>
> a. 1/3 share in the House and Lot at 1110 Tanay St., Rizal Village Makati TCT No. 348341 and 1/3 share in the rental income thereon;
>
> b. 1/3 share in the Vacant Lot with an area of 271 square meters located at Tanay St., Rizal Village, Makati City, TCT No. 119063;
>
> c. Agricultural land with an area of 3.8 hectares located at Puerta Galera Mindoro covered by OCT No. P-2159;
>
> d. Shares of stocks in San Miguel Corporation covered by the following Certificate Numbers: A0011036, A006144,

[5] *Id.* at 30.

A082906, A006087, A065796, A11979, A049521, C86950, C63096, C55316, C54824, C120328, A011026, C12865, A10439, A021401, A007218, A0371, S29239, S40128, S58308, S69309;

e. Shares of stocks in Paper Industries Corp. covered by the following Certificate Numbers: S29239, S40128, S58308, S69309, A006708, 07680, A020786, S18539, S14649;

f. ¼ share in Eduardo Pascual's shares in Baguio Gold Mining Co.;

g. Cash in Banco De Oro Savings Account No. 2 014 12292 4 in the name of Nona Arellano;

i. Property previously covered by TCT No. 119053 now covered by TCT No. 181889, Register of Deeds of Makati City;

j. Rental receivables from Raul Arellano per Order issued by Branch 64 of the Court on November 17, 1995.

5. **AND the properties are partitioned as follows:**

a. To heir Amelia P. Arellano-the property covered by TCT No. 181889;

b. To heirs Francisco N. Pascual and Miguel N. Pascual-the real properties covered by TCT Nos. 348341 and 119063 of the Register of Deeds of Makati City and the property covered by OCT No. 2159, to be divided equally between them up to the extent that each of their share have been equalized with the actual value of the property in 5(a) at the time of donation, the value of which shall be determined by an independent appraiser to be designated by Amelia P. Arellano, Miguel N. Pascual and Francisco N. Pascual. If the real properties are not sufficient to equalize the shares, then Francisco's and Miguel's shares may be satisfied from either in cash property or shares of stocks, at the rate of quotation. The remaining properties shall be divided equally among Francisco, Miguel and Amelia. (emphasis and underscoring supplied)

Before the Court of Appeals, petitioner faulted the trial court in holding that

I

. . . THE PROPERTY DONATED TO APPELLANT AMELIA PASCUAL ARELLANO IS PART OF THE ESTATE OF ANGEL PASCUAL, JR.

II

. . . THE PROPERTY DONATED TO APPELLANT IS SUBJECT TO COLLATION UNDER ARTICLE 1061 OF THE NEW CIVIL CODE.

III

. . . APPELLEES WHO ARE MERELY COLLATERAL RELATIVES OF DECEASED ANGEL N. PASCUAL JR. AS HIS COMPULSORY HEIRS ENTITLED TO LEGITIMES.

x x x x x x x x x

and

V

. . . IN NOT PARTITIONING THE ESTATE OF ANGEL N. PASCUAL JR. EQUALLY AMONG HIS LEGAL OR INTESTATE HEIRS.[6] (underscoring supplied)

By Decision[7] of July 20, 2009, the Court of Appeals found petitioner's appeal "partly meritorious." It sustained the probate court's ruling that the property donated to petitioner is subject to collation in this wise:

Bearing in mind that in intestate succession, what governs is the rule on equality of division, We hold that the **property subject of donation *inter vivos* in favor of Amelia is subject to collation**. Amelia cannot be considered a creditor of the decedent and we believe that under the circumstances, the value of such immovable though not strictly in the concept of advance legitime, should be deducted from her share in the net hereditary estate. The trial court therefore committed no reversible error when it included the said property as

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[6] CA *rollo* at p. 47.

[7] Penned by now Supreme Court Associate Justice Martin S. Villarama, Jr., and concurred in by Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, *rollo*, pp. 21-41.

forming part of the estate of Angel N. Pascual.[8] (citation omitted; emphasis and underscoring supplied)

The appellate court, however, held that, contrary to the ruling of the probate court, herein petitioner "was able to submit *prima facie* evidence of shares of stocks owned by the [decedent] which have not been included in the inventory submitted by the administrator."

Thus, the appellate court disposed, *quoted verbatim*:

WHEREFORE, premises considered, the present appeal is hereby PARTLY GRANTED. The Decision dated January 29, 2008 of the Regional Trial Court of Makati City, Branch 135 in Special Proceeding Case No. M-5034 is hereby REVERSED and SET ASIDE insofar as the order of inclusion of properties of the Intestate Estate of Angel N. Pascual, Jr. as well as the partition and distribution of the same to the co-heirs are concerned.

The case is hereby REMANDED to the said court for further proceedings in accordance with the disquisitions herein.[9] (underscoring supplied)

Petitioner's Partial Motion for Reconsideration[10] having been denied by the appellate court by Resolution[11] of October 7, 2009, the present petition for review on *certiorari* was filed, ascribing as errors of the appellate court its ruling

I

. . . THAT THE PROPERTY DONATED BY ANGEL N. PASCUAL, JR. TO PETITIONER AMELIA PASCUAL ARELLANO IS PART OF HIS ESTATE AT THE TIME OF HIS DEATH.

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[8] *Id.* at 37.

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

[10] CA *rollo* at p. 138.

[11] *Rollo* at 43.

II

... THAT THE PROPERTY DONATED TO PETITIONER IS SUBJECT TO COLLATION UNDER ARTICLE 1061 OF THE NEW CIVIL CODE.

III

... THAT RESPONDENTS ARE COMPULSORY HEIRS OF THEIR DECEASED BROTHER ANGEL N. PASCUAL JR. AND ARE ENTITLED TO LEGITIMES.

