PHILIPPINE REPORTS

VOL. 656

JANUARY 31, 2011 TO FEBRUARY 7, 2011

VOLUME 656

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 31, 2011 TO FEBRUARY 7, 2011

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. RTJ-11-2270. January 31, 2011]
(Formerly A.M. No. OCA IPI No. 10-3380-RTJ)

ELADIO D. PERFECTO, *complainant, vs.* **JUDGE ALMA CONSUELO DESALES-ESIDERA, Presiding Judge, Regional Trial Court, Branch 20, Catarman, Northern Samar,** *respondent.*

SYLLABUS

JUDICIAL ETHICS; JUDGES; IMPROPRIETY AND UNBECOMING CONDUCT OF A JUDGE; MANIFESTED IN THE ACT OF SOLICITATION AND ATTACKING A PERSON WITH THE USE OF UNCALLED FOR OFFENSIVE LANGUAGE AS IN CASE AT BAR.— [T]he Court finds the Evaluation and Recommendation of the OCA that respondent be charged with Impropriety and Unbecoming Conduct to be well-taken x x x. Respondent's improprieties as manifested in, among other things, her lack of discretion and the vicious attack upon the person of Prosecutor Ching as characterized by her use of uncalled for offensive language prompts this Court to raise the fine to Ten Thousand Pesos (₱10,000.00). Specifically with respect to respondent's alleged solicitation from Prosecutor Diaz, albeit Prosecutor Ching merely claimed to have "heard" of it, respondent did not deny it categorically as she merely, as reflected above, brushed off Prosecutor Ching's Affidavit as coming from one with a "dubious personality" and possessed of a "narcissistic

personality disorder." With respect to the alleged solicitation from Prosecutor Diaz, respondent never disclaimed or disavowed the same. Respondent's admission of having received the sum of ₱1,000.00 from Atty. Yruma – albeit allegedly as a mere accommodation to the latter, and her failure to disclaim the same act with respect to Prosecutor Diaz, only confirms her lack of understanding of the notion of propriety under which judges must be measured. x x x Respondent's act of proceeding to the Prosecutor's Office under the guise of soliciting for a religious cause betrays not only her lack of maturity as a judge but also a lack of understanding of her vital role as an impartial dispenser of justice, held in high esteem and respect by the local community, which must be preserved at all times. It spawns the impression that she was using her office to unduly influence or pressure Atty. Yruma, a private lawyer appearing before her sala, and Prosecutor Diaz into donating money through her charismatic group for religious purposes. To stress how the law frowns upon even any appearance of impropriety in a magistrate's activities, it has often been held that a judge must be like Caesar's wife - above suspicion and beyond reproach. Respondent's act discloses a deficiency in prudence and discretion that a member of the judiciary must exercise in the performance of his official functions and of his activities as a private individual. It is never trite to caution respondent to be prudent and circumspect in both speech and action, keeping in mind that her conduct in and outside the courtroom is always under constant observation.

D E C I S I O N

CARPIO MORALES, *J.*:

Eladio D. Perfecto (complainant), in a Complaint[1] which was received at the Office of the Court Administrator (OCA) on March 5, 2010, charges Judge Alma Consuelo Esidera (respondent), Presiding Judge of the Regional Trial Court (RTC) of Northern Samar, Branch 20, of soliciting and receiving on January 6, 2010 at the Prosecutor's Office the amount of One Thousand (₱1,000.00) from practitioner Atty. Albert Yruma

[1] *Rollo,* pp. 1-7.

(Atty. Yruma), and the same amount from Public Prosecutor Rosario Diaz (Prosecutor Diaz), purportedly to defray expenses for a religious celebration and *barangay* fiesta. To prove her charge, complainant attached the Affidavit[2] dated February 16, 2010 of Public Prosecutor Ruth Arlene Tan-Ching (Prosecutor Ching) who claimed to have witnessed the first incident, without respondent issuing any receipt. In the same Affidavit, Prosecutor Ching added that she "heard" that respondent also solicited the same amount from Prosecutor Diaz.

Complainant also questions the conduct of respondent in Special Proceedings No. C-360, "for Cancellation of Birth Registration of Alpha Acibar," in which she issued a January 5, 2010 Order directing the therein petitioner to publish said Order in a newspaper of general circulation, instead of in the *Catarman Weekly Tribune* (of which complainant is the publisher), the only accredited newspaper in the province.

Furthermore, complainant charges respondent with acts of impropriety — scolding her staff in open court and treating in an "inhuman and hostile" manner practitioners "who are not her friends." He adds that respondent even arrogantly treats public prosecutors assigned to her sala, citing instances of this charge in his complaint.

To the first charge, respondent explains that when she went to the Prosecutor's office, she was merely following up the pledge of Adelaida Taldo, a member of a Catholic charismatic group of which she (respondent) belongs, to donate a Sto. Niño image when Atty. Yruma, who had received a solicitation letter countersigned by Father Alwin Legaspi, the parish priest of San Jose, overheard her (respondent) and requested her to receive his donation of ₱1,000.00 through her.

Respondent brushes off the above-stated Affidavit of Prosecutor Ching who, she opines, is of "dubious personality" and has a "narcissistic personality disorder," the details of the bases of which she narrates in her Comment.[3]

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[2] *Id*. at 8-9.

[3] *Id*. at 59-65.

Respecting the complaint against her Order of publication, respondent claims that the *Catarman Weekly Tribune* is "not in circulation." Respondent echoes her Comment in A.M. OCA IPI No. 10-3340-RTJ, a complaint previously filed by complainant bearing on his claim that all orders of the court should be published in *Catarman Weekly Tribune*, in which Comment she listed pending cases the hearing of which had to be reset for failure of the *Catarman Weekly Tribune* to publish her orders on time.

As for the charge of impropriety, respondent denies the instances thereof cited by complainant in his complaint and claims that she has been maintaining a professional relationship with her staff and the lawyers who appear in her court.

The OCA has come up with the following:

EVALUATION: There is merit in the allegation of impropriety against respondent Judge Esidera.

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The fact that she is not the principal author of the solicitation letter or that the solicitation is for a religious cause is immaterial. Respondent Judge Esidera should have known that **going to the Prosecutor's Office to receive "donations" from a private lawyer and a public prosecutor does not bode well for the image of the judiciary.** Canon 4 of the Code of Judicial Conduct for the Judiciary (*A.M. No. 03-05-01-SC; date of effectivity: 1 June 2004)* explicitly provides that "judges shall avoid impropriety and the *appearance of impropriety* in all of their activities."

xxx xxx xxx

Soliciting donations from lawyers is not the only act of impropriety from respondent Judge Esidera. In a 27 May 2010 Comment, respondent Judge Esidera virtually gave Public Prosecutor Atty. Ruth Arlene Tan-Ching a **verbal lashing** for the affidavit the latter executed relative to the solicitation incident. To quote pertinent portions of the Comment of respondent Judge Esidera:

> "The affidavit of Fiscal Ruth Arlene Ching should not be believed and accepted simply because she is a fiscal. Not all prosecutors are credible and have integrity and are in possession

of their normal mental faculties. x x x Fiscal Ching is one whose personality is dubious."

"I get the impression that she (Prosecutor Ching) is suffering from some sort of personality disorder and should be subjected to neurological, psychiatric or psychological examination before she gets worse x x x Having read enough psychological examination reports of psychologists/psychiatrists submitted in annulment cases, it is my non-expert opinion that the character of Fiscal Ching falls under the category of narcissistic personality disorder."

"She was one of my students in Taxation in the UEP, College of Law, I was not a judge then. I gave her a '3' because when I checked her finals test booklet, her 'codigo' was still inserted in the examination booklet. Until now, that is one of the gossips she is spreading around."

xxx xxx xxx

The use of acerbic words was uncalled for considering the status of respondent Judge Esidera. In *Atty. Guanzon, et al. v. Judge Rufon* (A.M. No. RTJ-07-2038; 19 October 2007), the Court found respondent Judge Rufon guilty of vulgar and unbecoming conduct for uttering discriminatory remarks against women lawyers and litigants.

"Although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of the court. Judges are demanded to be always temperate, patient and courteous both in conduct and in language," held the Court in the *Guanzon* case.

Anent the allegations of ignorance of the law and usurpation of authority against respondent Judge Esidera, for issuing a directive to the petitioner in a special proceedings case to cause the publication of her order in a newspaper of general publication, this Office finds the same devoid of merit.

Complainant Perfecto had made a similar allegation in OCA I.P.I. No. 10-3340-RTJ, insisting that all orders from the courts of Northern Samar should only be published in the *Catarman Weekly Tribune*, the only accredited newspaper in the area.

xxx xxx xxx

[T]hat Catarman Weekly Tribune is the only accredited newspaper of general publication in Catarman does not bar the publication of judicial orders and notices in a newspaper of national circulation. A judicial notice/order may be published in a newspaper of national circulation and said newspaper does not even have to be accredited.

Section 1 of A.M. No. 01-1-07-SC thus provides:

SECTION 1. *Scope of application*. — These Guidelines apply only in cases where judicial or legal notices are to be published in newspapers or periodicals that are of general circulation in a particular province or city.

Publication of notices for national dissemination may be published in newspapers or periodicals with national circulation without need of accreditation.

Adopting the comments she made in OCA I.P.I. No. 10-3340-RTJ to the instant case, respondent Judge Esidera claims that she only arrived at the decision to direct the publication of her orders in a newspaper of national circulation after repeated failure of the *Catarman Weekly Tribune* to meet the publication requirements in other pending cases in the court. Respondent Judge Esidera even presented a list of cases where the hearings therein had to be reset because of the failure of the *Catarman Weekly Tribune* to publish the pertinent orders on time.

Moreover, the petitioner in the subject special proceedings case where respondent Judge Esidera issued the directive did not contest the order calling for the publication of the court's order in a newspaper of national circulation.[4] (emphasis and underscoring supplied)

Thus, the OCA RECOMMENDS that respondent be faulted for Impropriety and Unbecoming Conduct for which a fine in the amount of Five Thousand Pesos (₱5,000.00) should be imposed, with a warning that a repetition of the same or similar act shall be dealt with more severely.

While the Court finds the Evaluation and Recommendation of the OCA that respondent be charged with Impropriety and Unbecoming Conduct to be well-taken, it deems the recommendation for the imposition of a fine in the amount of

[4] Dated December 3, 2010, *id.* at 289-291.

₱5,000.00 to be insufficient as would impress upon her the gravity of the indictment. Respondent's improprieties as manifested in, among other things, her lack of discretion and the vicious attack upon the person of Prosecutor Ching as characterized by her use of uncalled for offensive language prompts this Court to raise the fine to Ten Thousand Pesos (₱10,000.00).[5]

Specifically with respect to respondent's alleged solicitation from Prosecutor Diaz, albeit Prosecutor Ching merely claimed to have "heard" of it, respondent did not deny it categorically as she merely, as reflected above, brushed off Prosecutor's Ching's Affidavit as coming from one with a "dubious personality" and possessed of a "narcissistic personality disorder." With respect to the alleged solicitation from Prosecutor Diaz, respondent never disclaimed or disavowed the same.

Respondent's admission of having received the sum of ₱1,000.00 from Atty. Yruma – albeit allegedly as a mere accommodation to the latter, and her failure to disclaim the same act with respect to Prosecutor Diaz, only confirms her lack of understanding of the notion of propriety under which judges must be measured.

In his *Annotation on Judges Fraternizing with Lawyers and Litigants*,[6] Jorge C. Coquia[7] commented on the Spirit and Philosophy of Canon 2 on Impropriety of Judges, *viz*:

In *Castillo vs. Calanog, Jr.*, 199 SCRA 75 (1991), the Supreme Court said that the Code of Judicial Ethics mandates that the conduct

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[5] Rule 140 of the Rules of Court provides:

Section 11. *Sanctions* – x x x

C. If the respondent is guilty of a light charge, any of the following sanctions shall be imposed:

1. A fine of not less than ₱1,000.00 but not exceeding ₱10,000.00 and/or;

x x x x x x x x x

[6] 411 SCRA 9, 11 (2003).

[7] Member of the Board of Editorial Consultants, Supreme Court Reports Annotated (SCRA).

of a judge must be free of a whiff of impropriety not only with respect to his performance of his official duties, but also to his **behavior outside his sala and as a private individual.** There is no dichotomy of morality. A public official is also judged by his private morality being the subject of constant public scrutiny. A judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen. (emphasis and underscoring supplied)

Respondent's act of proceeding to the Prosecutor's Office under the guise of soliciting for a religious cause betrays not only her lack of maturity as a judge but also a lack of understanding of her vital role as an impartial dispenser of justice, held in high esteem and respect by the local community, which must be preserved at all times. It spawns the impression that she was using her office to unduly influence or pressure Atty. Yruma, a private lawyer appearing before her sala, and Prosecutor Diaz into donating money through her charismatic group for religious purposes.

To stress how the law frowns upon even any appearance of impropriety in a magistrate's activities, it has often been held that a judge must be like Caesar's wife — above suspicion and beyond reproach.[8] Respondent's act discloses a deficiency in prudence and discretion that a member of the judiciary must exercise in the performance of his official functions and of his activities as a private individual.

It is never trite to caution respondent to be prudent and circumspect in both speech and action, keeping in mind that her conduct in and outside the courtroom is always under constant observation.[9]

WHEREFORE, Judge Alma Consuelo Desales-Esidera is, for Impropriety and Unbecoming Conduct, *ORDERED* to pay a fine of Ten Thousand Pesos (₱10,000.00) and *WARNED*

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[8] *In Re: Judge Benjamin H. Virrey*, Adm. Matter No. 90-7-1159-MTC, October 15, 1991, 202 SCRA 628, 634.

[9] *Legaspi v. Garrete*, Adm. Matter No. MTJ-92-713, March 27, 1995, 242 SCRA 679,686.

that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. No. 168501. January 31, 2011]

ISLRIZ TRADING/VICTOR HUGO LU, *petitioner, vs.* **EFREN CAPADA, LAURO LICUP, NORBERTO NIGOS, RONNIE ABEL, GODOFREDO MAGNAYE, ARNEL SIBERRE, EDMUNDO CAPADA, NOMERLITO MAGNAYE and ALBERTO DELA VEGA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; REINSTATEMENT; WAGES MAY BE COLLECTED DURING THE PERIOD BETWEEN THE LABOR ARBITER'S ORDER OR REINSTATEMENT PENDING APPEAL AND THE NLRC RESOLUTION OVERTURNING SAID ORDER.— The core issue to be resolved in this case is similar to the one determined in *Garcia v. Philippine Airlines Inc.*, that is, whether respondents may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter. xxx In resolving the case, the Court examined its conflicting rulings with respect to the application of paragraph 3 of Article 223 of the Labor Code, *viz*: xxx The Court then stressed that as opposed to the abovementioned *Genuino v. National*

Labor Relations Commission, the social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment. It then went on to examine the precarious implication of the "refund doctrine" as enunciated in *Genuino*, thus: x x x In view of this, the Court held this stance in *Genuino* as a stray posture and realigned the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal, that is, **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 or tribunal.** It likewise settled 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**.

2. ID.; ID.; ID.; ID.; ID.; NOT APPLICABLE WHERE THERE IS DELAY IN ENFORCING THE REINSTATEMENT PENDING APPEAL WITHOUT FAULT ON THE PART OF EMPLOYER; TWO-FOLD TEST.— The court [also declared] that **after the Labor Arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer**. It then provided for the two-fold test in determining whether an employee is barred from recovering his accrued wages, to wit: (1) there must be actual delay or that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's Decision.

APPEARANCES OF COUNSEL

Cecilio V. Suarez, Jr. for petitioner.
Jaime Miralles for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

We reiterate in this petition the settled view that employees are entitled to their accrued salaries during the period between the Labor Arbiter's order of reinstatement pending appeal and the resolution of the National Labor Relations Commission (NLRC) overturning that of the Labor Arbiter. Otherwise stated, even if the order of reinstatement of the Labor Arbiter is reversed on appeal, the employer is still obliged to reinstate and pay the wages of the employee during the period of appeal until reversal by a higher court or tribunal. In this case, respondents are entitled to their accrued salaries from the time petitioner received a copy of the Decision of the Labor Arbiter declaring respondents' termination illegal and ordering their reinstatement up to the date of the NLRC resolution overturning that of the Labor Arbiter.

This Petition for Review on *Certiorari* assails the Decision[1] dated March 18, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84744 which dismissed the petition for *certiorari* before it, as well as the Resolution[2] dated June 16, 2005 which denied the motion for reconsideration thereto.

Factual Antecedents

Respondents Efren Capada, Lauro Licup, Norberto Nigos and Godofredo Magnaye were drivers while respondents Ronnie Abel, Arnel Siberre, Edmundo Capada, Nomerlito Magnaye and Alberto Dela Vega were helpers of Islriz Trading, a gravel and sand business owned and operated by petitioner Victor Hugo Lu. Claiming that they were illegally dismissed, respondents filed a Complaint[3] for illegal dismissal and non-payment of overtime pay, holiday pay, rest day pay, allowances and separation

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[1] CA *rollo*, pp. 165-181; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[2] *Id.* at 198-199.

[3] *Rollo*, pp. 57-58.

pay against petitioner on August 9, 2000 before the Labor Arbiter. On his part, petitioner imputed abandonment of work against respondents.

Proceedings before the Labor Arbiter and the NLRC

On December 21, 2001, Labor Arbiter Waldo Emerson R. Gan (Gan) rendered a Decision[4] in this wise:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1. Declaring respondent ISLRIZ TRADING guilty of illegal dismissal.
>
> 2. Ordering respondent to reinstate complainants to their former positions without loss of seniority rights and the payment of full backwages from date of dismissal to actual reinstatement which are computed as follows: (As of date of decision);

1. EFREN CAPADA	₱ 102,400.00	(6,400.00X16)
2. LAURO LICUP	87,040.00	(5,440.00X16)
3. NORBERTO NIGOS	87,040.00	(5,440.00X16)
4. RONNIE ABEL	76,800.00	(4,800.00X16)
5. GODOFREDO MAGNAYE	102,400.00	(6,400.00X16)
6. ARNEL SIBERRE	51,200.00	(3,200.00X16)
7. EDMUNDO CAPADA	76,800.00	(4,800.00X16)
8. NOMERLITO MAGNAYE	76,800.00	(4,800.00X16)
9. ALBERTO DELA VEGA	51,200.00	(3,200.00X16)

> 3. Ordering respondent to pay complainants 10% of the total monetary award as attorney's fees.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[5]

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[4] *Id.* at 59-65.

[5] *Id.* at 64-65.

Aggrieved, petitioner appealed[6] to the NLRC which granted the appeal. The NLRC set aside the Decision of Labor Arbiter Gan in a Resolution[7] dated September 5, 2002. Finding that respondents' failure to continue working for petitioner was neither caused by termination nor abandonment of work, the NLRC ordered respondents' reinstatement but without backwages. The dispositive portion of said Resolution reads as follows:

> WHEREFORE, premises considered, the appeal is GRANTED and the Decision dated 21 December 2001 is hereby ordered SET ASIDE.
>
> A New Decision is hereby rendered finding that the failure to work of complainants-appellees is neither occasioned by termination (n)or abandonment of work, hence, respondents-appellants shall reinstate complainants-appellees to their former positions without backwages within ten (10) days from receipt of this Resolution.
>
> SO ORDERED.[8]

Respondents filed a Motion for Reconsideration[9] thereto but same was likewise denied in a Resolution[10] dated November 18, 2002. This became final and executory on December 7, 2002.[11]

On December 9, 2003, however, respondents filed with the Labor Arbiter an *Ex-Parte* Motion to Set Case for Conference with Motion.[12] They averred therein that since the Decision of Labor Arbiter Gan ordered their reinstatement, a Writ of Execution[13] dated April 22, 2002 was already issued for the enforcement of its reinstatement aspect as same is immediately executory even pending appeal. But this notwithstanding and

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[6] See petitioners' Notice of Appeal, Memorandum of Appeal and Joint Affidavit, *id.* at 66-71.

[7] *Id.* at 83-92.

[8] *Id.* at 91-92.

[9] *Id.* at 93-95.

[10] *Id.* at 96-98.

[11] *Id.* at 99.

[12] CA *rollo*, pp. 69-71.

[13] *Rollo*, pp. 80-82.

despite the issuance and subsequent finality of the NLRC Resolution which likewise ordered respondents' reinstatement, petitioner still refused to reinstate them. Thus, respondents prayed that in view of the orders of reinstatement, a computation of the award of backwages be made and that an *Alias* Writ of Execution for its enforcement be issued.

The case was then set for pre-execution conference on January 29, February 24 and March 5, 2004. Both parties appeared thereat but failed to come to terms on the issue of the monetary award. Hence, the office of the Labor Arbiter through Fiscal Examiner II Ma. Irene T. Trinchera (Fiscal Examiner Trinchera) issued an undated Computation[14] of respondents' accrued salaries from January 1, 2002 to January 30, 2004 or for a total of 24.97 months in the amount of ₱1,110,665.60 computed as follows:

Accrued Salary from January 1, 2002 to January 30, 2004 = 24.97 months

1. Efren Capada	₱ 6,400.00 x 24.97 months	₱ 159,808.00
2. Lauro Licup	₱ 5,440.00 x 24.97 months	₱ 135,836.80
3. Norberto Nigos	₱ 5,440.00 x 24.97 months	₱ 135,836.80
4. Ronnie Abel	₱ 4,800.00 x 24.97 months	₱ 119,856.00
5. Godofredo Magnaye	₱ 6,400.00 x 24.97 months	₱ 159,808.00
6. Arnel Siberre	₱ 3,200.00 x 24.97 months	₱ 79,904.00
7. Edmundo Capada	₱ 4,800.00 x 24.97 months	₱ 119, 856.00
8. Nomerlito Magnaye	₱ 4,800.00 x 24.97 months	₱ 119, 856.00
9. Alberto de la Vega	₱ 3,200.00 x 24.97 months	₱ 79,904.00
Total		₱ 1,110,665.60

Petitioner questioned this computation in his Motion/ Manifestation[15] claiming that said computation was without any factual or legal basis considering that Labor Arbiter Gan's Decision

[14] *Id.* at 103.

[15] *Id.* at 100-102.

had already been reversed and set aside by the NLRC and that therefore there should be no monetary award.

Nevertheless, Labor Arbiter Danna M. Castillon (Castillon) still issued a Writ of Execution[16] dated March 9, 2004 to enforce the monetary award in accordance with the abovementioned computation. Accordingly, the Sheriff issued a Notice of Sale/ Levy on Execution of Personal Property[17] by virtue of which petitioner's properties were levied and set for auction sale on March 29, 2004. In an effort to forestall this impending execution, petitioner then filed a Motion to Quash Writ of Execution with Prayer to Hold in Abeyance of Auction Sale[18] and a Supplemental Motion to Quash/Stop Auction Sale.[19] He also served upon the Sheriff a letter of protest.[20] All of these protest actions proved futile as the Sheriff later submitted his Report dated March 30, 2004 informing the Labor Arbiter that he had levied some of petitioner's personal properties and sold them in an auction sale where respondents were the only bidders. After each of the respondents entered a bid equal to their individual shares in the judgment award, the levied properties were awarded to them.

Later, respondents claimed that although petitioner's levied properties were already awarded to them, they could not take full control, ownership and possession of said properties because petitioner had allegedly padlocked the premises where the properties were situated. Hence, they asked Labor Arbiter Castillon to issue a break-open order.[21] For his part and in a last ditch effort to nullify the writ of execution, petitioner filed a Motion to Quash Writ of Execution, Notice of Sale/Levy on Execution of Personal Property and Auction Sale on Additional Grounds.[22] He reiterated that since the NLRC Resolution which reversed

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[16] *Id.* at 104-106.

[17] *Id.* at 107.

[18] *Id.* at 108-110.

[19] *Id.* at 111-112.

[20] *Id.* at 114.

[21] Urgent Motion for Issuance of Break Open Order, *id.* at 116-119.

[22] *Id.* at 120-124.

the Decision of the Labor Arbiter ordered respondents' reinstatement without payment of backwages or other monetary award, only the execution of reinstatement *sans* any backwages or monetary award should be enforced. It is his position that the Writ of Execution dated March 9, 2004 ordering the Sheriff to collect respondents' accrued salaries of ₱1,110,665.60 plus ₱1,096.00 execution fees or the total amount of ₱1,111,761.60, in effect illegally amended the said NLRC Resolution; hence, said writ of execution is null and void. And, as the writ is null and void, it follows that the Labor Arbiter cannot issue a break-open order. In sum, petitioner prayed that the Writ of Execution be quashed and all proceedings subsequent to it be declared null and void and that respondents' Urgent Motion for Issuance of Break Open Order be denied for lack of merit.

Both motions were resolved in an Order[23] dated June 3, 2004. Labor Arbiter Castillon explained therein that the monetary award subject of the questioned Writ of Execution refers to respondents' accrued salaries by reason of the reinstatement order of Labor Arbiter Gan which is self-executory pursuant to Article 223[24] The Order cited *Roquero v. Philippine Airlines Inc.*[25] where this Court ruled that employees are still entitled to their accrued salaries even if the order of reinstatement has been reversed on appeal. As to the application for break open order, Labor Arbiter Castillon relied on the Sheriff's report that there is imminent danger that petitioner's properties sold at the public auction might be transferred or removed, as in fact four of said properties were already transferred. Thus, she deemed it necessary to grant respondents' request for a break open order to gain access

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[23] *Id.* at 126-132.

[24] LABOR CODE, Article 223, par. 3 provides:

"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."

[25] 449 Phil. 437, 446 (2003).

to petitioner's premises. The dispositive portion of said Order reads:

> WHEREFORE, premises considered, the Motion to Quash Writ of Execution [and] Notice of Sale/Levy on Execution Sale filed by the respondent(s) [are] hereby DENIED. In view of the refusal of the respondents' entry to its premises, Deputy Sheriff S. Diega of this Office is hereby ordered to break-open the entrance of the premises of respondent wherein the properties are located.
>
> For this purpose, he may secure the assistance of the local police officer having jurisdiction over the locality where the said properties are located.
>
> SO ORDERED.[26]

Undeterred, petitioner brought the matter to the CA through a Petition for *Certiorari*.

Proceedings before the Court of Appeals

Before the CA, petitioner imputed grave abuse of discretion amounting to lack or excess of jurisdiction upon Labor Arbiter Castillon for issuing the questioned Writ of Execution and the Order dated June 3, 2004. He maintained that since the December 21, 2001 Decision of Labor Arbiter Gan has already been reversed and set aside by the September 5, 2002 Resolution of the NLRC, the Writ of Execution issued by Labor Arbiter Castillon should have confined itself to the said NLRC Resolution which ordered respondents' reinstatement without backwages. Hence, when Labor Arbiter Castillon issued the writ commanding the Sheriff to satisfy the monetary award in the amount of ₱1,111,761.60, she acted with grave abuse of discretion amounting to lack or excess of jurisdiction. For the same reason, her issuance of the Order dated June 3, 2004 denying petitioner's Motion to Quash Writ of Execution with Prayer to Hold in Abeyance Auction Sale and granting respondents' Urgent Motion for Issuance of Break Open Order is likewise tainted with grave abuse of discretion. Aside from these, petitioner also questioned the conduct of the auction sale. He likewise claimed that he was denied due

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[26] *Rollo*, p. 132.

process because he was not given the opportunity to file a motion for reconsideration of the Order denying his Motion to Quash Writ of Execution considering that a break-open order was also made in the same Order. For their part, respondents posited that since they have already disposed of petitioner's levied properties, the petition has already become moot.

In a Decision[27] dated March 18, 2005, the CA quoted the June 3, 2004 Order of Labor Arbiter Castillon and agreed with her ratiocination that pursuant to Article 223 of the Labor Code, what is sought to be enforced by the subject Writ of Execution is the accrued salaries owing to respondents by reason of the reinstatement order of Labor Arbiter Gan. The CA also found as unmeritorious the issues raised by petitioner with regard to the conduct of the auction sale. Moreover, it did not give weight to petitioner's claim of lack of due process considering that a motion for reconsideration of a Writ of Execution is not an available remedy. Thus, the CA dismissed the petition. Petitioner's Motion for Reconsideration[28] suffered the same fate as it was also denied in a Resolution[29] dated June 16, 2005.

Hence, petitioner is now before this Court through this Petition for Review on *Certiorari* where he presents the following issues:

1. Whether the provision of Article 223 of the Labor Code is applicable to this case x x x.
2. Whether x x x the Decision dated March 18, 2005 and the Resolution dated June 16, 2005 of the Court of Appeals are contrary to law and jurisprudence[.]
3. Whether x x x the award of accrued salaries has legal and factual bases[.][30]

The Parties' Arguments

Petitioner contends that the assailed Decision and Resolution of the CA are contrary to law and jurisprudence. This is because

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[27] CA *rollo*, pp. 165-181.

[28] *Id.* at 184-191.

[29] *Id.* at 198-199.

[30] *Rollo*, p. 13.

in upholding the issuance of the questioned Writ of Execution for the enforcement of respondents' accrued salaries, said Decision and Resolution, in effect, altered the NLRC Resolution which only decreed respondents' reinstatement without backwages. Moreover, he posits that Article 223 of the Labor Code only applies when an employee has been illegally dismissed from work. And since in this case the NLRC ruled that respondents' failure to continue working for petitioner was not occasioned by termination, there is no illegal dismissal to speak of, hence, said provision of the Labor Code does not apply. Lastly, petitioner claims that the computation of respondents' accrued salaries in the total amount of ₱1,110,665.60 has no legal and factual bases since as repeatedly pointed out by him, the NLRC Resolution reversing the Labor Arbiter's Decision has already ordered respondents' reinstatement without backwages after it found that there was no illegal termination.

Respondents, on the other hand, maintain that the CA did not err in applying Article 223 of the Labor Code to the instant case. They thus contend that the computation of their accrued salaries covering the period during which they were supposed to have been reinstated or from January 1, 2002 to January 30, 2004, should be upheld since same merely applied Article 223. In sum, respondents believe that the assailed Decision and Resolution of the CA are in accord with law and jurisprudence.

Our Ruling

The petition is not meritorious.

The core issue to be resolved in this case is similar to the one determined in *Garcia v. Philippine Airlines Inc.*,[31] that is, whether respondents may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter.

In order to provide a thorough discussion of the present case, an overview of *Garcia* is proper.

[31] G.R. No. 164856, January 20, 2009, 576 SCRA 479.

In *Garcia*, petitioners therein were dismissed by Philippine Airlines Inc. (PAL) after they were allegedly caught in the act of sniffing *shabu* during a raid at the PAL Technical Center's Toolroom Section. They thus filed a complaint for illegal dismissal. In the meantime, PAL was placed under an interim rehabilitation receivership because it was then suffering from severe financial losses. Thereafter, the Labor Arbiter ruled in petitioners' favor and ordered PAL to immediately comply with the reinstatement aspect of the decision. PAL appealed to the NLRC. The NLRC reversed the Labor Arbiter's Decision and dismissed petitioners' complaint for lack of merit. As petitioners' Motion for Reconsideration thereto was likewise denied, the NLRC issued an Entry of Judgment. Notably, PAL's Interim Rehabilitation Receiver was replaced by a Permanent Rehabilitation Receiver during the pendency of its appeal with the NLRC. A writ of execution with respect to the reinstatement aspect of the Labor Arbiter's Decision was then issued and pursuant thereto, a Notice of Garnishment was likewise issued. To stop this, PAL filed an Urgent Petition for Injunction with the NLRC. While the NLRC suspended and referred the action to the rehabilitation receiver, it however, likewise affirmed the validity of the writ so that PAL appealed to the CA. Fortunately for PAL, the CA nullified the assailed NLRC Resolutions on the grounds that (1) a subsequent finding of a valid dismissal removes the basis for the reinstatement aspect of a labor arbiter's decision and, (2) the impossibility to comply with the reinstatement order due to corporate rehabilitation justifies PAL's failure to exercise the options under Article 223 of the Labor Code. When the case reached this Court, we partially granted the petition in a Decision dated August 29, 2007 and effectively reinstated the NLRC Resolutions insofar as it suspended the proceedings. But as PAL later manifested that the rehabilitation proceedings have already been terminated, the court proceeded to determine the remaining issue, which is, as earlier stated, whether petitioners therein may collect their wages during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter.

In resolving the case, the Court examined its conflicting rulings with respect to the application of paragraph 3 of Article 223 of the Labor Code, *viz*:

At the core of the seeming divergence is the application of paragraph 3 of Article 223 of the Labor Code which reads:

> '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, 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.'

The view as maintained in a number of cases is that:

> 'x x x **[E]ven 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.

In other words, a dismissed employee whose case was favorably decided by the Labor Arbiter is entitled to receive wages pending appeal upon reinstatement, which is immediately executory. Unless there is a restraining order, it is ministerial upon the Labor Arbiter to implement the order of reinstatement and it is mandatory on the employer to comply therewith.

The opposite view is articulated in *Genuino* which 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 s/he 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 employee is entitled to the compensation received for actual services rendered without need of refund.
>
> xxx xxx xxx'

It has thus been advanced that there is no point in releasing the wages to petitioners since their dismissal was found to be valid, and to do so would constitute unjust enrichment." (Emphasis, italics and underscoring in the original; citations omitted.)[32]

The Court then stressed that as opposed to the abovementioned *Genuino v. National Labor Relations Commission*,[33] the social justice principles of labor law outweigh or render inapplicable the civil law doctrine of unjust enrichment. It then went on to examine the precarious implication of the "refund doctrine" as enunciated in *Genuino*, thus:

> [T]he "refund doctrine" easily demonstrates how a favorable decision by the Labor Arbiter could harm, more than help, a dismissed employee. The employee, to make both ends meet, would necessarily have to use up the salaries received during the pendency of the appeal, only to end up having to refund the sum in case of a final unfavorable decision. It is mirage of a stop-gap leading the employee to a risky cliff of insolvency.
>
> Advisably, the sum is better left unspent. It becomes more logical and practical for the employee to refuse payroll reinstament and simply find work elsewhere in the interim, if any is available. Notably, the option of payroll reinstatement belongs to the employer, even if the employee is able and raring to return to work. Prior to *Genuino,* it is unthinkable for one to refuse payroll reinstatement. In the face of the grim possibilities, the rise of concerned employees declining payroll reinstatement is on the horizon.
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> Further, the *Genuino* ruling not only disregards the social justice principles behind the rule, but also institutes a scheme unduly

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[32] *Id.* at 488-490.

[33] G.R. Nos. 142732-33 & 142753-54, December 4, 2007, 539 SCRA 342.

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. [Underscoring in the original][34]

In view of this, the Court held this stance in *Genuino* as a stray posture and realigned the proper course of the prevailing doctrine on reinstatement pending appeal *vis-à-vis* the effect of a reversal on appeal, that is, **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 or tribunal.** It likewise settled 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**.

The discussion, however, did not stop there. The court went on to declare that **after the Labor Arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer**. It then provided for the two-fold test in determining whether an employee is barred from recovering his accrued wages, to wit: (1) there must be actual delay or that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's Decision. In *Garcia*, after it had been established

[34] *Garcia v. Philippine Airlines Inc., supra* note 31 at 491-492.

that there was clearly a delay in the execution of the reinstatement order, the court proceeded to ascertain whether same was due to PAL's unjustified act or omission. In so doing, it upheld the CA's finding that the peculiar predicament of a corporate rehabilitation rendered it impossible for PAL, under the circumstances, to exercise its option under Article 223 of the Labor Code. The suspension of claims dictated by rehabilitation procedure therefore constitutes a justification for PAL's failure to exercise the alternative options of actual reinstatement or payroll reinstatement. Because of this, the Court held that PAL's obligation to pay the salaries pending appeal, as the normal effect of the non-exercise of the options, did not attach. Simply put, petitioners cannot anymore collect their accrued salaries during the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter because PAL's failure to actually reinstate them or effect payroll reinstatement was justified by the latter's situation of being under corporate rehabilitation.

Application of the Two-Fold Test to the present case

As previously mentioned, the vital question that needs to be answered in the case at bar is: *Can respondents collect their accrued salaries for the period between the Labor Arbiter's order of reinstatement pending appeal and the NLRC Resolution overturning that of the Labor Arbiter?* If in the affirmative, the assailed CA Decision and Resolution which affirmed the June 3, 2004 Order of Labor Arbiter Castillon denying the Motion to Quash Writ of Execution and ordering the break-open of petitioner's premises as well as the issuance of the subject Writ of Execution itself, have to be upheld. Otherwise, they need to be set aside as what petitioner would want us to do.

To come up with the answer to said question, we shall apply the two-fold test used in *Garcia*.

Was there an actual delay or was the order of reinstatement pending appeal executed prior to its reversal? As can be recalled, Labor Arbiter Gan issued his Decision ordering respondents'

reinstatement on December 21, 2001, copy of which was allegedly received by petitioner on February 21, 2002.[35] On March 4, 2002, petitioner appealed said decision to the NLRC. A few days later or on March 11, 2002, respondents filed an *Ex-Parte* Motion for Issuance of Writ of Execution relative to the implementation of the reinstatement aspect of the decision.[36] On April 22, 2002, a Writ of Execution was issued by Labor Arbiter Gan. However, until the issuance of the September 5, 2002 NLRC Resolution overturning Labor Arbiter Gan's Decision, petitioner still failed to reinstate respondents or effect payroll reinstatement in accordance with Article 223 of the Labor Code. This was what actually prompted respondents to file an *Ex-Parte* Motion to Set Case for Conference with Motion wherein they also prayed for the issuance of a computation of the award of backwages and *Alias* Writ of Execution for its enforcement. It cannot therefore be denied that there was an actual delay in the execution of the reinstatement aspect of the Decision of Labor Arbiter Gan prior to the issuance of the NLRC Resolution overturning the same.

Now, the next question is: *Was the delay not due to the employer's unjustified act or omission?* Unlike in *Garcia* where PAL, as the employer, was then under corporate rehabilitation, Islriz Trading here did not undergo rehabilitation or was under any analogous situation which would justify petitioner's non-exercise of the options provided under Article 223 of the Labor Code. Notably, what petitioner gave as reason in not immediately effecting reinstatement after he was served with the Writ of Execution dated April 22, 2002 was that he would first refer the matter to his counsel as he could not effectively act on the order of execution without the latter's advice.[37] He gave his word that upon conferment with his lawyer, he will inform the Office of the Labor Arbiter of his action on the writ. Petitioner,

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[35] As alleged by petitioners in their *Notice of Appeal, Memorandum of Appeal and Joint Affidavit, rollo*, pp. 66-71.

[36] Please see page 2 of the *Writ of Execution* dated April 22, 2002, *id.* at 80-82.

[37] See Sheriff's Return, *id.* at 223.

however, without any satisfactory reason, failed to fulfill this promise and respondents remained to be not reinstated until the NLRC resolved petitioner's appeal. Evidently, the delay in the execution of respondents' reinstatement was due to petitioner's unjustified refusal to effect the same.

Hence, the conclusion is that respondents have the right to collect their accrued salaries during the period between the Labor Arbiter's Decision ordering their reinstatement pending appeal and the NLRC Resolution overturning the same because petitioner's failure to reinstate them either actually or through payroll was due to petitioner's unjustified refusal to effect reinstatement. In order to enforce this, Labor Arbiter Castillon thus correctly issued the Writ of Execution dated March 9, 2004 as well as the Order dated June 3, 2004 denying petitioner's Motion to Quash Writ of Execution and granting respondents' Urgent Motion for Issuance of Break-Open Order. Consequently, we find no error on the part of the CA in upholding these issuances and in dismissing the petition for *certiorari* before it.

Having settled this, we find it unnecessary to discuss further the issues raised by petitioner except the one with respect to the computation of respondents' accrued salaries.

Correctness of the Computation of Respondents' Accrued Salaries

Petitioner contends that respondents' accrued salaries in the total amount of ₱1,110,665.60 have no factual and legal bases. This is because of his obstinate belief that the NLRC's reversal of Labor Arbiter Gan's Decision has effectively removed the basis for such award.

Although we do not agree with petitioner's line of reasoning, we, however, find incorrect the computation made by Fiscal Examiner Trinchera.

In *Kimberly Clark (Phils.), Inc. v. Facundo*,[38] we held that:

[38] G.R. No. 144885 (Unsigned Resolution), July 12, 2006.

[T]he Labor Arbiter's order of reinstatement was immediately executory. After receipt of the Labor Arbiter's decision ordering private respondents' reinstatement, petitioner 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. **Failing to exercise the options in the alternative, petitioner must pay private respondents' salaries which automatically accrued from notice of the Labor Arbiter's order of reinstatement until its ultimate reversal of the NLRC.**

xxx xxx xxx

x x x [S]ince **private respondent's reinstatement pending appeal was effective only until its reversal by the NLRC** on April 28, 1999, they are no longer entitled to salaries from May 1, 1999 to March 15, 2001, as ordered by the Labor Arbiter. (Emphasis supplied)

To clarify, respondents are entitled to their accrued salaries only from the time petitioner received a copy of Labor Arbiter Gan's Decision declaring respondents' termination illegal and ordering their reinstatement up to the date of the NLRC Resolution overturning that of the Labor Arbiter. This is because it is only during said period that respondents are deemed to have been illegally dismissed and are entitled to reinstatement pursuant to Labor Arbiter Gan's Decision which was the one in effect at that time. Beyond that period, the NLRC Resolution declaring that there was no illegal dismissal is already the one prevailing. From such point, respondents' salaries did not accrue not only because there is no more illegal dismissal to speak of but also because respondents have not yet been actually reinstated and have not rendered services to petitioner.

Fiscal Examiner Trinchera's computation of respondents' accrued salaries covered the period January 1, 2002 to January 30, 2004. As there was no showing when petitioner actually received a copy of Labor Arbiter Gan's decision except for petitioner's self-serving claim that he received the same on February 21, 2002,[39] we are at a loss as to how Fiscal Examiner Trinchera came up with January 1, 2002 as the reckoning point for computing respondents' accrued wages. We likewise wonder

[39] *Supra* note 30.

why it covered the period up to January 30, 2004 when on September 5, 2002, the NLRC already promulgated its Resolution reversing that of the Labor Arbiter. Hence, we deem it proper to remand the records of this case to the Labor Arbiter for the correct computation of respondents' accrued wages which shall commence from petitioner's date of receipt of the Labor Arbiter's Decision ordering reinstatement up to the date of the NLRC Resolution reversing the same. Considering, however, that petitioner's levied properties have already been awarded to respondents and as alleged by the latter, have also already been sold to third persons, respondents are ordered to make the proper restitution to petitioner for whatever excess amount received by them based on the correct computation.