IV

... IN NOT PARTITIONING THE ESTATE OF ANGEL N. PASCUAL, JR. EQUALLY AMONG PETITIONER AND RESPONDENTS, AS HIS LEGAL OR INTESTATE HEIRS.[12] (underscoring supplied)

Petitioners thus raise the issues of whether the property donated to petitioner is subject to collation; and whether the property of the estate should have been ordered equally distributed among the parties.

On the first issue:

The term collation has two distinct concepts: *first*, it is a mere mathematical operation by the addition of the value of donations made by the testator to the value of the hereditary estate; and *second*, it is the return to the hereditary estate of property disposed of by lucrative title by the testator during his lifetime.[13]

The purposes of collation are to secure equality among the compulsory heirs in so far as is possible, and to determine the free portion, after finding the legitime, so that inofficious donations may be reduced.[14]

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

[13] III TOLENTINO, *1992 Edition*, p. 332, citing 10 Fabres 295-299 Colin & Capitant 526-528;2-11 Ruggiero 394; 5 Planiol & Ripert 67; De Buen; 8 Colin & Capitant 340.

[14] III TOLENTINO, *1992 Edition*, pp. 331-332, citing 6 Manresa 406.

Collation takes place when there are *compulsory* heirs, one of its purposes being to determine the legitime and the free portion. If there is no compulsory heir, there is no legitime to be safeguarded.[15]

The records do not show that the decedent left any primary, secondary, or concurring compulsory heirs. He was only survived by his siblings, who are his *collateral* relatives and, therefore, are not entitled to any legitime – that part of the testator's property which he cannot dispose of because the law has reserved it for *compulsory* heirs.[16]

> The compulsory heirs may be classified into (1) primary, (2) secondary, and (3) concurring. The primary compulsory heirs are those who have precedence over and exclude other compulsory heirs; legitimate children and descendants are primary compulsory heirs. The secondary compulsory heirs are those who succeed only in the absence of the primary heirs; the legitimate parents and ascendants are secondary compulsory heirs. The concurring compulsory heirs are those who succeed together with the primary or the secondary compulsory heirs; the illegitimate children, and the surviving spouse are concurring compulsory heirs.[17]

The decedent not having left any compulsory heir who is entitled to any legitime, he was at liberty to donate all his properties, even if nothing was left for his siblings-collateral relatives to inherit. His donation to petitioner, assuming that it was valid,[18] is deemed as donation made to a "stranger," chargeable against the free portion of the estate.[19] There being no compulsory heir, however, the donated property is not subject to collation.

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[15] III TOLENTINO, *1992 Edition*, p. 337, citing 6 Manresa 413.

[16] Article 886, Civil Code.

[17] III TOLENTINO, *1992 Edition*, p. 252.

[18] It appears that its validity is in issue in Sp. Proc. No. M-3893 (for guardianship over the person and estate of Angel N. Pascual, Jr.) before Br. 139 of the Makati RTC, *vide* petition, par. 6, Record, pp. 1-4.

[19] *Vide* III TOLENTINO, 1992 Edition, p. 341.

On the second issue:

The decedent's remaining estate should thus be partitioned *equally* among his heirs-siblings-collateral relatives, herein petitioner and respondents, pursuant to the provisions of the Civil Code, *viz*:

Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles. (underscoring supplied)

Art. 1004. Should the only survivors be brothers and sisters of the full blood, they shall **inherit in equal shares**. (emphasis and underscoring supplied)

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision ordering the collation of the property donated to petitioner, Amelia N. Arellano, to the estate of the deceased Angel N. Pascual, Jr. is *SET ASIDE*.

Let the records of the case be *REMANDED* to the court of origin, Branch 135 of the Makati Regional Trial Court, which is ordered to conduct further proceedings in the case for the purpose of determining what finally forms part of the estate, and thereafter to divide whatever remains of it equally among the parties.

SO ORDERED.

Peralta,[*] *Bersamin, Mendoza,*[**] and *Sereno, JJ.*, concur.

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[*] Additional member per raffle dated January 6, 2010.

[**] Additional member per Special Order No. 921 dated December 13. 2010.

SECOND DIVISION

[G.R. No. 189841. December 15, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EFREN DITONA *y* MONTEFALCON, BERNARD FERNANDEZ and ERNESTO EMNAS,** *accused.* **EFREN DITONA *y* MONTEFALCON,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2001 (RA 9165); SALE OF ILLEGAL DRUGS AND POSSESSION OF ILLEGAL DRUGS; REQUISITES AND CHAIN OF CUSTODY.— To successfully prosecute an accused for selling illegal drugs, the prosecution has to prove: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. On the other hand, for an accused to be convicted of possession of illegal drugs, the prosecution is required to prove that: (1) the accused was in possession of prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the prohibited drug. In both instances, the State has to prove as well the *corpus delicti*, the body of the crime. It must be shown that the suspected substance the police officers seized from the accused is the same thing presented in court during the trial. Thus, the chain of custody rule is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. The witnesses should be able to describe these movements to ensure that there had been no change in the condition of the item and that no one who did not belong in the chain had access to the same.