As a final note, since it appears that petitioner still failed to reinstate respondents pursuant to the final and executory Resolution of the NLRC, respondents' proper recourse now is to move for the execution of the same. It is worthy to note that Labor Arbiter Castillon stated in her questioned Order of June 3, 2004 that the Writ of Execution she issued is for the sole purpose of enforcing the wages accruing to respondents by reason of Labor Arbiter Gan's order of reinstatement. Indeed, the last paragraph of said writ provides only for the enforcement of said monetary award and nothing on reinstatement, *viz*:

> NOW THEREFORE, you are commanded to proceed to the premises of respondents Islriz Trading/Victor Hugo C. Lu located at Brgy. Luciano Trece Martires[,] Cavite City or wherever it may be found to collect the amount of One Million One Hundred Eleven Thousand Seven Hundred Sixty One pesos & 60/100 (₱1,111,761.60) inclusive [of] ₱1,096.00 as execution fees and turn over the said amount to the NLRC Cashier for further disposition. In case you fail to collect the said amount in cash, you are directed to cause the satisfaction of the same out of respondents' chattels, movable/ immovable properties not exempt from execution. You are directed to return these Writ One Hundred Eighty (180) days from receipt hereof, together with the report of compliance.
>
> SO ORDERED.[40]

[40] *Rollo*, p. 106.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The assailed March 18, 2005 Decision and June 16, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 84744 are *AFFIRMED*. The records of this case are ordered REMANDED to the Office of the Labor Arbiter for the correct computation of respondents' accrued salaries covering the date of petitioner's receipt of the December 21, 2001 Decision of the Labor Arbiter up to the issuance of the NLRC Resolution on September 5, 2002. Respondents are ordered to make the proper restitution to petitioner for whatever excess amount which may be determined to have been received by them based on the correct computation.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 175404. January 31, 2011]

CARGILL PHILIPPINES, INC., *petitioner, vs.* **SAN FERNANDO REGALA TRADING, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; ARBITRATION; ARBITRATION LAW (R.A. NO. 876); THE AUTHORITY OF THE COURT IS CONFINED ONLY TO THE DETERMINATION OF WHETHER OR NOT THERE IS AN AGREEMENT IN WRITING PROVIDING FOR ARBITRATION.— [N]otwithstanding the finding that an arbitration agreement existed, the RTC denied petitioner's motion and directed petitioner to file an answer. In *La Naval Drug Corporation v. Court of Appeals*, it was held that R.A.

No. 876 explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof. If the court, upon the other hand, finds that no such agreement exists, the proceedings shall be dismissed.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL THE ORDER OF THE REGIONAL TRIAL COURT DIRECTING THE PETITIONER TO FILE AN ANSWER, INSTEAD OF DIRECTING THE PARTIES TO PROCEED TO ARBITRATION, AFTER FINDING THAT AN ARBITRATION AGREEMENT EXISTS.— In issuing the Order which denied petitioner's Motion to Dismiss/Suspend Proceedings and to Refer Controversy to Voluntary Arbitration, the RTC went beyond its authority of determining only the issue of whether or not there is an agreement in writing providing for arbitration by directing petitioner to file an answer, instead of ordering the parties to proceed to arbitration. In so doing, it acted in excess of its jurisdiction and since there is no plain, speedy, and adequate remedy in the ordinary course of law, petitioner's resort to a petition for *certiorari* is the proper remedy.

3. CIVIL LAW; ARBITRATION; ARBITRATION LAW (R.A. NO. 876); ARBITRATION AS AN ALTERNATIVE MODE OF SETTLING DISPUTES, DISCUSSED.— Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction. R.A. No. 876 authorizes arbitration of domestic disputes. Foreign arbitration, as a system of settling commercial disputes of an international character, is likewise recognized. The enactment of R.A. No. 9285 on April 2, 2004 further institutionalized the use of alternative dispute resolution systems, including arbitration, in the settlement of disputes. A contract is required for arbitration to take place and to be binding. Submission to arbitration is a contract and a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract. The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of the contract and is itself a contract.

4. ID.; ID.; SEPARABILITY DOCTRINE; THE INVALIDITY OF THE MAIN CONTRACT CONTAINING THE ARBITRATION CLAUSE WILL NOT INVALIDATE THE ARBITRATION AGREEMENT; THE PARTY WHO HAS REPUDIATED THE MAIN CONTRACT IS NOT PREVENTED FROM ENFORCING ITS ARBITRATION CLAUSE.— Applying the *Gonzales* ruling, an arbitration agreement which forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract. To reiterate, a contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration and that is exactly the situation that the separability doctrine sought to avoid. Thus, we find that even the party who has repudiated the main contract is not prevented from enforcing its arbitration clause.

5. ID.; ID.; THE ARBITRATOR, NOT THE COURTS, DECIDES WHETHER A CONTRACT BETWEEN THE PARTIES EXISTS OR IS VALID.— It is worthy to note that respondent filed a complaint for rescission of contract and damages with the RTC. In so doing, respondent alleged that a contract exists between respondent and petitioner. It is that contract which provides for an arbitration clause which states that "any dispute which the Buyer and Seller may not be able to settle by mutual agreement shall be settled before the City of New York by the American Arbitration Association. The arbitration agreement clearly expressed the parties' intention that any dispute between them as buyer and seller should be referred to arbitration. It is for the arbitrator and not the courts to decide whether a contract between the parties exists or is valid.

6. ID.; ID.; REFERRAL OF THE PARTIES' DISPUTE TO ARBITRATION, PROPER; CASE OF *GONZALES V. CLIMAX MINING LTD.* (G.R. NO. 161957, FEB. 28, 2005), INAPPLICABLE.— The respondent cannot rely on the *Gonzales* case to support its argument. x x x. [W]e clarified in our resolution on Gonzales' motion for reconsideration that "when we declared that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract

on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues." We made such clarification in our resolution of the motion for reconsideration after ruling that the parties in that case can proceed to arbitration under the Arbitration Law, as provided under the Arbitration Clause in their Addendum Contract.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

Estelito Mendoza for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated July 31, 2006 and the Resolution[2] dated November 13, 2006 of the Court of Appeals (CA) in CA G.R. SP No. 50304.

The factual antecedents are as follows:

On June 18, 1998, respondent San Fernando Regala Trading, Inc. filed with the Regional Trial Court (RTC) of Makati City a Complaint for Rescission of Contract with Damages[3] against petitioner Cargill Philippines, Inc. In its Complaint, respondent alleged that it was engaged in buying and selling of molasses and petitioner was one of its various sources from whom it purchased molasses. Respondent alleged that it entered into a contract dated July 11, 1996 with petitioner, wherein it was agreed upon that respondent would purchase from petitioner 12,000 metric tons of Thailand origin cane blackstrap molasses

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[1] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Rodrigo V. Cosico and Japar B. Dimaampao, concurring; *rollo*, pp. 32-45.

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

[3] Docketed as Civil Case No. 98-1376; raffled off to Branch 59.

at the price of US$192 per metric ton; that the delivery of the molasses was to be made in January/February 1997 and payment was to be made by means of an Irrevocable Letter of Credit payable at sight, to be opened by September 15, 1996; that sometime prior to September 15, 1996, the parties agreed that instead of January/February 1997, the delivery would be made in April/May 1997 and that payment would be by an Irrevocable Letter of Credit payable at sight, to be opened upon petitioner's advice. Petitioner, as seller, failed to comply with its obligations under the contract, despite demands from respondent, thus, the latter prayed for rescission of the contract and payment of damages.

On July 24, 1998, petitioner filed a Motion to Dismiss/Suspend Proceedings and To Refer Controversy to Voluntary Arbitration,[4] wherein it argued that the alleged contract between the parties, dated July 11, 1996, was never consummated because respondent never returned the proposed agreement bearing its written acceptance or conformity nor did respondent open the Irrevocable Letter of Credit at sight. Petitioner contended that the controversy between the parties was whether or not the alleged contract between the parties was legally in existence and the RTC was not the proper forum to ventilate such issue. It claimed that the contract contained an arbitration clause, to wit:

ARBITRATION

Any dispute which the Buyer and Seller may not be able to settle by mutual agreement shall be settled by arbitration in the City of New York before the American Arbitration Association. The Arbitration Award shall be final and binding on both parties.[5]

that respondent must first comply with the arbitration clause before resorting to court, thus, the RTC must either dismiss the case or suspend the proceedings and direct the parties to

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[4] *Rollo*, pp. 61-70.

[5] *Id*. at 60.

proceed with arbitration, pursuant to Sections 6[6] and 7[7] of Republic Act (R.A.) No. 876, or the Arbitration Law.

Respondent filed an Opposition, wherein it argued that the RTC has jurisdiction over the action for rescission of contract and could not be changed by the subject arbitration clause. It cited cases wherein arbitration clauses, such as the subject clause in the contract, had been struck down as void for being contrary to public policy since it provided that the arbitration award shall be final and binding on both parties, thus, ousting the courts of jurisdiction.

In its Reply, petitioner maintained that the cited decisions were already inapplicable, having been rendered prior to the effectivity of the New Civil Code in 1950 and the Arbitration Law in 1953.

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[6] Section 6. *Hearing by court.*- A party aggrieved by the failure, neglect or refusal of another to perform under an agreement in writing providing for arbitration may petition the court for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days notice in writing of the hearing of such application shall be served either personally or by registered mail upon the party in default. The court shall hear the parties, and upon being satisfied that the making of the agreement or such failure to comply therewith is not in issue, shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. If the making of the agreement or default be in issue the court shall proceed to summarily hear such issue. If the finding be that no agreement in writing providing for arbitration was made, or that there is no default in the proceeding thereunder, the proceeding shall be dismissed. If the finding be that a written provision for arbitration was made and there is a default in proceeding thereunder, an order shall be made summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

The court shall decide all motions, petitions or applications filed under the provisions of this Act, within ten days after such motions, petitions, or applications have been heard by it.

[7] Sec. 7. *Stay of civil action*. - If any suit or proceeding be brought upon an issue arising out of an agreement providing for the arbitration thereof, the court in which such suit or proceeding is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration, shall stay the action or proceeding until an arbitration has been had in accordance with the terms of the agreement; Provided that the applicant for the stay is not in default in proceeding with such arbitration.

In its Rejoinder, respondent argued that the arbitration clause relied upon by petitioner is invalid and unenforceable, considering that the requirements imposed by the provisions of the Arbitration Law had not been complied with.

By way of Sur-Rejoinder, petitioner contended that respondent had even clarified that the issue boiled down to whether the arbitration clause contained in the contract subject of the complaint is valid and enforceable; that the arbitration clause did not violate any of the cited provisions of the Arbitration Law.

On September 17, 1998, the RTC rendered an Order,[8] the dispositive portion of which reads:

> Premises considered, defendant's "Motion To Dismiss/Suspend Proceedings and To Refer Controversy To Voluntary Arbitration" is hereby DENIED. Defendant is directed to file its answer within ten (10) days from receipt of a copy of this order.[9]

In denying the motion, the RTC found that there was no clear basis for petitioner's plea to dismiss the case, pursuant to Section 7 of the Arbitration Law. The RTC said that the provision directed the court concerned only to stay the action or proceeding brought upon an issue arising out of an agreement providing for the arbitration thereof, but did not impose the sanction of dismissal. However, the RTC did not find the suspension of the proceedings warranted, since the Arbitration Law contemplates an arbitration proceeding that must be conducted in the Philippines under the jurisdiction and control of the RTC; and before an arbitrator who resides in the country; and that the arbitral award is subject to court approval, disapproval and modification, and that there must be an appeal from the judgment of the RTC. The RTC found that the arbitration clause in question contravened these procedures, *i.e.*, the arbitration clause contemplated an arbitration proceeding in New York before a non-resident arbitrator (American Arbitration Association); that the arbitral award shall be final and binding on both parties. The RTC said that to apply

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[8] Penned by Judge Lucia Violago Isnani; *rollo*, pp. 71-75.

[9] *Id*. at 75.

Section 7 of the Arbitration Law to such an agreement would result in disregarding the other sections of the same law and rendered them useless and mere surplusages.

Petitioner filed its Motion for Reconsideration, which the RTC denied in an Order[10] dated November 25, 1998.

Petitioner filed a petition for *certiorari* with the CA raising the sole issue that the RTC acted in excess of jurisdiction or with grave abuse of discretion in refusing to dismiss or at least suspend the proceedings *a quo*, despite the fact that the party's agreement to arbitrate had not been complied with.

Respondent filed its Comment and Reply. The parties were then required to file their respective Memoranda.

On July 31, 2006, the CA rendered its assailed Decision denying the petition and affirming the RTC Orders.

In denying the petition, the CA found that stipulation providing for arbitration in contractual obligation is both valid and constitutional; that arbitration as an alternative mode of dispute resolution has long been accepted in our jurisdiction and expressly provided for in the Civil Code; that R.A. No. 876 (the Arbitration Law) also expressly authorized the arbitration of domestic disputes. The CA found error in the RTC's holding that Section 7 of R.A. No. 876 was inapplicable to arbitration clause simply because the clause failed to comply with the requirements prescribed by the law. The CA found that there was nothing in the Civil Code, or R.A. No. 876, that require that arbitration proceedings must be conducted only in the Philippines and the arbitrators should be Philippine residents. It also found that the RTC ruling effectively invalidated not only the disputed arbitration clause, but all other agreements which provide for foreign arbitration. The CA did not find illegal or against public policy the arbitration clause so as to render it null and void or ineffectual.

Notwithstanding such findings, the CA still held that the case cannot be brought under the Arbitration Law for the purpose

[10] Records, pp. 113-115.

of suspending the proceedings before the RTC, since in its Motion to Dismiss/Suspend proceedings, petitioner alleged, as one of the grounds thereof, that the subject contract between the parties did not exist or it was invalid; that the said contract bearing the arbitration clause was never consummated by the parties, thus, it was proper that such issue be first resolved by the court through an appropriate trial; that the issue involved a question of fact that the RTC should first resolve. Arbitration is not proper when one of the parties repudiated the existence or validity of the contract.

Petitioner's motion for reconsideration was denied in a Resolution dated November 13, 2006.

Hence, this petition.

Petitioner alleges that the CA committed an error of law in ruling that arbitration cannot proceed despite the fact that: (a) it had ruled, in its assailed decision, that the arbitration clause is valid, enforceable and binding on the parties; (b) the case of *Gonzales v. Climax Mining Ltd.*[11] is inapplicable here; (c) parties are generally allowed, under the Rules of Court, to adopt several defenses, alternatively or hypothetically, even if such defenses are inconsistent with each other; and (d) the complaint filed by respondent with the trial court is premature.

Petitioner alleges that the CA adopted inconsistent positions when it found the arbitration clause between the parties as valid and enforceable and yet in the same breath decreed that the arbitration cannot proceed because petitioner assailed the existence of the entire agreement containing the arbitration clause. Petitioner claims the inapplicability of the cited *Gonzales* case decided in 2005, because in the present case, it was respondent who had filed the complaint for rescission and damages with the RTC, which based its cause of action against petitioner on the alleged agreement dated July 11, 2006 between the parties; and that the same agreement contained the arbitration clause sought to be enforced by petitioner in this case. Thus, whether petitioner

[11] G.R. No. 161957, February 28, 2005, 452 SCRA 607.

assails the genuineness and due execution of the agreement, the fact remains that the agreement sued upon provides for an arbitration clause; that respondent cannot use the provisions favorable to him and completely disregard those that are unfavorable, such as the arbitration clause.

Petitioner contends that as the defendant in the RTC, it presented two alternative defenses, *i.e.*, the parties had not entered into any agreement upon which respondent as plaintiff can sue upon; and, assuming that such agreement existed, there was an arbitration clause that should be enforced, thus, the dispute must first be submitted to arbitration before an action can be instituted in court. Petitioner argues that under Section 1(j) of Rule 16 of the Rules of Court, included as a ground to dismiss a complaint is when a condition precedent for filing the complaint has not been complied with; and that submission to arbitration when such has been agreed upon is one such condition precedent. Petitioner submits that the proceedings in the RTC must be dismissed, or at least suspended, and the parties be ordered to proceed with arbitration.

On March 12, 2007, petitioner filed a Manifestation[12] saying that the CA's rationale in declining to order arbitration based on the 2005 *Gonzales* ruling had been modified upon a motion for reconsideration decided in 2007; that the CA decision lost its legal basis, because it had been ruled that the arbitration agreement can be implemented notwithstanding that one of the parties thereto repudiated the contract which contained such agreement based on the doctrine of separability.

In its Comment, respondent argues that *certiorari* under Rule 65 is not the remedy against an order denying a Motion to Dismiss/Suspend Proceedings and To Refer Controversy to Voluntary Arbitration. It claims that the Arbitration Law which petitioner invoked as basis for its Motion prescribed, under its Section 29, a remedy, *i.e.*, appeal by a petition for review on *certiorari* under Rule 45. Respondent contends that the *Gonzales* case, which was decided in 2007, is inapplicable in this case,

[12] *Rollo*, pp. 311-314.

especially as to the doctrine of separability enunciated therein. Respondent argues that even if the existence of the contract and the arbitration clause is conceded, the decisions of the RTC and the CA declining referral of the dispute between the parties to arbitration would still be correct. This is so because respondent's complaint filed in Civil Case No. 98-1376 presents the principal issue of whether under the facts alleged in the complaint, respondent is entitled to rescind its contract with petitioner and for the latter to pay damages; that such issue constitutes a judicial question or one that requires the exercise of judicial function and cannot be the subject of arbitration.

Respondent contends that Section 8 of the Rules of Court, which allowed a defendant to adopt in the same action several defenses, alternatively or hypothetically, even if such defenses are inconsistent with each other refers to allegations in the pleadings, such as complaint, counterclaim, cross-claim, third-party complaint, answer, but not to a motion to dismiss. Finally, respondent claims that petitioner's argument is premised on the existence of a contract with respondent containing a provision for arbitration. However, its reliance on the contract, which it repudiates, is inappropriate.

In its Reply, petitioner insists that respondent filed an action for rescission and damages on the basis of the contract, thus, respondent admitted the existence of all the provisions contained thereunder, including the arbitration clause; that if respondent relies on said contract for its cause of action against petitioner, it must also consider itself bound by the rest of the terms and conditions contained thereunder notwithstanding that respondent may find some provisions to be adverse to its position; that respondent's citation of the *Gonzales* case, decided in 2005, to show that the validity of the contract cannot be the subject of the arbitration proceeding and that it is the RTC which has the jurisdiction to resolve the situation between the parties herein, is not correct since in the resolution of the Gonzales' motion for reconsideration in 2007, it had been ruled that an arbitration agreement is effective notwithstanding the fact that one of the parties thereto repudiated the main contract which contained it.

We first address the procedural issue raised by respondent that petitioner's petition for *certiorari* under Rule 65 filed in the CA against an RTC Order denying a Motion to Dismiss/ Suspend Proceedings and to Refer Controversy to Voluntary Arbitration was a wrong remedy invoking Section 29 of R.A. No. 876, which provides:

> Section 29.
>
> x x x An appeal may be taken from an order made in a proceeding under this Act, or from a judgment entered upon an award through *certiorari* proceedings, but such appeals shall be limited to question of law. x x x.

To support its argument, respondent cites the case of *Gonzales v. Climax Mining Ltd.*[13] (Gonzales case), wherein we ruled the impropriety of a petition for *certiorari* under Rule 65 as a mode of appeal from an RTC Order directing the parties to arbitration.

We find the cited case not in point.

In the *Gonzales* case, Climax-Arimco filed before the RTC of Makati a petition to compel arbitration under R.A. No. 876, pursuant to the arbitration clause found in the Addendum Contract it entered with Gonzales. Judge Oscar Pimentel of the RTC of Makati then directed the parties to arbitration proceedings. Gonzales filed a petition for *certiorari* with Us contending that Judge Pimentel acted with grave abuse of discretion in immediately ordering the parties to proceed with arbitration despite the proper, valid and timely raised argument in his Answer with counterclaim that the Addendum Contract containing the arbitration clause was null and void. Climax-Arimco assailed the mode of review availed of by Gonzales, citing Section 29 of R.A. No. 876 contending that *certiorari* under Rule 65 can be availed of only if there was no appeal or any adequate remedy in the ordinary course of law; that R.A. No. 876 provides for an appeal from such order. We then ruled that Gonzales' petition for *certiorari* should be dismissed as it was filed in lieu of an appeal by *certiorari* which was the prescribed remedy under

[13] G.R. Nos. 161957 & 167994, January 22, 1997, 512 SCRA 148, 163.

R.A. No. 876 and the petition was filed far beyond the reglementary period.

We found that Gonzales' petition for *certiorari* raises a question of law, but not a question of jurisdiction; that Judge Pimentel acted in accordance with the procedure prescribed in R.A. No. 876 when he ordered Gonzales to proceed with arbitration and appointed a sole arbitrator after making the determination that there was indeed an arbitration agreement. It had been held that as long as a court acts within its jurisdiction and does not gravely abuse its discretion in the exercise thereof, any supposed error committed by it will amount to nothing more than an error of judgment reviewable by a timely appeal and not assailable by a special civil action of *certiorari*.[14]

In this case, petitioner raises before the CA the issue that the respondent Judge acted in excess of jurisdiction or with grave abuse of discretion in refusing to dismiss, or at least suspend, the proceedings *a quo,* despite the fact that the party's agreement to arbitrate had not been complied with. Notably, the RTC found the existence of the arbitration clause, since it said in its decision that "hardly disputed is the fact that the arbitration clause in question contravenes several provisions of the Arbitration Law x x x and to apply Section 7 of the Arbitration Law to such an agreement would result in the disregard of the afore-cited sections of the Arbitration Law and render them useless and mere surplusages." However, notwithstanding the finding that an arbitration agreement existed, the RTC denied petitioner's motion and directed petitioner to file an answer.

In *La Naval Drug Corporation v. Court of Appeals*,[15] it was held that R.A. No. 876 explicitly confines the court's authority only to the determination of whether or not there is an agreement in writing providing for arbitration. In the affirmative, the statute ordains that the court shall issue an order summarily directing the parties to proceed with the arbitration in accordance with

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[14] *Id.* at 165.

[15] G.R. No. 103200, August 31, 1994, 236 SCRA 78, 91.

the terms thereof. If the court, upon the other hand, finds that no such agreement exists, the proceedings shall be dismissed.

In issuing the Order which denied petitioner's Motion to Dismiss/Suspend Proceedings and to Refer Controversy to Voluntary Arbitration, the RTC went beyond its authority of determining only the issue of whether or not there is an agreement in writing providing for arbitration by directing petitioner to file an answer, instead of ordering the parties to proceed to arbitration. In so doing, it acted in excess of its jurisdiction and since there is no plain, speedy, and adequate remedy in the ordinary course of law, petitioner's resort to a petition for *certiorari* is the proper remedy.

We now proceed to the substantive issue of whether the CA erred in finding that this case cannot be brought under the arbitration law for the purpose of suspending the proceedings in the RTC.

We find merit in the petition.

Arbitration, as an alternative mode of settling disputes, has long been recognized and accepted in our jurisdiction.[16] R.A. No. 876[17] authorizes arbitration of domestic disputes. Foreign arbitration, as a system of settling commercial disputes of an international character, is likewise recognized.[18] The enactment of R.A. No. 9285 on April 2, 2004 further institutionalized the use of alternative dispute resolution systems, including arbitration, in the settlement of disputes.[19]

A contract is required for arbitration to take place and to be binding.[20] Submission to arbitration is a contract [21] and a clause

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[16] *Gonzales v. Climax Mining Ltd.*, *supra* note 13, at 166.

[17] An Act to Institutionalize the Use of An Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for other purposes.

[18] *Gonzales v. Climax Mining Ltd.*, *supra* note 13.

[19] *Id.* at 167.

[20] *Id.*

[21] *Id.*, citing *Manila Electric Co. v. Pasay Transportation Co.*, 57 Phil. 600 (1932).

in a contract providing that all matters in dispute between the parties shall be referred to arbitration is a contract.[22] The provision to submit to arbitration any dispute arising therefrom and the relationship of the parties is part of the contract and is itself a contract.[23]

In this case, the contract sued upon by respondent provides for an arbitration clause, to wit:

ARBITRATION

Any dispute which the Buyer and Seller may not be able to settle by mutual agreement shall be settled by arbitration in the City of New York before the American Arbitration Association, The Arbitration Award shall be final and binding on both parties.

The CA ruled that arbitration cannot be ordered in this case, since petitioner alleged that the contract between the parties did not exist or was invalid and arbitration is not proper when one of the parties repudiates the existence or validity of the contract. Thus, said the CA:

Notwithstanding our ruling on the validity and enforceability of the assailed arbitration clause providing for foreign arbitration, it is our considered opinion that the case at bench still cannot be brought under the Arbitration Law for the purpose of suspending the proceedings before the trial court. We note that in its Motion to Dismiss/Suspend Proceedings, *etc.*, petitioner Cargill alleged, as one of the grounds thereof, that the alleged contract between the parties do not legally exist or is invalid. As posited by petitioner, it is their contention that the said contract, bearing the arbitration clause, was never consummated by the parties. That being the case, it is but proper that such issue be first resolved by the court through an appropriate trial. The issue involves a question of fact that the trial court should first resolve.

Arbitration is not proper when one of the parties repudiates the existence or validity of the contract. Apropos is *Gonzales v. Climax*

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[22] *Id.* at 167-168.

[23] *Id.*, citing *Del Monte Corporation -USA v. Court of Appeals*, 404 Phil. 192 (2001).

Mining Ltd., 452 SCRA 607, (G.R.No.161957), where the Supreme Court held that:

> **The question of validity of the contract containing the agreement to submit to arbitration will affect the applicability of the arbitration clause itself. A party cannot rely on the contract and claim rights or obligations under it and at the same time impugn its existence or validity. Indeed, litigants are enjoined from taking inconsistent positions....**

Consequently, the petitioner herein cannot claim that the contract was never consummated and, at the same time, invokes the arbitration clause provided for under the contract which it alleges to be non-existent or invalid. Petitioner claims that private respondent's complaint lacks a cause of action due to the absence of any valid contract between the parties. Apparently, the arbitration clause is being invoked merely as a fallback position. The petitioner must first adduce evidence in support of its claim that there is no valid contract between them and should the court *a quo* find the claim to be meritorious, the parties may then be spared the rigors and expenses that arbitration in a foreign land would surely entail.[24]

However, the *Gonzales* case,[25] which the CA relied upon for not ordering arbitration, had been modified upon a motion for reconsideration in this wise:

x x x **The adjudication of the petition in G.R. No. 167994 effectively modifies part of the Decision dated 28 February 2005 in G.R. No. 161957. Hence, we now hold that the validity of the contract containing the agreement to submit to arbitration does not affect the applicability of the arbitration clause itself. A contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration. That is exactly the situation that the separability doctrine, as well as jurisprudence applying it, seeks to avoid.** We add that when it was declared in G.R. No. 161957 that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground

[24] *Rollo*, pp. 44-45. (Emphasis supplied.)

[25] *Gonzales v. Climax Mining Ltd.*, *supra* note 11.

of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues.[26]

In so ruling that the validity of the contract containing the arbitration agreement does not affect the applicability of the arbitration clause itself, we then applied the doctrine of separability, thus:

> The doctrine of separability, or severability as other writers call it, enunciates that an arbitration agreement is independent of the main contract. The arbitration agreement is to be treated as a separate agreement and the arbitration agreement does not automatically terminate when the contract of which it is a part comes to an end.
>
> The separability of the arbitration agreement is especially significant to the determination of whether the invalidity of the main contract also nullifies the arbitration clause. Indeed, the doctrine denotes that the invalidity of the main contract, also referred to as the "container" contract, does not affect the validity of the arbitration agreement. Irrespective of the fact that the main contract is invalid, the arbitration clause/agreement still remains valid and enforceable.[27]

Respondent argues that the separability doctrine is not applicable in petitioner's case, since in the *Gonzales* case, Climax-Arimco sought to enforce the arbitration clause of its contract with Gonzales and the former's move was premised on the existence of a valid contract; while Gonzales, who resisted the move of Climax-Arimco for arbitration, did not deny the existence of the contract but merely assailed the validity thereof on the ground of fraud and oppression. Respondent claims that in the case before Us, petitioner who is the party insistent on arbitration also claimed in their Motion to Dismiss/Suspend Proceedings that the contract sought by respondent to be rescinded did not exist or was not consummated; thus, there is no room for the application of the separability doctrine, since there is no container or main contract or an arbitration clause to speak of.

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[26] *Gonzales v. Climax Mining Ltd.*, *supra* note 13, at 172-173. (Emphasis supplied.)

[27] *Id.* at 170.

We are not persuaded.

Applying the *Gonzales* ruling, an arbitration agreement which forms part of the main contract shall not be regarded as invalid or non-existent just because the main contract is invalid or did not come into existence, since the arbitration agreement shall be treated as a separate agreement independent of the main contract. To reiterate. a contrary ruling would suggest that a party's mere repudiation of the main contract is sufficient to avoid arbitration and that is exactly the situation that the separability doctrine sought to avoid. Thus, we find that even the party who has repudiated the main contract is not prevented from enforcing its arbitration clause.

Moreover, it is worthy to note that respondent filed a complaint for rescission of contract and damages with the RTC. In so doing, respondent alleged that a contract exists between respondent and petitioner. It is that contract which provides for an arbitration clause which states that "any dispute which the Buyer and Seller may not be able to settle by mutual agreement shall be settled before the City of New York by the American Arbitration Association. The arbitration agreement clearly expressed the parties' intention that any dispute between them as buyer and seller should be referred to arbitration. It is for the arbitrator and not the courts to decide whether a contract between the parties exists or is valid.

Respondent contends that assuming that the existence of the contract and the arbitration clause is conceded, the CA's decision declining referral of the parties' dispute to arbitration is still correct. It claims that its complaint in the RTC presents the issue of whether under the facts alleged, it is entitled to rescind the contract with damages; and that issue constitutes a judicial question or one that requires the exercise of judicial function and cannot be the subject of an arbitration proceeding. Respondent cites our ruling in *Gonzales*, wherein we held that a panel of arbitrators is bereft of jurisdiction over the complaint for declaration of nullity/or termination of the subject contracts on the grounds of fraud and oppression attendant to the execution of the addendum contract and the other contracts emanating

from it, and that the complaint should have been filed with the regular courts as it involved issues which are judicial in nature.

Such argument is misplaced and respondent cannot rely on the *Gonzales* case to support its argument.

In *Gonzales*, petitioner Gonzales filed a complaint before the Panel of Arbitrators, Region II, Mines and Geosciences Bureau, of the Department of Environment and Natural Resources (DENR) against respondents Climax- Mining Ltd. Climax-Arimco and Australasian Philippines Mining Inc. seeking the declaration of nullity or termination of the addendum contract and the other contracts emanating from it on the grounds of fraud and oppression. The Panel dismissed the complaint for lack of jurisdiction. However, the Panel, upon petitioner's motion for reconsideration, ruled that it had jurisdiction over the dispute maintaining that it was a mining dispute, since the subject complaint arose from a contract between the parties which involved the exploration and exploitation of minerals over the disputed area. Respondents assailed the order of the Panel of Arbitrators via a petition for *certiorari* before the CA. The CA granted the petition and declared that the Panel of Arbitrators did not have jurisdiction over the complaint, since its jurisdiction was limited to the resolution of mining disputes, such as those which raised a question of fact or matter requiring the technical knowledge and experience of mining authorities and not when the complaint alleged fraud and oppression which called for the interpretation and application of laws. The CA further ruled that the petition should have been settled through arbitration under R.A. No. 876 "the Arbitration Law" as provided under the addendum contract.

On a review on *certiorari*, we affirmed the CA's finding that the Panel of Arbitrators who, under R.A. No. 7942 of the Philippine Mining Act of 1995, has exclusive and original jurisdiction to hear and decide mining disputes, such as mining areas, mineral agreements, FTAAs or permits and surface owners, occupants and claimholders/concessionaires, is bereft of jurisdiction over the complaint for declaration of nullity of the addendum contract; thus, the Panels' jurisdiction is limited only to those mining disputes which raised question of facts or matters

requiring the technical knowledge and experience of mining authorities. We then said:

> In *Pearson v. Intermediate Appellate Court*, this Court observed that the trend has been to make the adjudication of mining cases a purely administrative matter. Decisions of the Supreme Court on mining disputes have recognized a distinction between (1) the primary powers granted by pertinent provisions of law to the then Secretary of Agriculture and Natural Resources (and the bureau directors) of an executive or administrative nature, such as granting of license, permits, lease and contracts, or approving, rejecting, reinstating or canceling applications, or deciding conflicting applications, and (2) controversies or disagreements of civil or contractual nature between litigants which are questions of a judicial nature that may be adjudicated only by the courts of justice. This distinction is carried on even in Rep. Act No. 7942.[28]

We found that since the complaint filed before the DENR Panel of Arbitrators charged respondents with disregarding and ignoring the addendum contract, and acting in a fraudulent and oppressive manner against petitioner, the complaint filed before the Panel was not a dispute involving rights to mining areas, or was it a dispute involving claimholders or concessionaires, but essentially judicial issues. We then said that the Panel of Arbitrators did not have jurisdiction over such issue, since it does not involve the application of technical knowledge and expertise relating to mining. It is in this context that we said that:

> Arbitration before the Panel of Arbitrators is proper only when there is a disagreement between the parties as to some provisions of the contract between them, which needs the interpretation and the application of that particular knowledge and expertise possessed by members of that Panel. It is not proper when one of the parties repudiates the existence or validity of such contract or agreement on the ground of fraud or oppression as in this case. The validity of the contract cannot be subject of arbitration proceedings. Allegations of fraud and duress in the execution of a contract are matters within the jurisdiction of the ordinary courts of law. These

[28] *Gonzales v. Climax Mining Ltd.*, *supra* note 11, at 620.

questions are legal in nature and require the application and interpretation of laws and jurisprudence which is necessarily a judicial function.[29]

In fact, We even clarified in our resolution on Gonzales' motion for reconsideration that "when we declared that the case should not be brought for arbitration, it should be clarified that the case referred to is the case actually filed by Gonzales before the DENR Panel of Arbitrators, which was for the nullification of the main contract on the ground of fraud, as it had already been determined that the case should have been brought before the regular courts involving as it did judicial issues." We made such clarification in our resolution of the motion for reconsideration after ruling that the parties in that case can proceed to arbitration under the Arbitration Law, as provided under the Arbitration Clause in their Addendum Contract.

WHEREFORE, the petition is *GRANTED*. The Decision dated July 31, 2006 and the Resolution dated November 13, 2006 of the Court of Appeals in CA-G.R. SP No. 50304 are *REVERSED and SET ASIDE*. The parties are hereby *ORDERED* to *SUBMIT* themselves to the arbitration of their dispute, pursuant to their July 11, 1996 agreement.

SO ORDERED.

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

[29] *Id.* at 624.

SECOND DIVISION

[G.R. No. 175473. January 31, 2011]

HILARIO P. SORIANO, *petitioner, vs.* **HON. MARIA THERESA V. MENDOZA-ARCEGA, as Presiding Judge of Branch 17, Regional Trial Court, Malolos, Bulacan; and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED; NOT COMMITTED BY THE TRIAL COURT WHEN IT CONSIDERED THAT A PARTY HAD WAIVED ITS RIGHT TO CONDUCT REDIRECT EXAMINATION OF A WITNESS DUE TO HIS NUMEROUS POSTPONEMENTS OF THE HEARINGS.— In *Ligeralde v. Patalinghug*, the Court reiterated the established definition of grave abuse of discretion, to wit: x x x By grave abuse of discretion is meant such **capricious or whimsical exercise of judgment** as is equivalent to lack of jurisdiction. The abuse of discretion must be **patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where **the power is exercised in an arbitrary and despotic manner** by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power. In this case, the CA was correct in holding that there was no such capricious, arbitrary or despotic exercise of power by the trial court. The records clearly show that the trial court had been very patient and reasonable, granting petitioner's numerous requests for postponement. Subsequently, the confluence of events revealed petitioner's propensity to delay the proceedings and the trial court had to put a stop to such conduct.

2. ID.; CRIMINAL PROCEDURE; TRIAL; THE TRIAL COURT CANNOT BE EXPECTED TO ALLOW THE PROCEEDINGS TO BE DELAYED AND CONTINUED ONLY WHEN THE PARTY FINDS IT CONVENIENT FOR HIMSELF.— He now bewails the fact that the trial court denied his motion to

cancel the September 22, 2005 hearing and deemed his redirect examination waived, but petitioner only has himself to blame for his quandary. He should not have allowed his original lawyers to withdraw their services until such time that he had obtained the services of new counsel. The trial court cannot be expected to allow the proceedings to be delayed and continued only when petitioner finds it convenient for himself. In the closely analogous case of *Philippine Banking Corporation v. Court of Appeals*, the Court held that the CA correctly ruled that a party had waived its right to conduct redirect examination of a witness because of said party's postponement of the hearings three times due to its witness's failure to appear. The Court cannot tolerate a party's propensity to delay the case.

APPEARANCES OF COUNSEL

Chato & Vinzons-Chato for petitioner.
M.M. Lazaro & Associates for respondent BSP.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) dated August 31, 2006, and the Resolution[2] dated November 7, 2006, denying herein petitioner's motion for reconsideration, be reversed and set aside.

The records reveal the following antecedent facts.

Petitioner is an accused in Criminal Case No. 237-M-2001 for Estafa through Falsification of Commercial Documents and in Criminal Case No. 238-M-2001 for violation of Section 38 of Republic Act No. 337, as amended. The criminal cases were consolidated and jointly tried before the Regional Trial Court of Malolos, Bulacan, Branch 17 (trial court).

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[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Noel G. Tijam and Arturo G. Tayag, concurring; *rollo*, pp. 23-32.

[2] *Id*. at 34-35.

After the prosecution rested its case, the trial court set the first hearing date for presentation of defense evidence on October 21, 2004. On said date, petitioner was absent allegedly due to illness so the defense moved for postponement. The trial court granted the motion and reset the hearing to December 6, 2004. The December 6, 2004 hearing was also cancelled upon motion of petitioner's counsel and the hearing date for presentation of defense evidence was moved to December 13, 2004. On that date, petitioner testified on direct examination and cross-examination began, but for lack of material time, continuation thereof was set for January 6, 2005. In an Order[3] dated March 11, 2005, the conduct of the proceedings was summarized by the trial court as follows:

> For resolution is the motion by the Private Prosecutor to have the direct examination of Hilario Soriano [herein petitioner] be stricken off the record, considering that said accused failed to appear during the continuation of his cross examination on March 10, 2005.
> x x x
>
> Record shows that accused Hilario Soriano was presented for his direct examination on December 13, 2004 and per Order of said date, his cross examination was deferred on the request of the Private Prosecutor to January 6 & 17, 2005. **On January 6, 2005, the hearing was cancelled** since accused was said to be indisposed. On January 17, 2005, the cross examination of the accused pushed through, but for lack of material time it was reset to March 10, April 5 and 21, 2005. **On March 10, 2005, accused was reported to be, again, indisposed** and this reasoning irked the Private Prosecutor and caused him to make unpalatable remarks before the Court.
>
> Under the circumstances, the Court is constrained to grant the request for postponement by the accused, however, with a warning that if at the next setting on April 5, 2005 the hearing will be cancelled for any reason that may be advanced by the defense, the Court will be constrained to grant the present motion by the prosecution. Additionally, the accused is given five (5) days from today within which to submit a verified medical certificate.[4]

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[3] Records, Vol. III, pp. 1666-1667.

[4] *Id*. at 1666. (Emphasis supplied.)

Petitioner appeared at the April 5, 2005 hearing, but cross-examination was still not finished. At the next hearing date of April 21, 2005, cross- examination had to be cut short, because petitioner was again not feeling well. The following hearing date was set for June 2, 2005.

In an Urgent Motion to Reset Hearing dated May 18, 2005, petitioner's counsel moved that the hearing on June 2, 2005 be reset to June 23, 2005, on the ground that said counsel had a previously scheduled hearing in a case involving his own personal property. The prosecution strongly opposed said motion. However, in an Order[5] dated May 26, 2005, the trial court granted petitioner's motion for postponement, "provided that another cancellation thereof, at the defense's instance and *sans* any cogent reason therefor, shall no longer be accommodated."

At the June 23, 2005 hearing, the cross-examination on petitioner was concluded. A hearing was set on July 19, 2005 for the redirect examination of petitioner. Petitioner appeared on July 19, 2005 only to submit a copy of the Withdrawal of Appearance[6] of Atty. Sedfrey A. Ordoñez. Hence, the hearing was cancelled due to the absence of both the state prosecutor and petitioner's counsel. In an Urgent Motion dated July 2, 2005 filed by the private prosecutor, the prosecution moved that the collaborating counsel for petitioner, Atty. Lamberto Gonzales, Jr., be directed to take over for the defense so as not to delay the proceedings. However, on August 5, 2005, the trial court received a Notice of Withdrawal of Appearance filed by Atty. Lamberto A. Gonzales, Jr.

Petitioner then filed an *Ex Parte* Manifestation dated August 10, 2005, stating that he needed at least 60 days from receipt of the Order of the court approving the withdrawal of appearance of his former counsels, within which to secure the services of new counsel. In an Order[7] dated August 11, 2005, the trial court ordered:

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[5] *Id*. at 1678-1679.

[6] *Id*. at 1682.

[7] *Id*. at 1701-1702.

Both accused are, thus, directed to engage the services of another counsel to represent them in the trial of their cases, particularly on September 22, October 11 and 20, November 17 and December 1 and 13, 2005, all at 8:30 o'clock in the morning. The Court emphasizes that any intent to unduly delay the prosecution of these cases by the accused will not be countenanced.[8]

On August 31, 2005, petitioner himself filed an Omnibus Motion stating that due to his difficulty in securing the services of new counsel, he was praying that (1) he be granted a period of 60 days from receipt of the Order of the court approving the withdrawal of appearance of his former counsels, within which to secure the services of new counsel; and (2) the hearings set for September 22, 2005, October 11, 2005, and October 20, 2005, all be cancelled, and future hearing dates be set after entry of appearance of his new counsel. Said motion was vehemently opposed by the prosecution.

On September 15, 2005, an Entry of Appearance[9] of the law firm Chato & Vinzons-Chato was filed with the trial court, along with a Motion to Cancel the Hearing on September 22, 2005, due to counsel's need for more time to study the case and a conflict in schedule.

At the hearing on September 22, 2005, the trial court issued, in open court, an Order, the pertinent portion of which stated, thus:

As regards the "Motion to Cancel Hearing Date" scheduled on September 22, 2005 incorporated in the "Entry of Appearance" of the new defense counsel, the Court is inclined to DENY the same. As pointed out by the Private Prosecutor, Atty. Romero's motion to cancel today's hearing failed to attach proof of his alleged conflict of schedule. More so, his law firm could have sent another lawyer to represent its client.

As prayed for by the prosecution, the re-direct examination of accused Hilario P. Soriano has been waived. Let the presentation of another defense witness proceed on October 11 and 20,

[8] *Id*. at 1702.

[9] *Id*. at 1735-1736.

November 17, December 1 and 13, 2005, all at 8:30 o'clock in the morning, as previously scheduled.[10]

Petitioner moved for reconsideration, but in an Order dated November 25, 2005, the trial court denied the same and affirmed the directive that petitioner's redirect examination be deemed waived.

On January 27, 2006, petitioner filed a petition for *certiorari* with the CA, alleging that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction when it deemed petitioner's redirect examination waived. The CA then issued the assailed Decision dated August 31, 2006, ruling that no grave abuse of discretion was committed by the trial court, because it had to ensure that deliberate delay on the part of one party would be avoided. Petitioner's motion for reconsideration of the Decision was denied in a Resolution dated November 7, 2006.

Hence, this petition for review on *certiorari* where the sole issue is whether the CA gravely erred in ruling that the trial court did not commit grave abuse of discretion in considering petitioner's redirect examination waived.

The petition must be struck down.

In *Ligeralde v. Patalinghug*,[11] the Court reiterated the established definition of grave abuse of discretion, to wit:

> x x x By grave abuse of discretion is meant such **capricious or whimsical exercise of judgment** as is equivalent to lack of jurisdiction. The abuse of discretion must be **patent and gross** as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where **the power is exercised in an arbitrary and despotic manner** by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.[12]

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[10] *Id.* at 1741.

[11] G.R. No. 168796, April 15, 2010, 618 SCRA 315.

[12] *Id.* at 320.

In this case, the CA was correct in holding that there was no such capricious, arbitrary or despotic exercise of power by the trial court. The records clearly show that the trial court had been very patient and reasonable, granting petitioner's numerous requests for postponement. Subsequently, the confluence of events revealed petitioner's propensity to delay the proceedings and the trial court had to put a stop to such conduct.

As discussed in the narration of facts abovementioned, petitioner failed to appear at several hearing dates for his cross-examination, thus, already causing delay. Upon conclusion of cross-examination, petitioner was granted several hearing dates for redirect examination, but he squandered them away. On July 19, 2005, the first date supposedly for his redirect examination, he submitted his original counsel's Withdrawal of Appearance. Fortunately for him, the trial court cancelled said July 19 hearing. On August 5, 2005, his other counsel, Atty. Lamberto Gonzales, Jr., also withdrew his appearance. In the Order dated August 11, 2005, the trial court already directed petitioner to engage the services of another counsel as the next trial date was set for September 22, 2005. From that time, petitioner had sufficient notice of the next hearing date and it was incumbent upon him to exert all efforts to get the services of a new one. At this point, **it should be noted that the withdrawal of appearance of his original counsels was with his conformity**. Indeed, the timing of the withdrawal of appearance of counsel makes the Court wary of petitioner's reasons or motivations for allowing his lawyer to leave him without the services of counsel at such a crucial time, right on the day when he was to give his testimony on redirect examination.

He now bewails the fact that the trial court denied his motion to cancel the September 22, 2005 hearing and deemed his redirect examination waived, but petitioner only has himself to blame for his quandary. He should not have allowed his original lawyers to withdraw their services until such time that he had obtained the services of new counsel. The trial court cannot be expected to allow the proceedings to be delayed and continued only when petitioner finds it convenient for himself.

In the closely analogous case of *Philippine Banking Corporation v. Court of Appeals*,[13] the Court held that the CA correctly ruled that a party had waived its right to conduct redirect examination of a witness because of said party's postponement of the hearings three times due to its witness's failure to appear.[14] The Court cannot tolerate a party's propensity to delay the case.

IN VIEW OF THE FOREGOING, the Petition is *DENIED.* The Decision and Resolution of the Court of Appeals, dated August 31, 2006 and November 7, 2006, respectively, are hereby *AFFIRMED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176287. January 31, 2011]

HOSPITAL MANAGEMENT SERVICES, INC. - MEDICAL CENTER MANILA, *petitioner, vs.* **HOSPITAL MANAGEMENT SERVICES, INC. – MEDICAL CENTER MANILA EMPLOYEES ASSOCIATION-AFW and EDNA R. DE CASTRO,** *respondents.*

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[13] 464 Phil. 614 (2004).

[14] *Id.* at 640.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 939 dated January 24, 2011.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; NEGLECT OF DUTY MUST BE BOTH GROSS AND HABITUAL TO BE A VALID GROUND FOR DISMISSAL; A SINGLE OR ISOLATED ACT OF NEGLIGENCE DOES NOT CONSTITUTE A JUST CAUSE FOR THE DISMISSAL OF THE EMPLOYEE; APPLICATION.— Neglect of duty, to be a ground for dismissal, must be both gross and habitual. 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. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. Despite our finding of culpability against respondent De Castro; however, we do not see any wrongful intent, deliberate refusal, or bad faith on her part when, instead of personally attending to patient Causaren, she requested Nursing Assistant Tatad and ward-clerk orientee Guillergan to see the patient, as she was then attending to a newly-admitted patient at Room 710. It was her judgment call, albeit an error of judgment, being the staff nurse with presumably more work experience and better learning curve, to send Nursing Assistant Tatad and ward-clerk orientee Guillergan to check on the health condition of the patient, as she deemed it best, under the given situation, to attend to a newly-admitted patient who had more concerns that needed to be addressed accordingly. Being her first offense, respondent De Castro cannot be said to be grossly negligent so as to justify her termination of employment. Moreover, petitioners' allegation, that respondent De Castro exerted undue pressure upon her co-nurses to alter the actual time of the incident so as to exculpate her from any liability, was not clearly substantiated.

2. ID.; ID.; NEGLIGENCE; DEFINED; AN ACT OR OMISSION THAT FALLS SHORT OF THE REQUIRED DEGREE OF CARE AND DILIGENCE AMOUNTS TO SERIOUS MISCONDUCT WHICH CONSTITUTES A SUFFICIENT GROUND FOR DISMISSAL.— Negligence is defined as the failure to exercise the standard of care that a reasonably prudent

person would have exercised in a similar situation. The Court emphasizes that the nature of the business of a hospital requires a higher degree of caution and exacting standard of diligence in patient management and health care as what is involved are lives of patients who seek urgent medical assistance. An act or omission that falls short of the required degree of care and diligence amounts to serious misconduct which constitutes a sufficient ground for dismissal.

3. ID.; ID.; GROSS NEGLIGENCE; PENALTY OF SUSPENSION IMPOSED INSTEAD OF DISMISSAL; MITIGATING CIRCUMSTANCES CONSIDERED IN THE IMPOSITION OF THE PENALTY.— [I]in some cases, the Court had ruled that sanctioning an erring employee with suspension would suffice as the extreme penalty of dismissal would be too harsh. Considering that this was the first offense of respondent De Castro in her nine (9) years of employment with petitioner hospital as a staff nurse without any previous derogatory record and, further, as her lapse was not characterized by any wrongful motive or deceitful conduct, the Court deems it appropriate that, instead of the harsh penalty of dismissal, she would be suspended for a period of six (6) months without pay, inclusive of the suspension for a period of 14 days which she had earlier served. Thereafter, petitioner hospital should reinstate respondent Edna R. De Castro to her former position without loss of seniority rights, full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the expiration of her suspension of six (6) months up to the time of actual reinstatement.

APPEARANCES OF COUNSEL

Kalaw Sy Selva & Campos for petitioner.
Edgar R. Martir for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* seeking to set aside the Decision[1] dated May 24, 2006 and Resolution[2] dated January 10, 2007 of the Court of Appeals (CA), Special First Division, in CA-G.R. SP No. 73189, entitled *Hospital Management Services, Inc.-Medical Center Manila Employees Association-AFW and Edna R. De Castro v. National Labor Relations Commission, Hospital Management Services, Inc.-Medical Center Manila and Asuncion Abaya-Morido,* which reversed and set aside the Decision[3] dated February 28, 2002 of the National Labor Relations Commission (NLRC), Second Division, in NLRC NCR No. 00-07-07716-99 (CA No. 027766-01), and its Resolution[4] dated May 31, 2002. The assailed CA decision ordered petitioner Hospital Management Services, Inc.-Medical Center Manila to reinstate respondent Edna R. De Castro to her former position without loss of seniority rights or by payroll reinstatement, pursuant to the Labor Arbiter's Decision dated January 18, 2001, but with payment of full backwages and other benefits or their monetary equivalent, computed from the expiration of the 14-day suspension period up to actual reinstatement.

The antecedent facts are as follows:

Respondent De Castro started working as a staff nurse at petitioner hospital since September 28, 1990, until she was dismissed on July 20, 1999.

Between 2:00 a.m. to 3:00 a.m. of March 24, 1999, while respondent De Castro and ward-clerk orientee Gina Guillergan

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[1] Penned by Associate Justice Ruben T. Reyes (now a retired member of this Court), with Associate Justices Hakim S. Abdulwahid and Aurora Santiago-Lagman, concurring, *rollo*, pp. 24-39.

[2] *Id.* at 41-42.

[3] Penned by Presiding Commissioner Raul T. Aquino, with Commissioners Victoriano R. Calaycay and Angelita A. Gacutan, concurring; *id*. at 100-114.

[4] *Id.* at 116-117.

were at the nurse station on night duty (from 10:00 p.m. of March 23, 1999 to 6:00 a.m. of March 24, 1999), one Rufina Causaren, an 81-year-old patient confined at Room 724-1 of petitioner hospital for "gangrenous wound on her right anterior leg and right forefoot" and scheduled for operation on March 26, 1999, fell from the right side of the bed as she was trying to reach for the bedpan. Because of what happened, the niece of patient Causaren staying in the room was awakened and she sought assistance from the nurse station. Instead of personally seeing the patient, respondent De Castro directed ward-clerk orientee Guillergan to check the patient. The vital signs of the patient were normal. Later, the physician on duty and the nursing staff on duty for the next shift again attended to patient Causaren.

Chief Nurse Josefina M. Villanueva informed Dr. Asuncion Abaya-Morido, president and hospital director, about the incident and requested for a formal investigation. On May 11, 1999, the legal counsel of petitioner hospital directed respondent De Castro and three other nurses on duty, Staff Nurse Janith V. Paderes and Nursing Assistants Marilou Respicio and Bertilla T. Tatad, to appear before the Investigation Committee on May 13, 1999, 2:00 p.m., at the conference room of petitioner hospital. During the committee investigation, respondent De Castro explained that at around 2:30 a.m. to 3:00 a.m., she was attending to a newly-admitted patient at Room 710 and, because of this, she instructed Nursing Assistant Tatad to check the vital signs of patient Causaren, with ward-clerk orientee Guillergan accompanying the latter. When the two arrived at the room, the patient was in a squatting position, with the right arm on the bed and the left hand holding on to a chair.

In the Investigation Report[5] dated May 20, 1999, the Investigation Committee found that the subject incident happened between 11:00 a.m. to 11:30 a.m. of March 23, 1999. The three other nurses for the shift were not at the nurse station. Staff Nurse Paderes was then in another nurse station encoding

[5] Prepared by UPSIPHI-Legal Counsel Atty. Zaldy V. Trespeses, Chief Nurse Josefina M. Villanueva, and HRD Head Janette A. Calixijan, *id.* at 59-62.

the medicines for the current admissions of patients, while Nursing Assistant Respicio was making the door name tags of admitted patients and Nursing Assistant Tatad delivered some specimens to the laboratory. The committee recommended that despite her more than seven years of service, respondent De Castro should be terminated from employment for her lapse in responding to the incident and for trying to manipulate and influence her staff to cover-up the incident. As for Staff Nurse Paderes and Nursing Assistants Respicio and Tatad, the committee recommended that they be issued warning notices for failure to note the incident and endorse it to the next duty shift and, although they did not have any knowledge of the incident, they should be reminded not to succumb to pressure from their superiors in distorting the facts.

On July 5, 1999, Janette A. Calixijan, HRD Officer of petitioner hospital, issued a notice of termination, duly noted by Dr. Abaya-Morido, upon respondent De Castro, effective at the close of office hours of July 20, 1999, for alleged violation of company rules and regulations, particularly paragraph 16 (a), Item 3, Chapter XI of the Employee's Handbook and Policy Manual of 1996 (Employee's Handbook):[6] (1) negligence to follow company policy on what to do with patient Rufina Causaren who fell from a hospital bed; (2) failure to record and refer the incident to the physician [on duty and] allow[ing] a significant lapse of time before reporting the incident; (3) deliberately instructing the staff to follow her version of the incident in order to cover up the lapse; and (4) negligence and carelessness in carrying out her duty as staff nurse-on-duty when the incident happened.

On July 21, 1999, respondent De Castro, with the assistance of respondent Hospital Management Services Inc.-Medical Center Manila Employees Association-AFW, filed a Complaint[7] for illegal

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[6] COMPANY RULES A – Serious Offense: Disciplinary Action: for Discharge/Termination

xxx xxx xxx

16. Other serious offenses or commission of acts inimical to the interest of the corporation. x x x (CA *rollo,* pp. 58-59)

[7] CA *rollo,* at 32.

dismissal against petitioners with prayer for reinstatement and claim of full backwages without loss of seniority rights, ₱20,000.00 moral damages, ₱10,000.00 exemplary damages, and 10% of the total monetary award as attorney's fees.

On January 18, 2001, the Labor Arbiter rendered a Decision,[8] ordering petitioner hospital to reinstate respondent De Castro to her former position or by payroll reinstatement, at the option of the former, without loss of seniority rights, but without backwages and, also, directing petitioners to notify her to report to work. Her prayer for damages and attorney's fees was denied. The Labor Arbiter concluded that although respondent De Castro committed the act complained of, being her first offense, the penalty to be meted should not be dismissal from the service, but merely 7 to 14 days suspension as the same was classified as a less serious offense under the Employee's Handbook.

On appeal by respondent De Castro, the NLRC rendered a Decision dated February 28, 2002, reversing the findings of the Labor Arbiter and dismissing the complaint against the petitioners. It observed that respondent De Castro lacked diligence and prudence in carrying out her duty when, instead of personally checking on the condition of patient Causaren after she fell from the bed, she merely sent ward-clerk orientee Guillergan to do the same in her behalf and for influencing her staff to conceal the incident.

On May 31, 2002, the NLRC denied respondent De Castro's Motion for Reconsideration dated April 16, 2002.

On May 24, 2006, the CA reversed and set aside the Decision of the NLRC and reinstated the Decision of the Labor Arbiter, with modification that respondent De Castro should be entitled to payment of full backwages and other benefits, or their monetary equivalent, computed from the expiration of the 14-day suspension period up to actual reinstatement. The CA ruled that while respondent De Castro's failure to personally attend to patient Causeran amounted to misconduct, however, being her first

[8] Per Felipe T. Garduque II, *rollo* pp. 81-87.

offense, such misconduct could not be categorized as serious or grave that would warrant the extreme penalty of termination from the service after having been employed for almost 9 years. It added that the subject infraction was a less serious offense classified under "commission of negligent or careless acts during working time or on company property that resulted in the personal injury or property damage causing expenses to be incurred by the company" stated in subparagraph 11, paragraph 3 (B), Chapter XI [on the Rules on Discipline] of the Employee's Handbook[9] of petitioner hospital. The CA did not sustain the NLRC's ruling that respondent De Castro's dismissal was proper on the ground that her offense was aggravated to serious misconduct on account of her alleged act of asking her co-employees to lie for her as this fact was not proven.

Petitioners' motion for reconsideration was denied by the CA in the Resolution dated January 10, 2007.

Hence, this present petition.

Petitioners allege that the deliberate refusal to attend to patient Causaren after the latter fell from the bed justifies respondent De Castro's termination from employment due to serious misconduct. They claim that respondent De Castro failed to: (a) personally assist the patient; (b) check her vital signs and examine if she sustained any injury; (c) refer the matter to the patient's attending physician or any physician on duty; and (d) note the incident in the report sheet for endorsement to the next shift for proper monitoring. They also aver that respondent De Castro persuaded her co-nurses to follow her version of what transpired so as to cover up her nonfeasance.

In her Comment, respondent De Castro counters that there was no serious misconduct or gross negligence committed, but simple misconduct or minor negligence which would warrant the penalty of 7 to 14 days of suspension under the Employee's Handbook of petitioner hospital. She denies exerting influence over the four nursing personnel, but points out that it was Chief

[9] CA *rollo*, p. 60.

Nurse Villanueva, a close friend of patient Causaren's niece, who persuaded the four nursing staff to retract their statements appearing in the incident reports as to the approximate time of occurrence, from 2:00 a.m. to 3:00 a.m. of March 24, 1999 to 11:00 a.m. to 11:30 p.m. of March 23, 1999, so as to pin her for negligence. She appeals for leniency, considering that the subject infraction was her first offense in a span of almost nine years of employment with petitioner hospital.

We affirm with modification the CA ruling which declared petitioners guilty of illegal dismissal.

Article 282 (b) of the Labor Code provides that an employer may terminate an employment for gross and habitual neglect by the employee of his duties. The CA ruled that per the Employee's Handbook of petitioner hospital, respondent De Castro's infraction is classified as a less serious offense for "commission of negligent acts during working time" as set forth in subparagraph 11, paragraph 3 (B) of Chapter XI[10] thereof. Petitioners anchor respondent De Castro's termination of employment on the ground of serious misconduct for failure to personally attend to patient Causaren who fell from the bed as she was trying to reach for the bedpan. Based on her evaluation of the situation, respondent De Castro saw no necessity to record in the chart of patient Causaren the fact that she fell from the bed as the patient did not suffer any injury and her vital signs were normal. She surmised that the incident was not of a magnitude that would require medical intervention as even the patient and her niece did not press charges against her by reason of the subject incident.

It is incumbent upon respondent De Castro to ensure that patients, covered by the nurse station to which she was assigned, be accorded utmost health care at all times without any qualification or distinction. Respondent De Castro's failure to personally assist patient Causaren, check her vital signs and examine if she sustained any injury, refer the matter to the patient's attending physician or any physician-on-duty, and note the incident in the report sheet for endorsement to the next shift for proper

[10] *See* note 9.

monitoring constitute serious misconduct that warrants her termination of employment. After attending to the toxic patients under her area of responsibility, respondent De Castro should have immediately proceeded to check the health condition of patient Causaren and, if necessary, request the physician-on-duty to diagnose her further. More importantly, respondent De Castro should make everything of record in the patient's chart as there might be a possibility that while the patient may appear to be normal at the time she was initially examined, an injury as a consequence of her fall may become manifest only in the succeeding days of her confinement. The patient's chart is a repository of one's medical history and, in this regard, respondent De Castro should have recorded the subject incident in the chart of patient Causaren so that any subsequent discomfort or injury of the patient arising from the incident may be accorded proper medical treatment.

Neglect of duty, to be a ground for dismissal, must be both gross and habitual. 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. A single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[11] Despite our finding of culpability against respondent De Castro; however, we do not see any wrongful intent, deliberate refusal, or bad faith on her part when, instead of personally attending to patient Causaren, she requested Nursing Assistant Tatad and ward-clerk orientee Guillergan to see the patient, as she was then attending to a newly-admitted patient at Room 710. It was her judgment call, albeit an error of judgment, being the staff nurse with presumably more work experience and better learning curve, to send Nursing Assistant Tatad and ward-clerk orientee Guillergan to check on the health condition of the patient, as she deemed it best, under the given situation, to attend to a newly-admitted patient who had more concerns that needed to be addressed accordingly. Being her first offense, respondent De Castro cannot be said to be grossly negligent so as to justify

[11] *St. Luke's Medical Center, Inc. and Robert Kuan v. Estrelito Notario*, G.R. No. 152166, October 20, 2010. (Citation omitted)

her termination of employment. Moreover, petitioners' allegation, that respondent De Castro exerted undue pressure upon her co-nurses to alter the actual time of the incident so as to exculpate her from any liability, was not clearly substantiated.

Negligence is defined as the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation.[12] The Court emphasizes that the nature of the business of a hospital requires a higher degree of caution and exacting standard of diligence in patient management and health care as what is involved are lives of patients who seek urgent medical assistance. An act or omission that falls short of the required degree of care and diligence amounts to serious misconduct which constitutes a sufficient ground for dismissal.

However, in some cases, the Court had ruled that sanctioning an erring employee with suspension would suffice as the extreme penalty of dismissal would be too harsh.[13] Considering that this was the first offense of respondent De Castro in her nine (9) years of employment with petitioner hospital as a staff nurse without any previous derogatory record and, further, as her lapse was not characterized by any wrongful motive or deceitful conduct, the Court deems it appropriate that, instead of the harsh penalty of dismissal, she would be suspended for a period of six (6) months without pay, inclusive of the suspension for a period of 14 days which she had earlier served. Thereafter, petitioner hospital should reinstate respondent Edna R. De Castro to her former position without loss of seniority rights, full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the expiration of her suspension of six (6) months up to the time of actual reinstatement.

WHEREFORE, the petition is *DENIED*. The Decision dated May 24, 2006 and Resolution dated January 10, 2007 of the

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[12] *Janssen Pharmaceutica v. Silayro*, G.R. No. 172528, February 26, 2008, 546 SCRA 628.

[13] *Id.*; *Perez v. Medical City General Hospital*, G.R. No. 150198, March 6, 2006, 484 SCRA 138; *National Sugar Refineries Corporation v. NLRC*, G.R. No. 112539, June 21, 1999, 308 SCRA 599; *Offshore Industries, Inc. v. NLRC (5th Division)*, G.R. No. 83108, August 29, 1989, 177 SCRA 50.

Court of Appeals, Special First Division, in CA-G.R. SP No. 73189, which reversed and set aside the Decision dated February 28, 2002 and Resolution dated May 31, 2002 of the National Labor Relations Commission, Second Division, are *AFFIRMED WITH MODIFICATION* insofar as respondent Edna R. De Castro is found guilty of gross negligence and is *SUSPENDED* for a period of *SIX (6) MONTHS* without pay, inclusive of the suspension for a period of 14 days which she had earlier served. Petitioner Hospital Management Services, Inc.-Medical Center Manila is *ORDERED* to reinstate respondent Edna R. De Castro to her former position without loss of seniority rights, full backwages, inclusive of allowances and other benefits, or their monetary equivalent, computed from the expiration of her suspension of six (6) months up to the time of actual reinstatement.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179961. January 31, 2011]

KEPCO PHILIPPINES CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; VALUE-ADDED TAX (VAT); REFUND OR CREDIT OF INPUT VAT ON ZERO-RATED SALES; INVOICING REQUIREMENTS; FOR THE EFFECTIVE ZERO RATING OF SERVICES RENDERED TO THE

NATIONAL POWER CORPORATION, THE VAT-REGISTERED TAXPAYER MUST COMPLY WITH THE INVOICING REQUIREMENTS INCLUDING THE IMPRINTING OF THE WORDS "ZERO-RATED" IN ITS VAT OFFICIAL RECEIPTS AND INVOICES.— The pertinent laws governing the present case is Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act (*R.A.*) No. 6395 (The Revised NPC Charter), as amended by Presidential Decree (*P.D.*) Nos. 380 and 938 xxx. Based on the afore-quoted provisions, there is no doubt that NPC is an entity with a special charter and exempt from payment of all forms of taxes, including VAT. As such, services rendered by any VAT-registered person/entity, like Kepco, to NPC are effectively subject to zero percent (0%) rate. For the effective zero rating of such services, however, the VAT-registered taxpayer must comply with invoicing requirements under Sections 113 and 237 of the 1997 NIRC as implemented by Section 4.108-1 of R.R. No. 7-95, thus: x x x. **Section 4.108-1. Invoicing Requirements**.- All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show: x x x **5. The word "zero-rated" imprinted on the invoice covering zero-rated sales;** x x x. Indeed, it is the duty of Kepco to comply with the requirements, including the imprinting of the words "zero-rated" in its VAT official receipts and invoices in order for its sales of electricity to NPC to qualify for zero-rating.

2. ID.; ID.; ID.; ID.; ID.; RATIONALE.— [T]he requirement of imprinting the word "zero-rated" on the invoices or receipts under Section 4.108-1 of R.R. No. 7-95 is mandatory as ruled by the CTA *En Banc*, citing *Tropitek International, Inc. v. Commissioner of Internal Revenue.* In *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, the CTA *En Banc* explained the rationale behind such requirement in this wise: The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely: 1. Zero-rated sales [Sec. 106(A)(2) and Sec. 108(B)]; 2. Exempt transactions [Sec. 109] in relation to Sec. 112(A); 3. Tax Credits

[Sec. 110]; and 4. Refunds or tax credits of input tax [Sec. 112] x x x Records disclose, as correctly found by the CTA that Kepco failed to substantiate the claimed zero-rated sales of ₱10,514,023.92. The wordings "zero-rated sales" were not imprinted on the VAT official receipts presented by Kepco (marked as Exhibits S to S-11) for taxable year 1999, in clear violation of Section 4.108-1 of R.R. No. 7-95 and the condition imposed under its approved Application/Certificate for Zero-rate as well.

3. ID.; ID.; ID.; ID.; SECTION 4.108-1 OF REVENUE REGULATION 7-95 DID NOT EXPAND THE LETTER AND SPIRIT OF SECTION 113 OF 1997 TAX CODE BUT IT IS MERELY A PRECAUTIONARY MEASURE TO ENSURE THE EFFECTIVE IMPLEMENTATION OF THE TAX CODE; IMPRINTING REQUIREMENT ON VAT INVOICES OR OFFICIAL RECEIPTS, DECLARED VALID.— Kepco's claim that Section 4.108-1 of R.R. 7-95 expanded the letter and spirit of Section 113 of 1997 Tax Code, is unavailing. Indubitably, said revenue regulation is merely a precautionary measure to ensure the effective implementation of the Tax Code. It was not used by the CTA to expound the meaning of Sections 113 and 237 of the NIRC. As a matter of fact, the provision of Section 4.108-1 of R.R. 7-95 was incorporated in Section 113 (B)(2)(c) of R.A. No. 9337, which states that *"if the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt."* This, in effect, and as correctly concluded by the CIR, confirms the validity of the imprinting requirement on VAT invoices or official receipts even prior to the enactment of R.A. No. 9337 under the principle of legislative approval of administrative interpretation by reenactment.

4. ID.; ID.; ID.; ID.; EFFECT OF NON-COMPLIANCE WITH THE INVOICING REQUIREMENT; SECTION 264 OF THE 1997 NATIONAL INTERNAL REVENUE CODE (NIRC) WAS NOT INTENDED TO EXCUSE THE COMPLIANCE OF THE SUBSTANTIVE INVOICING REQUIREMENT NEEDED TO JUSTIFY A CLAIM FOR REFUND ON INPUT VAT PAYMENTS.— Section 264 categorically provides for penalties in case of "Failure or Refusal

to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations," but not to penalties for failure to comply with the requirement of invoicing. As recently held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*, "Section 264 of the 1997 NIRC was not intended to excuse the compliance of the substantive invoicing requirement needed to justify a claim for refund on input VAT payments." Thus, for Kepco's failure to substantiate its effectively zero-rated sales for the taxable year 1999, the claimed ₱10,527,202.54 input VAT cannot be refunded.

5. ID.; ID.; ID.; ID.; FAILURE TO PRINT THE WORD "ZERO-RATED" ON THE INVOICES OR RECEIPTS IS FATAL TO THE CLAIM FOR REFUND; ACTIONS FOR TAX REFUND ARE IN THE NATURE OF A CLAIM FOR EXEMPTION, WHICH IS CONSTRUED *STRICTISSIMI JURIS* AGAINST THE TAXPAYER.— [T]his Court has consistently held that failure to print the word "zero-rated" on the invoices or receipts is fatal to a claim for refund or credit of input VAT on zero-rated sales. Contrary to Kepco's view, the denial of its claim for refund of input tax is not a harsh penalty. The invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of its claim. Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure assailing the May 17, 2007 Decision[1] of the Court of Tax Appeals *En Banc (CTA)*, in C.T.A. E.B. No. 186 entitled "*KEPCO Philippines Corporation v. Commissioner of Internal Revenue*," which denied petitioner's claim for refund or issuance of tax credit certificate for the unapplied input value-added taxes attributable to zero-rated sales of services for taxable year 1999, as well as its Resolution, dated September 28, 2007, which denied the motion for reconsideration of the said decision.

THE FACTS

Petitioner Kepco Philippines Corporation (*Kepco*) is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It is a value-added tax *(VAT)* registered taxpayer engaged in the production and sale of electricity as an independent power producer. It sells its electricity to the National Power Corporation (*NPC*). Kepco filed with respondent Commissioner of Internal Revenue (*CIR*) an application for effective zero-rating of its sales of electricity to the NPC.

Kepco alleged that for the taxable year 1999, it incurred input VAT in the amount of ₱10,527,202.54 on its domestic purchases of goods and services that were used in its production and sale of electricity to NPC for the same period. In its 1999 quarterly VAT returns filed with the Bureau of Internal Revenue (BIR) on March 30, 2000, Kepco declared the said input VAT as follows:

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[1] *Rollo*, pp. 61-71. Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castaneda, Jr., Lovell R. Bautista, Erlinda P. Uy and Olga Palanca-Enriquez, concurring. Presiding Justice Ernesto D. Acosta with concurring and dissenting opinion.

INPUT TAX

Exhibit	1999	Carried-over from previous quarter	This quarter	Carried over to next quarter
A	1st qtr	100,564,209.14	4,804,974.70	105,369,183.84
B	2nd qtr	105,369,183.84	1,461,960.38	106,831,144.22
C	3rd qtr	106,831,144.22	2,563,288.00	109,394,432.22
D	4th qtr	109,394,432.22	1,696,979.46	111,091,411.68
		TOTAL	₱10,527,202.54:[2]	

Thus, on January 29, 2001, Kepco filed an administrative claim for refund corresponding to its reported unutilized input VAT for the four quarters of 1999 in the amount of ₱10,527,202.54. Thereafter, on April 24, 2001, Kepco filed a petition for review before the CTA pursuant to Section 112(A) of the 1997 National Internal Revenue Code (NIRC), which grants refund of unutilized input taxes attributable to zero-rated or effectively zero-rated sales. This was docketed as CTA Case No. 6287.

On August 31, 2005, the CTA Second Division rendered a decision[3] denying Kepco's claim for refund for failure to properly substantiate its effectively zero-rated sales for the taxable year 1999 in the total amount of ₱860,340,488.96, with the alleged input VAT of ₱10,527,202.54 directly attributable thereto. The tax court held that Kepco failed to comply with the invoicing requirements in clear violation of Section 4.108-1 of Revenue Regulations *(R.R.)* No. 7-95, implementing Section 108(B)(3) in conjunction with Section 113 of the 1997 NIRC.

In view of the denial of its motion for reconsideration, Kepco filed an appeal via petition for review before the CTA *En Banc*, on the ground that the CTA Second Division erred in not considering the amount of ₱10,514,023.92 as refundable tax credit and in failing to appreciate that it was exclusively selling electricity to NPC, a tax exempt entity.

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[2] *Id*. at 62.

[3] Annex "C", Petition, *id*. at 78-90.

On May 17, 2007, the CTA *En Banc* dismissed the petition, reasoning out that Kepco's failure to comply with the requirement of imprinting the words "zero-rated" on its official receipts resulted in non-entitlement to the benefit of VAT zero-rating and denial of its claim for refund of input tax. The decision reads in part:

> In sum, the Court *En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the assailed August 31, 2005 Decision and May 4, 2006 Resolution of the CTA Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the evidence in their own perspective of things, which unfortunately had already been considered and passed upon.
>
> WHEREFORE, the instant Petition is hereby **DENIED DUE COURSE** and **DISMISSED** for lack of merit.
>
> SO ORDERED.[4]

Presiding Justice Ernesto D. Acosta agreed with the majority that services rendered by a VAT-registered entity to the NPC, a tax-exempt entity, were effectively zero-rated. He was likewise of the view that Kepco's claim could not be granted because it presented official receipts which were not in sequence indicating, that it might have sold electricity to entities other than NPC. But, he strongly dissented on the outright rejection of Kepco's refund claim for failure to comply with the imprinting requirements. His dissenting opinion states in part:

> However, I dissent to the majority's finding that imprinting the term "zero-rated" as well as the BIR authority to print or BIR Permit marker on duly registered Value Added Tax (VAT) official receipts/ invoices is necessary such that non-compliance would result to the outright denial of petitioner's claim.
>
> xxx xxx xxx
>
> Clearly, the applicable provisions of the Tax Code does not require the word "zero-rated" or the other information required by the majority in the invoice/official receipt. The "requirement" of imprinting the questioned information on the VAT invoice or receipt can be found in Section 4.108-1 of Revenue Regulations No. 7-95 (*The Implementing Rules and Regulations of the VAT law*). Then

[4] Annex B, Petition, *id.* at 71.

again, the said provision is merely a regulation created for the sole and limited purpose of implementing an otherwise very exact law.

Moreover, granting for the sake of argument that the Revenue Regulations above cited may validly impose such requirements, no provision allows the outright rejection of a refund claim as penalty for a tax-payer's failure to abide by the requirements laid down in the said regulations.[5]

Kepco filed a motion for reconsideration of the decision but it was denied for lack of merit by the CTA *En Banc* in its Resolution[6] dated September 28, 2007.

Hence, Kepco interposes this petition praying for the reversal and setting aside of the May 17, 2007 CTA Decision anchored on the following

GROUNDS:

(I)

THE COURT OF TAX APPEALS *EN BANC* COMMITTED SERIOUS ERROR OF LAW WHEN IT RULED THAT PETITIONER'S FAILURE TO IMPRINT THE WORDS "ZERO-RATED" ON ITS VAT OFFICIAL RECEIPTS ISSUED TO NPC IS FATAL TO ITS CLAIM FOR REFUND OF UNUTILIZED INPUT TAX CREDITS.

(II)

PETITIONER HAS SUFFICIENTLY PROVEN THAT IT IS RIGHTFULLY ENTITLED TO A REFUND OR ISSUANCE OF TAX CREDIT CERTIFICATE IN THE AMOUNT OF PHP10,514,023.92.[7]

From the foregoing arguments, the principal issue to be resolved is whether Kepco's failure to imprint the words "zero-rated" on its official receipts issued to NPC justifies an outright denial of its claim for refund of unutilized input tax credits.

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[5] Annex B, Petition, *id*. at. 74-75.

[6] Annex A, Petition, *id*. at 51-53.

[7] *Id*. at 10-11.

Kepco contends that the provisions of the 1997 Tax Code, specifically Section 113 in relation to Section 237, do not mention the mandatory requirement of imprinting the words "zero-rated" to purchases covering zero-rated transactions. The only provision which requires the imprinting of the word "zero-rated" on VAT invoice or official receipt is Section 4.108-1 of R.R. No. 7-95. Kepco argues that the condition imposed by the said administrative issuance should not be controlling over Section 113 of the 1997 Tax Code, "considering the long-settled rule that administrative rules and regulations cannot expand the letter and spirit of the law they seek to enforce."

Kepco further argues that there is no law or regulation which imposes automatic denial of taxpayer's refund claim for failure to comply with the invoicing requirements. No jurisprudence sanctions the same, not even the *Atlas* case,[8] cited by the CTA *En Banc*. According to Kepco, although it agrees with the CTA ruling that administrative issuances, like BIR regulations, requiring an imprinting of "zero-rated" on zero-rating transactions should be strictly complied with, it opposes the outright denial of refund claim for non-compliance thereof. It insists that such automatic denial is too harsh a penalty and runs counter to the doctrine of *solutio indebiti* under Article 2154 of the New Civil Code.

The CIR, in his Comment,[9] counters that Kepco is not entitled to a tax refund because it was not able to substantiate the amount of ₱10,514,023.92 representing zero-rated transactions for failure to submit VAT official receipts and invoices imprinted with the wordings "zero-rated" in violation of Section 4.108-1 of R.R. 7-95.

The petition is bereft of merit.

The pertinent laws governing the present case is Section 108(B)(3) of the NIRC of 1997 in relation to Section 13 of Republic Act *(R.A.)* No. 6395 (The Revised NPC

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[8] *Atlas Consolidated Mining & Development Corporation v. Commissioner of Internal Revenue*, 376 Phil. 495 (1999).

[9] Dated January 6, 2009, *rollo* p. 612.

Charter), as amended by Presidential Decree *(P.D.)* Nos. 380 and 938, which provide as follows:

Sec. 108. Value-added Tax on Sale of Services and Use or Lease of Properties.-

(A) Rate and Base of Tax. – x x x

(B) Transactions Subject to Zero Percent (0%) Rate. – The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

xxx xxx xxx

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

xxx xxx xxx

Sec. 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. The Corporation shall be non-profit and shall devote all its return from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes, duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.

Based on the afore-quoted provisions, there is no doubt that NPC is an entity with a special charter and exempt from payment of all forms of taxes, including VAT. As such, services rendered by any VAT-registered person/entity, like Kepco, to NPC are effectively subject to zero percent (0%) rate.

For the effective zero rating of such services, however, the VAT-registered taxpayer must comply with invoicing requirements under Sections 113 and 237 of the 1997 NIRC as implemented by Section 4.108-1 of R.R. No. 7-95, thus:

Sec. 113. Invoicing and Accounting Requirements for VAT-Registered Persons. –

(A) Invoicing Requirements. – A VAT-registered person **shall, for every sale, issue an invoice or receipt.** In addition to the information required under Section 237, the following information shall be indicated in the invoice or receipt:

(1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number; and

(2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax.

(B) Accounting Requirements.– Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.[10] (Emphasis supplied)

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[10] The provision, as amended by RA 9337, now reads:

> Section 113. Invoicing and Accounting Requirements for VAT-registered Persons.-
>
> (A) Invoicing Requirements.- A VAT-registered person shall issue:
>
> (1) A VAT invoice for every sale, barter or exchange of goods and properties; and
>
> (2) A VAT official receipt for every lease of goods or properties, and for every sale, barter or exchange of services.
>
> (B) Information Contained in the VAT Invoice or VAT Official Receipt.- The following information shall be indicated in the VAT invoice or VAT official receipt:
>
> (1) A statement that the seller is a VAT-registered person, followed by his taxpayer's identification number (TIN);
>
> (2) The total amount which the purchaser pays or is obligated to pay to the seller with the indication that such amount includes the value-added tax; Provided, That:

Sec. 237. Issuance of Receipts or Sales or Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sales or commercial invoices, prepared at least in duplicate, showing

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(a) The amount of the tax shall be shown as a separate item in the invoice or receipt;

(b) If the sale is exempt from the value-added tax, the term "VAT-exempt sale" shall be written or printed prominently on the invoice or receipt;

(c) If the sale is subject to zero percent (0%) value-added tax, the term "zero-rated sale" shall be written or printed prominently on the invoice or receipt;

(d) If the sale involves goods, properties or services some of which are VAT zero-rated or VAT-exempt, the invoice or receipt shall clearly indicate the breakdown of the sale price between its taxable, exempt and zero-rated components, and the calculation of the value-added tax on each portion of the sale shall be shown on the invoice or receipt; Provided, That the seller may issue separate invoices or receipts for the taxable, exempt, and zero-rated components of the sale.

(3) The date of the transaction, quantity, unit cost and description of the goods or properties or nature of the service; and

(4) In the case of sales in the amount of one thousand pesos (₱1,000) or more where the sale or transfer is made to a VAT-registered person, the name, business style, if any, address and taxpayer identification number (TIN) of the purchaser, customer or client.

(C) Accounting Requirements. – Notwithstanding the provisions of Section 233, all persons subject to the value-added tax under Sections 106 and 108 shall, in addition to the regular accounting records required, maintain a subsidiary sales journal and subsidiary purchase journal on which the daily sales and purchases are recorded. The subsidiary journals shall contain such information as may be required by the Secretary of Finance.

(D) Consequence of Issuing Erroneous VAT Invoice or VAT Official Receipt. –

the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That in the case of sales, receipts or transfers in the amount of One Hundred Pesos (₱100.00) or more, or regardless of amount, where the sale or transfer is made by a person liable to value-added tax to another person also liable to value-added tax; or where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client; Provided, further, That where the purchaser is a VAT-registered person, in addition to the information herein required, the invoice or receipt shall further show the Taxpayer Identification Number (TIN) of the purchaser.

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(1) If a person who is not a VAT-registered person issues an invoice or receipt showing his Taxpayer Identification Number (TIN) followed by the word "VAT":

(a) The issuer shall, in addition to any liability to other percentage taxes, be liable to:

(i) The tax imposed in Section 106 or 108 without the benefit of any input tax credit; and

(ii) A 50% surcharge under Section 248 (B) of this Code;

(b) The VAT shall, if the other requisite information required under Subsection (B) hereof is shown on the invoice or receipt, be recognized as an input tax credit to the purchaser under Section 110 of this Code.

(2) If a VAT-registered person issues a VAT invoice or VAT official receipt for a VAT-exempt transaction, but fails to display prominently on the invoice or receipt the term "VAT-exempt Sale," the issuer shall be liable to account for the tax imposed in Section 106 or 108 as if Section 109 did not apply.

(E) Transitional Period.— Notwithstanding Section (B) hereof, taxpayers may continue to issue VAT invoices and VAT official receipts for the period July 1, 2005 to December 31, 2005, in accordance with Bureau of Internal Revenue administrative practices that existed as of December 31, 2004.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.[11]

Section 4.108-1. Invoicing Requirements. – All VAT-registered persons shall, for every sale or lease of goods or properties or services, issue duly registered receipts or sales or commercial invoices which must show:

1. The name, TIN and address of seller;

2. Date of transaction;

3. Quantity, unit cost and description of merchandise or nature of service;

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[11] The provision, as amended by R.A. 9337, now reads:

Sec. 237. Issuance of Receipts or Sales or Commercial Invoices. – All persons subject to an internal revenue tax shall, for each sale or transfer of merchandise or for services rendered valued at Twenty-five pesos (₱25.00) or more, issue duly registered receipts or sale or commercial invoices, prepared at least in duplicate, showing the date of transaction, quantity, unit cost and description of merchandise or nature of service: Provided, however, That where the receipt is issued to cover payment made as rentals, commissions, compensations or fees, receipts or invoices shall be issued which shall show the name, business style, if any, and address of the purchaser, customer or client.

The original of each receipt or invoice shall be issued to the purchaser, customer or client at the time the transaction is effected, who, if engaged in business or in the exercise of profession, shall keep and preserve the same in his place of business for a period of three (3) years from the close of the taxable year in which such invoice or receipt was issued, while the duplicate shall be kept and preserved by the issuer, also in his place of business, for a like period.

The Commissioner may, in meritorious cases, exempt any person subject to an internal revenue tax from compliance with the provisions of this Section.

4. The name, TIN, business style, if any, and address of the VAT-registered purchaser, customer or client;

5. The word "zero-rated" imprinted on the invoice covering zero-rated sales;

6. The invoice value or consideration.

In the case of sale of real property subject to VAT and where the zonal or market value is higher than the actual consideration, the VAT shall be separately indicated in the invoice or receipt.

Only VAT-registered persons are required to print their TIN followed by the word "VAT" in their invoices or receipts and this shall be considered as "VAT Invoice." All purchases covered by invoices other than "VAT Invoice" shall not give rise to any input tax.

If the taxable person is also engaged in exempt operations, he should issue separate invoices or receipts for the taxable and exempt operations. A "VAT Invoice" shall be issued only for sales of goods, properties or services subject to VAT imposed in Sections 100 and 102 of the code.

The invoice or receipt shall be prepared at least in duplicate, the original to be given to the buyer and the duplicate to be retained by the seller as part of his accounting records. (Emphases supplied)

Also, as correctly noted by the CTA *En Banc*, in Kepco's approved Application/Certificate for Zero Rate issued by the CIR on January 19, 1999, the imprinting requirement was likewise specified, *viz*:

Valid only for sale of services from Jan. 19, 1999 up to December 31, 1999 unless sooner revoked.

Note: Zero-Rated Sales must be indicated in the invoice/ receipt.[12]

Indeed, it is the duty of Kepco to comply with the requirements, including the imprinting of the words "zero-rated" in its VAT official receipts and invoices in order for its sales of electricity to NPC to qualify for zero-rating.

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[12] Annex B of Petition, *rollo*, p. 66.

It must be emphasized that the requirement of imprinting the word "zero-rated" on the invoices or receipts under Section 4.108-1 of R.R. No. 7-95 is mandatory as ruled by the CTA *En Banc*, citing *Tropitek International, Inc. v. Commissioner of Internal Revenue*.[13] In *Kepco Philippines Corporation v. Commissioner of Internal Revenue*,[14] the CTA *En Banc* explained the rationale behind such requirement in this wise:

> The imprinting of "zero-rated" is necessary to distinguish sales subject to 10% VAT, those that are subject to 0% VAT (zero-rated) and exempt sales, to enable the Bureau of Internal Revenue to properly implement and enforce the other provisions of the 1997 NIRC on VAT, namely:
>
> 1. Zero-rated sales [Sec. 106(A)(2) and Sec. 108(B)];
> 2. Exempt transactions [Sec. 109] in relation to Sec. 112(A);
> 3. Tax Credits [Sec. 110]; and
> 4. Refunds or tax credits of input tax [Sec. 112]
>
> xxx xxx xxx

Records disclose, as correctly found by the CTA that Kepco failed to substantiate the claimed zero-rated sales of ₱10,514,023.92. The wordings "zero-rated sales" were not imprinted on the VAT official receipts presented by Kepco (marked as Exhibits S to S-11) for taxable year 1999, in clear violation of Section 4.108-1 of R.R. No. 7-95 and the condition imposed under its approved Application/Certificate for Zero-rate as well.