2. ID.; ID.; THAT DRUG ENFORCEMENT AGENCIES AND THE PROSECUTION SHOULD PUT THEIR ACTS TOGETHER ON DRUG CASES, EMPHASIZED.— [T]here is no room to apply the presumption of regularity in the police officers' performance of official duty. While the testimonies of the

police officers who apprehended the accused are generally accorded full faith and credit because of the presumption that they have performed their duties regularly, such presumption is effectively destroyed where the performance of their duties is tainted with failure to comply with the prescribed procedure and guidelines.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; NOT APPRECIATED WHERE PUBLIC OFFICERS FAILED TO COMPLY WITH THE PRESCRIBED PROCEDURE AND GUIDELINES.— The drug enforcement agencies of the government and the prosecution should put their acts together to ensure that the guilty are punished and the innocent absolved. Poor handling and preservation of the integrity of evidence show lack of professionalism and waste the time that the courts could use for hearing and adjudicating other cases. Prosecutors ought not to file drugs cases in court unless the law enforcement agencies are able to show documented compliance with every requirement of Section 21 of Republic Act 9165, the Comprehensive Dangerous Drugs Act of 2002. Likewise prosecutors ought to have a checklist of the questions they should ask their witnesses in drugs cases that would elicit the required proof.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the need for the prosecution to show proof that the integrity of seized prohibited drugs has been preserved from the moment of seizure to the moment they are presented in court.

The Facts and the Case

The prosecution evidence shows that the Drug Enforcement Group of the Olongapo City Police had received reports of rampant selling of illegal drugs at Compound 7-9th Street, Barangay Ilalim, Olongapo City.

On July 19, 2002, within the election period, the police conducted a buy-bust operation at the place. SPO1 Alfredo Flores, acting as a poseur-buyer, and an informer met the accused Efren M. Ditona in front of the latter's house. SPO1 Flores gave Ditona the marked money consisting of two ₱100 bills in exchange for one plastic sachet of *shabu*.

At a signal, PO3 Norberto Ventura and PO2 Allan Delos Reyes rushed towards the gate of the compound to make the apprehension but, before they could reach SPO1 Flores and Ditona, the latter noticed their movement and ran into his house. The officers arrested him there and four others who were then sniffing *shabu* and preparing aluminum tin foils.

The police frisked them and found the marked money on Ditona's person together with transparent plastic sachets containing what appeared to be *shabu* substance and one cal. 22 magnum revolver with six live ammunitions. They confiscated the marked money, the suspected *shabu* substance in sachets, the gun, and the ammunitions.[1] Upon laboratory examination, the substance proved positive for methamphetamine hydrochloride or *shabu*.[2]

The City Prosecutor of Olangapo City filed four separate informations against Ditona before the Regional Trial Court (RTC) of Olongapo City for selling and possessing illegal drugs[3] in Criminal Cases 436-2002[4] and 437-2002;[5] violation of the

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[1] Records, Vol. I, p. 188.

[2] *Id.* at 186.

[3] In violation of Sections 5 and 11, Republic Act (R.A.) 6425 as amended by R.A. 9165.

[4] Records, Vol. I, p. 59.

[5] *Id.* at 65.

Omnibus Election Code[6] in Criminal Case 438-2002;[7] and illegal possession of firearms[8] in Criminal Case 466-2002.[9] The RTC tried all four cases jointly.

On July 11, 2007 the RTC[10] found Ditona guilty of all the charges and sentenced him to suffer the penalty of life imprisonment *(reclusion perpetua)* in Criminal Case 436-2002; imprisonment from 12 years and one day to 20 years in Criminal Case 437-2002; imprisonment from one year to six years in Criminal Case 438-2002; and imprisonment from four years, two months, and one day to six years of *prision correccional* and a fine of ₱15,000.00 in Criminal Case 466-2002. Ditona's denial, said the RTC, cannot prevail over the police officers' positive declarations considering that the latter did not have any motive to concoct a false charge against him and presumably performed their official duties regularly.

On appeal, the Court of Appeals (CA)[11] affirmed the conviction for the crimes relating to the prohibited drugs but modified the RTC ruling with respect to the other charges after observing that it erred in convicting Ditona separately for illegal possession of firearms and violation of the Omnibus Election Code.

The Issue Presented

The sole issue for resolution is whether or not the prosecution was able to establish beyond reasonable doubt Ditona's guilt for illegal possession and sale of *shabu*.

The Court's Ruling

To successfully prosecute an accused for selling illegal drugs, the prosecution has to prove: (1) the identities of the buyer and

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[6] Section 261(q) in relation to Section 264.

[7] CA *rollo*, p. 13.

[8] In violation of Section 1, P.D. 1866 as amended by R.A. 8294.

[9] Records, Vol. II, p. 1.

[10] Records, Vol. I, pp. 262-264.

[11] *Rollo*, pp. 2-23. Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Andres B. Reyes, Jr. and Apolinario D. Bruselas, Jr.

the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[12] On the other hand, for an accused to be convicted of possession of illegal drugs, the prosecution is required to prove that: (1) the accused was in possession of prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the prohibited drug.[13]

In both instances, the State has to prove as well the *corpus delicti*, the body of the crime.[14] It must be shown that the suspected substance the police officers seized from the accused is the same thing presented in court during the trial. Thus, the chain of custody rule is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[15] The witnesses should be able to describe these movements to ensure that there had been no change in the condition of the item and that no one who did not belong in the chain had access to the same.[16]

Here, the prosecution dismally failed to prove the *corpus delicti* since there were substantial gaps in the chain of custody of the seized drugs which raised doubts on the authenticity of the evidence presented in court.

To begin with, SPO1 Flores, PO3 Ventura, and PO2 Delos Reyes executed a Joint Affidavit,[17] which formed part of their direct testimonies, in which they narrated the details of the

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[12] *People v. Partoza*, G.R. No. 182418, May 8, 2009, 587 SCRA 809, 816.

[13] *People of the Philippines v. Padua*, G.R. No. 174097, July 21, 2010.

[14] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 356.

[15] *People of the Philippines v. Sitco*, G.R. No. 178202, May 14, 2010; see also *People of the Philippines v. Nandi*, G.R. No. 188905, July 13, 2010.