Kepco's claim that Section 4.108-1 of R.R. 7-95 expanded the letter and spirit of Section 113 of 1997 Tax Code, is unavailing. Indubitably, said revenue regulation is merely a precautionary measure to ensure the effective implementation of the Tax Code. It was not used by the CTA to expound the meaning of Sections 113 and 237 of the NIRC. As a matter of fact, the

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[13] CTA Case Nos. 6422 & 6499, July 13, 2005. Annex B of Petition, *id.* at 68.

[14] CTA E.B. Case No. 107, June 29, 2007.

provision of Section 4.108-1 of R.R. 7-95 was incorporated in Section 113 (B)(2)(c) of R.A. No. 9337,[15] which states that "*if the sale is subject to zero percent (0%) value-added tax, the term 'zero-rated sale' shall be written or printed prominently on the invoice or receipt.*" This, in effect, and as correctly concluded by the CIR, confirms the validity of the imprinting requirement on VAT invoices or official receipts even prior to the enactment of R.A. No. 9337 under the principle of legislative approval of administrative interpretation by reenactment.

Quite significant is the ruling handed down in the case of *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[16] to wit:

> Section 4.108-1 of RR 7-95 proceeds from the rule-making authority granted to the Secretary of Finance under Section 245 of the 1977 NIRC (Presidential Decree 1158) for the efficient enforcement of the tax code and of course its amendments. The requirement is reasonable and is in accord with the efficient collection of VAT from the covered sales of goods and services. As aptly explained by the CTA's First Division, the appearance of the word "zero-rated" on the face of invoices covering zero-rated sales prevents buyers from falsely claiming input VAT from their purchases when no VAT was actually paid. If, absent such word, a successful claim for input VAT is made, the government would be refunding money it did not collect.
>
> Further, the printing of the word "zero-rated" on the invoice helps segregate sales that are subject to 10% (now 12%) VAT from those sales that are zero-rated. Unable to submit the proper invoices, petitioner Panasonic has been unable to substantiate its claim for refund.

To bolster its claim for tax refund or credit, Kepco cites the case of *Intel Technology Philippines, Inc. v. Commissioner of Internal Revenue*.[17] Kepco's reliance on the said case is misplaced

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[15] An Act Amending Sections 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237, and 288 of the National Internal Revenue Code of 1997, As Amended, and for Other Purposes, which took effect on November 1, 2005.

[16] G.R. No. 178090, February 8, 2010, 612 SCRA 28, 36-37.

[17] G.R. No. 166732, April 27, 2007, 522 SCRA 657.

because the factual milieu there is quite different from that of the case at bench. In the *Intel* case, the claim for tax refund or issuance of a tax credit certificate was denied due to the taxpayer's failure to reflect or indicate in the sales invoices the BIR authority to print. The Court held that the BIR authority to print was not one of the items required by law or BIR regulation to be indicated or reflected in the invoices or receipts, hence, the BIR erred in denying the claim for refund. In the present case, however, the principal ground for the denial was the absence of the word "zero-rated" on the invoices, in clear violation of the invoicing requirements under Section 108(B)(3) of the 1997 NIRC, in conjunction with Section 4.108-1 of R.R. No. 7-95.

Regarding Kepco's contention, that non-compliance with the requirement of invoicing would only subject the non-complying taxpayer to penalties of fine and imprisonment under Section 264 of the Tax Code, and not to the outright denial of the claim for tax refund or credit, must likewise fail. Section 264 categorically provides for penalties in case of "Failure or Refusal to Issue Receipts or Sales or Commercial Invoices, Violations related to the Printing of such Receipts or Invoices and Other Violations," but not to penalties for failure to comply with the requirement of invoicing. As recently held in *Kepco Philippines Corporation v. Commissioner of Internal Revenue*,[18] "Section 264 of the 1997 NIRC was not intended to excuse the compliance of the substantive invoicing requirement needed to justify a claim for refund on input VAT payments."

Thus, for Kepco's failure to substantiate its effectively zero-rated sales for the taxable year 1999, the claimed ₱10,527,202.54 input VAT cannot be refunded.

Indeed, in a string of recent decisions on this matter, to wit: *Panasonic Communications Imaging Corporation of the Philippines v. Commissioner of Internal Revenue*,[19] *J.R.A.*

[18] G.R. No. 181858, November 24, 2010.

[19] G.R. No. 178090, February 8, 2010, 612 SCRA 28.

Philippines, Inc. v. Commissioner of Internal Revenue,[20] *Hitachi Global Storage Technologies Philippines Corp. (formerly Hitachi Computer Products (Asia) Corporations) v. Commissioner of Internal Revenue*,[21] and *Kepco Philippines Corporation v. Commissioner of Internal Revenue*,[22] this Court has consistently held that failure to print the word "zero-rated" on the invoices or receipts is fatal to a claim for refund or credit of input VAT on zero-rated sales.

Contrary to Kepco's view, the denial of its claim for refund of input tax is not a harsh penalty. The invoicing requirement is reasonable and must be strictly complied with, as it is the only way to determine the veracity of its claim.

Well-settled in this jurisdiction is the fact that actions for tax refund, as in this case, are in the nature of a claim for exemption and the law is construed in *strictissimi juris* against the taxpayer. The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[23]

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

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[20] G.R. No. 177127, October 11, 2010.

[21] G.R. No. 174212, October 20, 2010.

[22] G.R. No. 181858, November 24, 2010.

[23] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 456 SCRA 150, 163.

SECOND DIVISION

[G.R. No. 180013. January 31, 2011]

DEL MONTE PHILIPPINES INC. EMPLOYEES AGRARIAN REFORM BENEFICIARIES COOPERATIVE (DEARBC), *petitioner, vs.* **JESUS SANGUNAY and SONNY LABUNOS**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; A STRICT AND RIGID APPLICATION OF THE RULES THAT WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE RATHER THAN PROMOTE JUSTICE MUST BE AVOIDED.— DEARBC failed to comply with the rules which mistake was a fatal error warranting the dismissal of the petition for review. However, it has been the constant ruling of this Court that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from constraints of technicalities. Rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided. Thus, the Court opts to brush aside the procedural flaw and resolve the core issue of jurisdiction as it has been discussed by the parties anyway.

2. ID.; COURTS; JURISDICTION OVER THE SUBJECT MATTER; NOT AFFECTED BY THE PLEAS OR THE THEORIES SET UP BY THE DEFENDANT IN AN ANSWER OR A MOTION TO DISMISS.— It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject 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. In the same vein, jurisdiction of the court over the subject matter of the action is not affected by the pleas or the theories set up by the defendant in an answer or a motion

to dismiss. Otherwise, jurisdiction will become dependent almost entirely upon the whims of the defendant.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM PROGRAM; QUASI-JUDICIAL POWERS OF THE DEPARTMENT OF AGRARIAN REFORM (DAR); ONLY THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) CAN DETERMINE AND ADJUDICATE ALL AGRARIAN DISPUTES, CASES, CONTROVERSIES AND MATTERS OR INCIDENTS INVOLVING THE IMPLEMENTATION OF THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP).— Under Section 50 of R.A. No. 6657 and as held in a string of cases, "the DAR is vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program." The DARAB was created, thru Executive Order No. 109-A, to assume the powers and functions with respect to the adjudication of agrarian reform cases. Hence, all matters involving the implementation of agrarian reform are within the DAR's primary, exclusive and original jurisdiction. At the first instance, only the DARAB, as the DAR's quasi-judicial body, can determine and adjudicate all **agrarian disputes**, cases, controversies, and matters or incidents involving the implementation of the CARP.

4. ID.; ID.; ID.; ID.; AGRARIAN DISPUTE; DEFINED.— An **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 landowner 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.

5. ID.; ID.; ID.; ID.; ID.; ABSENT ALLEGATION OF JURIDICAL TIE OF LANDOWNER AND TENANT, THE CONTROVERSY BETWEEN THE PARTIES CANNOT BE

CATEGORIZED AS AN AGRARIAN DISPUTE; THE CLAIM OF BEING FARMER-BENEFICIARIES WITH RIGHT OF RETENTION WILL NOT DIVEST THE REGULAR COURTS OF JURISDICTION.— [A]ll that DEARBC prayed for was the ejectment of the respondents from the respective portions of the subject lands they allegedly entered and occupied illegally. DEARBC avers that, as the owner of the subject landholding, it was in prior physical possession of the property but was deprived of it by respondents' intrusion. Clearly, no "agrarian dispute" exists between the parties. The absence of tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, cannot be overlooked. In this case, no juridical tie of landowner and tenant was alleged between DEARBC and Sangunay or Labunos, which would so categorize the controversy as an agrarian dispute. In fact, the respondents were contending for the ownership of the same parcels of land. This set of facts clearly comprises an action for recovery of possession. The claim of being farmer-beneficiaries with right of retention will not divest the regular courts of jurisdiction, since the pleas of the defendant in a case are immaterial.

APPEARANCES OF COUNSEL

Ravanera Olegario Namalata & Associates for petitioner.
Lim. L. Amarga for Sonny Labunos.
Macodi M. Agus for Jesus Sangunay.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the Resolutions[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 01715, which dismissed the petition filed by Del Monte Philippines Inc. Employees Agrarian Reform Beneficiaries

[1] This is a petition filed under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Dated June 27, 2007 and August 24, 2007. Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justice Romulo V. Borja and Associate Justice Elihu A. Ybanez.

Cooperative *(DEARBC)*, challenging the May 12, 2006 Decision[3] of the Central Office of the Department of Agrarian Reform Adjudication Board *(DARAB)*. For lack of jurisdiction, the DARAB reversed and set aside the ruling of the DARAB Regional Adjudicator *(Adjudicator)* who ordered the respondents to peacefully vacate certain portions of the subject landholding.[4]

The Court is now urged to rule on the issue of jurisdiction of regular courts over petitions for recovery of possession *vis-à-vis* the original, primary and exclusive jurisdiction of the Department of Agrarian Reform *(DAR)* and the DARAB over agrarian disputes and/or agrarian reform implementation as provided for under Section 50 of Republic Act No. 6657 *(R.A. 6657)*.

The Facts

The property subject of this case is a portion of an entire landholding located in Sankanan, Manolo Fortich, Bukidnon, with an area of 1,861,922 square meters, more or less, covered by Original Certificate of Title No. AO-3 [Certificate of Land Ownership Award *(CLOA)*].[5] The said landholding was awarded to DEARBC, an agrarian cooperative and beneficiary under the Comprehensive Agrarian Reform Program *(CARP)*. Subsequently, DEARBC leased a substantial portion of the land to Del Monte Philippines, Inc. *(DMPI)* under Section 8 of R.A. No. 6657 through a Grower's Contract dated February 21, 1989.

On July 7, 1998, DEARBC filed a complaint for Recovery of Possession and Specific Performance with Damages[6] with the DARAB Region 10 Office against several respondents, among whom were Jesus Sangunay *(Sangunay)* and Sonny Labunos *(Labunos)*.

Essentially, DEARBC claimed that both Sangunay and Labunos illegally entered portions of its property called "Field 34." Sangunay

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[3] *Rollo*, pp. 58-67.

[4] *Id.* at 48-51 dated December 17, 1998.

[5] *Id.* at 68.

[6] Docketed as DARAB Case Nos. 8162 and 8163, *id.* at 58-67.

utilized approximately one and a half (1½) hectare portion[7] where he planted corn, built a house and resided from 1986 to the present. Labunos, on the other hand, tilled an area of approximately eight (8) hectares where he planted fruit trees, gmelina, mahogany and other crops as a source of his livelihood.[8] Both respondents refused to return the parcels of land notwithstanding a demand to vacate them. This illegal occupation resulted in the deprivation of the proper and reasonable use of the land and damages.

On December 11, 1990, the Adjudicator ruled in favor of DEARBC on the ground that the respondents failed to present proof of ownership over the subject portions of the landholding. According to the Adjudicator, their bare allegation of possession, even prior to the award of the land to DEARBC, did not suffice as proof of ownership. Thus:

> In the series of hearing conducted by this Adjudicator and in the position papers submitted by some of the defendants, none of them was able to present proof, either documentary or otherwise, that they owned the areas they respectively occupied and cultivate[d], or that their occupation and cultivation was with the consent and authority of the complainant.
>
> x x x against all reasons, the fact remains that their occupation and cultivation thereof, granting it is true, have not been validated by the DAR and they were not among the identified FB's over the said subject landholding.[9]

Aggrieved, respondents elevated the case to the DARAB Central Office before which Sangunay filed his position paper. He claimed that the subject property was located along the Maninit River and was an accrual deposit. He inherited the land from his father in 1948 and had since been in open, public, adverse, peaceful, actual, physical, and continuous possession thereof in the concept of an owner. He cultivated and lived on the land with the knowledge of DEARBC. Sangunay presented Tax

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[7] *Rollo*, p. 72.

[8] *Id.* at 76.

[9] *Id.* at 50-51.

Declaration No. 15-018 and Real Property Historical Ownership issued by the Municipal Assessor of Manolo Fortrich, showing that he had declared the property for taxation purposes long before DEARBC acquired it. In sum, Sangunay asserted that, as a qualified farmer-beneficiary, he was entitled to security of tenure under the agrarian reform law and, at any rate, he had already acquired the land by prescription.

For his part, Labunos reiterated the above arguments and added that the subject portion of the landholding was previously owned by one Genis Valdenueza who sold it to his father, Filoteo, as early as 1950. Like Sangunay, he asserted rights of retention and ownership by prescription because he had been in open, public, adverse, peaceful, actual, physical, and continuous possession of the landholding in the concept of an owner.[10]

In its May 12, 2006 Decision,[11] the DARAB dismissed the case for lack of jurisdiction. It ruled that the issue of ownership of the subject land classifies the controversy as a regular case falling within the jurisdiction of regular courts and not as an agrarian dispute.[12] Thus:

> x x x the plaintiff-appellee's cause of action is for the recovery of possession and specific performance with damages with respect to the subject landholding. Such cause of action flows from the plaintiff-appellee's contention that it owns the subject landholding. On the other hand, defendant-appellants refuted and assailed such ownership as to their respective landholdings. Thus, the only question in this case is who owns the said landholdings. Without doubt, the said question classified the instant controversy to a regular case.

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[10] *Id.* at 63.

[11] *Id.* at 58-67.

[12] R.A. 6657 Section 3 (d) – "*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 and conditions of such tenurial arrangements. On the other hand, regular cases involving issues of ownership over a landholding is a regular case and is within the jurisdiction of the regular courts.*"

At this premise, We hold that the only issue to be resolved by this Board is whether or not the instant case presents an agrarian dispute and is therefore well within Our jurisdiction.

xxx xxx xxx

In the case at bar, petitioner-appellants wanted to recover x x the subject landholding on the premise of ownership xxx. Defendants-appellants assail such allegations saying that the landholdings are accrual deposits and maintaining their open, peaceful and adverse possession over the same. Indubitably, there assertions and issues classify the present controversy as a regular case. As such, clearly, this Board has no jurisdiction to rule upon the instant case. Obviously, the dispute between the parties does not relate to any tenurial arrangement. Thus, this Board has no jurisdiction over the same.

DEARBC challenged the DARAB Decision in the CA through a petition for review filed under Rule 43 of the Rules of Civil Procedure. In its Resolution dated June 27, 2007,[13] the CA dismissed the petition for procedural infirmities in its verification, certification and attachments, *viz:*

1) The Verification and Certification is defective due to the following reasons:

   a) There is no assurance that the allegations in the petition are based in (sic) personal knowledge and in authentic records, in violation of Section 4 par. (2), Rule 7 of the Revised Rules of Civil Procedure;

   b) The Community Tax Certificate Nos. of the affiant therein are not indicated;

   c) The affiant is not authorized to sign the same for and in behalf of the petitioner cooperative;

2) The attached copies of the Motion for Reconsideration filed before the DARAB Quezon City and the Complaint filed before the DAR, Region XD, and the Decision and Resolution rendered therein are mere plain photocopies, in violation of Sec. 6 par. (c), Rule 43, *supra*.

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[13] *Rollo*, pp. 31-33.

In a motion for reconsideration, DEARBC invoked substantial compliance with the pertinent procedural rules, pointing to the attached Secretary's Certificate as sufficient proof of authority given to the President and Chairman of the Board, Dennis Hojas *(Hojas)*, to represent DEARBC. On August 24, 2007,[14] the CA denied the motion because DEARBC failed to attach a copy of the board resolution showing Hojas' authority to file the petition. This was a fatal error that warranted dismissal of the petition, according to the appellate court.

Hence, this petition for review.

With regard to the dismissal of the case by the CA on technical grounds, the Court is of the view that it was correct. DEARBC clearly failed to comply with the rules which mistake was a fatal error warranting the dismissal of the petition for review. However, it has been the constant ruling of this Court that every party-litigant should be afforded the amplest opportunity for the proper and just disposition of his cause, free from constraints of technicalities.[15] Rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided.[16] Thus, the Court opts to brush aside the procedural flaw and resolve the core issue of jurisdiction as it has been discussed by the parties anyway.

Position of the Parties

DEARBC claims that the action it filed for recovery of possession falls within the jurisdiction of the DARAB because it partakes of either a boundary dispute, a correction of a CLOA or an ouster of an interloper or intruder found under Section 1

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

[15] *Asta Moskowsky v. Court of Appeals, Antonio C. Doria, Edgardo L. Alcaraz and Evangeline E. Doria*, 366 Phil. 189 (1999), citing *Nerves v. Civil Service Commission*, 342 Phil. 578 (1997).

[16] *Cusi-Hernandez v. Spouses Diaz*, 390 Phil. 1245, 1252 (2000).

of Rule 11 of the 2003 DARAB Rules of Procedure[17] and Administrative Order 03 Series of 2003.[18] Under those rules, any conflict involving agricultural lands and the rights of beneficiaries is within the jurisdiction of the DARAB.

In his Comment,[19] Labunos argues that only questions of law may be resolved in appeals under Rule 45 and that it is the decision of the CA which must be challenged and not the DARAB decision. On the merits, he cites cases where this Court ruled that the jurisdiction of the DARAB is limited only to agrarian disputes and other matters relating to the implementation of the CARP. The subject land has not been transferred, distributed and/or sold to tenants, and it is obvious that the complaint is not for the correction of a title but for the recovery of possession and specific performance. Issues of possession may be dealt with by the DARAB only when they relate to agrarian disputes. Otherwise, jurisdiction lies with the regular courts.

Sangunay prays that he be declared as the owner of the land, particularly his area in Field 34, based on the following grounds: 1] that the tax receipts and Tax Declaration No. 15-018 were

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[17] Section 1. Primary and Exclusive jurisdiction. The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:

xxx xxx xxx

1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Landownership Awards; xxx

1.10 Those cases involving boundary disputes xxx

1.11 Those cases involving the determination of title to agricultural lands where the issue raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee xxx or effecting the ouster of the interloper or intruder in one and the same proceeding.

[18] Section 3 DARAB cases xxx include:

xxx xxx xxx

3.1 The rights and obligations of persons, whether natural or juridical, engaged in the management, cultivation, and use of all agricultural lands covered by RA 6657 and other related agrarian laws.

[19] *Rollo*, pp. 82-88.

issued in his name; 2] that R.A. No. 6657 provides that farmers already in place and those not accommodated in the distribution of privately-owned lands must be given preferential rights in the distribution of lands from the public domain (to which the subject land as an accretion belongs); and 3] that acquisitive prescription had set in his favor.

The Court's Ruling

The Court finds no merit in the petition.

Where a question of jurisdiction between the DARAB and the Regional Trial Court is at the core of a dispute, basic jurisprudential tenets come into play. It is the rule that the jurisdiction of a tribunal, including a quasi-judicial office or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for[20] irrespective of whether the petitioner or complainant is entitled to any or all such reliefs.[21] In the same vein, jurisdiction of the court over the subject matter of the action is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction will become dependent almost entirely upon the whims of the defendant.[22]

Under Section 50 of R.A. No. 6657[23] and as held in a string of cases, "the DAR is vested with the primary jurisdiction to

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[20] *Department of Agrarian Reform, rep. by Regional Director Naser M. Musali v. Hon. Hakim S. Abdulwahid, Presiding Judge, Regional Trial Court, Br. XII of Zamboanga City and Yupangco Cotton Mills, Inc.*, G.R. No. 163285, February 27, 2008, 547 SCRA 30.

[21] *Heirs of Julian dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, 512 Phil. 389 (2005).

[22] *Lourdes L. Eristingcol v. Court of Appeals and Randolph C. Limjoco*, G.R. No. 167702, March 20, 2009, 582 SCRA 139.

[23] Section 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) x x x.

determine and adjudicate agrarian reform matters and shall have the exclusive jurisdiction over all matters involving the implementation of the agrarian reform program."[24] The DARAB was created, thru Executive Order No. 109-A, to assume the powers and functions with respect to the adjudication of agrarian reform cases. Hence, all matters involving the implementation of agrarian reform are within the DAR's primary, exclusive and original jurisdiction. At the first instance, only the DARAB, as the DAR's quasi-judicial body, can determine and adjudicate all **agrarian disputes**, cases, controversies, and matters or incidents involving the implementation of the CARP.[25] An **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 landowner 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.[26]

The following allegations were essentially contained in the complaints filed separately against the respondents before the DARAB with some variance in the amount of damages and fees prayed for:

1. The complainant is an agrarian cooperative duly registered and organized under the laws of the Republic of the Philippines xxx.

2. Complainant is an awardee of Comprehensive Agrarian Reform Program (CARP), situated at Limbona, Bukidnon under Original Certificate of Title A-3 as evidenced by Certificate of Land Ownership Award (CLOA) xxx.

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[24] *Cipriano Centeno, Leonila C. Calonzo, and Ramona Adriano, v. Ignacia Centeno*, 397 Phil. 170 (2000).

[25] *Supra* note 20.

[26] R.A. No. 6657, Sec. 3(d).

xxx xxx xxx

5. The defendant illegally entered and tilled the land owned by the complainant, inside the portion of Field 34, with an area of one and a half (1 ½) hectares, more or less, located at Sankanan, Manolo Fortrich, Bukidnon xxx.

xxx xxx xxx

8. Demands were made by the complainant for the defendant to vacate the premises but the latter adamantly refused and did not vacate the area xxx.

9. The defendant has caused actual damages in the amount of xxx in the form of back rentals and an estimated amount of xxx brought about by the defendant for all his unlawful acts towards the land and the owner of the land.

10. To recover the possession of the land and to protect and vindicate its rights, the complainant was compelled to engage the servces (sic) of a legal counsel x x x

P R A Y E R

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Board, that a decision be rendered:

Ejecting the defendant from the subject landholding and/or causing him to cede possession of the land to complainant. [Emphasis ours]

xxx xxx xxx

Verily, all that DEARBC prayed for was the ejectment of the respondents from the respective portions of the subject lands they allegedly entered and occupied illegally. DEARBC avers that, as the owner of the subject landholding, it was in prior physical possession of the property but was deprived of it by respondents' intrusion.

Clearly, no "agrarian dispute" exists between the parties. The absence of tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, cannot be overlooked. In this case, no juridical tie of landowner and tenant was alleged between DEARBC and Sangunay or Labunos, which would so categorize

the controversy as an agrarian dispute. In fact, the respondents were contending for the ownership of the same parcels of land.[27]

This set of facts clearly comprises an action for recovery of possession. The claim of being farmer-beneficiaries with right of retention will not divest the regular courts of jurisdiction, since the pleas of the defendant in a case are immaterial.

The ruling in *DAR v. Hon. Hakim S. Abdulwahid and Yupangco Cotton Mills, Inc.*[28] is inapplicable to the present case. The complaint in *Abdulwahid* "impugn(ed) the CARP coverage of the landholding involved and its redistribution to farmer beneficiaries, and (sought) to effect a reversion thereof to the original owner, Yupangco" and essentially prayed for the annulment of the coverage of the disputed property within the CARP. The dispute was on the "terms and conditions of transfer of ownership from landlord to agrarian reform beneficiaries over which DARAB has primary and exclusive original jurisdiction, pursuant to Section 1(f), Rule II, DARAB New Rules of Procedure."[29]

Although the complaint filed by DEARBC was similarly denominated as one for recovery of possession, it utterly lacks allegations to persuade the Court into ruling that the issue encompasses an agrarian dispute.

DEARBC's argument that this case partakes of either a boundary dispute, correction of a CLOA, and ouster of an interloper or intruder, as found under Section 1, Rule 11 of the 2003 DARAB Rules of Procedure,[30] is unavailing. Nowhere in

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[27] *Rodrigo Almuete and Ana Almuete v. Marcelo Andres and the Court of Appeals*, 421 Phil. 522 (2001), citing *Chico v. Court of Appeals*, 348 Phil. 37 (1998) and *Heirs of the Late Herman Rey Santos v. Court of Appeals*, 384 Phil. 27 (2000).

[28] *Supra* note 20.

[29] *Id.* at 34-37.

[30] 1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority;

the complaint was the correction or cancellation of the CLOA prayed for, much less mentioned. DEARBC merely asserted its sole ownership of the awarded land and no boundary dispute was even hinted at.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 181039. January 31, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SEVILLANO DELOS REYES *y* LANTICAN,** *appellant.*

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xxx xxx xxx

1.10 Those cases involving boundary disputes over lands under the administration and disposition of the DAR and the LBP, which are transferred, distributed, and/or sold to tenant-beneficiaries and are covered by deeds of sale, patents, and certificates of title;

xxx xxx xxx

1.11 Those cases involving the determination of title to agricultural lands where this issue is raised in an agrarian dispute by any of the parties or a third person in connection with the possession thereof for the purpose of preserving the tenure of the agricultural lessee or actual tenant-farmer or farmer-beneficiaries and effecting the ouster of the interloper or intruder in one and the same proceeding;

xxx xxx xxx

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF PROHIBITED DRUG; ELEMENTS.— In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.

2. ID.; ID.; ID.; PROCEDURAL REQUIREMENTS; STRICT COMPLIANCE WITH THE PROCEDURE IN THE SEIZURE AND CUSTODY OF THE ILLEGAL DRUG IS REQUIRED.— Considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to strictly comply with procedure in its seizure and custody. Section 21, paragraph 1, Article II of R.A. No. 9165, provides such procedure xxx. Evident however from the records of the case is the fact that the members of the buy-bust team did not comply with the procedure laid down in Section 21 of R.A. No. 9165. x x x. Although there were elected public officials from the *barangay* who were present during the buy-bust operation, nothing in his testimony, nor in the facts stipulated by the parties shows that there was physical inventory of the seized items or that there was photographing thereof in the presence of appellant, his representative or counsel, a representative of media and the Department of Justice, as required by Section 21 of R.A. No. 9165.

3. ID.; ID.; ID.; CHAIN OF CUSTODY REQUIREMENT; FAILURE OF THE PROSECUTION TO PROVE THAT THE SPECIMEN SUBMITTED FOR LABORATORY EXAMINATION WAS THE SAME ONE ALLEGEDLY SEIZED FROM THE ACCUSED IS FATAL.— [*P*]*eople v. Pringas* teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal. Mere failure to comply

with Section 21 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. But what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. This function in buy-bust operations is performed by the chain of custody requirement which ensures that doubts concerning the identity of the evidence are removed. Hence, in a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.

4. ID.; ID.; ID.; ID.; CHAIN OF CUSTODY, DEFINED; AN UNACCOUNTED CRUCIAL PORTIONS OF THE CHAIN OF CUSTODY CREATES A LINGERING DOUBT WHETHER THE SPECIMEN SEIZED FROM APPELLANT WAS THE SPECIMEN BROUGHT TO THE CRIME LABORATORY AND EVENTUALLY OFFERED IN COURT AS EVIDENCE.— Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows: "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.] x x x. [Here,] gaps in the chain cannot be disregarded or overlooked by this Court. x x x. With crucial portions of the chain of custody not clearly accounted for, reasonable doubt is created as to the origins of the *shabu* presented in court. Lingering doubt exists whether the specimen seized from appellant was the specimen brought to the crime laboratory and eventually offered in court as evidence.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; FAILURE OF THE POLICE OFFICERS TO COMPLY WITH THE PROCEDURES AND GUIDELINES PRESCRIBED

DESTROYS THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES.— The presumption of regularity in the performance of official duties cannot be availed of in this case to supply the missing links as the presumption is effectively negated by to the buy-bust team's failure to comply with Section 21 of R.A. No. 9165 and to show that the integrity of the *corpus delicti* has been preserved. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

The instant appeal assails the Decision[1] dated August 9, 2007 of the Court of Appeals (CA) in CA-G.R. CR HC No. 02038 which affirmed with modification the February 27, 2006 Decision[2] of the Regional Trial Court (RTC), Branch 36, of Calamba City finding appellant Sevillano delos Reyes guilty beyond reasonable doubt of illegal sale of dangerous drugs under Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

On January 22, 2003, two separate informations were filed against appellant charging him as follows:

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[1] *Rollo*, pp. 2-9. Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag concurring.

[2] Records, pp. 106-115. Penned by Judge Medel Arnaldo B. Belen.

Criminal Case No. 10733-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the accused above-named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously sell, dispense, deliver and distribute to a poseur buyer one (1) folded aluminum foil strip containing Methamphetamine Hydrochloride having a total weight of 0.04 grams, a dangerous drug.

CONTRARY TO LAW.[3]

Criminal Case No. 10734-2003-C

That on or about October 16, 2002 at Sitio Tagpuan, Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above named not being licensed or authorized by law did then and there willfully, unlawfully and feloniously possess five (5) folded aluminum foil strips containing Methamphetamine Hydrochloride having a total weight of 0.80 grams, a dangerous drug.

CONTRARY TO LAW.[4]

When arraigned, appellant pleaded not guilty to both charges.[5] During pre-trial, the prosecution and the defense stipulated on the following facts:

1. that accused Sevillano delos Reyes was the person charged in the Information and arraigned before this Court; and,
2. that accused was arrested at about 12:30 p.m. of October 16, 2002 at Sitio Tagpuan, Bayog, Los Baños, Laguna.[6]

In the ensuing trial, the prosecution offered the testimony of three prosecution witnesses: PO2 Joseph Ortega, who was a member of the buy-bust team, P/Insp. Donna Villa P. Huelgas,

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[3] *Id*. at 17.

[4] RTC Decision, *id*. at 106-107. As noted by the CA, the information for Criminal Case No. 10734-03-C was not attached to the records.

[5] *Id*. at 21.

[6] *Id*. at 25.

the forensic chemist who tested the crystalline substance contained in the strip of aluminum foil allegedly confiscated from the appellant, and PO2 Gandergem E. Cabaluna, who delivered the Request for Drug Examination and the six pieces of folded strips of aluminum foil allegedly seized from the appellant to the Crime Laboratory in Camp Vicente Lim, Calamba City, Laguna. The testimonies of P/Insp. Huelgas and PO2 Cabaluna, however, were dispensed with as the matters they were supposed to testify on were admitted by the defense.

Thus, the prosecution's case was established primarily from the testimony of PO2 Ortega and the facts stipulated upon by both parties. The prosecution presented the following antecedents.

On October 16, 2002, the Los Baños Police Station, through SPO1 Camilo Palisoc, received a tip from an informant that appellant was selling *shabu*. Thus, Los Baños Police Chief Police Senior Inspector Raymond Perlado instructed PO2 Ortega and SPO1 Palisoc to conduct a buy-bust operation. P/Sr. Insp. Perlado gave them two fifty-peso bills to be used as marked money.

On even date, around 12:00 noon, PO2 Ortega, SPO1 Palisoc and SPO2 Herminigildo Dino proceeded to appellant's house at Sitio Tagpuan, *Barangay* Bayog, Los Baños, Laguna to execute the planned buy-bust operation.

Upon reaching the place, PO2 Ortega and SPO2 Dino positioned themselves near a fence six meters behind appellant's house. SPO1 Palisoc, the designated poseur-buyer, on the other hand, proceeded to enter appellant's house. A few minutes later, appellant and SPO1 Palisoc came out of the house. SPO1 Palisoc then handed over the marked money to appellant while the latter in return gave him an aluminum foil containing white crystalline substance.

As pre-arranged signal, SPO1 Palisoc held the hands of appellant. PO2 Ortega and SPO2 Dino thereafter approached the two and introduced themselves as police officers. SPO1 Palisoc recovered the marked money. With the assistance of *barangay* officials, they entered appellant's house and recovered five plastic sachets of *shabu* on top of the bed. Therafter, appellant

was brought to the police station where he was detained. As to the seized folded strips of aluminum foil containing white crystalline substance, SPO1 Palisoc marked the one subject of the transaction with "SLD" while PO2 Ortega marked those recovered inside the house with "SLD 1," "SLD 2," "SLD 3," "SLD 4," and "SLD 5." The specimens were then turned over to PO2 Cabaluna who submitted the same for testing to the Philippine National Police Crime Laboratory Service 4 located in Camp Vicente Lim, Calamba City.

In the chemistry examination conducted by P/Insp. Huelgas, a forensic chemist, the white crystalline substance contained in the folded strips of aluminum foil tested positive for the presence of methamphetamine hydrochloride or *shabu*. P/Insp. Huelgas prepared Chemistry Report No. D-2386-02[7] to document the results of the examination.

The defense, for its part, presented three witnesses, appellant, Iluminada delos Reyes and Rizza Estevez, whose testimonies presented the following version of the facts:

In the morning of October 16, 2002, Iluminada Reyes (Iluminada), appellant's mother, left for their farm while appellant was sleeping soundly in their house. Appellant was then still asleep as he worked the night shift in a factory.

Around 12:30 in the afternoon, Rizza Estevez, Iluminada's sister-in-law, who lives eight meters away, saw PO2 Ortega kick open the door of appellant's house.

Appellant was not awakened by this but was awakened only when his shoulder blade was hit with a .45 caliber pistol by a certain "Magie," a civilian agent. When he woke up, he saw that two police officers, PO2 Ortega and SPO1 Palisoc, were also in his house. They were looking for marked money but failed to find any so they searched the entire room of his house, took appellant's Nokia 3310 cellular phone and ₱20,000 cash hidden under his pillow. Thereafter, the three called a *barangay* official to accompany them on the way to the police station.

[7] *Id.* at 12.

On the way out of the house, appellant saw that their door was broken.

When Iluminada arrived home, she found their door broken. She asked around and was informed by her cousin, Erlinda delos Reyes, that the police barged into their house and arrested her son.

On February 27, 2006, the RTC rendered judgment acquitting appellant in Criminal Case No. 10734-2003-C (illegal possession of dangerous drugs) but finding him guilty as charged in Criminal Case No. 10733-2003-C (illegal sale of dangerous drugs). The *fallo* of the trial court's decision reads:

> WHEREFORE, in Crim. Case No. 10733-2003-C, the Court finds Accused **SEVILLANO DE LOS REYES GUILTY**. The accused is sentenced to *Reclusion Perpetua* and pay the fine of ₱500,000.00[.]
>
> In Crim. Case No. 10734-2003-C, the Court finds Accused **SEVILLANO DE LOS REYES not GUILTY** for the failure of the prosecution to prove his guilt beyond reasonable doubt.
>
> The Branch Clerk of Court shall, in accordance with law, forward the seized "*shabu*" in these cases to the Philippine Drug Enforcement Agency for destruction.[8]

In convicting appellant, the trial court held that with the testimony of PO2 Ortega and the facts stipulated upon by the parties, the prosecution was able to establish the *corpus delicti*.

Appellant in his brief before the CA alleged that:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONY OF THE LONE PROSECUTION EYEWITNESS WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME

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[8] *Id*. at 115.

CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[9]

Appellant argued that PO2 Ortega's testimony was not corroborated by anybody since the other two witnesses for the prosecution, P/Insp. Huelgas and PO2 Cabaluna, were not part of the buy-bust team. Further, it was erroneous for the trial court to convict him of illegal sale of drugs when the alleged poseur-buyer was never presented to testify in court. And even assuming for the sake of argument that there was a buy-bust operation, the buy-bust team did not comply with the mandatory requirements of R.A. No. 9165 rendering void the seizure of the items submitted as evidence.

The Office of the Solicitor General (OSG), on the other hand, argued that the clear and convincing testimony of PO2 Ortega necessarily prevails over appellant's bare denial. It pointed out that the trial court's factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. Moreover, there is no rule requiring that a testimony has to be corroborated to be adjudged credible since witnesses are weighed and not numbered. Lastly, the OSG argued the implementing rules and regulations of R.A. No. 9165 were not yet in effect at the time appellant was arrested.

On August 9, 2007, the CA rendered a decision affirming with modification the RTC decision and disposing as follows:

> WHEREFORE, premises considered, the appealed decision, dated February 27, 2006, of the Regional Trial Court, Branch 36, Calamba City, Laguna, in Criminal Case No. 10733-2003-C is hereby AFFIRMED with MODIFICATION. Accused-appellant Sevillano delos Reyes *y* Lantican is hereby sentenced to suffer the penalty of life imprisonment instead of *reclusion perpetua*. The appealed decision is affirmed in all other respects.
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> SO ORDERED.[10]

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[9] CA *rollo*, p. 41.

[10] *Rollo*, p. 8.

The CA held that the non-presentation of the poseur-buyer is not fatal to the establishment of appellant's guilt since there was an eyewitness to the illicit transaction in the person of PO2 Ortega, a member of the buy-bust team who positively identified appellant as the perpetrator of the illegal sale. The CA further ruled that the examination conducted by the forensic chemist on the contents of the folded strips of aluminum foil showed that they contained methamphetamine hydrochloride or *shabu*. Lastly, the appellate court also applied the doctrine of presumption of regularity in the performance of official duties. It held that as there was no evidence that PO2 Ortega was impelled by improper motive in testifying against appellant or that he deviated from the regular performance of his duties.

On February 27, 2008, the Court directed the parties to file their respective supplemental briefs if they desire.[11] The Office of the Solicitor General manifested that it is dispensing with the filing of a supplemental brief as the same would constitute a mere rehash or reiteration of matters already presented in its brief and duly considered by the CA.[12]

Appellant, for his part, submitted a Supplemental Brief,[13] contending that PO2 Ortega's testimony failed to provide substantial information as to warrant the non-presentation of the poseur-buyer. Appellant stresses that PO2 Ortega was six meters away from the poseur-buyer and appellant when the alleged transaction took place. Thus, he could not have clearly seen what was handed by appellant. Likewise, there remains no proof that the item handed to the poseur-buyer was the very same item examined by the forensic chemist. The stipulation on the chemist's testimony should not be taken against appellant since it only refers to the fact that the seized items yielded positive results for *shabu* and does not in any way extend to the matter of ownership thereof. Appellant likewise argues that the police officers deviated from the regular performance of

[11] *Id*. at 13.

[12] *Id*. at 14.

[13] *Id*. at 18-23.

their duties as his arrest was tainted with irregularity. He points to the destruction of the door of his house and more importantly, the buy-bust-team's failure to follow the mandatory requirements of R.A. No. 9165 which consequently resulted in the prosecution's failure to present the *corpus delicti* of the crime.

The appeal is meritorious.

In a prosecution for illegal sale of a prohibited drug under Section 5 of R.A. No. 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.*, the body or substance of the crime that establishes that a crime has actually been committed, as shown by presenting the object of the illegal transaction.[14]

Considering the illegal drug's unique characteristic rendering it indistinct, not readily identifiable and easily open to tampering, alteration or substitution either by accident or otherwise, there is a need to strictly comply with procedure in its seizure and custody.[15] Section 21, paragraph 1, Article II of R.A. No. 9165, provides such procedure:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

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[14] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, p. 7, citing *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 266; and *People v. Denoman*, G.R. No. 171732, August 14, 2009, 596 SCRA 257, 267.

[15] *People v. Kamad*, G.R. No.174198, January 19, 2010, 610 SCRA 295, 304-305.

Evident however from the records of the case is the fact that the members of the buy-bust team did not comply with the procedure laid down in Section 21 of R.A. No. 9165. As testified to by PO2 Ortega concerning the facts relating to the seizure and custody of the evidence:

Q The aluminum foil that was handed to Palisoc during the conduct of the buy bust, what was done with it?

A We also turned it over to the investigator and it was turned over later on to the PCCL, sir.

xxx xxx xxx

Q And you also said that Palisoc turned over the methamphetamine hydrochloride, the aluminum foil containing *shabu* that was bought [from] [D]elos Reyes, if it will be shown to you, would you be able to identify the same?

A Yes, sir.

Q And kindly go over this piece of evidence that was marked as Exhibit D and tell us?

A This is the one, sir (again witness identified the aluminum foil inside the small plastic sachet with markings)

Q There is a marking on this piece of evidence on the aluminum foil itself marked as SLD, do you know who placed th[ose] markings on that aluminum foil?

A SPO1 Palisoc, sir.

Q Why do you know that he was the one who placed the markings?

A I was present when he placed those markings, sir.

xxx xxx xxx

Q So, after these turned over to –I withdraw. You said that were found positive for the presence of methamphetamine hydrochloride the contents of this aluminum foil, so how do you know how these pieces of evidence were transmitted to the Crime Laboratory?

A We sent a request to the PCCL which was received by the PCCL and we returned to the PCCL to get the result, sir.

Q If that request will be shown to you, would you be able to identify the same?

A Yes, sir.

Q Kindly go over this Exhibit D and tell us if you could recognize that document?

A Yes sir, this is the one (witness identified Exhibit A)

Q Who in particular transmitted that to the Crime Laboratory?

A PO2 Cabaluna, sir.

Q And who is this PO2 Cabaluna?

A Our Police Investigator, sir.[16]

Although there were elected public officials from the *barangay* who were present during the buy-bust operation, nothing in his testimony, nor in the facts stipulated by the parties shows that there was physical inventory of the seized items or that there was photographing thereof in the presence of appellant, his representative or counsel, a representative of media and the Department of Justice, as required by Section 21 of R.A. No. 9165.

Of course, *People v. Pringas*[17] teaches that non-compliance by the apprehending/buy-bust team with Section 21 is not fatal. Mere failure to comply with Section 21 will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. But what is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[18] This function in buy-bust operations is performed by the chain of custody requirement which ensures that doubts concerning the identity of the evidence are removed.

[16] TSN, January 27, 2004, pp. 15-18.

[17] G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842.

[18] *Id.* at 842-843.

Hence, in a long line of cases, we have considered it fatal for the prosecution to fail to prove that the specimen submitted for laboratory examination was the same one allegedly seized from the accused.[19] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "chain of custody" as follows:

> "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition[.][20]

While this regulation took effect on October 18, 2002 (or 2 days after the alleged commission of the crime charged), it is however useful in determining if the integrity of the evidence was preserved in the instant case.

Here, the *first link* in the chain of custody starts with SPO1 Palisoc, the designated poseur-buyer, to whom appellant allegedly handed over the *shabu* contained in an aluminum foil. The *second link* is when SPO1 Palisoc marked the aluminum foil with "SLD," then turned them over to PO2 Cabaluna.

The *third link* is when PO2 Cabaluna delivered the specimen to the PNP Crime Laboratory Service 4, together with a request for examination signed by P/Sr. Insp. Perlado. Records show and parties stipulated that it was received by one PO1 Golfo, Jr. at the crime laboratory.

The continuity of the chain, however, becomes unclear after the evidence reached the hands of PO1 Golfo, Jr. as the next part of the chain established by the prosecution already relates

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[19] *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 213. Citations omitted.

[20] See *People v. Denoman*, *supra* note 14 at 271.

to the examination conducted by P/Insp. Huelgas, the forensic chemist. The records are bereft of any proof from whom P/Insp. Huelgas received the specimen she examined and where it was kept for safekeeping after the examination was conducted up to the time it was presented in court.

Said gaps in the chain cannot be disregarded or overlooked by this Court. As held in the case of *People v. Almorfe*:[21]

> x x x Although Janet identified Exhibits "C-1", "C-2" and "C-3" as the drugs seized from appellants which she claimed to have marked immediately after the bust, she did not disclose the name of the investigator to whom she turned them over. **And there is no showing if that same investigator was the one who turned the drugs over to the forensic chemist, or if the forensic chemist whose name appears in the physical science report was the one who received them from that investigator, or where the drugs were kept for safekeeping after the chemical test was conducted up to the time they were presented in court.**
>
> It bears recalling that while the parties stipulated on the existence of the sachets, they did not stipulate with respect to their "source."
>
> *People v. Sanchez* teaches that **the testimony of the forensic chemist which is stipulated upon merely covers the handling of the specimen at the forensic laboratory and the result of the examination, but not the *manner* the specimen was handled before it came to the possession of the forensic chemist and after it left his possession.** (Underscoring in the original omitted; emphasis supplied.)

With crucial portions of the chain of custody not clearly accounted for, reasonable doubt is created as to the origins of the *shabu* presented in court. Lingering doubt exists whether the specimen seized from appellant was the specimen brought to the crime laboratory and eventually offered in court as evidence.

The presumption of regularity in the performance of official duties cannot be availed of in this case to supply the missing links as the presumption is effectively negated by to the buy-bust team's failure to comply with Section 21 of R.A. No. 9165

[21] G.R. No. 181831, March 29, 2010, 617 SCRA 52, 61.

and to show that the integrity of the *corpus delicti* has been preserved. As a general rule, the testimonies of the police officers who apprehended the accused are accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with failure to comply with the procedure and guidelines prescribed, the presumption is effectively destroyed.[22]

For failure of the prosecution to prove the guilt of appellant beyond reasonable doubt, acquittal is in order.

WHEREFORE, the Decision dated August 9, 2007 of the Court of Appeals in CA-G.R. CR HC No. 02038 is *REVERSED* and *SET ASIDE*. Appellant *SEVILLANO DELOS REYES y LANTICAN* is *ACQUITTED* of the crime charged in Criminal Case No. 10733-2003-C and ordered immediately *RELEASED* from detention, unless he is confined for any other lawful cause/s.

The Director of the Bureau of Corrections is *DIRECTED* to *IMPLEMENT* this Decision and to report to this Court the action taken hereon within five (5) days from receipt.

With costs *de oficio*.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, Jr., and *Sereno, JJ.,* concur.

[22] *People v. De Guzman*, G.R. No. 186498, March 26, 2010, 616 SCRA 652, 669.

SECOND DIVISION

[G.R. No. 182301. January 31, 2011]

JAIME ALFEREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and PINGPING CO,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; VIOLATION OF B.P. BLG. 22 (THE BOUNCING CHECKS LAW; ELEMENTS; SECOND ELEMENT, NOT PROVED.— [T]he elements of the crime of violation of B.P. Blg. 22 are, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. In this case, the first and third elements of the crime have been adequately established. The prosecution, however, failed to prove the second element.

2. ID.; ID.; REQUISITE NOTICE OF DISHONOR; THE DRAWEE'S ACTUAL RECEIPT OF THE NOTICE OF DISHONOR MUST BE PROVED BY THE PROSECUTION; PRESENTATION OF THE REGISTRY CARD WITH AN UNAUTHENTICATED SIGNATURE NOT SUFFICIENT PROOF OF THE DRAWEE'S RECEIPT OF NOTICE OF DISHONOR.— Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor. To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that petitioner received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice, because the fact of service provided

for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.

3. ID.; ID.; ID.; ABSENT SUFFICIENT PROOF THAT THE DRAWEE RECEIVED THE NOTICE OF DISHONOR, THE PRESUMPTION THAT HE HAD KNOWLEDGE OF INSUFFICIENCY OF FUNDS CANNOT ARISE.— The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice. Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. From the registry receipt alone, it is possible that petitioner or his authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt. The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution. As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.

4. ID.; ID.; ID.; FAILURE TO PROVE RECEIPT BY PETITIONER OF THE REQUISITE NOTICE OF DISHONOR AND THAT HE WAS GIVEN AT LEAST FIVE (5) BANKING DAYS WITHIN WHICH TO SETTLE HIS ACCOUNT CONSTITUTES SUFFICIENT GROUND FOR HIS ACQUITTAL.— [T]he prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense. The failure of the prosecution to prove the receipt by petitioner of the requisite notice of dishonor and that he was given at least five (5) banking days within which to settle his account constitutes sufficient ground for his acquittal.

5. ID.; ID.; ACQUITTAL OF THE PETITIONER BASED ON REASONABLE DOUBT DOES NOT INCLUDE THE EXTINGUISHMENT OF HIS LIABILITY FOR THE DISHONORED CHECKS.— [P]etitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond

reasonable doubt does not include the extinguishment of his civil liability for the dishonored checks. In case of acquittal, the accused may still be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. In a number of similar cases, we have held that an acquittal based on reasonable doubt does not preclude the award of civil damages.

6. REMEDIAL LAW; EVIDENCE; DEMURRER TO EVIDENCE; ACCUSED'S FILING THEREOF IS DEEMED A WAIVER OF THE RIGHT TO PRESENT EVIDENCE AND THE COURT MAY DECIDE THE CASE INCLUDING ITS CIVIL ASPECT.— [W]hen petitioner filed a demurrer to evidence without leave of court, the whole case was submitted for judgment on the basis of the evidence presented by the prosecution as the accused is deemed to have waived the right to present evidence. At that juncture, the court is called upon to decide the case including its civil aspect.

APPEARANCES OF COUNSEL

Oliver T. Booc for petitioner.
The Solicitor General for public respondent.
Roberto Palmares for private respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated December 13, 2007 and Resolution[2] dated March 4, 2008 in CA-G.R. CEB-CR No. 00300.

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; *rollo*, pp. 16-25.

[2] *Id.* at 26-27.

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

Petitioner Jaime Alferez purchased construction materials from Cebu ABC Sales Commercial. As payment for the goods, he issued three (3) checks for the total amount of ₱830,998.40. However, the checks were dishonored for having been drawn against a closed account. Petitioner was thus charged with three (3) counts of violation of *Batas Pambansa Bilang* (B.P. Blg.) 22 before the Municipal Trial Court in Cities (MTCC), Cebu City. The cases were raffled to Branch 3 and docketed as Criminal Case Nos. 40985-R to 40987-R.[3] During the trial, the prosecution presented its lone witness, private complainant Pingping Co.[4] Thereafter, the prosecution formally offered the following documentary evidence:

1. BPI Check No. 492089 dated 29 April 1994 in the sum of ₱78,889.95;
2. BPI Check No. 492010 dated 22 June 1994 in the sum of ₱30,745.90;
3. BPI Check No. 492011 dated 22 June 1994 in the sum of ₱721,362.55;
4. The demand letter dated 7 July 1994 addressed to petitioner;
5. The registry receipt of the Post Office;
6. The face of the Registry Return Receipt;
7. The dorsal side of the Registry Return Receipt;
8. The Returned Check Ticket dated 23 June 1994; and
9. The reason for the dishonor.[5]

Instead of presenting evidence, petitioner filed a Demurrer to Evidence[6] on August 8, 2003, or approximately ten (10) months

[3] CA *rollo*, p. 18.

[4] *Rollo*, p. 17.

[5] CA *rollo*, pp. 22-23.

[6] *Id.* at 28-31.

after the prosecution rested its case. Petitioner averred that the prosecution failed to show that he received the notice of dishonor or demand letter.

On March 4, 2005, the MTCC issued a resolution[7] denying petitioner's Demurrer to Evidence, and rendering judgment finding petitioner guilty as charged, the dispositive portion of which reads:

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of issuing bouncing checks as defined and penalized under Section 1 of Batas Pambansa Blg. 22 and hereby sentences the accused the following:
>
> 1. To pay a fine of Php830,998.40 and in case of insolvency to suffer subsidiary imprisonment;
>
> 2. To pay private complainant the total face value of the checks in the amount of Php830,998.40 plus 1% interest per month beginning from the filing of the complaint.
>
> SO ORDERED.[8]

Aggrieved, petitioner appealed to the Regional Trial Court (RTC), Branch 21, Cebu City. The RTC rendered Judgment[9] affirming *in toto* the MTCC decision. Petitioner moved for reconsideration, but it was denied in an Order[10] dated December 16, 2005. In the same Order, the RTC modified the MTCC resolution by sentencing petitioner to suffer the penalty of imprisonment for six (6) months for each count of violation of B.P Blg. 22, instead of fine as originally imposed.

Undaunted, petitioner elevated the matter to the CA *via* a petition for review under Rule 42 of the Rules of Court. In the assailed Decision, the CA dismissed the petition for lack of merit. It sustained petitioner's conviction as the elements of the crime had been sufficiently established. As to the service

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[7] Penned by Presiding Judge Gil R. Acosta; *id.* at 18-21.

[8] *Id.* at 21.

[9] Penned by Presiding Judge Eric F. Menchavez; *id.* at 14-15.

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

on petitioner of the notice of dishonor, the appellate court pointed out that petitioner did not testify, and that he did not object to the prosecution's evidence aimed at proving the fact of receipt of the notice of dishonor. Consequently, the registry receipt and the return card adequately show the fact of receipt. As to petitioner's contention that he was denied his right to present evidence after the denial of his demurrer to evidence, the CA held that there was no such denial since it was merely the consequence of the filing of demurrer without leave of court. Finally, as to the imposition of the penalty of imprisonment instead of fine, the CA found no grave abuse of discretion on the part of the RTC since it was shown that petitioner acted in bad faith.[11]

On March 4, 2008, the CA denied petitioner's motion for reconsideration. Hence, this petition anchored on the following issues:

> Whether the Registry Receipt and Registry Return Receipt alone without presenting the person who mailed and/or served the demand letter is sufficient notice of dishonor as required by BP 22.
>
> Whether the filing of the Demurrer of (sic) Evidence without leave and denied by the trial court is a waiver of the right of the petitioner (the accused before the trial court) to present his evidence in support and to rebut the evidence of the respondent particularly with respect to the civil aspect of the case.
>
> On the alternative (if the petitioner is guilty), whether the accused should only be mete[d] the penalty of fine as imposed by the trial court (MTCC).[12]

The petition is partly meritorious.

After a careful evaluation of the records of the case, we believe and so hold that the totality of the evidence presented does not support petitioner's conviction for violation of B.P. Blg. 22.

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[11] *Rollo*, pp. 19-24.

[12] *Id.* at 6.

Section 1 of B.P. Blg. 22 defines the offense, as follows:[13]

> Section 1. *Checks without sufficient funds*.—Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.
>
> The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.
>
> Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

Accordingly, this Court has held that the elements of the crime are, as follows: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit, or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[14]

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[13] *King v. People*, 377 Phil. 692, 706 (1999).

[14] *Suarez v. People*, G.R. No. 172573, June 19, 2008, 555 SCRA 238, 245; *Moster v. People*, G.R. No. 167461, February 19, 2008, 546 SCRA 287, 296.

In this case, the first and third elements of the crime have been adequately established. The prosecution, however, failed to prove the second element. Because this element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 creates a presumption of knowledge of insufficiency of funds under the following circumstances:[15]

> Sec. 2. *Evidence of knowledge of insufficient funds*. — The making, drawing, and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

In *Suarez v. People*,[16] which is on all fours with the instant case, two Informations for violation of B.P. Blg. 22 were filed against petitioner therein. After the prosecution presented its evidence, petitioner filed a Demurrer to Evidence without leave of court on the ground that no notice of dishonor had been sent to and received by him. When the case reached this Court, we acquitted petitioner on reasonable doubt as there was insufficient proof that he received notice of dishonor. We explained that:

> The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment. The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense. Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to avert prosecution under B.P. Blg. 22.
>
> x x x. [I]t is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said

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[15] *Suarez v. People*, *supra*, at 245; *King v. People*, *supra* note 13, at 708-709.

[16] *Supra*

notice because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.

A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.[17]

In this case, the prosecution merely presented a copy of the demand letter, together with the registry receipt and the return card, allegedly sent to petitioner. However, there was no attempt to authenticate or identify the signature on the registry return card.[18] Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor.[19] To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable doubt that petitioner received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.[20] The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice.[21] Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. From the registry receipt alone, it is possible that

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[17] *Id.* at 246.

[18] *Moster v. People*, *supra* note 14, at 297-298.

[19] *Id.* at 298, citing *Rico v. People*, G.R. No. 137191, November 18, 2002, 392 SCRA 61, 73.

[20] *Moster v. People*, *supra*, at 299, citing *Cabrera v. People*, 454 Phil. 759, 774 (2003).

[21] *Cabrera v. People*, *supra*, at 774.

petitioner or his authorized agent did receive the demand letter.[22] Possibilities, however, cannot replace proof beyond reasonable doubt.[23] The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused.[24] The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution.[25] As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.[26]

This is so even if petitioner did not present his evidence to rebut the documentary evidence of the prosecution as he had waived his right to present evidence for having filed a demurrer to evidence without leave of court. We must emphasize that the prosecution has the burden of proving beyond reasonable doubt each element of the crime as its case will rise or fall on the strength of its own evidence, never on the weakness or even absence of that of the defense.[27] The failure of the prosecution to prove the receipt by petitioner of the requisite notice of dishonor and that he was given at least five (5) banking days within which to settle his account constitutes sufficient ground for his acquittal.[28]

Nonetheless, petitioner's acquittal for failure of the prosecution to prove all elements of the offense beyond reasonable doubt does not include the extinguishment of his civil liability for the dishonored checks.[29] In case of acquittal, the accused may still

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[22] *Ting v. Court of Appeals,* 398 Phil. 481, 494 (2000).

[23] *Moster v. People*, *supra* note 14, at 299.

[24] *Ambito v. People*, G.R. No. 127327, February 13, 2009, 579 SCRA 69, 94.

[25] *Id.* at 92.

[26] *Suarez v. People*, *supra* note 14, at 247.

[27] *Moster v. People*, *supra* note 14, at 299; *King v. People*, *supra* note 13, at 711.

[28] *Moster v. People*, *supra*, at 299.

[29] *Ambito v. People*, *supra* note 24, at 94.

be adjudged civilly liable. The extinction of the penal action does not carry with it the extinction of the civil action where (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted.[30] In a number of similar cases, we have held that an acquittal based on reasonable doubt does not preclude the award of civil damages.[31]

In view of the foregoing, we sustain the findings of the trial court, as affirmed by the CA, as to petitioner's civil liability.

Finally, in answer to petitioner's insistence that he should have been allowed by the trial court to present his evidence on the civil aspect of the case, suffice it to state that when petitioner filed a demurrer to evidence without leave of court, the whole case was submitted for judgment on the basis of the evidence presented by the prosecution as the accused is deemed to have waived the right to present evidence. At that juncture, the court is called upon to decide the case including its civil aspect.[32]

WHEREFORE, premises considered, the Court of Appeals Decision dated December 13, 2007 and Resolution dated March 4, 2008 in CA-G.R. CEB-CR No. 00300 are *MODIFIED.* Petitioner Jaime Alferez is *ACQUITTED* on reasonable doubt of violation of B.P. Blg. 22. However, the civil liability imposed on petitioner is *AFFIRMED.*

SO ORDERED.

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

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[30] *Hun Hyung Park v. Eung Won Choi*, G.R. No. 165496, February 12, 2007, 515 SCRA 502, 513.

[31] *Ambito v. People*, *supra* note 24, at 94, citing *Bax v. People*, G.R. No. 149858, September 5, 2007, 532 SCRA 284, 292-293; *Rico v. People*, *supra* note 19, at 74; *Domangsang v. Court of Appeals*, G.R. No. 139292, December 5, 2000, 347 SCRA 75, 84-85.

[32] *Hun Hyung Park v. Eung Won Choi*, *supra* note 30, at 512-513.

SECOND DIVISION

[G.R. No. 184091. January 31, 2011]

EDWARD GARRICK VILLENA and PERCIVAL DOROJA, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES, NOMAR B. DEGERON, CHRISTIAN DANDAN, and ELIZABETH BORCELIS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; THE MERE FILING OF A NOTICE OF APPEAL PERFECTS AN APPEAL PROVIDED THE PARTY FILING THE NOTICE OF APPEAL HAS NOT YET LOST STANDING IN COURT.— While it is true that an appeal is perfected upon the mere filing of a notice of appeal and that the trial court thereupon loses jurisdiction over the case, this principle presupposes that the party filing the notice of appeal could validly avail of the remedy of appeal and had not lost standing in court.

2. ID.; ID.; ID.; AN ACCUSED WHO FAILED TO APPEAR AT THE PROMULGATION OF JUDGMENT IS NOT ALLOWED TO AVAIL OF THE REMEDIES AGAINST THE JUDGMENT.— [T]he accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available under the Rules of Court against the judgment—(a) the filing of a motion for new trial or reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122). However, the Rules allow the accused to regain his standing in court in order to avail of these remedies by: (a) his surrender, and (b) his filing of a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment. If the trial court finds that his absence was for a justifiable cause, the accused shall be allowed to avail of the said remedies within 15 days from notice or order finding his absence justified and allowing him the available remedies against the judgment of conviction.

3. ID.; ID.; ID.; ID.; ONLY UPON THE ACCUSED'S VALID SURRENDER AND ONLY AFTER PROPER MOTION THAT HE CAN AVAIL OF THE REMEDY OF APPEAL; TERM "SURRENDER," CONSTRUED.— [P]etitioners' mere filing of notices of appeal through their new counsel, therein only explaining their absence during the promulgation of judgment, cannot be considered an act of surrender, despite the fact that said notices were filed within 15 days from September 28, 2007, the purported date when their new counsel personally secured a copy of the judgment of conviction from the RTC. The term "surrender" under Section 6, Rule 120 of the Rules of Court contemplates an act whereby a convicted accused physically and voluntarily submits himself to the jurisdiction of the court to suffer the consequences of the verdict against him. The filing of notices of appeal cannot suffice as a physical and voluntary submission of petitioners to the RTC's jurisdiction. It is only upon petitioners' valid surrender, and only after proper motion, that they can avail of the remedy of appeal. Absent compliance with these requirements, their notices of appeal, the initiatory step to appeal from their conviction, were properly denied due course.

4. ID.; ID.; ID.; AN ACCUSED WHO JUMPS BAIL LOSES HIS STANDING IN COURT AND IS DEEMED TO HAVE WAIVED ANY RIGHT TO SEEK RELIEF FROM COURT UNLESS HE SURRENDERS OR SUBMITS TO THE JURISDICTION OF THE COURT.— Once an accused escapes from prison or confinement, jumps bail (as in the case of petitioners), or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.

5. ID.; ID.; ID.; THE RIGHT TO APPEAL IS LOST WHEN THE PARTY WHO SEEKS TO AVAIL OF THE SAME FAILED TO COMPLY WITH THE REQUIREMENTS OF THE RULES.— This Court has invariably ruled that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.

APPEARANCES OF COUNSEL

William F. De Los Santos for petitioners.
The Solicitor General for public respondent.
Donardo R. Paglinawan for respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition[1] for review on *certiorari* under Rule 45 of the Rules of Court are the Resolutions dated April 30, 2008[2] and August 1, 2008[3] of the Court of Appeals (CA) in CA-G.R. SP No. 103224.

The antecedents—

Petitioners Police Inspector (P/Insp.) Edward Garrick Villena and Police Officer 1 (PO1) Percival Doroja, together with PO2 Nicomedes Lambas (PO2 Lambas), PO3 Dan Fermalino (PO3 Fermalino),[4] Police Chief Inspector Jovem C. Bocalbos, PO3 Reynaldo Macalinao (PO3 Macalinao), PO1 Alvaro Yumang (PO1 Yumang), and Imelda Borcelis, were indicted for the crime of robbery (extortion)[5] before the Regional Trial Court (RTC), Branch 202, Las Piñas City. The case was docketed as Criminal Case No. 05-0025.

After arraignment, where the accused all pled "not guilty," and pre-trial, trial on the merits ensued. Petitioners failed to appear before the trial court to adduce evidence in their defense.

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[1] *Rollo*, pp. 3-22.

[2] Per Associate Justices Rebecca de Guia-Salvador, Vicente S.E. Veloso, and Apolinario D. Bruselas, Jr.; *id*. at 28.

[3] Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso, concurring; *id*. at 30-32.

[4] Also known as PO3 Dan Firmalino in other documents.

[5] Per the Information for Robbery (Extortion); *id*. at 77-78.

It was only PO3 Macalinao who appeared before the court to present his evidence.

On August 29, 2007, the RTC rendered its decision[6] convicting petitioners, together with PO2 Lambas, PO3 Fermalino, PO3 Macalinao, and PO1 Yumang, of the crime charged.

During the promulgation of judgment on September 3, 2007, petitioners again failed to appear despite proper notices to them at their addresses of record. In the absence of petitioners, the promulgation was made pursuant to paragraphs 4 and 5, Section 6, Rule 120 of the Revised Rules on Criminal Procedure. Consequently, the RTC issued warrants of arrest against them.

On October 11, 2007, petitioners, through their new counsel, Atty. William F. delos Santos, filed their separate notices of appeal before the RTC. In the said notices, they explained that they failed to attend the promulgation of judgment because they did not receive any notice thereof because they were transferred to another police station.[7]

In the Order[8] dated November 20, 2007, the RTC denied due course to petitioners' notices of appeal. The RTC ratiocinated in this wise—

> Case record shows that the Decision of the court dated August 29, 2007 was promulgated on September 3, 2007. The appropriate notices and subpoenas were duly sent to the accused but [they were] returned with the notation that they are no longer residing at their given address/es. In the present case, all three accused raised the excuse that they were not notified of the setting of the promulgation. The Court finds this ground unmeritorious since the accused have the obligation to inform the Court of the changes in their address in order that the orders, notices and other court processes may be properly sent to them. In any case, the counsels on record for the accused Macalinao, Doroja and Villena were duly notified of the scheduled hearings and promulgation of judgment.

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[6] *Id*. at 80-94.

[7] Notices of Appeal of Doroja and Villena, respectively; *id*. at 63-64 and 66-67.

[8] *Id*. at 57-58.

Moreover, with the non-appearance of the accused-movants during the presentation of defense evidence and on the scheduled promulgation of the decision, the Court already issued a Warrant of Arrest against the three accused. This means that they have lost their standing in court and unless they surrender or submit to the jurisdiction of the court, they are deemed to have waived any right to seek relief from the court. (*People v. Del Rosario, et al., G.R. Nos. 107297-98, December 19, 2000, citing People v. Mapalao, 197 SCRA 79, 87-88 [1991]*).

IN VIEW THEREOF, the Notices of Appeal filed by accused PO3 Reynaldo Macalinao, PO1 Percival Doroja and P/Insp. Edward Garrick Villena are hereby DENIED DUE COURSE.

SO ORDERED.

Subsequently, PO3 Macalinao filed a Motion with Leave of Court to Reconsider the November 20, 2007 Order.[9] Petitioners likewise filed a joint Motion for Reconsideration (of the Order of November 20, 2007).[10]

Resolving the said motions, the RTC issued its Order[11] dated February 8, 2008, granting the prayer for reconsideration of PO3 Macalinao, giving his notice of appeal due course. However, the said Order denied herein petitioners' motion, for failure to adduce any valid excuse or compelling justification for the reconsideration, reversal, and setting aside of the November 20, 2007 Order. The RTC found—

x x x In the case of accused Reynaldo Macalinao, it is pristinely clear from the case records that he has been actually attending the scheduled hearings of the case since its inception. He was also the only one, among the police officers accused in this case, who testified in Court in defense of the charges leveled against him.

Moreover, the Court, after a second look at the records finds that his failure to attend the promulgation of judgment on September 3, 2007 (of the Decision dated August 29, 2007) was due to an excusable and justifiable reason. As stated in his

[9] As mentioned in the RTC Order dated February 8, 2008; *id*. at 60.

[10] *Id*. at 69-73.

[11] *Id*. at 60-62.

Manifestation/Motion on the Subpoena dated August 29, 2007, the basis for his non-appearance was for the reason that he was transferred from Raxa Bago, Tondo, Police Station (PS-1) to Police Station 11, Meisic located at Felipe II, Binondo, Manila, since July 26, 2006, as evidenced by [the] Certification dated September 19, 2007 issued by P/Insp. Ricardo Tibay Tangunan, Chief Administration Section.

We cannot say the same thing for the other two (2) accused, namely, PO1 Percival Doroja and P/Insp. Edward Garrick Villena as they have not manifested nor informed the Court of the cause of their non-appearances despite notices and subpoenas sent to them nor sought for the lifting of the Bench Warrant issued against them unlike accused Reynaldo Macalinao. Also, it can be keenly observed that they both failed to appear in several if not most of the hearings set by the Court since the commencement of the trial of the instant case against them. Noteworthy of such non-appearances in court despite due notices and subpoenas are the scheduled hearings on November 23, 2005, February 8, 2006, February 15 and 22, 2006, April 26, 2006, May 10, 2006, June 21, 2006, September 20, 2006, October 11 and 25, 2006, November 29, 2006, January 24, 2007, February 26, 2007, March 14 and 19, 2007, April 25, 2007 and the promulgation of judgment on September 3, 2007.

From all the foregoing actions during the trial of this instant criminal case, and after their conviction by this Court, it is only accused PO3 Reynaldo Macalinao who had shown sufficient interest in defending his case. The records show no unusual and deliberate delay caused by him in the trial of the criminal case.

As to the other two accused, it can[not] be gainsaid that they have not proffered any cogent and excusable reason to justify their non-appearance during the aforesaid dates and they only asked for judicial leniency, which this Court cannot give. They have only themselves to be blamed.[12]

Aggrieved, petitioners filed a petition[13] for *certiorari*, prohibition, and *mandamus* under Rule 65 of the Rules of Court before the CA. The CA, in its Resolution[14] dated April 30, 2008,

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

[13] *Id*. at 33-48.

[14] *Supra* note 2.

initially dismissed the petition for not being accompanied with clearly legible duplicate originals or certified true copies of the questioned Orders. Petitioners thus moved to reconsider the April 30, 2008 Resolution.

In the August 1, 2008 Resolution,[15] even as it took into account the merits of petitioners' motion for reconsideration, the CA nevertheless resolved to deny the same for failure to show *prima facie* evidence of any grave abuse of discretion on the part of the RTC. Hence, this petition ascribing error to the CA in dismissing their petition and in not finding grave abuse of discretion against the RTC for denying their notices of appeal.

Petitioners now argue that the CA erred in upholding the RTC in its denial of their respective notices of appeal since they already contained the required manifestation and information as to the cause of their non-appearance on the scheduled promulgation on September 3, 2007, *i.e.*, lack of notice. According to them, their notices of appeal have substantially complied with the requirement of Section 6, Rule 120 of the Rules of Court, and have effectively placed them under the RTC's jurisdiction. They allege further that their motion for reconsideration should have been considered by the CA since they have offered the explanations that their failure to appear during the promulgation of judgment was due to the change of their respective addresses, and that their former counsel of record did not inform them of the need to notify the RTC thereof, much less properly advise them of the current status of the proceedings. As regards their failure to move for the lifting of the bench warrants issued for their arrest, petitioners asseverate that the Rules of Court do not provide for such a requirement before they could avail of the remedies they seek.

The petition is without merit.

While it is true that an appeal is perfected upon the mere filing of a notice of appeal and that the trial court thereupon loses jurisdiction over the case, this principle presupposes that

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[15] *Supra* note 3.

the party filing the notice of appeal could validly avail of the remedy of appeal and had not lost standing in court. In this case, petitioners have lost their standing in court by their unjustified failure to appear during the trial and, more importantly, during the promulgation of judgment of conviction, and to surrender to the jurisdiction of the RTC.

Petitioners insist that their failure to attend the promulgation of judgment was due to the lack of notice of the date thereof, allegedly because they were transferred to another police station. Notably, however, petitioners did not proffer any documentary and convincing proof of their supposed transfer, not even to inform the court as to which police station they were transferred. In contrast, their fellow accused PO3 Macalinao submitted to the RTC a Certification issued by P/Insp. Ricardo Tibay Tangunan, Chief of the Philippine National Police Administrative Section, evidencing his transfer from Police Station (PS-1), Raxa Bago, Tondo Manila to Police Station 11, Meisic in Binondo, Manila. Petitioners were duty bound to inform the RTC of their transfer, assuming its truth, so that notices may be sent to their respective new mailing addresses. They were remiss in the discharge of this responsibility.

Petitioners contend that their act of filing notices of appeal was already substantial compliance with the requirements of Section 6, Rule 120 of the Rules of Court.

We differ. Said provision states—

> Sec. 6. *Promulgation of judgment.*—The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.
>
> If the accused is confined or detained in another province or city, the judgment may be promulgated by the executive judge of the Regional Trial Court having jurisdiction over the place of confinement or detention upon request of the court which rendered the judgment.

The court promulgating the judgment shall have the authority to accept the notice of appeal and to approve the bail bond pending appeal; provided, that if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed and resolved by the appellate court.

The proper clerk of court shall give notice to the accused personally or through his bondsman or warden and counsel, requiring him to be present at the promulgation of the decision. If the accused was tried *in absentia* because he jumped bail or escaped from prison, the notice to him shall be served at his last known address.

In case the accused fails to appear at the scheduled date of promulgation of judgment despite notice, the promulgation shall be made by recording the judgment in the criminal docket and serving him a copy thereof at his last known address or thru his counsel.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these rules against the judgment and the court shall order his arrest. **Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.**[16]

Thus, the accused who failed to appear at the promulgation of the judgment of conviction shall lose the remedies available under the Rules of Court against the judgment—(a) the filing of a motion for new trial or reconsideration (Rule 121), and (b) an appeal from the judgment of conviction (Rule 122). However, the Rules allow the accused to regain his standing in court in order to avail of these remedies by: (a) his surrender, and (b) his filing of a motion for leave of court to avail of these remedies, stating therein the reasons for his absence, within 15 days from the date of promulgation of judgment. If the trial court finds that his absence was for a justifiable cause, the accused shall be allowed to avail of the said remedies within 15 days from

[16] Emphasis supplied.

notice or order finding his absence justified and allowing him the available remedies against the judgment of conviction.[17]

Thus, petitioners' mere filing of notices of appeal through their new counsel, therein only explaining their absence during the promulgation of judgment, cannot be considered an act of surrender, despite the fact that said notices were filed within 15 days from September 28, 2007, the purported date when their new counsel personally secured a copy of the judgment of conviction from the RTC. The term "surrender" under Section 6, Rule 120 of the Rules of Court contemplates an act whereby a convicted accused physically and voluntarily submits himself to the jurisdiction of the court to suffer the consequences of the verdict against him. The filing of notices of appeal cannot suffice as a physical and voluntary submission of petitioners to the RTC's jurisdiction. It is only upon petitioners' valid surrender, and only after proper motion, that they can avail of the remedy of appeal. Absent compliance with these requirements, their notices of appeal, the initiatory step to appeal from their conviction, were properly denied due course.

Even if petitioners' notices of appeal were given due course, the CA would only be constrained to dismiss their appeal. This is because petitioners, who had standing warrants of arrest but did not move to have them lifted, are considered fugitives from justice. Since it is safe to assume that they were out on bail during trial, petitioners were deemed to have jumped bail when they failed to appear at the promulgation of their sentence. This is a ground for dismissal of an appeal under Section 8, Rule 124 of the Rules of Court, which provides—

> Sec. 8. *Dismissal of appeal for abandonment or failure to prosecute.*—The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de officio*.

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[17] *People v. De Grano*, G.R. No. 167710, June 5, 2009, 588 SCRA 550, 570, citing *Pascua v. Court of Appeals*, 401 Phil. 350, 363 (2000).

The Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal.[18]

Once an accused escapes from prison or confinement, jumps bail (as in the case of petitioners), or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.[19]

What is more, the judgment of conviction against petitioners had already acquired finality. Under Section 6, Rule 120 of the Rules of Court, they had only 15 days from the date of promulgation of judgment within which to surrender and to file the required motion for leave of court to avail of the remedies against the judgment. As the judgment was promulgated on September 3, 2007, petitioners had only until September 18, 2007 to comply with the mandatory requirements of the said rule.

This Court has invariably ruled that the right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirements of the Rules. Failing to do so, the right to appeal is lost.[20]

WHEREFORE, the petition is *DENIED*. The Resolutions dated April 30, 2008 and August 1, 2008 of the Court of Appeals in CA-G.R. SP No. 103224 are *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

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[18] Emphasis supplied.

[19] *Estrada v. People*, 505 Phil. 339, 352 (2005), citing *People v. Mapalao, et al.*, 274 Phil. 354, 363 (1991).

[20] *De Guzman v. People*, G.R. No. 167492, March 22, 2007, 518 SCRA 767, 771-772, citing *Balgami v. Court of Appeals*, 487 Phil. 102, 115 (2004).

SECOND DIVISION

[G.R. No. 185535. January 31, 2011]

MANILA INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **REYNALDO (REYMUNDO[1]) AVILA, CALIXTO AGUIRRE, and SPS. ROLANDO and ANGELITA QUILANG,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; THE ONLY ISSUE UP FOR ADJUDICATION IS MATERIAL POSSESSION OVER THE REAL PROPERTY; THE COURT MAY PASS ON THE ISSUE OF OWNERSHIP PROVISIONALLY.— It is settled in ejectment suits that a defendant's claim of ownership over a disputed property will not divest the first level courts of their summary jurisdiction. Thus, even if the pleadings raise the issue of ownership, the court may still pass on the same although only for the purpose of determining the question of possession. Any adjudication with regard to the issue of ownership is only provisional and will not bar another action between the same parties which may involve the title to the land. This doctrine is but a necessary consequence of the nature of ejectment cases where the only issue up for adjudication is the physical or material possession over the real property.

2. ID.; ID.; ID.; BARE CLAIM OF PARTIES THAT THEY COULD BE BENEFICIARIES OF PROCLAMATION NO. 595 SHOULD NOT BE PERMITTED TO DEFEAT THE RIGHT OF POSSESSION BY THE OWNER OF THE REAL PROPERTY.— Granting that their occupation of the subject premises was not derived from either Tarrosa or Balilo, the postulation of the respondents makes them mere trespassers or squatters acquiring no vested right whatsoever to the subject property. Thus, to thwart the decision of the court, they claim that they were potential beneficiaries of Proclamation No. 595. Certainly, this bare anticipation on their part should not be permitted to defeat the right of possession by the owner, MIAA. Juxtaposed against the evidence adduced by the MIAA showing

[1] *Rollo*, p. 176.

that respondents were once tenants of either Tarrosa or Balilo, respondents' bare claim that they could be beneficiaries of Proclamation No. 595 cannot be given any consideration.

3. ID.; ID.; ID.; THE DETERMINATION OF THE RIGHTS OF CLAIMANTS TO PUBLIC LANDS IS DISTINCT FROM THE DETERMINATION OF WHO HAS BETTER RIGHT OF PHYSICAL POSSESSION; RULING ON INAPPLICABILITY OF PROCLAMATION NO. 595 IS ONLY PROVISIONAL.— [T]he ruling on the inapplicability of Proclamation No. 595 is only provisional and will certainly not bar the NHA or any other agency of the government tasked to implement Proclamation No. 595, from making a determination of respondents' qualifications as beneficiaries, in another action. In *Pajuyo v. CA*, the very case relied upon by the respondents and later cited by the CA in its assailed decision, the Court reiterated that the determination of the rights of claimants to public lands is distinct from the determination of who has better right of physical possession. While it was held therein that the CA erred in making a premature determination of the rights of the parties under Proclamation No. 137, it was emphasized that the courts should expeditiously resolve the issue of physical possession to prevent disorder and breaches of peace.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Catalino Aldea Generillo, Jr. for respondents.

D E C I S I O N

MENDOZA, *J.:*

This is a petition for review on *certiorari* under Rule 45 filed by the Manila International Airport Authority *(MIAA)* seeking to reverse and set aside the June 16, 2008 Decision[2] of the

[2] *Id.* at 16-31. Penned by Associate Justice Celia C. Librea-Leagogo with Associate Justice Vicente S.E. Veloso and Associate Justice Agustin Dizon, concurring.

Court of Appeals *(CA)* in CA-G.R. SP No. 97536 which annulled the August 7, 2006[3] and the November 13, 2006[4] Resolutions of the Regional Trial Court of Pasay City, Branch 117 *(RTC)*, in Civil Case No. 05-0399-CFM.

From the records, it appears that in June 1968, the late Tereso Tarrosa *(Tarrosa)* leased a 4,618 square meter parcel of land located along the MIAA Road in Pasay City from its owner, MIAA. Before the expiration of the lease sometime in 1993, Tarrosa filed a case against MIAA to allow him to exercise his pre-emptive right to renew the lease contract. Finding that Tarrosa violated certain provisions of its contract with MIAA, the trial court dismissed the case. Tarrosa appealed before the CA but to no avail. When Tarrosa passed away, he was substituted by his estate represented by his heirs' attorney-in-fact, Annie Balilo *(Balilo)*. On June 9, 1998, the CA decision became final and executory.[5]

Thereafter, MIAA sent letters of demand to the heirs asking them to vacate the subject land. Unheeded, MIAA instituted an ejectment suit against the Estate of Tarrosa *(Estate)* before the Metropolitan Trial Court of Pasay City, Branch 47 *(MeTC)*, docketed as Civil Case No. 64-04-CFM. On February 18, 2005, the MeTC rendered its decision[6] ordering the Estate and all persons claiming rights under it to vacate the premises, peacefully return possession thereof to MIAA and pay rentals, attorney's fees and costs of suit.

The Estate, through Balilo, appealed the case to the RTC, where it was docketed as Civil Case No. 05-0399-CFM. In its July 22, 2005 Decision,[7] the RTC gave due course to the appeal and affirmed the MeTC decision *in toto*.

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[3] *Id*. at 236-239.

[4] *Id*. at 260-263.

[5] *Id*. at 98-115.

[6] *Id*. at 116-120.

[7] *Id*. at 122-127.

The Estate then filed a motion for reconsideration while MIAA sought the correction of a clerical error in the MeTC decision as well as the issuance of a writ of execution. On September 20, 2005, the RTC issued an omnibus order[8] denying the Estate's motion for reconsideration, granting MIAA's motion to correct a clerical error and granting the motion for the issuance of a writ of execution.

On the strength of the writ of execution issued by the RTC, a notice to vacate was served on the occupants of the subject premises. The RTC Sheriff partially succeeded in evicting the Estate, Balilo and some other occupants. Still, others remained in the premises.[9]

Among the remaining occupants were respondents Calixto E. Aguirre *(Aguirre)*, Reymundo Avila *(Avila)*, and spouses Rolando and Angelita Quilang *(Quilangs)*, who filed separate special appearances with motions to quash the writ of execution.[10] In essence, all of them interposed that they were not covered by the writ of execution because they did not derive their rights from the Estate since they entered the subject premises only after the expiration of the lease contract between MIAA and Tarrosa. They further stated that the subject premises had already been set aside as a government housing project by virtue of Presidential Proclamation No. 595 *(Proclamation No. 595)*.[11]

On May 5, 2006, the RTC granted the motion to quash filed by the remaining occupants, including Avila and the Quilangs.

On August 4, 2006, the RTC denied the motion to quash filed by Aguirre. In its August 4, 2006 Resolution,[12] the RTC stated:

It is important to emphasize at this juncture that during the ocular inspection conducted by this court (Thru Presiding Judge, Henrick

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[8] *Id*. at 128-130.

[9] *Id*. at 18 and 131.

[10] *Id*. at 18, 144 and 159.

[11] *Id*. at 393 (CA Decision in S.P. No. 96477).

[12] *Id*.

F. Gingoyon), records reveal that the area occupied by Mr. Calixto Aguirre, as he claimed, is more or less 1,000 square meters. Thus, citing the provision of the law pertaining to qualified occupants or beneficiaries who can avail of the privilege, the area alone possessed by Mr. Calixto Aguirre will not qualify as beneficiary under Republic Act 7279. Moreover, the result of the ocular inspection revealed that the area is used by Mr. Calixto Aguirre as business establishment and in fact some of them were even subject for lease.

Therefore, from the very nature of the utilization of the property the same is beyond doubt not covered and the same is contrary to the letter and spirit of the aforementioned Presidential Proclamation No. 595.

WHEREFORE, premises considered, the instant Motion to Quash Writ of Execution and Set Aside Judgment filed by Mr. Calixto Aguirre is hereby DENIED for lack of merit.

SO ORDERED. (underscoring supplied)[13]

On August 7, 2006, a similar finding was made with regard to Avila and the Quilangs when the RTC resolved MIAA's motion for reconsideration. In its August 7, 2006 Resolution, the RTC likewise wrote:

Unfortunately, however, the result of the ocular inspection revealed that some of the 28 Oppositors, namely: Mr. REYMUNDO AVILA; SPS. ROLANDO QUILANG AND ANGELITA QUILANG; ROMEO CAGAS; JEANETTE LOPEZ, are using the property subject to this case not as family dwelling but rather utilized as business establishments. Thus, the said occupancy is not covered under Republic Act 7279 in order to be considered qualified beneficiaries. Relatedly, therefore that the Writ of Execution cannot be implemented against the afore-named persons on the ground that they are qualified beneficiaries under Presidential Proclamation No. 595 in relation to the provision of Republic Act 7279 is unwarranted under the circumstances.

It is important to emphasize at this juncture that during the ocular inspection conducted by this court (Thru Presiding Judge, Henrick F. Gingoyon), records reveal that the area occupied by Mr. REYNALDO (REYMUNDO) AVILA, is occupying more or less 500

[13] *Id*. at 294-295.

square meters and the same is actually use as an apartment for lease/ rent; Sps. ROLANDO AND ANGELITA QUILANG; is occupying the premises by virtue of the rights vested by their father, Calixto Aguirre, and also utilizing the property for rent; ROMEO CAGAS AND JEANNETE LOPEZ are tenants of Calixto Aguirre.

Thus, citing the provision of the law pertaining to qualified occupants or beneficiaries who can avail of the privilege, the area alone possessed by Mr. Reynaldo (Reymundo) Avila; Sps. Rolando and Angelita Quilang will not qualify as beneficiaries under Republic Act 7279. Moreover, the area as shown in the result of the ocular inspection is used by them as business establishment and in fact some of them were even subject for lease.

Therefore, from the very nature of the utilization of the property the same is beyond doubt not covered and the same is contrary to the letter and spirit of the aforementioned Presidential Proclamation No. 595 in relation to Republic Act 7279.

WHEREFORE, premises considered, the Order dated May 5, 2006 is hereby MODIFIED in so far as Oppositors REYNALDO (REYMUNDO) AVILA; Sps. ROLANDO QUILANG and ANGELITA QUILANG; ROMEO CAGAS AND JEANETTE LOPEZ are concerned. Let the corresponding Writ of Execution against the afore-mentioned persons be issued.

SO ORDERED. (underscoring supplied)[14]

The above findings were reiterated in the assailed RTC's Joint Resolution dated November 13, 2006 which denied the separate motions for reconsideration of the respondents.

On account of this, Aguirre, Avila and the Quilangs went to the CA on *certiorari* questioning the propriety of the RTC's disposition, more particularly, its finding that they were not qualified beneficiaries under Proclamation No. 595.