[16] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[17] Records, Vol. I, p. 3.

buy-bust operation. Yet, they did not say how they handled the seized drugs from the time they frisked Ditona until they brought him to the police station. They also omitted these important points in their testimonies on direct and cross-examination.

PO2 Delos Reyes testified on the details of the seized drugs, the gun, and the ammunitions taken from the persons in the house but he did not specify what things he confiscated from Ditona. PO3 Ventura, on the other hand, merely testified that he issued a receipt for the things the police seized, thus:[18]

PROSECUTOR:

As regards the shabu, we will maintain it to be collectively marked as Exhibit "B". Now…will you tell us briefly your participation in this police operation?

A: I was tasked as back-up together with PO3 [sic] Allan Delos Reyes. It was SPO1 Alfredo Flores who acted as poseur-buyer.

Q: After the consummation, Alfredo Flores gave his pre-arranged signal and when Ditona saw it, and sensed the presence the other members of the team he tried to ran inside his house and that's the time we gave chase upon which we saw another person inside the sala?

A: Yes Sir.

Q: By the way, what was the lighting condition when this incident transpired?

A: From the light post, it is well-lighted…near the house at No. 7-9th St.

Q: In connection with this drug operation, do you recall having prepared a receipt of evidence or property seized?

A: Yes Sir.

Q: If you see this again, will you be able to recognize it?

A: Yes Sir.

Q: I am showing to you a document which we request to be marked as Exhibit "L", please go over this and tell if this is the receipt of property seized you are referring to?

A: Yes Sir, this is it.

[18] *Id.* at 226-227.

Q: Can you identify the signatures indicated below?
A: This is Alfredo Flores, this is my signature and this is Allan Delos Reyes' signature.

Finally, SPO1 Flores testified only that he was the one who bought the *shabu* from Ditona, thus:[19]

Q: You said you were able to buy shabu on July 19, 2002, from whom were you able to buy shabu?
A: From Efren Ditona, Sir.

Q: Will you tell the Court the quantity of shabu you were able to purchase?
A: One sachet of shabu containing 0.2 grams.

Q: If you see the stuff you were able to buy, will you be able to recognize this?
ATTY. COLOMA:
We stipulate that the witness can identify the stuff.

Quite clearly, the prosecution failed to establish the required chain of custody of the prohibited drugs through the testimonies of the police officers. While the RTC noted that SPO1 Flores and PO3 Ventura placed their initials, "AF" and "NV", on the seized drugs, they did not identify the markings as theirs during their direct testimonies nor did they testify when and where they made such markings. Moreover, they failed to show how the seized drugs reached the laboratory technician who examined it and how the same were stored pending turnover to the court.[20]

Indeed, there is no room to apply the presumption of regularity in the police officers' performance of official duty. While the testimonies of the police officers who apprehended the accused are generally accorded full faith and credit because of the presumption that they have performed their duties regularly, such presumption is effectively destroyed where

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[19] *Id.* at 229.

[20] *People v. Partoza*, *supra* note 12, at 819.

the performance of their duties is tainted with failure to comply with the prescribed procedure and guidelines.[21]

The drug enforcement agencies of the government and the prosecution should put their acts together to ensure that the guilty are punished and the innocent absolved. Poor handling and preservation of the integrity of evidence show lack of professionalism and waste the time that the courts could use for hearing and adjudicating other cases. Prosecutors ought not to file drugs cases in court unless the law enforcement agencies are able to show documented compliance with every requirement of Section 21 of Republic Act 9165, the Comprehensive Dangerous Drugs Act of 2002. Likewise prosecutors ought to have a checklist of the questions they should ask their witnesses in drugs cases that would elicit the required proof.

WHEREFORE, the Court *GRANTS* the petition and *MODIFIES* the assailed Decision of the Court of Appeals in CA-G.R. CR-HC 03095 dated July 31, 2009 in that accused-appellant Efren Ditona *y* Montefalcon is *ACQUITTED* with respect to the crimes charged in Criminal Cases 436-2002, 437-2002, and 466-2002. The Court, however, *AFFIRMS* the finding of the Court of Appeals of his guilt beyond reasonable doubt with respect to the charge of violation of Section 261(q) in relation to Section 264 of the Omnibus Election Code in Criminal Case 438-02 and the corresponding penalty of imprisonment from one (1) year to six (6) years meted out to him.

SO ORDERED.

Carpio (Chairperson), Nachura, Villarama, Jr.,[*] and *Mendoza, JJ.,* concur.

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[21] *People of the Philippines v. De Guzman*, G.R. No. 186498, March 26, 2010.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated December 13, 2010.

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— Shall be filed not later than sixty (60) days from notice of the judgment, order or resolution and in case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the 60 day period shall be counted from the notice of the denial of the said motion. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, Dec. 15, 2010) p. 45

Respondents and costs in certain cases — Sec. 5, Rule 65 of the Rules of Court provides: When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person,

the petitioner shall join, as private respondent/s with such public respondent/s, the person/s interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent/s affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent/s. (Pascual *vs*. Robles, G.R. No. 182645, Dec. 15, 2010) p. 396

COMMON CARRIERS

Contract of carriage — A contract imbued with public interest. (Air France *vs*. Gillego, G.R. No. 165266, Dec. 15, 2010) p. 138

— There is breach of contract when the carrier returned the passenger's baggage only after two years. *(Id.)*

Contributory negligence — Defined as the conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection. (Sealoader Shipping Corp. *vs*. Grand Cement Manufacturing Corp., G.R. No. 167363, Dec. 15, 2010) p. 155