On June 16, 2008, the CA rendered the subject decision annulling the RTC resolutions dated August 7, 2006 and November 13, 2006. According to the CA, there was a grave

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

abuse of discretion on the part of the RTC in ruling that respondents could not invoke Proclamation No. 595 because the mandate to determine the same rested with the National Housing Authority *(NHA)*. Thus:

> x x x. As provided in said Proclamation No. 595, the National Housing Authority (NHA), under the supervision of the Housing and Urban Development Coordinating Council (HUDCC) and in coordination with the MIAA, shall be the agency primarily responsible for the administration and disposition of the lots subject thereof in favor of the bona fide occupants therein, pursuant to the provisions of Sections 8, 9 and 12 of Republic Act 7279 and other pertinent laws.[15]

In a related case, MIAA also went to the CA on *certiorari* questioning the RTC's grant of another motion to quash its writ of execution filed by other remaining occupants. Said occupants are not parties in this case. The case was docketed as CA-G.R. SP No. 96477.[16] In said case, taking note that the occupants themselves admitted that they had entered the subject premises without the permission of either the MIAA or the Estate, the CA ruled that the said occupants were mere trespassers or squatters who had no right to possess the same. Accordingly, the writ of execution issued in the ejectment case could be enforced against them even though they were not named parties in the ejectment suit. Some of the occupants/aggrieved parties therein, namely, Alejandro Aguirre (son of Calixto Aguirre) and Norberto Aguirre (brother of Calixto Aguirre), came to this Court via a petition for review but it was summarily denied for having been filed out of time and for their failure to show any reversible error on the part of the CA. The denial became final and executory on July 23, 2009.[17]

Going back to the June 16, 2008 CA Decision, MIAA comes now to this Court questioning its annulment of the RTC resolutions by raising the following:

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[15] *Id*. at 12.

[16] *Id*. at 390.

[17] *Id*. at 456.

ISSUES:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT PUBLIC RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN HE ARROGATED UPON HIMSELF THE DETERMINATION THAT PRIVATE RESPONDENTS ARE NOT QUALIFIED BENEFICIARIES UNDER PROCLAMATION NO. 595

WHETHER OR NOT A NAKED CLAIM OF POTENTIAL QUALIFIED BENEFICIARIES OF A SOCIALIZED HOUSING PROGRAM PREVAIL OVER THE RIGHTS OF THE PERSON WITH PRIOR PHYSICAL POSSESSION AND A BETTER RIGHT OVER THE DISPUTED REAL PROPERTY[18]

The Court finds the petition meritorious.

As mentioned earlier, the controversy stemmed from an ejectment suit filed by MIAA against the Estate represented by Balilo wherein the MeTC ordered the eviction of the Estate, Balilo and all those claiming rights under them.

The MeTC decision was affirmed by the RTC. Eventually, the Estate, Balilo and some occupants were evicted.[19] Respondents Aguirre, Avila and the Quilangs, together with some other remaining occupants, filed their separate special appearances and sought to quash the RTC's writ of execution. They claimed that they did not derive their right to occupy the premises from the Estate or from Balilo but rather from Proclamation No. 595 as they were potential beneficiaries of the same. In its opposition, the MIAA submitted documents prepared and signed by Balilo showing that the respondents were tenants of Tarrosa or Balilo.[20] The RTC, through its then Presiding Judge, the late Henrick F. Gingoyon *(Judge Gingoyon),* conducted an ocular inspection on the premises. Judge Jesus B. Mupas, who took over from

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[18] *Id*. at 43-44 and 442.

[19] *Id*. at 18 and 131.

[20] *Id*. at 195-212.

Judge Gingoyon, reproduced the findings of the latter in his August 4, 2006 Resolution.[21]

The same finding was reached with respect to Avila and the Quilangs in the August 7, 2006 Resolution of the RTC[22] and reiterated in its Joint Resolution dated November 13, 2006 which dismissed the separate motions for reconsideration of the respondents.

Going over the RTC's findings and disposition, the Court is of the considered view that it acted well within its jurisdiction. It is settled in ejectment suits that a defendant's claim of ownership over a disputed property will not divest the first level courts of their summary jurisdiction. Thus, even if the pleadings raise the issue of ownership, the court may still pass on the same although only for the purpose of determining the question of possession. Any adjudication with regard to the issue of ownership is only provisional and will not bar another action between the same parties which may involve the title to the land. This doctrine is but a necessary consequence of the nature of ejectment cases where the only issue up for adjudication is the physical or material possession over the real property.[23]

Granting that their occupation of the subject premises was not derived from either Tarrosa or Balilo, the postulation of the respondents makes them mere trespassers or squatters acquiring no vested right whatsoever to the subject property.[24] Thus, to thwart the decision of the court, they claim that they were potential beneficiaries of Proclamation No. 595. Certainly, this bare anticipation on their part should not be permitted to defeat the right of possession by the owner, MIAA. Juxtaposed against the evidence adduced by the MIAA showing that respondents were once tenants of either Tarrosa or Balilo, respondents' bare claim that they could be beneficiaries of Proclamation No. 595 cannot be given any consideration.

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[21] *Id.* at 294.

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

[23] *Pajuyo v. CA*, G.R No. 146364, June 3, 2004, 430 SCRA 492, 509.

[24] *Id*.

At any rate, as earlier stated, the ruling on the inapplicability of Proclamation No. 595 is only provisional and will certainly not bar the NHA or any other agency of the government tasked to implement Proclamation No. 595, from making a determination of respondents' qualifications as beneficiaries,[25] in another action.

In *Pajuyo v. CA*,[26] the very case relied upon by the respondents and later cited by the CA in its assailed decision, the Court reiterated that the determination of the rights of claimants to public lands is distinct from the determination of who has better right of physical possession. While it was held therein that the CA erred in making a premature determination of the rights of the parties under Proclamation No. 137, it was emphasized that the courts should expeditiously resolve the issue of physical possession to prevent disorder and breaches of peace.

WHEREFORE, the petition is *GRANTED*. The June 16, 2008 Decision of the CA in CA-G.R. SP No. 97536 is hereby *REVERSED* and *SET ASIDE* and another judgment entered reinstating the August 7, 2006 and the November 13, 2006 Resolutions of the Regional Trial Court of Pasay City, Branch 117, in Civil Case No. 05-0399-CFM.

SO ORDERED.

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

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[25] *Id.* at 513-514.

[26] G.R No. 146364, June 3, 2004, 430 SCRA 492, 518.

SECOND DIVISION

[G.R. No. 185685. January 31, 2011]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **NIETO A. RACHO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* FINDINGS OF FACT OF THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE PARTIES AND ARE NOT REVIEWABLE; EXCEPTIONS; PRESENT.— As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts. When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) ***When the findings of fact are conflicting;*** (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. Undeniably, the findings of fact of the Ombudsman are different from those of the CA. Thus, the Court finds it necessary to take a second look at the factual matters surrounding the present case.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REQUIRED TO MAKE A COMPLETE DISCLOSURE OF THEIR ASSETS,

LIABILITIES AND NET WORTH; MONEY OR PROPERTY ACQUIRED BY PUBLIC OFFICIAL OR EMPLOYEE WHICH IS MANIFESTLY DISPROPORTIONATE TO HIS SALARY OR HIS OTHER LAWFUL INCOME SHALL BE *PRIMA FACIE* PRESUMED TO HAVE BEEN UNLAWFULLY ACQUIRED; APPLICATION.— Section 7 and Section 8 of Republic Act (R.A.) 3019 explain the nature and importance of accomplishing a true, detailed and sworn SALN x x x. Complimentary to the above-mentioned provisions, Section 2 of R.A. 1379 states that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired." By mandate of law, every public official or government employee is required to make a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters. Hence, a public official or employee who has acquired money or property manifestly disproportionate to his salary or his other lawful income shall be *prima facie* presumed to have illegally acquired it. It should be understood that what the law seeks to curtail is "*acquisition of unexplained wealth*." Where the source of the undisclosed wealth can be properly accounted, then it is "explained wealth" which the law does not penalize. In this case, Racho not only failed to disclose his bank accounts containing substantial deposits but he also failed to satisfactorily explain the accumulation of his wealth or even identify the sources of such accumulated wealth.

3. ID.; ID.; ID.; CHARGE OF DISHONESTY; DISHONESTY, EXPLAINED; DISMISSAL FROM THE SERVICE, PROPER PENALTY FOR DISHONESTY.— Dishonesty begins when an individual intentionally makes a false statement in any material fact, or practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment or promotion. It is understood to imply the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. It is a malevolent

act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee. Section 52 (A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats dishonesty as a grave offense the penalty of which is dismissal from the service at the first infraction.

4. ID.; ID.; ID.; ID.; THE PUBLIC OFFICIAL'S INTENT TO COVER UP THE TRUE SOURCE OF HIS BANK DEPOSITS CONSTITUTES DISHONESTY.— Simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.

5. ID.; ID.; ID.; SUSCEPTIBLE TO DISHONESTY WHEN THEIR ACCUMULATED WEALTH BECOMES MANIFESTLY DISPROPORTIONATE TO THEIR INCOME OR OTHER SOURCES OF INCOME AND FAIL TO PROPERLY ACCOUNT OR EXPLAIN THE LATTER.— It should be emphasized that mere misdeclaration of the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the employee's income or other sources of income and the public officer/employee fails to properly account or explain his other sources of income, does he become susceptible to dishonesty because when a public officer takes an oath or office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs.

6. ID.; ID.; ID.; A PUBLIC SERVANT MUST DISPLAY AT ALL TIMES THE HIGHEST SENSE OF HONESTY AND INTEGRITY.— The Court has consistently reminded our public servants that public service demands utmost integrity and discipline. A public servant must display at all times the highest sense of honesty and integrity, for no less than the Constitution

mandates the principle that a public office is a public trust; and all public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Malilong Hupp & Cabatingan for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by the Office of the Ombudsman *(Ombudsman)* assails the February 21, 2008 Decision[2] and November 20, 2008 Resolution[3] of the Court of Appeals-Cebu *(CA)* in CA-G.R. CEB-SP No. 00694 which reversed and set aside the administrative aspect of the April 1, 2005 Joint Order[4] of the Office of the Ombudsman-Visayas.

The April 1, 2005 Joint Order of the Ombudsman found respondent Nieto A. Racho *(Racho)* guilty of dishonesty and ordered him dismissed from the service with forfeiture of all benefits and perpetual disqualification from public office. The assailed CA Decision, however, found Racho guilty of negligence only and reduced the penalty to suspension from office for six months, without pay.

From the records, it appears that DYHP Balita Action Team *(DYHP)*, in a letter dated November 9, 2001, reported to Deputy Ombudsman for the Visayas, Primo Miro, a concerned citizen's

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[1] *Rollo*, pp. 12-47.

[2] *Id.* at 49-61. Penned by Associate Justice Franchito N. Diamante with Associate Justice Isaias P. Dicdican and Associate Justice Priscilla Baltazar-Padilla, concurring.

[3] *Id.* at 64-64b.

[4] CA *rollo*, pp. 46-51.

complaint regarding the alleged unexplained wealth of Racho, then Chief of the Special Investigation Division of the Bureau of Internal Revenue (*BIR*), Cebu City.[5] To support the allegation, the complainant attached copies of bank certifications, all issued in June of 1999, by Metrobank Cebu (Tabunok Branch),[6] BPI Cebu (Mango Branch),[7] and PCI Bank (Magallanes Branch).[8] In total, Racho appeared to have an aggregate bank deposit of ₱5,798,801.39.

Acting on the letter, the Ombudsman launched a fact-finding investigation and directed the BIR to submit Racho's Statements of Assets, Liabilities and Net Worth (*SALN*) from 1995 to 1999. BIR complied with the order and gave copies of Racho's SALN. Soon, the Ombudsman found that Racho did not declare the bank deposits in his SALN, as mentioned in the DYHP's letter. Accordingly, the Ombudsman filed a Complaint for Falsification of Public Document under Article 171 of the Revised Penal Code (OMB-V-C-02-0240-E) and Dishonesty (OMB-V-A-02-0214-E) against Racho.

The Ombudsman, in its August 21, 2002 Memorandum, adopted the Final Evaluation Report[9] of Administrative Officer Elpidio Montecillo as the sworn complaint. Thereafter, Racho submitted his counter-affidavit attacking the procedural infirmities of the complaint against him.[10] At the scheduled clarificatory hearing, Racho invoked his right to remain silent. On January 02, 2003, Graft Prosecution Officer *(GPO)* Pio Dargantes did not give weight to the bank documents because they were mere photocopies. As a result, he dismissed the complaint for dishonesty (OMB-V-A-02-214-E) due to insufficiency of evidence.[11]

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[5] *Rollo,* p. 74.

[6] CA *rollo*, p. 98.

[7] *Id.* at 99.

[8] *Id.* at 100.

[9] *Id.* at 104-105.

[10] *Id.* at 113-118.

[11] *Id.* at 106-108.

On review, Director Virginia Palanca, through a memorandum dated May 30, 2003,[12] decreed that Racho's act of not declaring said bank deposits in his SALN, which were disproportionate to his and his wife's salaries, constituted falsification and dishonesty. She found Racho guilty of the administrative charges against him and imposed the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold public office.

Racho moved for reconsideration[13] but his motion was denied in an Order dated July 15, 2003.[14]

Racho appealed the said order of dismissal to the CA. On January 26, 2004, the CA reversed the Ombudsman's ruling and ordered the reinvestigation of the case.[15]

In compliance with the CA's decision, the Ombudsman reinvestigated the case. In his Comment,[16] Racho denied sole ownership of the bank deposits. In support of his position, he presented the Joint Affidavit[17] of his brothers and nephew, particularly Vieto, Dean and Henry Racho, allegedly executed on December 18, 2004. In the joint sworn statement, it was alleged that he and his siblings planned to put up a business and eventually established "*Angelsons Lending and Investors, Inc.*," a corporation registered[18] with the Securities and Exchange Commission *(SEC)* on April 30, 1999. To prove their agreement, Racho presented a Special Power of Attorney,[19] dated January 28, 1993, wherein his brothers and nephew designated him as the trustee of their investments in the business venture they were intending to put up and authorized him to deposit their money

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[12] *Id.* at 119-126.

[13] *Id.* at 127-135.

[14] *Id.* at 138-143.

[15] *Id.* at 144.

[16] *Id.* at 145-147.

[17] *Rollo,* pp. 97-99.

[18] CA *rollo,* pp. 156-171.

[19] *Rollo,* pp. 100-101.

into his questioned bank accounts to defray business-related expenses. Racho averred that his wife also set up a small business named "*Nal Pay Phone Services*" registered under the Department of Trade and Industry *(DTI)* on April 30, 1999.[20]

On January 10, 2005, in its Reinvestigation Report, the Office of the Ombudsman-Visayas found no reason to deviate from its previous findings against Racho.[21] Thus, the Reinvestigation Report disposed:

> With all the foregoing, undersigned finds no basis to change, modify nor reverse her previous findings that there is probable cause for the crime of FALSIFICATION OF PUBLIC DOCUMENT, defined and penalized under Article 171 of the Revised Penal Code, against respondent Nieto A. Racho for making untruthful statements in a narration of facts in his SALN. As there are additional facts established during the reinvestigation, re: failure of Mr. Racho to reflect his business connections, then the Information filed against him should be amended to include the same. Let this Amended Information be returned to the court for further proceedings.
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> SO RESOLVED.[22]

Racho filed a motion for reconsideration[23] but the Ombudsman denied it in its April 1, 2005 Joint Order.[24]

Racho elevated the case to the CA by way of a petition for review[25] under Rule 43 of the Rules of Court assailing the administrative aspect of the April 1, 2005 Joint Order of the Ombudsman-Visayas.

On February 21, 2008, the CA rendered the challenged decision. Citing *Pleyto v. Philippine National Police (PNP)-Criminal*

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[20] CA *rollo*, pp. 172-185.

[21] *Rollo*, pp. 80-96.

[22] *Id.* at 96.

[23] CA *rollo*, pp. 52-66.

[24] *Id.* at 46-51.

[25] *Id.* at 13-45.

Investigation and Detection Group (CIDG),[26] the CA opined that in charges of dishonesty "intention is an important element in its commission."[27] The CA ruled that Racho "never denied the existence of the bank accounts. Instead, he undertook to explain that those were not wholly owned by him and endeavored to secure and submit documentary evidence to buttress explanation. Judging from his conduct, there is want of intent to conceal information. Intent, as held in the *Pleyto* case, is essential to constitute dishonesty and without the intent to commit a wrong, the public officer is not dishonest, albeit he is adjudged to be negligent."[28]

Accordingly, the decretal portion of the CA decision reads:

> WHEREFORE, the instant Petition for Review on the administrative aspect of Ombudsman Visayas JOINT ORDER dated April 1, 2005 is hereby GRANTED. The said JOINT ORDER, in so far as it affirmed the petitioner's guilt for dishonesty and imposed the penalty of dismissal with forfeiture of all benefits and perpetual disqualification to hold office is hereby REVERSED and SET ASIDE. Petitioner is adjudged GUILTY of NEGLIGENCE in accomplishing his Statement of Assets, Liabilities and Networth (SALN) and is ORDERED to be SUSPENDED FROM OFFICE WITHOUT PAY FOR A PERIOD OF SIX (6) MONTHS.[29]

The Ombudsman moved for reconsideration,[30] but the CA stood by its decision and denied said motion in its November 20, 2008 Resolution.[31]

Hence, this petition.

In its Memorandum,[32] the Office of the Ombudsman submits the following:

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[26] G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[27] *Rollo*, p. 58.

[28] *Id.* at 58-58a.

[29] *Id.* at 60.

[30] *Id.* at 125-149.

[31] *Id.* at 64-64b.

[32] *Id.* at 268-299.

ISSUES

I.

THE ACTIVE PARTICIPATION OF THE OFFICE OF THE OMBUDSMAN IN THE INSTANT CASE IS SANCTIONED BY THE MANDATE OF THE OFFICE AS AN "ACTIVIST WATCHMAN."

II

THE HONORABLE COURT OF APPEALS' RELIANCE ON A FICTITIOUS DOCUMENT WHOSE AUTHENTICITY HAS BEEN PUT TO QUESTION IN A SEPARATE CRIMINAL CASE PRESENTS AN EXCEPTION TO THE GENERAL RULE THAT AN APPEAL BY *CERTIORARI* UNDER RULE 45 SHOULD RAISE ONLY QUESTIONS OF LAW CONSIDERING THAT –

THE OFFICE OF THE OMBUDSMAN FOUND THE SPECIAL POWER OF ATTORNEY AND THE JOINT AFFIDAVIT OFFERED AS EVIDENCE BY RESPONDENT TO BE SPURIOUS, HOWEVER, THE HONORABLE COURT OF APPEALS WITHOUT RULING ON THE AUTHENTICITY OF THE SAME DOCUMENTS, RELIED ON THE SAME TO FIND RESPONDENT GUILTY ONLY OF NEGLIGENCE;

AND

THE COURT OF APPEALS' FINDING OF LACK OF INTENT ON THE PART OF RESPONDENT RACHO TO CONCEAL INFORMATION IS NOT BASED ON THE EVIDENCE

III

THE OFFICE OF THE OMBUDSMAN HAS REPEATEDLY RAISED THE SPURIOUS CHARACTER OF THE JOINT AFFIDAVIT AND SPECIAL POWER OF ATTORNEY BEFORE THE COURT OF APPEALS. THE COUNTER-AFFIDAVITS COUNTERING ITS AUTHENTICITY WAS SUBMITTED FOR THE FIRST TIME BEFORE THE COURT OF APPEALS, AND NOT BEFORE THIS HONORABLE COURT.

IV

THE DECISIONS, RESOLUTIONS AND ORDERS OF THE OFFICE OF THE OMBUDSMAN ARE IMMEDIATELY EXECUTORY EVEN PENDING APPEAL UNDER SECTION 7, RULE III OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, AS AMENDED; CONSEQUENTLY THE WRIT OF INJUNCTION EARLIER ISSUED SHOULD BE LIFTED.[33]

The Ombudsman argues that the CA failed to see the discrepancies on Racho's Special Power of Attorney itself "such as a statement that the date of registration of the Nal Pay Phone Services was 'last April 30, 1999,' when the Special Power of Attorney had been allegedly executed on 28 January 1993."[34] The Ombudsman insists that these inconsistencies should have alerted the CA to delve more deeply into the case and check if Racho's explanation through the supposed dubious documents should be given weight at all.[35]

THE COURT'S RULING

The Court finds merit in the petition.

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.[36] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

(2) When the inference made is manifestly mistaken, absurd or impossible;

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[33] *Id.* at 280-281.

[34] *Id.* at 33.

[35] *Id.* at 34.

[36] *Office of the Ombudsman v. Lazaro-Baldazo*, G.R. No. 170815, February 2, 2007, 514 SCRA 141, 144.

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) ***When the findings of fact are conflicting***;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[37] [Emphasis supplied]

Undeniably, the findings of fact of the Ombudsman are different from those of the CA. Thus, the Court finds it necessary to take a second look at the factual matters surrounding the present case.

From the records, it is undisputed that Racho admitted the bank accounts, but explained that the deposits reflected therein were not entirely his. Racho proffered that some of the money came from his brothers and nephew as part of their contribution to the business that they had planned to put up. He presented a Special Power of Attorney (SPA), dated January 28, 1993, and Joint Affidavit of his siblings that echoed his explanation.

In the appreciation of the said documents, the Ombudsman and the CA took opposing views. The Ombudsman did not give weight to the SPA due to some questionable entries therein. The CA, on the other hand, recognized the fact that Racho never denied the existence of the bank accounts and accepted his explanation. Accordingly, the CA decreed that although Racho

[37] *Heirs of Jose Lim v. Juliet Villa Lim*, G.R. No. 172690, March 03, 2010.

was remiss in fully declaring the said bank deposits in his SALN, the intent to make a false statement, as would constitute dishonesty, was clearly absent.

The pivotal issue in this case, however, is whether or not Racho's non-disclosure of the bank deposits in his SALN constitutes dishonesty.

The Court views it in the affirmative.

Section 7 and Section 8 of Republic Act (R.A.) 3019[38] explain the nature and importance of accomplishing a true, detailed and sworn SALN, thus:

> Sec. 7. *Statement of Assets and Liabilities.* — Every public officer, within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of corresponding Department Head, or in the case of a Head Department or chief of an independent office, with the Office of the President, a true, detailed and sworn statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of said calendar year.
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> Sec. 8. *Prima Facie Evidence of and Dismissal Due to Unexplained Wealth.*- If in accordance with the provisions of Republic Act Numbered One Thousand Three Hundred Seventy-Nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse

[38] Anti-Graft and Corrupt Practices Act.

or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

In the case of *Carabeo v. Court of Appeals*,[39] citing *Ombudsman v. Valeroso*,[40] the Court restated the rationale for the SALN and the evils that it seeks to thwart, to wit:

Section 8 above, speaks of *unlawful acquisition* of wealth, the evil sought to be suppressed and avoided, and Section 7, which mandates full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service. "Unexplained" matter normally results from "non-disclosure" or concealment of vital facts. SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

Complimentary to the above-mentioned provisions, Section 2 of R.A. 1379[41] states that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income

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[39] G.R. Nos. 178000 and 178003, December 04, 2009, 607 SCRA 394, 412.

[40] G.R. No. 167828, April 02, 2007, 520 SCRA 140, 149-150.

[41] An Act Declaring Forfeiture in Favor of the State any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings therefor.

and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired."

By mandate of law, every public official or government employee is required to make a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters. Hence, a public official or employee who has acquired money or property manifestly disproportionate to his salary or his other lawful income shall be *prima facie* presumed to have illegally acquired it.

It should be understood that what the law seeks to curtail is "*acquisition of unexplained wealth*." Where the source of the undisclosed wealth can be properly accounted, then it is "explained wealth" which the law does not penalize.

In this case, Racho not only failed to disclose his bank accounts containing substantial deposits but he also failed to satisfactorily explain the accumulation of his wealth or even identify the sources of such accumulated wealth. The documents that Racho presented, like those purportedly showing that his brothers and nephew were financially capable of sending or contributing large amounts of money for their business,[42] do not prove that they did contribute or remit money for their supposed joint business venture. Equally, the Special Power of Attorney[43] that was supposedly issued by Vieto, Dido and Henry Racho in favor of Racho on January 28, 1993 to show their business plans, contained a glaringly inconsistent statement that belies the authenticity of the document, to wit:

1. To be the Trustee Attorney-in-fact of our investment in ANGELSONS LENDING AND INVESTORS, INC. of whom we are the Stockholders/Investors as well as the NAL PAY PHONE SERVICES, ***which was registered by the DTI last April 30, 1999*** in the name of NIETO RACHO's wife of whom we are likewise investors. [emphasis supplied]

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[42] CA *rollo*, pp. 187-194; 200-209; 212.

[43] *Rollo*, pp. 100-101.

Definitely, a document that was allegedly executed in 1993 could not contain a statement referring to a future date "*registered by the DTI last April 30, 1999.*" This certainly renders the intrinsic and extrinsic value of the SPA questionable.

More important, the Joint Affidavits allegedly executed by Racho's siblings and nephew to corroborate his story were later *disowned and denied by his nephew, Henry, and brother, Vieto*, as shown by their Counter-Affidavits.[44] Henry averred that he was out of the country at the time of the alleged execution of the Joint Affidavit on December 18, 2004 and he arrived in Manila only on September 16, 2005. Vieto, on the other hand, denied having signed the Joint Affidavit. He disclosed that as a left-handed person, he pushes the pen instead of pulling it. He concluded that the signature on the Joint Affidavit was made by a right-handed person.[45] He likewise included a copy of his passport containing his real signature for comparison.[46]

Thus, the SPA and Joint Affidavits which should explain the sources of Racho's wealth are dubious and merit no consideration.

Although Racho presented the SEC Certificate of Registration of *Angelsons*,[47] the business that he supposedly put up with his relatives, he showed no other document to confirm that the business is actually existing and operating. He likewise tried to show that his wife built a business of her own but he did not bother to explain how the business grew and merely presented a Certificate of Registration of Business Name from the DTI.[48] These documents, however, do not prove that Racho had enough other sources of income to justify the said bank deposits. Ultimately, only ₱1,167,186.33[49] representing his wife's retirement benefits, was properly accounted for. Even this money, however,

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[44] *Id.* at 115-116; pp. 122-123.

[45] *Id.* at 122.

[46] *Id.* at 124.

[47] CA *rollo*, pp. 156-171.

[48] *Id.* at 172-186.

[49] *Id.* at 195-199.

was reduced by his loan payable of ₱1,000,000.00 as reflected in his 2000 SALN.[50]

Dishonesty begins when an individual intentionally makes a false statement in any material fact, or practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment or promotion.[51] It is understood to imply the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[52] It is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.[53] Section 52 (A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats dishonesty as a grave offense the penalty of which is dismissal from the service at the first infraction.[54]

Indeed, an honest public servant will have no difficulty in gathering, collating and presenting evidence that will prove his credibility, but a dishonest one will only provide shallow excuses in his explanations.

For these reasons, the Court is of the view that *Pleyto v. Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG)*[55] which the CA cited as basis to exculpate Racho of dishonesty, is not applicable in this case. In the *Pleyto* case, the Court recognized Pleyto's candid admission of his failure to properly and completely fill out his SALN, his vigorous effort to clarify the entries and provide the necessary information

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[50] *Id.* at 79.

[51] *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 586.

[52] *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

[53] *Civil Service Commission v. Sta. Ana*, 435 Phil. 1, 12 (2002).

[54] *De Guzman v. Delos Santos*, 442 Phil. 428, 440 (2002).

[55] G.R. No. 169982, November 23, 2007, 538 SCRA 534.

and supporting documents to show how he and his wife acquired their properties.[56] The Court found substantial evidence that Pleyto and his wife had lawful sources of income other than Pleyto's salary as a government official which allowed them to purchase several real properties in their names and travel abroad.[57]

Unfortunately for Racho, his situation is different. The Court, thus, holds that the CA erred in finding him guilty of simple neglect of duty only. As defined, simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[58] In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.

It should be emphasized, however, that mere misdeclaration of the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the employee's income or other sources of income and the public officer/employee fails to properly account or explain his other sources of income, does he become susceptible to dishonesty because when a public officer takes an oath or office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs.[59]

The Court has consistently reminded our public servants that public service demands utmost integrity and discipline. A public servant must display at all times the highest sense of honesty

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[56] *Id.* at 586.

[57] *Id.* at 594.

[58] *Galero v. Court of Appeals*, G.R. No. 151121, July 21, 2008, 559 SCRA 11, 22.

[59] *Atty. Salumbides, et al. v. Office of the Ombudsman, et al.*, G.R. No. 180917, April 23, 2010.

and integrity, for no less than the Constitution mandates the principle that a public office is a public trust; and all public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.[60]

WHEREFORE, the petition is *GRANTED*. The February 21, 2008 Decision and November 20, 2008 Resolution of the Court of Appeals-Cebu are hereby *REVERSED and SET ASIDE*. The administrative aspect of the April 1, 2005 Joint Order of the Office of the Ombudsman-Visayas is hereby *REINSTATED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186120. January 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EVANGELINE SOBANGEE *y* EDAÑO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements:

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[60] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 680.

(1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR VARIANCES IN THE DETAILS OF THE WITNESSES' ACCOUNTS ARE BADGES OF TRUTH RATHER THAN INDICIA OF FALSEHOOD.— The trial court explained that the inconsistencies found in the testimonies of the witnesses for the prosecution were minor and even made their testimonial evidence more believable and unrehearsed. We agree with the trial and appellate courts in this respect. Minor variances in the details of the witnesses' accounts, more frequently than not, are badges of truth rather than indicia of falsehood, and they often bolster the probative value of their testimonies.

3. ID.; ID.; ID.; FOR A SUCCESSFUL APPEAL, THE INCONSISTENCIES BROUGHT UP SHOULD PERTAIN TO THAT CRUCIAL MOMENT WHEN THE ACCUSED WAS CAUGHT SELLING *SHABU,* NOT TO PERIPHERAL MATTERS.— The defense opposes the verdict since the following details presented by the prosecution were inconsistent: the date of the buy-bust operation, the time the buy-bust team left their office, the stops made on the way to the target area, the location of the operatives during the buy-bust, where the seized items were marked, the denomination of the buy-bust money, the identity of the operative who informed accused-appellant of her constitutional rights, and the identity of the alleged confidential informant. These pieces of information, however, do not destroy the foundation that the prosecution has built in proving accused-appellant's culpability. These are but irrelevant inconsistencies that do not take away the credibility of the police officers who testified against accused-appellant. Considering there were five (5) police officers who testified on the buy-bust operation, one can hardly expect their testimonies to be in perfect agreement. As held in the past, it is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are, in fact, to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. For a successful

appeal, the inconsistencies brought up should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PROOF THAT THE TRANSACTION BETWEEN THE ACCUSED-APPELLANT AND THE POSEUR-BUYER TOOK PLACE, COUPLED WITH THE PRESENTATION IN COURT OF THE *CORPUS DELICTI*, IS MATERIAL TO THE PROSECUTION THEREOF.— The presentation of accused-appellant's mobile phone is not essential to her conviction, as it is not an element of the offense of sale of illegal drugs. Contrary to the position of the defense, it is not a major piece of evidence, the non-presentation of which would result in an acquittal. What is material to the prosecution of the illegal sale of dangerous drugs is proof that the transaction actually took place, coupled with the presentation in court of the *corpus delicti.* The transaction between accused-appellant and the poseur-buyer and the presentation in court of the *shabu* seized from her were adequately established, as can be gleaned from the records.

5. ID.; ID.; ID.; PROPER PENALTY.— For drug pushing 48.76 grams of *shabu* under Sec. 5, Art. II of RA 9165, accused-appellant was sentenced to life imprisonment and a fine of one million pesos (PhP 1,000,000). We find this proper and in accord with the penalty provided under the same provision of the law, which penalizes the commission of the offense involved with life imprisonment and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000).

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT WILL DEFER TO THE FINDINGS OF THE TRIAL COURT WITH RESPECT THERETO; EXCEPTIONS; NOT PRESENT.— In affirming accused-appellant's conviction, We adhere to the general rule that unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court, this Court will defer to the

findings of the trial court as to the credibility of witnesses. An examination of the records shows that none of the aforementioned exceptions exists in the instant case that would necessitate a reversal of judgment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Meer Meer & Meer for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the February 29, 2008 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01904 entitled *People of the Philippines v. Evangeline Sobangee y Edaño*, which affirmed the October 12, 2005 Decision in Criminal Case No. 02-3445 of the Regional Trial Court (RTC), Branch 65 in Makati City. The RTC found accused Evangeline Sobangee *y* Edaño (Sobangee) guilty of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, for selling methylamphetamine hydrochloride.

The Facts

An Information[1] charged Sobangee as follows:

That on or about the 21st day of November, 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away ₱150,000.00 worth of Methylamphetamine Hydrochloride (*Shabu*) weighing eighty seven point nineteen (87.19) grams and forty eight point seventy six (48.76) grams, a dangerous drug.

During her arraignment, Sobangee pleaded not guilty.

[1] CA *rollo*, p. 19.

At the trial, the prosecution presented the following witnesses: Police Inspector Lourdeliza M. Gural (P/Insp. Gural), Senior Police Officer 1 Marvin Fajilan (SPO1 Fajilan), SPO1 Antonio Fulleros (SPO1 Fulleros), SPO2 Wilmer Antonio (SPO2 Antonio), SPO4 Arsenio Mangulabnan (SPO4 Mangulabnan), and Police Officer 3 Reynaldo Juan (PO3 Juan). Sobangee was the only witness for the defense.

Version of the Prosecution

A confidential informant reported to the Drug Enforcement Unit (DEU) of Makati City that a certain "Vangie" was engaged in drug pushing activities. The DEU Chief, Senior Police Inspector Leandro Abel, thus, ordered a buy-bust operation against the alleged drug pusher.[2]

On November 21, 2002, a buy-bust operation was planned by the DEU. SPO4 Mangulabnan conducted the briefing. "Vangie" was contacted by SPO4 Mangulabnan through a mobile phone, and a drug deal worth PhP 150,000 was agreed upon. The parties arranged to meet at Jollibee in Guadalupe Viejo.

SPO1 Fulleros was designated as poseur-buyer, while SPO2 Antonio, SPO1 Fajilan, PO2 Costa, PO2 Gabrang, PO1 Inopla, PO1 Santos, and PO3 Mapili served as back-up. SPO1 Fulleros was instructed to place a genuine marked one thousand peso bill on top of a bundle of boodle money.

Before the actual meeting, the target location was changed by "Vangie" to Starbucks Café on Rockwell Drive, Rockwell Center, Makati City. SPO1 Fulleros acceded to her request and headed to the coffee shop. The back-up team monitored the transaction from a distance. Minutes after, "Vangie" arrived and looked for the poseur-buyer. SPO4 Mangulabnan had earlier told "Vangie" that the customer would be dressed in a black jacket and bull cap.

"Vangie" approached SPO1 Fulleros and asked his name. She then allowed him to examine the contents of the plastic bags she had with her. He gave "Vangie" the boodle money

[2] *Id.* at 21.

after examining the plastic bags. Afterwards, he gave the pre-arranged signal to alert his team that the transaction had been consummated. The back-up operatives arrived while he was introducing himself to "Vangie" as a DEU operative. She was placed under arrest and later identified as Sobangee.

The operations retrieved the marked buy-bust bill from Sobangee along with the boodle money and informed her of her constitutional rights. The seized items, consisting of the plastic bags and its contents, were turned over to SPO4 Mangulabnan and marked inside their vehicle.[3]

PO3 Juan, the investigating officer, prepared the inventory of the seized items. This was made in the presence of Prosecutor Christopher Garvida, *Barangay* Captain Rodolfo Doromal, and media representative Loudeth Bonilla. PO3 Juan then requested for the Philippine National Police Crime Laboratory to examine the contents of the items. Sobangee was later brought to the DEU for investigation. She was tested for drugs at the Southern Police District Crime Laboratory.[4] P/Insp. Gural, a Forensic Chemical Officer, tested the plastic bags marked "EES" (87.19 grams) and "EES-1" (48.76 grams). These tested positive for methylamphetamine hydrochloride. After the examination, the seized substance was turned over to the evidence custodian and presented in court.[5]

Version of the Defense

Denying the charge against her, Sobangee claimed that at the time of the buy-bust, she was in Rockwell to get money from a certain "Rolly," a friend of her common-law partner. She testified that she had no mobile phone with her at the time. Upon her arrival, she could not find "Rolly." While she was still there, she was suddenly accosted by two men who instructed her to go with them and forced her to board a van. She asked why she was being held and what offense had she committed

[3] *Id*. at 21-22.

[4] *Id*. at 22.

[5] *Id*. at 20.

but received no reply. She observed that five other persons, all of them male, were inside the vehicle.

When further questioned, Sobangee stated that none of the prosecution witnesses arrested her. She was detained at the DEU for three days and then transferred to the Makati City Jail. She explained that she did not sign the inventory sheet because she had not committed any offense.[6]

During cross-examination, Sobangee revealed that she did not divulge any information while she was at the DEU, because she was told to keep quiet and she obeyed out of fear. She stated that none of the men who arrested her or who were at the DEU was known to her, and she did not know of any reason why she would be maliciously prosecuted. She did not press any charges against those who arrested her.[7]

The Ruling of the Trial Court

After trial, the RTC convicted Sobangee. The trial court was convinced that all the elements of the offense were established. It ruled that the requirements for a valid buy-bust operation were complied with.

In contrast, the bare denials of Sobangee did not impress the trial court in the face of the testimonies of the prosecution's credible witnesses. The RTC ruled that they had the presumption of regularity in the performance of official functions working in their favor.

The dispositive portion of the October 12, 2005 RTC Decision[8] reads:

THE FOREGOING CONSIDERED, the court is of the opinion and so hold accused Evangeline Sobangee *y* Edaño guilty beyond reasonable doubt of the offense charged. She is hereby sentenced to life imprisonment and is fined the sum of one million pesos

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[6] *Id*. at 23.

[7] *Id*. at 24.

[8] *Id*. at 26. Penned by Judge Salvador S. Abad Santos.

(Php 1,000,000.00) without subsidiary imprisonment in case of insolvency.

xxx xxx xxx

SO ORDERED.

The Ruling of the Appellate Court

On appeal, Sobangee claimed that the RTC erred in finding her guilty beyond reasonable doubt. She claimed that the testimonies of the prosecution witnesses suffered from major inconsistencies, such as: (1) the date the alleged informant came to the DEU office; (2) the time the buy-bust team left the office to conduct its operation; (3) the place that the team first went to before going to the buy-bust at Rockwell Center, Makati City; (4) the location of the operatives during the buy-bust operation; (5) the site where the illegal substances seized were marked; (6) the amount involved in the buy-bust; (7) the officer who informed Sobangee of her constitutional rights; and (8) the identity of the informant.

She also cited as incredulous the claim that she conducted drug pushing activities via her mobile phone when the prosecution did not present the phone she allegedly used.

On February 29, 2008, the appellate court affirmed the judgment of the trial court.[9] It ruled that all the elements of the offense charged were established by the prosecution. It deferred to the finding of the RTC on the credibility of the witnesses against Sobangee and dismissed her claim of inconsistencies in their testimonies as insignificant and immaterial.

On August 4, 2008, Sobangee filed her Notice of Appeal from the appellate court's Decision.

On March 16, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, represented by the Office of the Solicitor General (OSG), reserved its option

[9] *Rollo*, p. 10. Penned by Associate Justice Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza.

to file a supplemental brief if accused-appellant Sobangee should file one. Accused-appellant did not file any.

The Issue

Whether the Court of Appeals erred in finding accused-appellant guilty beyond reasonable doubt of having violated Sec. 5, Art. II of Republic Act No. 9165

The Ruling of this Court

Accused-appellant maintains that the witnesses' testimonies were conflicting on material points.

We affirm accused-appellant's conviction.

The inconsistencies referred to are inconsequential. What is important is that the prosecution was able to establish the key elements needed for a conviction. In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it.[10]

The relevant portion of the RTC's disquisition reads:

The prosecution succeeded in proving the presence of all the elements of the offense charged. The plastic bags containing white crystalline substance taken from the accused were positively and categorically identified by Forensic Chemist Lourdeliza Gural as methylamphetamine hydrochloride, a dangerous drug otherwise known as *shabu*. According to her, the said substance was contained in two (2) knot-tied transparent plastic bags delivered and submitted to the PNP Crime Laboratory for testing on 21 November 2002; immediately after the same was turned over for investigation and documentation. The markings placed by the arresting officer were identified in open court and shown to be the same markings present on the plastic bags examined by the forensic chemist are proof that the plastic bags delivered for laboratory examination were the same plastic bags bought from the accused (Exhibits "A" to "E").

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[10] *People v. Miguel*, G.R. No. 180505, June 29, 2010.

The identity of the accused was positively established. In open court, witnesses for the prosecution pointed to the accused as the person they arrested after consummation of the buy-bust operation. This same person when asked of her identity identified herself as Evangeline Sobangee. The marked money found in the possession of the accused consisting of one genuine one thousand peso bill placed on top of a bundle of money was likewise positively identified by the arresting officers as the same one provided and used in the operation.

All the prosecution's witnesses to the buy-bust operation consistently and unequivocally narrated the events that transpired during the operation, particularly the delivery of the accused of the subject plastic bags to the poseur-buyer upon payment by the latter to accused Sobangee of the agreed amount. The testimonies with respect to the discovery of the bags of *shabu* subject of the charge for pushing and the marked money were likewise straightforward and definite.

Also, all the requirements for a valid arrest and prosecution for violation of sale of dangerous drugs under Republic Act No. 9165 have likewise been complied with. An inventory of the items involved in the buy-bust operation was conducted by the investigator (Exhibit "J"). The seizing officers, SPO4 Mangulabnan and then SPO1 Fulleros, prepared the inventory in the presence of prosecutor Christopher Garvida, barangay captain Rodolfo Doromal and Loudeth Bonilla, a representative from the media.[11]

The trial court explained that the inconsistencies found in the testimonies of the witnesses for the prosecution were minor and even made their testimonial evidence more believable and unrehearsed. We agree with the trial and appellate courts in this respect. Minor variances in the details of the witnesses' accounts, more frequently than not, are badges of truth rather than indicia of falsehood, and they often bolster the probative value of their testimonies.[12]

The defense opposes the verdict since the following details presented by the prosecution were inconsistent: the date of the

[11] CA *rollo*, pp. 24-25.

[12] *People v. De Leon*, G.R. Nos. 132484-85, November 15, 2002, 391 SCRA 682, 695.

buy-bust operation, the time the buy-bust team left their office, the stops made on the way to the target area, the location of the operatives during the buy-bust, where the seized items were marked, the denomination of the buy-bust money, the identity of the operative who informed accused-appellant of her constitutional rights, and the identity of the alleged confidential informant.

These pieces of information, however, do not destroy the foundation that the prosecution has built in proving accused-appellant's culpability. These are but irrelevant inconsistencies that do not take away the credibility of the police officers who testified against accused-appellant. Considering there were five (5) police officers who testified on the buy-bust operation, one can hardly expect their testimonies to be in perfect agreement. As held in the past, it is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are, in fact, to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses.[13] For a successful appeal, the inconsistencies brought up should pertain to that crucial moment when the accused was caught selling *shabu*, not to peripheral matters.[14] Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.[15]

The presentation of accused-appellant's mobile phone is not essential to her conviction, as it is not an element of the offense of sale of illegal drugs. Contrary to the position of the defense, it is not a major piece of evidence, the non-presentation of which would result in an acquittal. What is material to the prosecution of the illegal sale of dangerous drugs is proof that the transaction actually took place, coupled with the presentation

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[13] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 386.