Last clear chance doctrine — States that where both parties are negligent but the negligent act of one is appreciably later than that of the other, or where it is impossible to determine whose fault or negligence caused the loss, the one who had the last clear opportunity to avoid the loss but failed to do so, is chargeable with the loss. (Sealoader Shipping Corp. *vs*. Grand Cement Manufacturing Corp., G.R. No. 167363, Dec. 15, 2010) p. 155

Negligence — Defined as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would

do, or the doing of something which a prudent and reasonable man would not do. (Sealoader Shipping Corp. *vs*. Grand Cement Manufacturing Corp., G.R. No. 167363, Dec. 15, 2010) p. 155

COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165)

Illegal possession of prohibited or regulated drugs — Elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (People *vs*. Ditona, G.R. No. 189841, Dec. 15, 2010) p. 529

Illegal sale of dangerous drugs — Elements to be established are: (1) proof that the transaction of sale took place; and (2) the presentation in court of the corpus delicti or the illicit drug as evidence. (People *vs*. Ditona, G.R. No. 189841, Dec. 15, 2010) p. 529

COURT PERSONNEL

Conduct of — Disrespect towards the right of a co-employee constitutes a violation of the prescribed norms of conduct for public officials and employees. (Ruben *vs*. Abon, A.M. No. P-10-2753, Dec. 15, 2010) p. 21

Misconduct — Defined as any unlawful conduct, on the part of a person concerned in the administration of justice, prejudicial to the rights of parties or to the right determination of the cause. (Sarmiento *vs*. Mendiola, A.M. No. P-07-2383, Dec. 15, 2010) p. 12

DAMAGES

Award of — Proper award of damages in criminal cases where the imposable penalty for the crime is *reclusion perpetua* or death are: civil indemnity, moral, and exemplary damages. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

— Rule when death occurs due to a crime. *(Id.)*

Civil indemnity — An indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

— Mandatory upon the finding of the fact of rape. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

Compensation for loss of earning capacity — Documentary evidence must be presented to substantiate a claim for damages; exceptions. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

Exemplary damages — Awarded in cases of qualified rape. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

— Awarded in view of the carrier's failure to act timely on its passenger's predicament. (Air France *vs*. Gillego, G.R. No. 165266, Dec. 15, 2010) p. 138

— Awarded when a pregnant married woman was sexually assaulted. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

— For a common carrier to be liable, it must be shown that the carrier acted fraudulently or in bad faith. (Air France *vs*. Gillego, G.R. No. 165266, Dec. 15, 2010) p. 138

— Intended to serve as a deterrent to serious wrongdoings, a vindication of undue sufferings and wanton invasion of the rights of an injured, or a punishment for those guilty of outrageous conduct. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

(Siok Ping Tang *vs*. Subic Bay Distribution, Inc., G.R. No. 162575, Dec. 15, 2010) p. 124

Moral damages — Awarded in view of the carrier's failure to act timely on its passenger's predicament. (Air France *vs*. Gillego, G.R. No. 165266, Dec. 15, 2010) p. 138

— Considered and allowed for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as a result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim and mental distress. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

— Designed to compensate the claimant for actual injury suffered and not to impose a penalty. (Siok Ping Tang *vs*. Subic Bay Distribution, Inc., G.R. No. 162575, Dec. 15, 2010) p. 124

— For a common carrier to be liable, it must be shown that the carrier acted fraudulently or in bad faith. (Air France *vs*. Gillego, G.R. No. 165266, Dec. 15, 2010) p. 138

— In case of rape, it should be awarded without need of showing that the victim suffered the trauma of mental, physical, and psychological sufferings constituting the basis thereof. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive identification made by witnesses. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction — Includes cases involving the rights and obligations of landlords and agricultural tenants/lessees. (Soriano *vs*. Bravo, G.R. No. 152086, Dec. 15, 2010) p. 72

Rules of procedure — The Board and its Regional and Provincial Adjudicators are not bound by technical rules of procedure and evidence. (Reyes *vs*. Barrios, G.R. No. 172841, Dec. 15, 2010) p. 213

Secretary of Agrarian Reform — Has exclusive jurisdiction over the exercise of the right of retention by the landowner. (Reyes *vs*. Barrios, G.R. No. 172841, Dec. 15, 2010) p. 213

DOCUMENTARY EVIDENCE

Notarized documents — Have in its favor the presumption of regularity, which may only be rebutted by evidence so clear, strong and convincing as to exclude all controversies as to the falsity of the certificate. (Gabunas, Sr. *vs*. SCANMAR Maritime Services, Inc., G.R. No. 188637, Dec. 15, 2010) p. 457

EJECTMENT

Action for — Collateral attack on the title in an ejectment case is not allowed. (Sps. Marcos R. Esmaquel and Victoria Sordevilla *vs*. Coprada, G.R. No. 152423, Dec. 15, 2010) p. 96

EMPLOYMENT, TERMINATION OF

Dismissal — Considered too harsh a penalty for employee's act of submitting altered receipts to support claim for reimbursement. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, Dec. 15, 2010) p. 45

Gross negligence — Connotes want of care in the performance of one's duties. (Valenzuela *vs*. Caltex Phils., Inc., G.R. Nos. 169965-66, Dec. 15, 2010) p. 187

Habitual neglect of duty — Implies repeated failure to perform one's duties for a period of time, depending upon the circumstances. (Valenzuela *vs*. Caltex Phils., Inc., G.R. Nos. 169965-66, Dec. 15, 2010) p. 187

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of his actual reinstatement. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, Dec. 15, 2010) p. 45

— The requirement for employers to pay wages to employees obtaining favorable rulings in illegal dismissal suits pending appeal is statutorily mandated under the second paragraph of Article 223 of the Labor Code. (Magana *vs*. Medicard Phils., Inc., G.R. No. 174833, Dec. 15, 2010) p. 286