[14] *People v. Razul*, G.R. No. 146470, November 22, 2002, 392 SCRA 553, 571.

[15] *People v. Tuan*, G.R. No. 176066, August 11, 2010.

in court of the *corpus delicti.*[16] The transaction between accused-appellant and the poseur-buyer and the presentation in court of the *shabu* seized from her were adequately established, as can be gleaned from the records.

In affirming accused-appellant's conviction, We adhere to the general rule that unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted by the trial court, this Court will defer to the findings of the trial court as to the credibility of witnesses.[17] An examination of the records shows that none of the aforementioned exceptions exists in the instant case that would necessitate a reversal of judgment.

Penalty Imposed

For drug pushing 48.76 grams of *shabu* under Sec. 5, Art. II of RA 9165, accused-appellant was sentenced to life imprisonment and a fine of one million pesos (PhP 1,000,000). We find this proper and in accord with the penalty provided under the same provision of the law, which penalizes the commission of the offense involved with life imprisonment and a fine ranging from five hundred thousand pesos (PhP 500,000) to ten million pesos (PhP 10,000,000).[18]

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 01904 finding accused-appellant guilty of the charge is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Abad,[*] and *Perez, JJ.*, concur.

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[16] *People v. Lacap*, G.R. No. 139114, October 23, 2001, 368 SCRA 124, 143-144.

[17] *People v. Campomanes*, G.R. No. 187741, August 8, 2010.

[18] As amended by RA 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*.

[*] Additional member per raffle dated January 26, 2011.

SECOND DIVISION

[G.R. Nos. 187912-14. January 31, 2011]

JOEY P. MARQUEZ, *petitioner*, *vs.* **THE SANDIGANBAYAN 5th DIVISION and THE OFFICE OF THE SPECIAL PROSECUTOR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; TO LIE, THERE MUST BE CAPRICIOUS, ARBITRARY OR WHIMSICAL EXERCISE OF POWER; GRAVE ABUSE OF DISCRETION, EXPLAINED.— Those availing of the remedy of *certiorari* must clearly show that the trial court acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion, it means such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS; REQUIREMENTS; FAILURE OF THE TRIAL COURT TO ACCORD AN ACCUSED REASONABLE OPPORTUNITY TO SUBMIT EVIDENCE IN HIS DEFENSE WARRANTS THE EXERCISE BY THE COURT OF ITS *CERTIORARI* JURISDICTION.— One of the most vital and precious rights accorded to an accused by the Constitution is due process, which includes a fair and impartial trial and a reasonable opportunity to present one's defense. x x x. [I]t is well settled that due process in criminal proceedings requires that (a) the court or tribunal trying the case is properly clothed with judicial power to hear and determine the matter before

it; (b) that jurisdiction is lawfully acquired by it over the person of the accused; (c) that **the accused is given an opportunity to be heard**; and (d) that judgment is rendered only upon lawful hearing. While the Constitution does not specify the nature of this opportunity, by necessary implication, it means that the accused should be allowed reasonable freedom to present his defense if the courts are to give form and substance to this guaranty. Should the trial court fail to accord an accused reasonable opportunity to submit evidence in his defense, the exercise by the Court of its *certiorari* jurisdiction is warranted as this amounts to a denial of due process.

3. REMEDIAL LAW; EVIDENCE; FORGERY; CANNOT BE PRESUMED AND MUST BE PROVED BY CLEAR, POSITIVE AND CONVINCING EVIDENCE, AND THE BURDEN OF PROOF LIES ON THE PARTY ALLEGING FORGERY; APPLICATION.— It is hornbook rule that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery. Thus, Marquez bears the burden of submitting evidence to prove the fact that his signatures were indeed forged. In order to be able to discharge his burden, he must be afforded reasonable opportunity to present evidence to support his allegation. This opportunity is the actual examination of the signatures he is questioning by no less than the country's premier investigative force – the NBI. If he is denied such opportunity, his only evidence on this matter is negative testimonial evidence which is generally considered as weak. And, he cannot submit any other examination result because the signatures are on the original documents which are in the control of either the prosecution or the graft court. At any rate, any finding of the NBI will not be binding on the graft court. It will still be subject to its scrutiny and evaluation in line with Section 22 of Rule 132. Nevertheless, Marquez should not be deprived of his right to present his own defense. How the prosecution, or even the court, perceives his defense to be is irrelevant. To them, his defense may seem feeble and his strategy frivolous, but he should be allowed to adduce evidence of his own choice. The court should not control how he will defend himself as long as the steps to be taken will not be in violation of the rules.

4. ID.; ID.; CANNOT PROPERLY BE WEIGHED IF NOT EXHIBITED OR PRODUCED BEFORE THE COURT; FORMAL OFFER AND ADMISSION BY THE ANTI-GRAFT COURT OF THE DOCUMENTARY EXHIBITS CANNOT PRECLUDE THE EXAMINATION OF THE SIGNATURE THEREON BY THE DEFENSE.— While it is true that the appreciation of whether the signatures of Marquez are genuine or not is subject to the discretion of the graft court, this discretion, by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Evidence cannot properly be weighed if not exhibited or produced before the court. Only after evidence is offered and admitted that the court can appreciate and evaluate it. The prosecution had already offered its evidence on the matter. The court should not deny the same right to the defense. The fact that the documentary exhibits were already formally offered and duly admitted by the anti-graft court cannot preclude an examination of the signatures thereon by the defense. With proper handling by court personnel, this can easily be accomplished by the NBI expert examiners.

5. POLITICAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO DUE PROCESS; BOTH THE STATE AND THE ACCUSED ARE ENTITLED TO DUE PROCESS; PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT DENIED THE ACCUSED THE OPPORTUNITY TO BE HEARD AND TO PRODUCE EVIDENCE OF HIS CHOICE IN HIS DEFENSE.— In the conduct of its proceedings, a court is given discretion in maintaining the delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other. Indeed, both the State and the accused are entitled to due process. However, the exercise of such discretion must be exercised judiciously, bearing in mind the circumstances of each case, and the interests of substantial justice. Thus, for having denied Marquez the opportunity to be heard and to produce evidence of his choice in his defense, the SB-5th Division committed grave abuse of discretion warranting intervention from the Court. The anti-graft court should allow him to refer the evidence of the prosecution to the Questioned Documents Section of the NBI for examination

at the soonest time possible and for the latter to immediately conduct such examination and to submit the results to the court within a reasonable time.

APPEARANCES OF COUNSEL

Law Firm of R.P. B. Jurado and *Efren L. Dizon* for petitioner.

D E C I S I O N

MENDOZA, *J.*:

Through this petition for *certiorari*, prohibition and *mandamus* with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction,[1] petitioner Joey P. Marquez *(Marquez)* assails the 1] February 11, 2009 Resolution[2] of the 5th Division of the Sandiganbayan *(SB-5th Division)* in Criminal Case Nos. 27903, 27904 and 27905; and its 2] May 20, 2009 Resolution[3] denying his motion for reconsideration.

In the assailed issuances, the SB-5th Division denied Marquez's Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation *(NBI)*.

From the records, it appears that as a result of the Report on the Audit of Selected Transactions and *Walis Ting-ting* for the City of Parañaque for the years 1996 to 1998, conducted by the Special Audit Team of the Commission on Audit *(COA)*, several anomalies were discovered involving Marquez, then City Mayor and Chairman of the Bids and Awards committee of Parañaque City; and Ofelia C. Caunan *(Caunan)*, Head of the General Services Office of said city.

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[1] *Rollo*, p. 5.

[2] Penned by Associate Justice Napoleon E. Inoturan with Associate Justice Ma. Cristina G. Cortez-Estrada and Associate Justice Alexander G. Gesmundo, concurring; *id*. at 47-51.

[3] *Id*. at 52-55.

It was found that, through personal canvass and without public bidding, Marquez and Caunan secured the procurement of several thousand rounds of bullets of different calibers that were grossly overpriced from VMY Trading, a company not registered as an arms and ammunitions dealer with either the Firearms and Explosives Division of the Philippine National Police *(PNP)* or the Department of Trade and Industry *(DTI)*.

Finding the transactions anomalous, the COA Special Audit Team issued Notices of Disallowances for the overpriced ammunitions. Marquez and Caunan sought reconsideration of the findings of the team, but their plea was denied. Aggrieved, they elevated the matter to the COA but their appeal was denied.

At the Office of the Ombudsman *(OMB)*, in answer to the charges filed against them, Marquez and Caunan filed their Joint Counter Affidavit[4] with the Evaluation and Preliminary Investigation Bureau of said office. In the said affidavit, the two insisted on the propriety of the transactions and raised the pendency of their appeal with the COA.

Having found probable cause to indict them for violation of Section 3 (e) of Republic Act (R.A.) No. 3019, the OMB, through the Office of the Special Prosecutor *(OSP)*, filed three (3) informations[5] against Marquez and Caunan. The cases were raffled to the Fourth Division of the Sandiganbayan *(SB-4th Division)*.

Before arraignment, on November 24, 2003, alleging discovery of the forged signatures, Marquez sought *referral of the disbursement vouchers, purchase requests and authorization requests to the NBI* and the reinvestigation of the cases against him.[6] These were denied by the OSP.

Before the SB-4th Division, to prove its case, the prosecution presented five (5) witnesses, namely: 1] COA State Auditor IV

[4] *Id*. at 66-75.

[5] Docketed as Criminal Case Nos. 27903-27905. Other graft cases filed against the petitioner and other officials of the City of Parañaque were docketed as Criminal Case Nos. 27944, 27946, 27952-27954.

[6] *Rollo*, pp. 154-159.

Fatima Valera Bermudez; 2] Elenita Pracale, Chief, Business Permit and Licensing Office, Parañaque City; 3] Benjamin Cruz; 4] P/Insp. Rolando C. Columna, Legal Officer, PNP Firearms and Explosive Division; and 5] Emerito L. Lejano, President, Guns Empire. Documentary evidence consisting of disbursement vouchers, purchase requests and authorization requests were also adduced.

On January 13, 2006, the prosecution filed its Formal Offer of Evidence consisting of Exhibits "A" to "FFFF", and their sub-markings. All of the evidence offered were admitted by the anti-graft court on March 22, 2006.

After the prosecution rested, Caunan testified and partly presented evidence for her defense.

Marquez, on the other hand, in his Omnibus Motion dated April 1, 2008, moved, among others, for the inhibition of Associate Justice Gregory Ong *(Justice Ong)* and Associate Justice Jose Hernandez *(Justice Hernandez)* and *for the referral of the disbursement vouchers, purchase requests and authorization to the NBI.* Associate Justice Hernandez and Associate Justice Ong inhibited themselves but the request of Marquez that the questioned documents be referred to the NBI was not acted upon.

On May 20, 2008, Justice Ong and Justice Hernandez recused themselves from further participating in the cases. The cases were then raffled to the SB-5th Division.

Thereafter, on July 4, 2008, Marquez filed the subject *Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation*. In his motion, he again insisted that his purported signatures on the vouchers were forged.

By way of Comment/Opposition to the motion, the prosecution argued that its documentary exhibits had already been formally offered in January 2006 and had been duly admitted by the anti-graft court. The prosecution added that, when confronted with the questioned transactions during the COA audit investigation, Marquez never raised the defense of forgery. Instead, he insisted

on the propriety of the transactions. He did not claim forgery either when he filed his Joint Counter-Affidavit with the OMB. Also, in his verified Motion for Reconsideration dated May 29, 2003 and Supplemental Motion dated July 1, 2003 filed with the COA, no allegation of forgery was made.

The prosecution pointed to Section 4, Rule 129 of the Revised Rules of Court[7] and posited that since Marquez alleged in his pleadings that he had relied on the competence of his subordinates, there could be no "palpable mistake," thus, he was estopped from alleging that his signatures on the subject documents were forged. The prosecution accused Marquez of filing the motion merely to delay the proceedings.[8]

In his Reply, Marquez insisted that he never admitted that his signatures on the disbursement vouchers, purchase requests and authorization requests were his and that his motion was not intended to delay the proceedings.

In its Rejoinder, the prosecution reiterated its earlier arguments and added that Caunan testified and identified the signatures of Marquez in the subject vouchers. It further noted that Marquez moved to refer the documents to the NBI only two and a half (2 ½) years after the formal offer of said documents.

In the subject February 11, 2009 Resolution, the anti-graft court denied the motion of Marquez. Citing Section 22 of Rule 132 of the Rules of Court,[9] it was of the view that while resort to the expert opinion of handwriting experts would be

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[7] Sec. 4. *Judicial admissions*. — An admission, verbal or written, made by the party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made. (2a)

[8] Resolution, Sandiganbayan-5th Division, February 11, 2009, pp.1-2, *rollo*, pp. 47-48.

[9] Sec. 22. *How genuineness of handwriting proved.* — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the

helpful in the examination of alleged forged documents, the same was neither mandatory nor indispensable, since the court can determine forgery from its own independent examination.

The motion for reconsideration of Marquez was likewise denied.

Aggrieved, Marquez interposed this petition for *certiorari* raising this lone

ISSUE

THAT THE PUBLIC RESPONDENT SANDIGANBAYAN - 5TH DIVISION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED ITS RESOLUTIONS RESPECTIVELY DATED FEBRUARY 11, 2009 AND MAY 20, 2009 DENYING THE PETITIONER'S MOTION TO REFER PROSECUTION'S EVIDENCE FOR EXAMINATION BY THE QUESTIONED DOCUMENTS SECTION OF THE NATIONAL BUREAU OF INVESTIGATION WHICH DENIAL IS IN VIOLATION OF HIS RIGHT TO PRESENT EVIDENCE AND HIS TWIN CONSTITUTIONAL RIGHTS TO DUE PROCESS AND EQUAL PROTECTION OF LAW.

Those availing of the remedy of *certiorari* must clearly show that the trial court acted without jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. By grave abuse of discretion, it means such capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. In sum, for the extraordinary writ of *certiorari* to lie, there must be capricious, arbitrary or whimsical exercise of power.[10]

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witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (23a)

[10] *Salma v. Hon. Miro*, G.R. No. 168362, January 25, 2007, 512 SCRA 724.

Such circumstance exists in this case.

One of the most vital and precious rights accorded to an accused by the Constitution is due process, which includes a fair and impartial trial and a reasonable opportunity to present one's defense.Under Section 14, Article III of the 1987 Constitution, it is provided that:

> (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the **production of evidence in his behalf**. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable. (emphasis supplied)

In this connection, it is well settled that due process in criminal proceedings requires that (a) the court or tribunal trying the case is properly clothed with judicial power to hear and determine the matter before it; (b) that jurisdiction is lawfully acquired by it over the person of the accused; (c) that **the accused is given an opportunity to be heard**; and (d) that judgment is rendered only upon lawful hearing.

While the Constitution does not specify the nature of this opportunity, by necessary implication, it means that the accused should be allowed reasonable freedom to present his defense if the courts are to give form and substance to this guaranty. Should the trial court fail to accord an accused reasonable opportunity to submit evidence in his defense, the exercise by the Court of its *certiorari* jurisdiction is warranted as this amounts to a denial of due process.

In this case, the defense interposed by the accused Marquez was that his signatures in the disbursement vouchers, purchase requests and authorizations were forged. It is hornbook rule

that as a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence[11] and the burden of proof lies on the party alleging forgery.[12]

Thus, Marquez bears the burden of submitting evidence to prove the fact that his signatures were indeed forged. In order to be able to discharge his burden, he must be afforded reasonable opportunity to present evidence to support his allegation. This opportunity is the actual examination of the signatures he is questioning by no less than the country's premier investigative force – the NBI. If he is denied such opportunity, his only evidence on this matter is negative testimonial evidence which is generally considered as weak. And, he cannot submit any other examination result because the signatures are on the original documents which are in the control of either the prosecution or the graft court.

At any rate, any finding of the NBI will not be binding on the graft court. It will still be subject to its scrutiny and evaluation in line with Section 22 of Rule 132. Nevertheless, Marquez should not be deprived of his right to present his own defense. How the prosecution, or even the court, perceives his defense to be is irrelevant. To them, his defense may seem feeble and his strategy frivolous, but he should be allowed to adduce evidence of his own choice. The court should not control how he will defend himself as long as the steps to be taken will not be in violation of the rules.

Contrary to the assertion of the prosecution, this move of Marquez is not a mere afterthought to delay the prosecution of the case. From the records, it appears that as early as November 24, 2003, even before arraignment, upon his alleged discovery of the forged signatures, Marquez already sought referral of the disbursement vouchers, purchase requests and authorization requests to the NBI and reinvestigation of the cases against him.[13] At that stage, his plea was already denied by the OSP.

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[11] *Tenio-Obsequio v. Court of Appeals*, G.R. No. 107967, March 1, 1994, 230 SCRA 550.

[12] *Heirs of Severa P. Gregorio v. CA*, G.R. No. 117609, 360 Phil. 753 (1998).

[13] *Rollo*, pp. 154-159.

Apparently, he did not abandon his quest. In his Omnibus Motion dated April 1, 2008 filed with the SB-4th Division, Marquez did not only move for the inhibition of Justice Ong and Justice Hernandez, but also moved for the referral of the disbursement vouchers, purchase requests and authorization to the NBI. Since the latter was not acted upon, he filed the subject Motion to Refer Prosecution's Evidence for Examination by the Questioned Documents Section of the National Bureau of Investigation reiterating his plea, this time with the SB-5th Division.

If this case has been delayed, it is because of the denial of the simple request of Marquez. If it was granted in the first instance, the trial of the case would have proceeded smoothly and would have been over by now. If the Court were to deny this petition and Marquez would be convicted for having failed to prove forgery, he could not be prevented from crying that he was prevented from presenting evidence in his defense.

The fact that Marquez did not raise this issue with the COA is immaterial and irrelevant. His failure or omission to do so may affect the appreciation and weight of his defense, but it should not bar him from insisting on it during his turn to adduce evidence.

In denying said motion, the SB-5th Division offered no valid explanation other than the fact that, being the trial court, it may validly determine forgery from its own independent examination of the documentary evidence. While it is true that the appreciation of whether the signatures of Marquez are genuine or not is subject to the discretion of the graft court, this discretion, by the very nature of things, may rightly be exercised only after the evidence is submitted to the court at the hearing. Evidence cannot properly be weighed if not exhibited or produced before the court.[14] Only after evidence is offered and admitted that the court can appreciate and evaluate it. The prosecution had already offered its evidence on the matter. The court should not deny the same right to the defense.

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[14] See *Basco v. Rapatalo,* A.M. No. RTJ-96-1335, 336 Phil. 214 (1997), citing *Ramos v. Ramos,* 45 Phil. 362 (1923).

The fact that the documentary exhibits were already formally offered and duly admitted by the anti-graft court cannot preclude an examination of the signatures thereon by the defense. With proper handling by court personnel, this can easily be accomplished by the NBI expert examiners.

In the conduct of its proceedings, a court is given discretion in maintaining the delicate balance between the demands of due process and the strictures of speedy trial on the one hand, and the right of the State to prosecute crimes and rid society of criminals on the other. Indeed, both the State and the accused are entitled to due process. However, the exercise of such discretion must be exercised judiciously, bearing in mind the circumstances of each case, and the interests of substantial justice.

Thus, for having denied Marquez the opportunity to be heard and to produce evidence of his choice in his defense, the SB-5th Division committed grave abuse of discretion warranting intervention from the Court. The anti-graft court should allow him to refer the evidence of the prosecution to the Questioned Documents Section of the NBI for examination at the soonest time possible and for the latter to immediately conduct such examination and to submit the results to the court within a reasonable time.

WHEREFORE, the petition is *GRANTED*. The February 11, 2009 and May 20, 2009 Resolutions of the 5th Division of the Sandiganbayan in Criminal Case Nos. 27903, 27904 and 27905 are hereby *REVERSED* and *SET ASIDE*. The 5th Division of the Sandiganbayan is hereby ordered to allow the petitioner Joey P. Marquez to refer the evidence of the prosecution to the Questioned Documents Section of the National Bureau of Investigation for examination as soon as possible and, after submission of the results to the court and proper proceedings, to act on the case with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 188847. January 31, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUFINO VICENTE, JR.** ***y*** **CRUZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PROCEDURAL REQUIREMENTS; NON-COMPLIANCE THEREWITH RELATIVE TO THE CUSTODY, PHOTOGRAPHING, AND DRUG TESTING OF THE APPREHENDED PERSONS IS NOT A SERIOUS FLAW THAT CAN RENDER VOID THE SEIZURES AND CUSTODY OF DRUGS IN A BUY-BUST OPERATION PROVIDED THE INTEGRITY AND IDENTITY OF THE SPECIMEN REMAINS INTACT.— Non-compliance with Sec. 21 of R.A. 9165 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. Non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation. We have thus emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused." *People v. Sultan* explains further: In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains intact.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN CASES INVOLVING VIOLATIONS OF THE COMPREHENSIVE DANGEROUS DRUGS ACT, CREDENCE IS GIVEN TO THE POLICE OFFICERS FOR THEY ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER, UNLESS THERE IS EVIDENCE TO THE CONTRARY.— Prosecutions involving

illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PROCEDURAL REQUIREMENTS; BELATED OBJECTION TO THE ALLEGED LAPSES COMMITTED BY THE BUY-BUST TEAM CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— [W]e take notice of Vicente, Jr.'s belated objection to the alleged lapses committed by the buy-bust team. *People v. Sta. Maria* does not support this move: The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

4. ID.; ID.; ID.; DEFENSE OF FRAME-UP MUST BE CORROBORATED BY CREDIBLE AND CONVINCING EVIDENCE TO GAIN MERIT IN COURT.— As Vicente, Jr.'s final argument, he reiterates that the case against him was all a frame-up. We find his excuse all too common and poorly argued. As the trial court noted: x x x [T]he accused failed to secure a medical report to support his claim alleging that his relatives were prevented from going near him. Such

excuse deserves scant consideration. Also, his silence during the inquest proceeding because a policeman simply advised him to is highly suspect. Finally his claim that he did not file any action against the policemen who mauled him because of his fear for his life and that of his family is questionable. Vicente, Jr.'s testimony was, thus, labeled by the CA as "simply not corroborated by credible and convincing evidence," a requirement for the defense of frame-up to gain merit in court.

5. ID.; ID.; ID.; PROPER PENALTY.— Vicente, Jr. was sentenced to life imprisonment and the payment of a PhP 500,000 fine. This is within the range provided in RA 9165 for the crime of illegal sale of drugs: SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.- The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. We, thus, affirm the findings of the appellate court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the April 30, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02699 entitled *People of the Philippines v. Rufino Vicente, Jr. y Cruz*, which affirmed the September 7, 2006 Decision in Criminal Case No. 12474-D of the Regional Trial Court (RTC), Branch 151 in Pasig City. The RTC found accused Rufino Vicente, Jr. (Vicente, Jr.) guilty of violating Section 5, Article II of Republic

Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Acts of 2002*.

The Facts

An Information[1] charged Vicente, Jr. as follows:

That, on or about the 31st day of May 2003, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.40 grams of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to test for Methylamphetamine Hydrochloride, also known as "*shabu*," which is a dangerous drug, in consideration of the amount of Php500.00, in violation of the above-cited law.

During his arraignment, Vicente, Jr. gave a negative plea.

Version of the Prosecution

At the trial, the prosecution presented the following witnesses: Police Officer 2 (PO2) Darwin M. Boiser and PO2 Gerald Marion R. Lagos, who were both part of the buy-bust team that apprehended Vicente, Jr.

PO2 Boiser and PO2 Lagos testified as to the following events that allegedly transpired:

On May 31, 2003, at around 8:00 in the evening, an informant arrived at the District Anti-Illegal Drugs at the Southern Police District, Fort Bonifacio, Taguig, Metro Manila. The informant reported that a certain "Paks" was pushing *shabu* on P. Mariano St., Ususan, Taguig, Metro Manila.[2]

Acting on the information from the informant, Police Inspector (P/Insp.) Rodolfo Anicoche ordered PO2 Boiser to verify the drug-peddling activities of "Paks."[3]

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[1] CA *rollo*, p. 47.

[2] *Id.* at 48.

[3] *Id*.

PO2 Boiser proceeded to Ususan accompanied by the informant. Once there, the informant pointed "Paks" to PO2 Boiser. They were at a distance of 10 meters when they both saw "Paks" peddling drugs to several persons. After confirming the informant's report, they went back to the police station to recount what they had seen to P/Insp. Anicoche. Thereafter, a team was dispatched to conduct a buy-bust operation. The buy-bust team was composed of P/Insp. Anicoche, PO2 Boiser, PO2 Lagos, PO3 Macario, and Senior Police Officer 2 Millari. PO2 Boiser was designated as the poseur-buyer.[4]

The buy-bust team conducted a briefing where PO2 Boiser marked a PhP 500 bill with "JG," the initials of Police Superintendent and District Intelligence and Investigation Branch Chief Jose Gentiles. Afterwards, they boarded a vehicle and headed to Ususan, Taguig, arriving at the area around midnight. PO2 Boiser and PO2 Lagos walked with the informant to meet "Paks." PO2 Boiser was then introduced to "Paks" as a *balikbayan* who wanted to score some drugs. He also told "Paks" that he had been released from rehab and wanted to use again. "Paks," satisfied that PO2 Boiser was indeed a drug user, agreed to sell PhP 500 worth of *shabu*. He reached from his camouflage shorts a plastic sachet and handed it to PO2 Boiser.[5]

After receiving the plastic sachet from "Paks," PO2 Boiser examined it under the light of a lamppost. Seeing the pre-arranged signal acted out by PO2 Boiser, PO2 Lagos went to the scene and introduced himself as a police officer to "Paks."

The buy-bust money was then seized from "Paks." "Paks" quietly stood while he was informed of his drug violation as well as his constitutional rights. The plastic sachet sold by "Paks" was later turned over by PO2 Boiser to investigating officer PO3 Delima, who prepared the laboratory request. The plastic sachet was marked "DB-1-3105-03," pertaining to PO2

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[4] *Id*. The records do not divulge the complete names of PO3 Macario and SPO2 Millari.

[5] *Id*.

Boiser's initials and the date of the seizure of the drug.[6] The following pieces of documentary evidence were also presented:

(1) Exhibit "A" – Joint Affidavit of Arrest dated June 2, 2003 by PO2 Gerald Marion R. Lagos and PO2 Darwin M. Boiser;[7]

(2) Exhibit "B" – Request for Laboratory Examination dated May 31, 2003 by Police Superintendent Jose L. Gentiles, Officer-in-Charge, District Intelligence and Investigation Branch, delivered by PO2 Lagos and received by PO2 Imus;[8] and

(3) Exhibit "D" – Physical Science Report No. D-616-03S prepared by Forensic Chemical Officer Richard Allan B. Mangalip.[9]

Version of the Defense

The defense offered the testimonies of Vicente, Jr. and Elisa Santos.

According to Elisa, she was outside her house having a conversation with Vicente, Jr. around midnight of May 31, 2003. They both noticed a gray vehicle drive past them. Shortly thereafter, a tricycle stopped in front of them. Three men alighted and poked a gun at Vicente, Jr., and warned him, "*Reden, wag kang kikilos ng masama*." Vicente, Jr. denied he was Reden. Yet the three men took him away and hit him with a gun and boxed him in his abdomen. Elisa further testified, "*Tinuhod po yung harapan niya.*" Vicente, Jr. attempted to show identification to the three men but they ignored him. The gray vehicle earlier spotted by Elisa and Vicente, Jr. then returned and a person inside said, "*Hindi iyan.*" However, someone replied "*Sinaktan niyo na siya, isama na natin.*"[10]

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[6] *Id.* at 48-49.

[7] Records, p. 103.

[8] *Id.* at 105.

[9] *Id.* at 107.

[10] *Id.* at 168.

On the witness stand, Vicente, Jr. said that he had never been involved in any drug-related case prior to his arrest. He explained that he was buying *balut* from witness Elisa when three men accosted him and poked a gun at him. They mistakenly thought he was "Reden" and beat him up when he said it was a case of mistaken identity. The men turned out to be police officers and he was brought to their office where one of them told him, "*Kung gusto mo magturo ka na lang ng ibang tao*." When he did not cooperate, he was again beaten up. Vicente, Jr. further testified that his wife and brother were not allowed to visit him. He claimed that he did not get a medical certificate for his injuries for that reason. PO2 Lagos even warned him not to say anything during the inquest proceedings and to tell the prosecutor that he would just make his statement in court.[11]

The Ruling of the RTC

On September 7, 2006, the RTC pronounced Vicente, Jr. guilty of the crime charged. The RTC stated that the witnesses for the prosecution gave straightforward testimonies that clearly established the elements necessary for the prosecution of illegal sale of drugs.

The dispositive portion of the RTC Decision[12] reads:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding the accused, RUFINO VICENTE, JR., *Y* CRUZ, GUILTY beyond reasonable doubt for violation of Section 5, 1st paragraph, Article II of RA 9165 as charged and hereby sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00.

The Ruling of the CA

On appeal, Vicente, Jr. averred that the trial court erred (1) in convicting him as the alleged seller of *shabu* since he was not the alleged "Paks" identified by the police informant as the peddler of *shabu*; (2) in convicting him based on the weakness of the defense and not on the strength of the prosecution's

[11] CA *rollo*, p. 50.

[12] *Id.* at 51. Penned by Judge Franchito N. Diamante.

evidence; and (3) in finding that the arresting police officers regularly performed their duties despite non-compliance with procedural rules on drug buy-bust operations.

Representing the People, the Office of the Solicitor General (OSG) countered that all the elements in the illegal sale of drugs were established. Vicente, Jr.'s identity as the seller of *shabu* was established by the credible testimonies of PO2 Boiser and PO2 Lagos.

The CA affirmed the findings of the trial court, *viz*:

> The said elements of the offense of illegal sale of dangerous drugs (*shabu*) was clearly established by the testimony of PO2 Boiser who acted as the poseur-buyer in the standard police buy-bust operation. PO2 Boiser was able to chronologically and consistently narrate the factual circumstances that led to the arrest of the accused-appellant.
>
> Moreso, PO2 Boiser's testimony was corroborated on material points by PO2 Lagos who was just more or less ten (10) meters from the *locus criminis* and who helped PO2 Boiser in effecting the arrest of the accused-appellant.[13]

On May 26, 2009, Vicente, Jr. filed his Notice of Appeal from the appellate court's Decision.

On October 5, 2009, this Court required the parties to submit supplemental briefs if they so desired. The People, through the OSG, manifested that it was adopting its previous arguments. Vicente, Jr. filed his Supplemental Brief on January 18, 2010. He averred that there was a failure to preserve the integrity and evidentiary value of the seized drug by the arresting officers.

The Issue

Whether the Court of Appeals erred in finding accused-appellant guilty beyond reasonable doubt

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[13] *Rollo*, p. 10. The Decision was penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Mariano C. Del Castillo (now a member of this Court) and Marlene Gonzales-Sison.

The Ruling of this Court

Vicente, Jr. is convinced that Sec. 21 of the Implementing Rules and Regulations (IRR) of RA 9165 was not complied with, since the buy-bust team failed to present a pre-operation report and photographs of the seized items. He concludes that there is uncertainty as to the identity of the illegal drugs seized. He says that due to the buy-bust team's omissions, there is a lingering doubt as to whether the drugs that underwent laboratory examination were the same items allegedly seized from him.

The OSG, on the other hand, argues that the integrity and evidentiary value of the seized *shabu* were properly preserved by the buy-bust team from the time it was handed by Vicente, Jr. to the poseur-buyer up to the time it was presented during trial. The OSG adds that prior coordination with the Philippine Drug Enforcement Agency was not required as the buy-bust was conducted on March 31, 2003, while the IRR of RA 9165 took effect only on November 27, 2004.

We affirm accused's conviction.

As previously held by this Court, Sec. 21 of RA 9165 need not be followed as an exact science. Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[14] Non-compliance with the procedural requirements under RA 9165 and its IRR relative to the custody, photographing, and drug-testing of the apprehended persons is not a serious flaw that can render void the seizures and custody of drugs in a buy-bust operation.[15] We have thus emphasized that what is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[16]

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[14] *People v. De Leon*, G.R. No. 186471, January 25, 2010, 611 SCRA 118, 133.

[15] *People v. Ara*, G.R. No. 185011, December 23, 2009, 609 SCRA 304, 325.

[16] *Id*.

People v. Sultan[17] explains further:

In fact, the Implementing Rules and Regulations of Rep. Act No. 9165 adequately reflects the desire of the law to excuse from the rigid tenor of Section 21 situations wherein slight infractions in methodology are present but the integrity and identity of the specimen remains intact.

The following exchange took place during the direct examination of PO2 Boiser and shows the handling of the seized drug:

PROSECUTOR DULDULAO

Q: After the recovery of the buy-bust money from *alias* Paks, what else did you do?
A: I informed him of his violation and apprised him his constitutional rights.

Q: What violation did you inform him [about]?
A: That he violated [a law by] selling *shabu*, sir.

Q: What was his answer if any?
A: He kept silent, sir.

Q: How about the rights you informed him? What are those rights?
A: He has the right to remain silent and he has the right to get his own counsel.

xxx xxx xxx

Q: After that, what else did you do?
A: We brought Paks to our office, sir.

Q: How about the specimen or the *shabu* which you were able to buy from *alias* Paks? What did you do to it if any?
A: I turned it over to the investigator and he prepared a crime lab request.

Q: If shown to you again, Mr. Witness, that plastic sachet containing *shabu* which according to you you were able to buy from *alias* Paks, would you be able to identify it and how can you identify it?
A: I place a marking, sir.

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[17] G.R. No. 187737, July 5, 2010.

Q: What marking did you place?
A: I placed the initial of my name and the date of arrest.

Q: What initial did you put?
A: DB, sir.

Q: DB meaning the initial refers to?
A: My name, sir. Darwin Boiser.

Q: I am showing to you, Mr. Witness, a heat transparent plastic sachet containing white crystalline substance which was found positive to the test of *shabu* previously marked as Exh. C. Will you please go over this and tell us if this is the same specimen [which] you were able to buy from *alias* Paks at the time of the buy-bust operation?
A: Yes, sir. It is the same.

Q: Why do you say so?
A: Because it bears the marking which I placed, sir.

Q: Again, what marking are you referring to?
A: DB-1-310503, sir.

INTERPRETER

Witness is referring to the initial appearing in Exh. C.

PROSECUTOR DULDULAO:

Q: When you put the marking on this evidence, what happened next?
A: We brought Paks to the office, sir.

Q: When you were already at the office, what happened thereat?
A: I turned him over to the investigator.

Q: You are referring to *alias* Paks?
A: Yes, sir.

Q: How about the evidence?
A: I also gave it, sir.

Q: Who was your investigator then?
A: PO3 Delima, sir.

Q: What did Delima do after turning over to him the person of *alias* Paks and the evidence?
A: He prepared the crime lab request.

Q: Request for what?
A: For laboratory examination.

Q: What was the subject of the examination?
A: The *shabu* which we bought from Paks.

Q: What happened to the request?
A: There was a result, sir.

Q: What was the result?
A: It [was] found positive [for] methylamphetamine hydrochloride.

Q: How about *alias* Paks? Did you come to know his full name?
A: Yes, sir.

Q: How did you come to know it?
A: When I asked him to sign the booking sheet, sir.

Q: What was his name?
A: Rufino Vicente, sir.

Q: The accused in this case?
A: Yes, sir.

Q: If you will see him again, would you be able to identify him?
A: Yes, sir.

Q: Will you please point to him if he is inside the courtroom?
A: He is there seated in front wearing a yellow t-shirt, sir.

INTERPRETER:

Witness is pointing to a person inside the courtroom whom upon being asked answered by the name of Rufino Vicente, Jr.[18]

Additionally, any doubts as to the chain of custody requirement were clarified during the cross-examination of PO2 Boiser:

ATTY. RONATAY

Q: Where did you place the marking of the specimen, at the place where the accused was arrested or at the police station when there was already an investigation?

[18] TSN, January 20, 2004, pp. 18-22.

A: At the place where the accused was arrested, ma'am.[19]

We affirm the trial court's finding that PO2 Boiser's testimony was credible and straightforward. As the trial court explained:

> The prosecution showed that there was a meeting of the minds between the witness Boiser, poseur-buyer and the seller, accused Rufino Vicente, Jr., to sell to the former *shabu* for Php500.00. The act of the accused-seller in receiving the money and delivering the said *shabu* consummated the sale. The straightforward testimonies of the witnesses for the prosecution clearly established the elements.[20]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[21] Oft-repeated is the rule that in cases involving violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[22] Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.[23]

The cross-examination of Vicente, Jr. sheds light on the matter of ill motive:

Fiscal Glenn Santos

Q Mr. witness, but prior to this incident do you know these police officers Boiser, Lagos and Millari?
A No sir.

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[19] TSN, April 26, 2004, pp. 6-7.

[20] CA *rollo*, p. 50.

[21] *People v. Villamin*, G.R. No. 175590, February 9, 2010, 612 SCRA 91,106.

[22] *People v. Tamayo*, G.R. No. 187070, February 24, 2010, 613 SCRA 556, 564.

[23] *People v. Gum-Oyen*, G.R. No. 182231, April 16, 2009, 585 SCRA 668, 678.

Q So it [is] safe to assume that you do not have any misunderstanding or misgiving with these police officers, Mr. witness?
A None, sir.

Q During the incident you said that you were with the "*balut*" vendor?
A [Y]es, sir.

Q But the "*balut*" vendor [was] never [harmed] nor arrested by these police officers?
A No sir.

Q And just like you, you claimed that you [did] not commit anything this "*balut*" vendor did not commit any crime?
A None, sir.

Q But despite that you were [singled] out by these police officers in arresting and mauling you?
A Yes, sir.

Q Would you know of any reason why these police officers would hurt you for no apparent reason or arrest or [charge] you for selling *shabu*?
A None, sir.[24]

No clear and convincing evidence exists in the records to show that Vicente, Jr.'s arresting officers were impelled by malicious or ill motives in bringing up trumped-up charges against him.

Moreover, We take notice of Vicente, Jr.'s belated objection to the alleged lapses committed by the buy-bust team. *People v. Sta. Maria*[25] does not support this move:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but

[24] TSN, September 12, 2005, pp. 15-16.

[25] G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633-634.

were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

The OSG, however, is incorrect in arguing that the buy-bust was conducted on March 31, 2003, while the IRR of RA 9165 took effect only on November 27, 2004. The IRR of RA 9165 was approved on August 30, 2002, and it became effective upon its publication in three newspapers of general circulation and registration with the Office of the National Administrative Register. It was published in the national newspaper *Today* on October 31, 2002 or before the buy-bust against Vicente, Jr. occurred. Thus, the IRR of RA 9165 is applicable to the case of Vicente, Jr. Yet, regardless of this argument on the effectivity of said IRR, Vicente, Jr. still cannot count on his acquittal. Even with the effectivity of the IRR during his arrest, We hold that the chain of custody of the seized item was not broken in this case. We are not convinced that the integrity and evidentiary value of the evidence were compromised.

Alibi as a Defense

As Vicente, Jr.'s final argument, he reiterates that the case against him was all a frame-up. We find his excuse all too common and poorly argued.

As the trial court noted:

x x x [T]he accused failed to secure a medical report to support his claim alleging that his relatives were prevented from going near him. Such excuse deserves scant consideration. Also, his silence during the inquest proceeding because a policeman simply advised him to is highly suspect. Finally his claim that he did not file any action against the policemen who mauled him because of his fear for his life and that of his family is questionable.[26]

[26] CA *rollo*, p. 50.

Vicente, Jr.'s testimony was, thus, labeled by the CA as "simply not corroborated by credible and convincing evidence," a requirement for the defense of frame-up to gain merit in court.

Penalty Imposed

Vicente, Jr. was sentenced to life imprisonment and the payment of a PhP 500,000 fine. This is within the range provided in RA 9165 for the crime of illegal sale of drugs:

> SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*.—The penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

We, thus, affirm the findings of the appellate court.

WHEREFORE, the appeal is *DENIED*. The CA Decision in CA-G.R. CR-H.C. No. 02699 finding accused-appellant Vicente, Jr. guilty of the violation charged is *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Mendoza,[*] and *Perez, JJ.*, concur.

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[*] Additional member as per raffle dated January 26, 2011.

THIRD DIVISION

[G.R. No. 191889. January 31, 2011]

SPS. IRENEO T. FERNANDO (substituted by their heirs, Ronaldo M. Fernando, Concordia Fernando-Jayme, Esmeralda M. Fernando, Antonette M. Fernando-Regondola, Ferdinand M. Fernando, and Jean Marie Fernando-Cansanay), and MONSERRAT MAGSALIN FERNANDO, *petitioners, vs.* **MARCELINO T. FERNANDO,** *respondent.*

MATIAS I. FERNANDO and PANFILO M. FERNANDO,[1] **in their capacity as Administrators [of the estate] of the late JULIANA T. FERNANDO,** *respondents-intervenors.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITIONS FOR REVIEW ON *CERTIORARI*; LIMITED TO QUESTIONS OF LAW; EXCEPTION.— The principal issue - whether the deed is genuine - involves a question of fact. While it is settled that petitions for review on *certiorari* under Rule 45 are limited to questions of law as the Court is not a trier of facts, the rule admits of exceptions including when the factual findings of the trial and appellate courts are conflicting, in which event this Court may still pass on the same.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; DEED OF PARTITION WITH SALE; AUTHENTICITY THEREOF NOT PROVED; A FORGED DEED IS A NULLITY AND CONVEYS NO TITLE; THE CASE OF *HEIRS OF ROSA DUMALIANG V. SERBAN* (G.R. NO. 155133, FEB. 21, 2007) CITED.— A scrutiny of the deed reveals several significant irregularities which belie petitioners' claim of its authenticity. x x x In *Heirs of Rosa Dumaliang v. Serban* where the therein petitioners-heirs similarly sought the annulment of a 1962 deed of extra-judicial settlement and sale upon a claim that the signatures of some

[1] Should be Procilo Fernando; *vide* note 12.

> of the heirs had been falsified and that the remaining signatories could not have signed the deed as they were already dead, this Court stressed in no uncertain terms that: . . . if it is established that petitioners' consent was not given to the 1962 Deed of Extra-Judicial Settlement and Sale which became the basis for the issuance of the new title over the entire lot in respondent Damiano's name in 1965, **the absence of such consent makes the Deed null and void *ab initio* and subject to attack anytime. It is recognized in our jurisprudence that a forged deed is a nullity and conveys no title.** Article 1410 of the Civil Code clearly provides that an action to declare the inexistence of a void contract does not prescribe. x x x.

APPEARANCES OF COUNSEL

Erwin S. Herrera for petitioner.
Emmanuel Basa for respondent.
Ana Marie V. Pagbibigan for respondent-intervenors.

D E C I S I O N

CARPIO MORALES, *J.*:

The spouses Ireneo[2] T. Fernando and Monserrat Magsalin Fernando (petitioners) and Irineo's sisters Juliana T. Fernando (Juliana) and Celerina T. Fernando (Celerina) were the registered co-owners in pro-rata shares –1/3 each – of three parcels of land located in Quezon City, designated as Lot Nos. 22, 24 and 26, all of Block 329 and each containing an area of 264 square meters, more or less. Lot No. 22 was covered by Transfer Certificate of Title (TCT) No. RT-7108 (141363),[3] while Lot Nos. 24 and 26 were covered by TCT No. RT-7109 (141364),[4] both issued by the Register of Deeds for Quezon City.

Marcelino T. Fernando (respondent) is the full-blood brother of petitioner Ireneo, Juliana and Celerina. Celerina died on

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[2] Also interchangeably referred to in the records as Irineo.

[3] Records, Vol. 2, pp. 573-574.