Just causes — Employee's act of allowing the loss of merchandise stocks and concealing these from the employer is reason enough for his termination from employment. (Valenzuela *vs*. Caltex Phils., Inc., G.R. Nos. 169965-66, Dec. 15, 2010) p. 187

Loss of trust and confidence — Must be based on a willful breach of trust and founded on clearly established facts. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, Dec. 15, 2010) p. 45

Preventive suspension — Employee is entitled to his wages and benefits during the additional period of suspension. (Valenzuela *vs*. Caltex Phils., Inc., G.R. Nos. 169965-66, Dec. 15, 2010) p. 187

Reinstatement — The mandatory order by law to execute reinstatement orders pending appeal is a police measure and even if the order of reinstatement is reversed on appeal, it is obligatory on the part of the employer to reinstate and pay the wages of the dismissed employee during the period of appeal until its reversal by the highest court. (Magana *vs*. Medicard Phils., Inc., G.R. No. 174833, Dec. 15, 2010) p. 286

Serious misconduct as a ground — Employee's act of submitting tampered receipts to support a claim for reimbursement could not be considered serious misconduct if not done with wrongful intent. (Coca-Cola Export Corp. *vs*. Gacayan, G.R. No. 149433, Dec. 15, 2010) p. 45

EVIDENCE

Flight of the accused — Evinces consciousness of guilt and a silent admission of culpability. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

Weight and sufficiency of — Certificate of Title is given more evidentiary weight than bare claim of oral sale in unlawful detainer cases. (Sps. Marcos R. Esmaquel and Victoria Sordevilla *vs.* Coprada, G.R. No. 152423, Dec. 15, 2010) p. 96

EXPROPRIATION

Just compensation — Defined as the full and fair equivalent of the property taken from its owner by the expropriator. (NAPOCOR *vs.* Diato-Bernal, G.R. No. 180979, Dec. 15, 2010) p. 345

— Determination thereof is a judicial prerogative. *(Id.)*

— Must be valued at the time of the taking which 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. *(Id.)*

HEINOUS CRIMES, AN ACT IMPOSING THE DEATH PENALTY ON (R.A. NO. 7659)

Crimes punishable by reclusion perpetua — Cited. (People *vs.* Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

Crimes punishable by reclusion perpetua to death — Cited. (People *vs.* Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

— Rule in the award of damages. *(Id.)*

INTERESTS

Computation of legal interest — Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (PCI Leasing and Finance, Inc. *vs.* Trojan Metal Industries, Inc., G.R. No. 176381, Dec. 15, 2010) p. 296

JOB CONTRACTING

Legitimate/permissible job contracting — The following conditions must concur: (1) The contractor carries on a distinct and independent business and undertakes the contract work on his account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of his work except as to the results thereof; (2) The contractor has substantial capital or investment; and (3) The agreement between the principal and the contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social welfare benefits. (Babas *vs*. Lorenzo Shipping Corp., G.R. No. 186091, Dec. 15, 2010) p. 421

JUDGES

Making untruthful statements in the certificates of service — Constitutes a less serious offense and punishable by suspension without salary and other benefits for not less than one month nor more than three months or a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. (Atty. Amante-Descallar *vs*. Hon. Ramas, A.M. No. RTJ-06-2015, Dec. 15, 2010) p. 26

JUDGMENTS

Validity of — Not impaired by the fact that the judge who heard the evidence was not himself the one who penned the decision. (People *vs.* Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

LABOR CONTRACTING OR SUB-CONTRACTING

Independent and permissible contractor relationship — Certificate of registration is not sufficient evidence that one is an independent contractor. (Babas *vs*. Lorenzo Shipping Corp., G.R. No. 186091, Dec. 15, 2010) p. 421

Labor-only contracting — Exists where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer. (Babas *vs*. Lorenzo Shipping Corp., G.R. No. 186091, Dec. 15, 2010) p. 421

LACHES

Doctrine of — 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. (Sps. Marcos R. Esmaquel and Victoria Sordevilla *vs*. Coprada, G.R. No. 152423, Dec. 15, 2010) p. 96

— Unless reasons of inequitable proportions are adduced, a delay within the prescriptive period is sanctioned by law and is not considered to be a delay that would bar relief. (Brito, Sr. *vs*. Dianala, G.R. No. 171717, Dec. 15, 2010) p. 200

LIBEL

Commission of — The elements are: (1) imputation of a crime, vice or defect, real or imaginary or any act, omission, condition, status or circumstance; (2) the imputation must be malicious; (3) it must be given publicity; and (4) the victim must be identifiable. (Corpuz *vs*. Del Rosario, G.R. No. 149261, Dec. 15, 2010) p. 36

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Power to tax — Local government units have no power to tax instrumentalities of the national government. (Phil. Fisheries Dev't. Authority *vs*. Central Board of Assessment Appeals, G.R. No. 178030, Dec. 15, 2010) p. 328

MANDAMUS

Petition for — Lies only to compel an officer to perform a ministerial duty and not a discretionary one. (Marcelo, Jr. *vs*. Villordon, G.R. No. 173081, Dec. 15, 2010) p. 230

— Proper when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled. *(Id.)*

— Proper when there is neither an appeal nor any plain, speedy, or adequate relief in the ordinary course of law. *(Id.)*

OBLIGATIONS, EXTINGUISHMENT OF

Payment or performance — Creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary and whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (Maxwell Heavy Equipment Corp. *vs*. UyChiaoco Yu, G.R. No. 179395, Dec. 15, 2010) p. 338

OVERSEAS EMPLOYMENT

Claim for disability benefits — Must be proved by substantial evidence. (Gabunas, Sr. *vs*. SCANMAR Maritime Services, Inc., G.R. No. 188637, Dec. 15, 2010) p. 457

— The law requires a probability of the connection between the risk of contracting the illness and its aggravation due to the working conditions — not absolute certainty or direct causal relation — to prove compensability. *(Id.)*

PETROLEUM, ACT INVOLVING PROHIBITED ACTS RELATIVE TO (B.P. BLG. 33)

Illegal trading in petroleum — Considered an infringement of property rights akin to an unauthorized sale of branded LPG cylinders. (Ty *vs*. NBI Supervising Agent De Jemil, G.R. No. 182147, Dec. 15, 2010) p. 356

— Includes even a single underfilling of an LPG cylinder. *(Id.)*

— Persons who may be liable therefor are: (1) the president, (2) general manager, (3) managing partner, (4) such officer charged with the management of the business affairs of the corporation or juridical entity, or (5) the employee responsible for such violation. *(Id.)*

— Present where the refilling of branded LPG cylinders was made without authorization. *(Id.)*

— Search warrant may be directed to the person in control of the branded LPG to be seized, as ownership thereof under B.P. Blg. 33 is of no consequence. *(Id.)*

PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY

Nature — An instrumentality of the national government which is generally exempt from the payment of real property tax. (Phil. Fisheries Dev't. Authority *vs*. Central Board of Assessment Appeals, G.R. No. 178030, Dec. 15, 2010) p. 328

PLEADINGS

Answer-in-intervention — A party whose answer-in-intervention was dismissed has an option to institute a separate action to protect their rights. (Brito, Sr. *vs*. Dianala, G.R. No. 171717, Dec. 15, 2010) p. 200

— When a party filed an answer-in-intervention, he submits himself to the jurisdiction of the court and the court, in turn, acquired jurisdiction over their persons. *(Id.)*

Verification — Lack of verification is only a formal defect, not a jurisdictional defect, and is not necessarily fatal to a case. (South Cotabato Communications Corp. *vs*. Hon. Sto. Tomas, G.R. No. 173326, Dec. 15, 2010) p. 240

— President of a corporation may sign the verification. *(Id.)*

— Rule may be relaxed in the interest of justice. *(Id.)*

Verification and certification — Petition can be given due course only as to the parties who signed it. (Babas *vs*. Lorenzo Shipping Corp., G.R. No. 186091, Dec. 15, 2010) p. 421

PRELIMINARY INVESTIGATION

Concept — Where the issue is evidentiary in nature and a matter of defense, the resolution thereof is not proper at the preliminary investigation level. (Corpuz *vs*. Del Rosario, G.R. No. 149261, Dec. 15, 2010) p. 36

Conduct of — It is the prosecutor alone who has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. (Marcelo, Jr. *vs*. Villordon, G.R. No. 173081, Dec. 15, 2010) p. 230

Nature of — Not a mere formal or technical right but a substantive right. (Marcelo, Jr. *vs*. Villordon, G.R. No. 173081, Dec. 15, 2010) p. 230

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. (Corpuz *vs*. Del Rosario, G.R. No. 149261, Dec. 15, 2010) p. 36

— Determination thereof is subject to judicial review where the same is tainted with grave abuse of discretion. (Ty *vs*. NBI Supervising Agent De Jemil, G.R. No. 182147, Dec. 15, 2010) p. 356

— Implies probability of guilt. *(Id.)*

PRESCRIPTION OF ACTIONS

Action enforcing an implied trust — Prescribes in ten (10) years from the issuance of a Certificate of Title if plaintiff is not in possession of the property. (Brito, Sr. *vs*. Dianala, G.R. No. 171717, Dec. 15, 2010) p. 200

(Heirs of Domingo Valientes *vs*. Judge Ramas, G.R. No. 157852, Dec. 15, 2010) p. 111

— When the parties are in possession of the disputed property, their complaint for reconveyance is imprescriptible. (Brito, Sr. *vs*. Dianala, G.R. No. 171717, Dec. 15, 2010) p. 200

Actions based on a written contract and for reformation of an instrument — Must be brought within ten (10) years from the time the right of action accrues. (PCI Leasing and Finance, Inc. *vs*. Trojan Metal Industries, Inc., G.R. No. 176381, Dec. 15, 2010) p. 296

Prescription under Property Registration Decree (P.D. No. 1529) — Prevails over the general rules on prescription under the Civil Code. (Heirs of Domingo Valientes *vs*. Judge Ramas, G.R. No. 157852, Dec. 15, 2010) p. 111

PRESUMPTIONS

Regularity in the performance of official duties — Applicable only when there is nothing on record that would arouse suspicions of irregularity. (Palomata *vs*. Colmenares, G.R. No. 174251, Dec. 15, 2010) p. 268

— Can be destroyed upon unjustified failure of the police officer to conform with the procedural requirements under the chain of custody rule of R.A. No. 9165. (People *vs*. Ditona, G.R. No. 189841, Dec. 15, 2010) p. 529

PROPERTY

Property of public dominion — Exempt from real property tax under Section 234(a) of the Local Government Code. (Phil. Fisheries Dev't. Authority *vs*. Central Board of Assessment Appeals, G.R. No. 178030, Dec. 15, 2010) p. 328

— Includes: (1) those intended for public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; and (2) those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. *(Id.)*

QUALIFYING CIRCUMSTANCES

Minority and relationship as special qualifying circumstances — Guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance. (People *vs*. Flores, G.R. No. 177355, Dec. 15, 2010) p. 313

— Should be alleged in the information and proven during the trial to be appreciated. *(Id.)*

QUASI-DELICT

Contributory negligence — Defined as the conduct on the part of the injured party, contributing as a legal cause to the harm he has suffered, which falls below the standard to which he is required to conform for his own protection. (Sealoader Shipping Corp. *vs*. Grand Cement Manufacturing Corp., G.R. No. 167363, Dec. 15, 2010) p. 155

Negligence — Defined as the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent and reasonable man would not do. (Sealoader Shipping Corp. *vs*. Grand Cement Manufacturing Corp., G.R. No. 167363, Dec. 15, 2010) p. 155

RAPE

Carnal knowledge — Instances when it will constitute rape are: (1) when force or intimidation is used; (2) when the woman is deprived of reason or is otherwise unconscious; and (3) when the woman is under twelve (12) years of age. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

Civil liabilities of accused — Cited. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

(People *vs*. Flores, G.R. No. 177355, Dec. 15, 2010) p. 313

Commission of — Established when a man shall have carnal knowledge of a woman by means of force, threat or intimidation. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

Prosecution of rape cases — A victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lurid detail of a frightening experience. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

— Guiding principles in the determination of the innocence or guilt of the accused. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

(People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

— Medical examination and certificate are considered veritable corroborative evidence of rape. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

— No young Filipina would publicly admit that she had been criminally abused and ravished unless it is the truth. (People *vs*. Celocelo, G.R. No. 173798, Dec. 15, 2010) p. 251

— Rape may be proven by the uncorroborated testimony of the offended victim, as long as her testimony is conclusive, logical and probable. *(Id.)*

Qualified rape — Actual force or intimidation is substituted by abuse of moral ascendancy. (People *vs*. Fontillas, G.R. No. 184177, Dec. 15, 2010) p. 406

— Imposable penalty. *(Id.)*

— Liability for civil indemnity and moral damages. *(Id.)*

Rape committed in full view of the parent — Shall be punished by *reclusion perpetua*. (People *vs*. Flores, G.R. No. 177355, Dec. 15, 2010) p. 313

Statutory rape — Civil liabilities of accused. (People *vs*. Castro, G.R. No. 188901, Dec. 15, 2010) p. 471

— Established when rape is committed against a woman who is a mental retardate with the mental age of a child below 12 years old. *(Id.)*

— Imposable penalty. *(Id.)*

— Minority of the victim must not only be alleged in the information but must also be established with moral certainty. (People *vs.* Flores, G.R. No. 177355, Dec. 15, 2010) p. 313

ROBBERY

Unlawful taking — All offenses which are necessarily included in the crime of robbery cannot be filed in the absence of the essential element of unlawful taking. (Tan *vs*. Sy Tiong Gue, G.R. No. 174570, Dec. 15, 2010) p. 281

SEARCH AND SEIZURE

Search warrant — May be issued only if there is probable cause in connection with only one specific offense alleged in the application on the basis of the applicant's personal knowledge and his witnesses. (Tan *vs*. Sy Tiong Gue, G.R. No. 174570, Dec. 15, 2010) p. 281

SHERIFFS

Duties — Sheriff cannot and should not be the one to determine which property to levy if the judgment obligor cannot immediately pay because it is the judgment obligor who is given the option which property or part thereof may be levied. (Sarmiento *vs*. Mendiola, A.M. No. P-07-2383, Dec. 15, 2010) p. 12

SUCCESSION

Collation — Has two distinct concepts: (1) it is a mere mathematical operation by the addition of the value of the hereditary estate; and (2) it is the return to the hereditary estate of

property disposed of by lucrative title by the testator during his lifetime. (Arellano *vs*. Pascual, G.R. No. 189776, Dec. 15, 2010) p. 519

— Takes place when there are compulsory heirs, one of its purpose being to determine the legitime and the free portion. *(Id.)*

Order of intestate succession — Where the only survivors of decedent are his siblings of full blood, they shall inherit in equal shares. (Arellano *vs*. Pascual, G.R. No. 189776, Dec. 15, 2010) p. 519

SUPPORT

Support for illegitimate children — Filiation of the child must first be established, if the same is not admitted or acknowledged. (Dolina *vs*. Vallecera, G.R. No. 182367, Dec. 15, 2010) p. 391

TENANT EMANCIPATION DECREE (P.D. NO. 27)

Emancipation patents — Documents to be submitted, cited. (Reyes *vs*. Barrios, G.R. No. 172841, Dec. 15, 2010) p. 213

— The laws mandates full payment of just compensation for the lands acquired under P.D. No. 27 prior to the issuance thereof. *(Id.)*

— The steps in transferring the land to the tenant-tiller, are: (1) The identification of tenants, landowners, and the land covered by OLT; (2) land survey and sketching of the actual cultivation of the tenant to determine parcel size, boundaries, and possible land use; (3) the issuance of the Certificate of Land Title; (4) valuation of the land covered for amortization computation; (5) amortization payments of tenant-tillers over fifteen (15) year period; and (6) the issuance of the Emancipation Patent. *(Id.)*

TESTIMONIES

Weight of — Testimonial evidence is given more weight than affidavits. (People *vs*. Alfredo, G.R. No. 188560, Dec. 15, 2010) p. 435

— Testimony of a witness must be considered in its entirety and not merely on its truncated parts. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

UNLAWFUL DETAINER

Action for — The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. (Sps. Marcos R. Esmaquel and Victoria Sordevilla *vs*. Coprada, G.R. No. 152423, Dec. 15, 2010) p. 96

Nature — A person whose occupation of the property was by mere tolerance has no right to retain its possession under the concept of "builder in good faith". (Sps. Marcos R. Esmaquel and Victoria Sordevilla *vs*. Coprada, G.R. No. 152423, Dec. 15, 2010) p. 96

— The possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. *(Id.)*

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

(People *vs*. Asuela, G.R. No. 182229, Dec. 15, 2010) p. 386

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Combate, G.R. No. 189301, Dec. 15, 2010) p. 487

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