[4] *Id.* at 575-576.

April 28, 1988,[5] single, without issue and without leaving any will, while Juliana passed away on December 1, 1998,[6] likewise single and without issue. Juliana purportedly executed a holographic will.

It appears that on November 3, 1994, Ireneo and Juliana presented a document before the Register of Deeds of Quezon City, denominated as Deed of Partition with Sale[7] (the deed) dated October 27, 1994 and notarized on even date by Notary Public Jesus M. Bautista, allegedly executed by petitioners, Juliana and Celerina wherein they partitioned equally among themselves the aforementioned properties, thereby terminating their co-ownership. Under the deed, Lot No. 22 would be allotted to petitioners; Lot No. 24 to Juliana; and Lot No. 26 to Celerina. Still in the same deed, Juliana agreed to sell Lot No. 24 to petitioners for the sum of ₱300,000.00.

TCT Nos. 120654 and 120655[8] covering Lot Nos. 22 and 24, respectively, were thereupon issued on November 3, 1994 by the Register of Deeds for Quezon City in the name of petitioners, while TCT No. 120656[9] was issued in the name of Celerina.

On December 10, 1997, respondent caused the annotation of an Affidavit of Adverse Claim on petitioners' and Celerina's respective TCTs, claiming a right and interest over the properties, being one of the heirs of his late sister Celerina.

Respondent later filed on February 22, 2000 a complaint[10] for annulment of the deed and the derivative TCTs against petitioners and the Register of Deeds of Quezon City before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q-00-40041, alleging that Celerina's signatures

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[5] *Id*. at 577.

[6] *Id*. at 584.

[7] Exhibit "D", *id*. at 578-580.

[8] *Id*. at 581-582.

[9] *Id*. at 583.

[10] Records, Vol. 1, pp. 1-7.

on the deed of partition was a forgery as she had passed away on April 28, 1988, before the deed was purportedly executed in 1994, and that the purported sale by Juliana of her share over Lot No. 24 in favor of petitioners was simulated and fictitious due to lack of any valid consideration, which questioned acts had effectively deprived him of his right of pre-emption or redemption as Celerina's heir under Article 1620 of the Civil Code [sic].

Respondent thus prayed for, *inter alia*, the cancellation and invalidation of the deed and the questioned TCTs, and the revival of TCT Nos. RT-7108 (141363) and RT-7109 (141364).

Respondent was later appointed administrator of the intestate estate of Celerina on December 21, 2001.[11]

On January 30, 2002, intervenors Matias Fernando and Procilo Fernando, who had earlier been appointed special co-administrators[12] of Juliana's estate by the Quezon City RTC, Br. 95, filed their complaint-in-intervention. Claiming an interest in the outcome of respondent's complaint for annulment, they echoed respondent's claim that, among other things, the sale of Juliana's share to petitioners was fictitious, citing lack of any consideration, and thus prayed for its reconveyance to Juliana's estate.

Petitioners, denying respondent's allegations by way of Answer *Ad Cautelam*[13] dated May 11, 2002 with Compulsory Counterclaim, asserted in the main that the deed was actually executed sometime in 1986 during the lifetime of Celerina and held in safekeeping by one of the parties but it was belatedly notarized on October 27, 1994 before it was presented to the Register of Deeds; and that Juliana left a holographic will which

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[11] *Vide* Order of the Quezon City RTC, Br. 220 in Sp. Proc. Case No. Q-00-42034, *id*. at 145-147.

[12] *Vide* Resolution of January 5, 2000 in Sp. Proc. No. Q-99-37053 issued by then (now Supreme Court Associate Justice) Judge Diosdado Peralta, Records, Vol. 2, pp. 370-371.

[13] *Id*. at 327-335.

is the subject of probate proceedings[14] before Br. 95 of the Quezon City RTC.

At the witness stand, respondent confirmed the material allegations of his complaint.[15] Petitioners, on the other hand, presented Monserrat Fernando (Monserrat), Ireneo's widow, who declared that, among other things, she was present when the deed was signed by Ireneo, Juliana and Celerina in 1986, and that by agreement, it remained in Juliana's safekeeping until it was notarized on October 27, 1994.[16]

On cross-examination, Monserrat maintained that the deed was signed in Juliana's house, but she could not recall the witnesses to the document; that at the time Juliana signed the deed, it was still undated and the entries on page 3 (the notarial page) were, with respect to the date and the community tax certificates of the parties, still blank; and that she (Monserrat) appeared before the notary public but she could not remember if her husband did.

Monserrat further testified that she did not know if the typewriter used in preparing the deed was different from that used in typing the notarial date (October 27, 1994) as well as the figures "₱300,000.00" and the words "THREE HUNDRED THOUSAND PESOS" representing the consideration for the sale of Juliana's share to Irineo; and that Ireneo issued a check-payment drawn on his account in favor of Juliana, albeit she (Monserrat) could not produce the check.[17]

By Decision[18] of April 13, 2005, Branch 220 of the Quezon City RTC dismissed both the complaint and the complaint-in-intervention. And, on the Counterclaim, the trial court ordered respondent to pay petitioners moral damages and attorney's fees.

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[14] *Vide* note 12.

[15] TSN, August 26, 2003, September 25, 2003.

[16] TSN, January 22, 2004, pp. 1-12.

[17] *Id*. at 13-23.

[18] Rendered by Judge Jose G. Paneda, records, Vol. 2, pp. 689-694.

In sustaining the validity of the deed, the trial court ratiocinated that since there appeared to be no dispute as to the genuineness of Celerina and Juliana's signatures, the notarization of the document at a later date did not render it void or without legal effect, but merely opened the notary public to prosecution for possible violation of notarial laws.

The trial court added that both respondent and intervenors, not being compulsory heirs of either Celerina or Juliana, were not entitled to any legitime and thus could not assail the sale made by Juliana in favor of her brother Ireneo, which sale was proven to have been duly supported by valuable consideration.[19]

On appeal, the Court of Appeals *reversed* the trial court's decision. It held that the deed is void in light of the clear forgery of the signature of Celerina who could not have given her consent thereto more than six years *after* her death. The appellate court reasoned:

> Celerina T. Fernando, who admittedly died on April 28, 1988, could not have possibly "affixed" her "signature" to the document on October 27, 1994; neither could she have secured the misrepresented Community Tax Certificate No. 6720337 from Manila on January 6, 1994; and worsely, she could not have "personally appeared" before Notary Public Jesus M. Bautista on "October 27, 1994" and "acknowledged before (him) that the same was executed of (her) own free act and deed." Especially that Monserrat, a signatory who insists that the deed was in truth executed in 1986, did not adduce evidence to such effect, other than her bare testimony. She did not even proffer any explanation why the correct date was not made part of the assailed deed.
>
> xxx xxx xxx
>
> The discrepancy in the date of execution and notarization of the deed and the date of death of supposed signatory Celerina are too glaring for Us to overlook and gloss over, moreso, that the evidence offered in opposition thereto is merely Monserrat's bare testimony.[20] (underscoring supplied)

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[19] *Id.* at 693-694.

[20] *Vide* note 21 at 189-190.

Thus the appellate court disposed in its Decision[21] of January 6, 2010:

WHEREFORE, the instant appeal is GRANTED. Setting aside the assailed April 31, 2005 Decision of the RTC, judgment is hereby rendered:

1) Declaring the Deed of Partition with Sale dated October 27, 1994 as NULL and VOID;

2) Declaring further Transfer Certificate of Title Nos. 120654 and 120655 issued in the name of Ireneo T. Fernando and Transfer Certificate of Title No. 120655 issued in the name of Celerina T. Fernando as NULL and VOID;

3) Directing the Register of Deeds of Quezon City to revive TCT Nos. RT-7108 and RT-7109 and accordingly issue transfer of title over the three lots as now co-owned by Irineo T. Fernando married to Monserrat M. Fernando, Juliana T. Fernando and Celerina T. Fernando; and

4) Ordering the defendants-appellees to pay plaintiff-appellant ₱100,000.00 as moral damages, ₱50,000.00 as exemplary damages and ₱50,000.00 as attorney's fees.

SO ORDERED. (underscoring supplied)

Reconsideration of the appellate court's Decision having been denied by Resolution[22] of April 13, 2010, petitioners filed the present petition for review on *certiorari*, contending that the appellate court:

. . . disregarded the trial court's factual findings on the authenticity of Celerina's signature as based on the eyewitness account of Monserrat, who also signed the subject deed, and failed to take into account their explanation on the date of execution of the instrument;

. . . failed to recognize that the deed of partition with sale executed by the parties in 1986 does not require notarization for the same to be valid, binding and enforceable, even granting that a notarial defect–

[21] Penned by Associate Justice Vicente S. E. Veloso with the concurrence of Associate Justices Amy C. Lazaro-Javier and Andres B. Reyes, Jr., CA *rollo*, pp. 177-195.

[22] *Id*. at 228-229.

arising from Celerina's failure to appear before the Notary Public– exists; and

. . . erred in upholding respondent's legal personality to question the validity of the deed of partition with sale.[23]

The principal issue—whether the deed is genuine—involves a question of fact.

While it is settled that petitions for review on *certiorari* under Rule 45 are limited to questions of law as the Court is not a trier of facts, the rule admits of exceptions including when the factual findings of the trial and appellate courts are conflicting, in which event this Court may still pass on the same.[24]

The petition fails.

In ruling, by a one brief paragraph, in the affirmative on the issue of whether Celerina's and Juliana's signatures in the deed were genuine, the trial court did not provide sufficient legal or factual basis on how it arrived at its conclusion. It apparently contented itself with just declaring that "the deed . . . does not suffer from any legal infirmity" since there was allegedly no dispute as to the signatures thereon, and went on to opine that its notarization at a later date did not render the document void and without legal effect.[25]

Petitioners maintain that the deed was actually executed in 1986 when Celerina was still alive, but notarized only in 1994:

. . . a plain perusal of the Subject Deed will readily show that **the font type used for the supposed date of execution of the deed as found in the body is different from the font type used for the rest of the deed but appears to be the very same font type used for the notarization**. This further affirms that it was the Notary

[23] *Rollo*, pp. 26-27.

[24] *B & I Realty Co., Inc. v. Caspe*, G.R. No. 146972, January 29, 2008, 543 SCRA 1, 7 citing *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 24; 325 SCRA 137, 145 (2000); *Rosario v. PCI Leasing and Finance, Inc.* G.R. No. 139233, November 11, 2005, 474 SCRA 500, 506.

[25] *Vide* note 18 at 693.

Public who inserted or caused to be inserted the date "October 27, 1994."…[26] (emphasis in the original; underscoring supplied)

Petitioners thus fault the notary public for making it appear that the date of execution of the deed was the same as the date of its notarization and for including the name of the already deceased Celerina in the Acknowledgment portion thereof.

A scrutiny of the deed reveals, however, several significant irregularities which belie petitioners' claim of its authenticity. Thus, while the entry "October 27, 1994" appearing on the date of execution (page 2) and on the Acknowledgment portion (page 3), the date of notarization, the parties' Community Tax Certificates, the Document, Page and Book Numbers appear to carry a different typeset – indicating the intervention of the notary public " from that employed in the body of the deed, the words "Series of 1994" as reflected in the Acknowledgment carry the same typeset used in the body of the document. Consider the following Acknowledgment:

xxx xxx xxx

REPUBLIC OF THE PHILIPPINES)
Q U E Z O N C I T Y) S. S.

BEFORE ME, a Notary Public for and in Quezon City, this **Oct. 27, 1994** personally appeared:

JULIANA T. FERNANDO **CTC#35411020A/QC/3.1.94**

CELERINA T. FERNANDO **CTC#6720337/Mla.1.20.94**

IRENEO T. FERNANDO/MONSERRAT MAGSALIN **CTC#2506693A/Mla./1.6.94**

known to me to be the same persons who executed the foregoing instrument and acknowledged before me that the same was executed of their own free act and deed.

This instrument consists of three (3) pages, including this page, wherein the acknowledgment is written and has been signed by the parties and their instrumental witnesses on each and every page, refer to a Deed of Partition with Sale.

[26] *Rollo*, p. 35.

WITNESS MY HAND AND OFFICIAL SEAL on the date and place above-written.

10.27.94

Doc. No. **xxxx**
270
Page No. **xx 55**
Book No. **13**
Series of 1994[27] (emphasis supplied; underscoring in the original)

It is thus all too glaring that the deed could not have been, as advanced by petitioners, actually executed in 1986. For if indeed it was, and without belaboring the obvious, the entry for the notarial year after the words "Series of" should have been left in blank, consistent with the other entries which the notary public would fill in (upon notarization at a later date). Since the words "Series of 1994" and the contents of the deed were obviously prepared from the very same machine, it cannot be gainsaid that it was drafted/executed only in 1994 at which time Celerina could not have been a party thereto, she having passed away in 1988.

Whether the notary public was responsible for inserting October 27, 1994 as the date of the execution of the instrument is thus no longer material.

An examination of the signatures of both Juliana and Celerina on the bottom of page 2 of the deed reveals that their family name "Fernando" appears to have been written by one and the same hand which, to the Court's naked eye, is significant, taking note of the same style and flourish with which, particularly, the letters "F" and "D" were executed, thereby engendering further doubts as to the genuineness of the deed or the actual participation of the concerned parties.

As for petitioners' reliance on the testimony of Monserrat (Ireneo's widow), the same fails. Except for her claim that she was present when the document was signed by Ireneo, Juliana and Celerina in 1986, little else was offered by way of

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[27] *Vide* note 7 at 580.

collaboration. Monserrat, on cross-examination, could not even recall the names of the witnesses to the deed or if they were present during its signing. She did not know who prepared the deed or if her husband Ireneo or Juliana appeared before the notary public. She could not advance any explanation why the deed was not dated at the time of its execution or why it was, by her claim, entrusted to Juliana for safekeeping, And she proffered no reason why she failed to present the check-payment for ₱300,000.00 for Lot No. 24.[28]

And it bears noting that petitioners never even bothered to present the notary public to testify on the circumstances surrounding the belated notarization of the deed.

In *Heirs of Rosa Dumaliang v. Serban*[29] where the therein petitioners-heirs similarly sought the annulment of a 1962 deed of extra-judicial settlement and sale upon a claim that the signatures of some of the heirs had been falsified and that the remaining signatories could not have signed the deed as they were already dead, this Court stressed in no uncertain terms that:

> . . . if it is established that petitioners' consent was not given to the 1962 Deed of Extra-Judicial Settlement and Sale which became the basis for the issuance of the new title over the entire lot in respondent Damiano's name in 1965, **the absence of such consent makes the Deed null and void *ab initio* and subject to attack anytime. It is recognized in our jurisprudence that a forged deed is a nullity and conveys no title.** Article 1410 of the Civil Code clearly provides that an action to declare the inexistence of a void contract does not prescribe.
>
> Likewise, we have consistently ruled that when there is a showing of such illegality, the property registered is deemed to be simply held in trust for the real owner by the person in whose name it is registered, and the former then has the right to sue for the reconveyance of the property. The action for the purpose is also,

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[28] TSN, January 22, 2004, pp. 1-23.

[29] G.R. No. 155133, February 21, 2007, 516 SCRA 343, 357-358 citing *Salomon v. Intermediate Appellate Court*, G.R. No. 70263, May 14, 1990, 185 SCRA 352, 363, *Baranda v. Baranda*, No. 73275, May 20, 1987, 150 SCRA 59, 74, *Director of Lands v. Addison*, 49 Phil. 19 (1926).

imprescriptible, and as long as the land wrongfully registered under the Torrens system is still in the name of the person who caused such registration, an action *in personam* will lie to compel him to reconvey the property to the real owner.

If indeed petitioners' consent was not given, respondents could not have acquired ownership over the 56,804 sq m lot by virtue of the 1962 Deed of Extra-Judicial Settlement and Sale. **While a certificate of title was issued in respondents' favor, such title could not vest upon them ownership of the entire property; neither could it validate a deed which is null and void.** Registration does not vest title; it is merely the evidence of such title. Our land registration laws do not give the holder any better title than what he actually has. (emphasis and underscoring supplied)

WHEREFORE, the petition is *DENIED*. The assailed January 6, 2010 Decision of the Court of Appeals is *AFFIRMED.*

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

THIRD DIVISION

[G.R. No. 192898. January 31, 2011]

SPOUSES ALEXANDER TRINIDAD and CECILIA TRINIDAD, *petitioners, vs.* **VICTOR ANG**, *respondent.*

SYLLABUS

1. REMEDIAL LAW; MOTION FOR RECONSIDERATION; FAILURE TO STATE THE MATERIAL DATE OF FILING THE MOTION FOR RECONSIDERATION IS ONLY A FORMAL REQUIREMENT THAT WARRANTS THE

RELAXATION OF THE RULES.— [T]he petitioners' failure to state the material date of filing the motion for reconsideration is only a formal requirement that warrants the relaxation of the rules in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice.

2. ID.; CRIMINAL PROCEDURE; ARRAIGNMENT; GROUNDS FOR SUSPENSION OF ARRAIGNMENT; PENDENCY OF A PETITION FOR REVIEW; DEFERMENT OF THE ARRAIGNMENT LIMITED TO A PERIOD OF 60 DAYS RECKONED FROM THE FILING OF THE PETITION; APPLICATION.— The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which provides: SEC. 11. *Suspension of Arraignment*. – Upon motion by the proper party, the arraignment shall be suspended in the following cases: x x x **(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *Provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office.** In *Samson v. Daway*, the Court explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision **limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment**. In the present case, the petitioners filed their petition for review with the DOJ on October 10, 2007. When the RTC set the arraignment of the petitioners on August 10, 2009, 1 year and 10 months had already lapsed. This period was way beyond the 60-day limit provided for by the Rules.

APPEARANCES OF COUNSEL

Ambrosio Ambrosio Ambrosio & Associates for petitioners.

R E S O L U T I O N

BRION, *J.*:

We resolve the motion for reconsideration filed by petitioner spouses Alexander Trinidad and Cecilia Trinidad (*petitioners*) to challenge our Resolution of September 29, 2010. Our Resolution denied the petition for review on *certiorari* for its failure to state the material dates of receipt of the order[1] of the Regional Trial Court (*RTC*), Branch 44, Masbate City, and of filing the motion for reconsideration, in violation of Sections 4(b)[2] and 5,[3] Rule 45, in relation to Section 5(d),[4] Rule 56 of the Rules of Court.

Antecedent Facts

On September 3, 2007, the Office of the City Prosecutor, Masbate City, issued a Resolution recommending the filing of an Information for Violation of *Batas Pambansa Bilang* 22 against the petitioners. On October 10, 2007, the petitioners filed with the Department of Justice (*DOJ*) a petition for review challenging this Resolution.

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[1] Dated July 5, 2010.

[2] SECTION 4. *Contents of petition*. – The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall x x x (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received[.]

[3] SECTION 5. Dismissal or denial of petition. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof.

[4] SECTION 5. *Grounds for dismissal of appeal*. – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

xxx xxx xxx

(d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition[.]

On March 3, 2009, the Office of the City Prosecutor filed before the Municipal Trial Court in Cities (*MTCC*), Fifth Judicial Region, Masbate City, an Information for Violation of *Batas Pambansa Bilang* 22 against the petitioners. As the case was covered by the Rules on Summary Procedure, the MTCC ordered the petitioners to submit their counter affidavits and to appear in court within 10 days from receipt of the said order.

The petitioners filed a *Manifestation and Motion to Defer Arraignment and Proceedings and Hold in Abeyance the Issuance of Warrants of Arrest*[5] praying, among others, for the deferment of their arraignment in view of the pendency of their petition for review before the DOJ.

The MTCC, in its Order[6] dated May 28, 2009, granted the motion, "subject x x x to paragraph c[,] Section 11, Rule 116 of the Revised Rules of Criminal Procedure." On August 10, 2009, the MTCC reconsidered this order, and set the petitioners' arraignment on September 10, 2009.[7]

The petitioners filed a petition for *certiorari* before the RTC, docketed as SCA No. 05-2009. The RTC, in its decision[8] of January 6, 2010, denied this petition. The petitioners moved to reconsider this decision, but the RTC denied their motion in its order[9] dated July 5, 2010.

The RTC held that the MTCC judge did not err in setting the arraignment of the petitioners after the lapse of one (1) year and ten (10) months from the filing of the petition for review with the DOJ. It explained that the cases cited by the petitioners were decided before the amendment of the Revised Rules of Criminal Procedure. After the amendment of the Rules on December 1, 2000, the Supreme Court applied the 60-day

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[5] *Rollo*, pp. 24-28.

[6] *Id*. at 30.

[7] *Id*. at 31-33.

[8] Copy of the RTC decision is not attached to the *rollo*.

[9] *Rollo*, pp. 21-22.

limit on suspension of arraignment in case of a pendency of a petition for review with the DOJ.

The petitioners filed with this Court a petition for review on *certiorari* essentially claiming that the 60-day limit on suspension of arraignment is only a general rule. They cited several cases to show that the arraignment of an accused should be deferred until the petition for review with the DOJ is resolved.

As earlier stated, we denied the petition for its failure to state the material dates of receipt of the assailed RTC order and of filing the motion for reconsideration.

The Motion for Reconsideration

In the present motion for reconsideration, the petitioners claim that the date of receipt of the assailed RTC order was stated in the petition. The petitioners further state that they filed the motion for reconsideration on January 2, 2010.

The Court's Ruling

We grant the motion for reconsideration and reinstate the petition for review on *certiorari*.

A careful examination of the petition reveals that it stated the date when the petitioners received a copy of the RTC's assailed order. In addition, the petitioners' failure to state the material date of filing the motion for reconsideration is only a formal requirement that warrants the relaxation of the rules in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice.

Nevertheless, we resolve to *deny* the petition for its failure to show any reversible error in the challenged RTC order.

The grounds for suspension of arraignment are provided under Section 11, Rule 116 of the Rules of Court, which provides:

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

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

(b) There exists a prejudicial question; and

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

In *Samson v. Daway*,[10] the Court explained that while the pendency of a petition for review is a ground for suspension of the arraignment, the aforecited provision **limits the deferment of the arraignment to a period of 60 days reckoned from the filing of the petition with the reviewing office. It follows, therefore, that after the expiration of said period, the trial court is bound to arraign the accused or to deny the motion to defer arraignment**.

In the present case, the petitioners filed their petition for review with the DOJ on October 10, 2007. When the RTC set the arraignment of the petitioners on August 10, 2009, 1 year and 10 months had already lapsed. This period was way beyond the 60-day limit provided for by the Rules.

In addition, the cases cited by the petitioners – *Solar Team Entertainment, Inc. v. How*,[11] *Roberts, Jr. v. CA*,[12] and *Dimatulac v. Villon*[13] – were **all decided prior to the amendment to Section 11 of the Revised Rules of Criminal Procedure** which took effect on December 1, 2000. At the time these cases were decided, there was no 60-day limit on the suspension of arraignment.

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[10] G.R. Nos. 160054-55, July 21, 2004, 434 SCRA 612.

[11] G.R. No. 140863, August 22, 2000, 338 SCRA 511.

[12] G.R. No. 113930, March 5, 1996, 254 SCRA 307.

[13] G.R. No. 127107, October 12, 1998, 297 SCRA 679.

WHEREFORE, premises considered, the Court resolves to:

(1) *GRANT* the present motion for reconsideration, and *REINSTATE* the petition for review on *certiorari*; and

(2) *DENY* the said petition for petitioners' failure to show any reversible error in the challenged RTC order.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

EN BANC

[A.M. No. 2007-22-SC. February 1, 2011]

RE: ANONYMOUS COMPLAINT AGAINST MS. HERMOGENA F. BAYANI FOR DISHONESTY

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DISHONESTY, AS AN OFFENSE; DEFINED AND CONSTRUED.— Indeed, dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the

consequences of his act, and the degree of reasoning he could have had at that moment.

2. ID.; ID.; ID.; WHILE ERRONEOUS JUDGMENT DOES NOT EQUATE TO BAD FAITH OR DISHONESTY HOWEVER, PRUDENCE DEMANDS THAT INFORMATIONS MATERIAL TO ASSESSING ELIGIBILITY FOR PROMOTION SHOULD BE DISCLOSED NO MATTER HOW IRRELEVANT IT MAY APPEAR.— We do not tolerate the acts of Bayani in failing to disclose in her PDS such informations which could be material and relevant in assessing her eligibility for promotion. We, however, find it harsh to punish Bayani severely for her erroneous judgment. Suffice it to say that while her defense of good faith may be difficult to prove as clearly it is a question of intention, a state of mind, erroneous judgment on the part of Bayani does not, however, necessarily connote the existence of bad faith, malice, or an intention to defraud. Be that as it may, we must emphasize that while erroneous judgment does not equate to bad faith or dishonesty, Bayani, should likewise know that prudence demands that she should disclose such information no matter how irrelevant it may appear to her.

3. ID.; ID.; ID.; CONSIDERATION OF THE FACTS AND CIRCUMSTANCES TAKEN; PENALTY IMPOSED.— Indeed, in administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. We define substantial evidence *as relevant evidence as a* ***reasonable mind*** *might accept as adequate to support a conclusion.* Thus, after much consideration of the facts and circumstances, while the Court has not shied away in imposing the strictest penalty to erring employees, neither can we think and rule unreasonably in determining whether an employee deserves disciplinary sanction. **WHEREFORE,** *HERMOGENA F. BAYANI, SC Chief Judicial Staff Officer*, Leave Division, OAS-Office of the Court Administrator, Supreme Court, is hereby *ADMONISHED* and *WARNED* that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

D E C I S I O N

PERALTA, *J.*:

Before this Court is an Anonymous Complaint for Dishonesty against Ms. Hermogena F. Bayani, SC Chief Judicial Staff Officer, Leave Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA).

The Anonymous complainant alleged that Bayani, during her application for promotion to her present position as SC Chief Judicial Staff Officer of the Leave Division, OAS-OCA, failed to disclose in her Personal Data Sheet (PDS) that she was previously charged in an administrative case in 1995. It appeared that in a Memorandum dated February 9, 1995 issued by the OAS and signed by then Chief Justice Andres R. Narvasa, Bayani was found remiss in the performance of her duties and was recommended that she be admonished. Complainant added that Bayani's previous administrative record was discovered only during the investigation relative to A.M. No. 2007-08-SC- *In Re: Fraudulent release of retirement benefits of Jose Lantin, former Presiding Judge, Municipal Trial Court, San Felipe, Zambales*, wherein Bayani was one of the personnel under investigation. Consequently, Bayani's failure to disclose said information misled the Court's Selection and Promotion Board (SPB) in evaluating her application for promotion which is tantamount to dishonesty.

On October 1, 2007, the OCA directed Bayani to submit her comment on the instant complaint.[1]

On October 8, 2007, in her Comment/Memorandum,[2] Bayani presumed that the instant complaint stemmed from her answers to question nos. 25 and 27 in her PDS, which she filled up on July 27, 1999. To wit:

25. Do you have any pending a) administrative case [ ] Yes [/] No

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[1] *Rollo*, p. 32.

[2] *Id*. at 21-22.

xxx xxx xxx

27. Have you ever been convicted of any administrative offense?
[ ] Yes [/] No

xxx xxx xxx

Bayani, however, explained that she answered "No" to question no. 25, since the administrative case against her was already decided in 1995, and before she accomplished her PDS in 1999. Thus, Bayani believed that she had no more pending case at the time she accomplished her PDS.

With regard to question No. 27, wherein she again answered in the negative, Bayani explained that it was due to her understanding that there was no conviction on the administrative case against her, because she was merely admonished and warned therein. She pointed out that pursuant to Section 15, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, admonition and stern warning are not considered penalties. She claimed that by answering "no" to question no. 27, it was not her intention to gain advantage of getting the promotion to her current position, SC Chief Judicial Staff Officer, as she was, in fact, the most qualified candidate for the position being the Officer-in-Charge since 1997.

Moreover, Bayani added that the admonition was merely by virtue of a Memorandum issued by the OAS albeit signed by then Chief Justice Narvasa. She claimed that the memorandum was not the current A.M. Resolution issued by the Court *En Banc*, or through its divisions.

Finally, Bayani averred that if her act was indeed wrong, she, however, did not intend to defraud the government, or prejudice anyone.

On October 10, 2007, the OCA referred the instant case to Atty. Eden T. Candelaria, Chief of Office, Office of Administrative Services, Supreme Court, for appropriate action.[3]

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[3] *Id*. at 18.

On January 7, 2008, in a Memorandum,[4] Atty. Candelaria recommended that Bayani be dismissed from service having been found guilty of Dishonesty through falsification of official documents.

The OAS maintained that while admonition or stern warning are not considered penalties, Bayani remained guilty of the charges in the previous administrative complaint against her as per OAS Memorandum dated February 9, 1995. Hence, her failure to disclose such finding of guilt in the PDS she filled up, Bayani becomes administratively liable for dishonesty.

Furthermore, the OAS pointed out that Bayani could have mentioned in the PDS that there was a previous administrative case against her, but she was only admonished instead of choosing to conceal it. The OAS emphasized that while admonition and stern warning are not penalties, still, her non-disclosure thereof constituted as dishonesty. In essence, the OAS maintained that there is no substantial difference in using "convicted" and "guilty" as long as what is intended to be made known is the existence of a previous finding of administrative liability. Thus, the OAS failed to appreciate Bayani's defense of good faith as well as Bayani's length of service.

We disagree with the OAS's recommendation.

Indeed, dishonesty is defined as "intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion." Thus, dishonesty, like bad faith, is not simply bad judgment or negligence. Dishonesty is a question of intention. In ascertaining the intention of a person accused of dishonesty, consideration must be taken not only of the facts and circumstances which gave rise to the act committed by the respondent, but also of his state of mind at the time the offense was committed, the time he might have had at his disposal for the purpose of meditating on the

[4] *Id.* at 1-9.

consequences of his act, and the degree of reasoning he could have had at that moment.[5]

In the instant case, the OAS would like to impress on us that Bayani is guilty of dishonesty for her deliberate failure to disclose in her PDS the existence of previous administrative case against her as evidenced by OAS Memorandum dated February 9, 1995. The OAS stressed that, while Bayani's claim that admonition and warning are not penalties, she was still found guilty in the said OAS Memorandum. The OAS explained that Bayani was just fortunate that she was not penalized for her infraction, but her conviction then subsists. Thus, we quoted the pertinent areas of the OAS Memorandum dated February 9, 1995 wherein Bayani was admonished and warned, to wit:

> While this Office commends the initiative and effort of Mrs. Bayani in facilitating the immediate processing of Mr. Gingco's GSIS Clearance, during which time she prepared the first and second request for it, we could not agree to her view of putting the blame for its delay entirely to GSIS. Logic and common sense would dictate that any document which remains unacted for quite some time needs constant follow-up, through a liaison officer or directly to the agency itself, if only to determine the reason for its delay or uprise the agency concerned of its inaction, especially in cases where great prejudice will result to an individual. Had Mrs. Bayani been more prudent to check on her request for Mr. Ginco's GSIS Clearance, she would have known, assuming that the allegations of Mrs. Hernaes were true, that the clearance she was requesting for had already been forwarded to their division.
>
> xxx xxx xxx
>
> In the case of Mrs. Hernaes, we find nothing in the records which would somehow corroborate her allegations that she had distributed the GSIS Clearance of Mr. Gingco to the processor. Both Mrs. Bayani and Mrs. Concepcion, the processors of RTC Region XI claimed that they did not receive any GSIS Clearance of Mr. Gingco. Not even the messengers (Jimmy and Noel), whom Mrs. Hernaes averred she instructed to deliver the said clearance to the processor, could

[5] *Office of the Court Administrator v. Flores*, A.M. No. P-07-2366 [Formerly OCA-I.P.I. No. 07-2519-P], April 16, 2009, 585 SCRA 82, 87.

categorically state that she (Mrs. Hernaes) indeed handed to them for distribution the GSIS Clearance of Mr. Gingco. ***Hence, this office could not help but infer from the foregoing that Mr. Gingco's GSIS Clearance, since it cannot be retrieved anymore, was lost in the hands of Mrs. Hernaes.***

Premises considered, this Office finds Mrs. Bayani, Mrs. Concepcion, and Mrs. Hernaes remiss in the performance of their duties and hereby respectfully recommends that they be admonished accordingly with a stern warning that a repetition of the same and similar acts will be dealt with more severely.

xxx xxx xxx[6]

A perusal of the OAS Memorandum would readily show that indeed Bayani was merely admonished and warned for being remiss in the performance of her duty. Clearly, these are not penalties. If at all, the admonition was meant as a reminder to then respondents to be diligent in the performance of their duties. Moreover, it appeared that while Bayani was included in the investigation and was later on admonished, she was not in fact principally at fault. Thus, considering these circumstances, we surmise that while Bayani made an erroneous judgment in choosing not to disclose her previous infraction, she cannot be blamed for believing that such was irrelevant to: (1) question no. 25 - for this incident had long been resolved and no longer pending; and (2) question no. 27 - for clearly being admonished and warned for being remiss in the performance for her duties do not necessarily equate to conviction as question no. 27 seeks to determine.

Furthermore, as a matter of procedure, the Selection and Promotion Board should have made the proper verification with regard to the entries Bayani made in her PDS, since her answers in question nos. 25 and 27 are easily verifiable, considering that Bayani is an employee of the Court. Moreover, the informations Bayani allegedly deliberately concealed are matters which are supposedly recorded in her employment records. It should not therefore be difficult for the board to perform their

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[6] *Id*. at 11-12. (Emphasis supplied.)

duty to assess the qualifications of all applicants for promotions based on their own inquiries; and should not just rely on the informations the applicants reveal.

Likewise, as admitted by the OAS, the subject OAS Memorandum is not an A.M. Resolution/Decision which had undergone deliberation by the Court either as *en banc* or through its divisions. While it was approved by then Chief Justice Andres R. Narvasa, it appeared that the said OAS Memorandum was meant to be an internal memorandum only issued as a warning/ reminder to erring court employees and was not docketed as a regular administrative matter which will also explain why it was not found out earlier.

We do not tolerate the acts of Bayani in failing to disclose in her PDS such informations which could be material and relevant in assessing her eligibility for promotion. We, however, find it harsh to punish Bayani severely for her erroneous judgment. Suffice it to say that while her defense of good faith may be difficult to prove as clearly it is a question of intention, a state of mind, erroneous judgment on the part of Bayani does not, however, necessarily connote the existence of bad faith, malice, or an intention to defraud. Be that as it may, we must emphasize that while erroneous judgment do not equate to bad faith or dishonesty, Bayani, should likewise know that prudence demands that she should disclose such information no matter how irrelevant it may appear to her.

Indeed, in administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. We define substantial evidence *as relevant evidence as a* ***reasonable mind*** *might accept as adequate to support a conclusion.* Thus, after much consideration of the facts and circumstances, while the Court has not shied away in imposing the strictest penalty to erring employees, neither can we think and rule unreasonably in determining whether an employee deserves disciplinary sanction.

WHEREFORE, *HERMOGENA F. BAYANI, SC Chief Judicial Staff Officer,* Leave Division, OAS-Office of the Court Adminstrator, Supreme Court, is hereby *ADMONISHED* and *WARNED*

that a repetition of the same or similar offense will warrant the imposition of a more severe penalty.

SO ORDERED.

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

EN BANC

[A.M. No. RTJ-00-1600.* February 1, 2011]

VIVIAN T. DABU, Assistant Provincial Prosecutor, *complainant, vs.* **EDUARDO RODEN E. KAPUNAN, Presiding Judge, Branch 51 and Acting Judge, Branch 52,+ MA. THERESA CORTEZ, LEILA O. GALO, Both Court Stenographers, SUZETTE O. TIONGCO, Legal Researcher, All of Regional Trial Court, Branch 51, Guagua, Pampanga,** *respondents.*

[A.M. No. 01-3-138-RTC. February 1, 2011]

RE: EVALUATION OF THE REPORT AND INVENTORY SUBMITTED BY EXECUTIVE JUDGE ROGELIO C. GONZALES, RTC, Guagua, Pampanga, ON ANNULMENT OF MARRIAGE CASES IN BRANCHES 49, 50, 51, 52 and 53 OF THE GUAGUA REGIONAL TRIAL COURT

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* Formerly OCA I.P.I. No. 00-1028-RTJ.

+ Passed away on May 28, 2001.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; GENUINENESS OF HANDWRITING; HOW AND WHO SHOULD PROVE THE SAME.— The rule is that he who disavows the authenticity of his signature on a public document bears the responsibility of presenting evidence to that effect. Mere disclaimer is not sufficient. Under Section 22, Rule 132 of the Rules of Court, the genuineness of handwriting may be proved in the following manner: [1] by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted on or been charged; [2] by a comparison, made by a witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness. As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.

2. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; COURT EMPLOYEES, FROM THE PRESIDING JUDGE TO THE LOWLIEST CLERK, BEING PUBLIC SERVANTS IN AN OFFICE DISPENSING JUSTICE, SHOULD ALWAYS ACT WITH A HIGH DEGREE OF PROFESSIONALISM AND RESPONSIBILITY; CASE AT BAR.— Court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.

3. ID.; ID.; GRAVE OFFENSES; DISHONESTY AND FALSIFICATION ARE CONSIDERED GRAVE OFFENSES WARRANTING THE PENALTY OF DISMISSAL FROM SERVICE UPON COMMISSION OF THE FIRST OFFENSE.— Falsification of an official document such as court records is considered a grave offense. It also amounts to dishonesty. Under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service upon commission of the first offense. Furthermore, falsification of an official document is punishable as a criminal offense under Article 171 of the Revised Penal Code and dishonesty is an impious act that has no place in the judiciary.

4. ID.; ID.; ID.; ID.; IMPOSABLE PENALTY.— The penalty of dismissal, however, can no longer be imposed and carried out with respect to the late Judge Kapunan. The administrative complaints against him have become moot and academic and the case should be deemed closed and terminated following our ruling in *Loyao, Jr. v. Caube* and *Apiag v. Cantero.* **WHEREFORE**, finding respondents, Ma. Theresa Cortez and Leila O. Galo, *GUILTY* of falsification of official documents and dishonesty, the Court hereby orders their *DISMISSAL* from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. The case against respondent Judge Eduardo Roden E. Kapunan is hereby dismissed for being moot and academic due to his untimely demise.

APPEARANCES OF COUNSEL

Dabu and Dabu Law Office for complainant.

Bunag Kapunan Migallos & Perez for the Heirs of Judge Eduardo Roden E. Kapunan.

Ricardo M. Sampang for Suzeth O. Tiongco.

D E C I S I O N

***PER CURIAM*:**

Pursuant to the powers vested in the Court under Section 6, Article VIII of the 1987 Constitution,[1] the Court acts upon these two consolidated administrative cases against [1] Judge Eduardo Roden E. Kapunan *(Judge Kapunan),* then presiding judge of Branch 51 and acting judge of Branch 52, Regional Trial Court of Guagua, Pampanga *(RTC);* [2] stenographer Ma. Theresa Cortez *(Cortez)*; [3] stenographer Leila O. Galo *(Galo)*; and [4] Legal Researcher Suzette Tiongco *(Tiongco)*, all of Branch 51, RTC, Guagua, Pampanga.

In **A.M. No. RTJ-00-1600**, complainant Vivian T. Dabu *(Dabu)* claimed that she was appointed 4th Assistant Provincial Prosecutor for Pampanga sometime in June 1999. In October of the same year, from her station in San Fernando, Pampanga, she was transferred and re-assigned to Guagua, Pampanga, to serve Branches 50, 51 and 52 of the RTC therein.

According to Dabu, just a few months into her assignment, she noticed that unlike in Branch 50, she was not being called upon to intervene or investigate cases involving annulment of marriages in Branches 51 and 52, both presided by Judge Kapunan, despite the fact that the cases for annulment of marriage were being raffled equally among the five (5) branches of the RTC, in Guagua, Pampanga.

Curious on what appeared to her as an oddity, and having previously learned that cases for annulment of marriage were being "fixed" in the said station, Dabu went to the Office of the Clerk of Court and got from its docket the list of annulment cases raffled to Branches 51 and 52 pertaining to the period from August 1, 1999 to March 2000. She then went to each branch and requested the records of the cases in the list. She then found out that the records were being falsified and made

[1] *Section 6.* The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

to appear that a prosecutor appeared during the supposed hearings of the annulment cases, when, in truth, the prosecutors who supposedly appeared were either on leave or had already been re-assigned to another station.

The other case, **A.M. No. 01-3-138**, stemmed from an article written by Atty. Emil P. Jurado *(Atty. Jurado)* in the November 1, 2000 issue of the Manila Standard. It reported that an RTC branch in Guagua, Pampanga, had been improperly disposing cases for annulment of marriage in "syndicated efforts involving court personnel and a public assistance office lawyer."

Determined to ascertain the truth of the allegations made in the article, then Chief Justice Hilario G. Davide, Jr. instructed Executive Judge Rogelio C. Gonzales *(Judge Gonzales)* of RTC, Guagua, Pampanga to submit inventories of marriage annulment cases filed in the five (5) branches of the RTC, Guagua, Pampanga, from January 1997 to November 2000.

In the evaluation[2] of the report and inventory submitted by Judge Gonzales, then Deputy Court Administrator Jose P. Perez[3] recommended that the matter be joined with the proceedings in **A.M. No. RTJ-00-1600** so that "a complete picture and history of the anomalous treatment by Branches 51 and 52 of annulment of marriage cases" would be made.

In its Resolution[4] dated March 13, 2001, the Court ordered the consolidation of A.M. No. 1-3-138-RTC and A.M. OCA IPI No. 00-1028-RTJ.

During the hearing of these cases, only Judge Kapunan and Tiongco participated. Cortez manifested that she would not adduce evidence in her behalf and would submit the case for disposition/ recommendation on the basis of the records and evidence adduced during the investigation. Respondent Galo, on the other hand, neither appeared nor filed any comment or pleading.

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[2] *Rollo* (A.M. No. 01-3-138-RTC), pp. 1-19.

[3] Now an Associate Justice of the Court.

[4] *Rollo* (A.M. No. 01-3-138 RTC), p. 20.

The result of the investigation revealed something not expected of a proper judicial office. As reported in detail by the Investigating Justice Eliezer R. De Los Santos[5] *(Investigating Justice)* of the Court of Appeals:

On August 24, 2000, Complainant Assistant Provincial Prosecutor Vivian T. Dabu executed an Affidavit citing several incidents wherein the court records of cases for annulment of marriage, lost titles and declaration of presumptive death were being falsified. The Affidavit was treated as a Complaint for falsification of court records against Judge Eduardo Roden E. Kapunan and court stenographers Ma. Theresa Cortez and Leila O. Galo. Respondent Suzette Tiongco was not included in the charge of falsification of court records as complainant ha[d] no evidence linking her thereto but the Office of the Court Administrator included her with the charge of conduct prejudicial to the best interest of the service.

Complainant alleged that during the period between November 1999 and August 2000, respondent Judge was the presiding judge of Branch 51 and the acting judge of Branch 52, both of the Regional Trial Court of Guagua, Pampanga, with three (3) of the personnel of Branch 51, namely: Leila Galo, Ma. Theresa Cortez and Suzette Tiongco.

Respondent Judge and Galo were detailed to the Regional Trial Court of Manila, Branch 48, at the same time and were returned to their original assignment at the Regional Trial Court of Guagua, Pampanga also at the same time x x x.

Respondents Galo and Cortez were appointed to the position of court stenographers for Branch 51 x x x. However, respondent Galo, during the said period, did not perform the duties of a stenographer but acted as a secretary for respondent Judge x x x. She received all communications pertaining to respondent Judge or to cases pending before Branches 51 and 52 x x x. Respondent Judge gave specific instruction on this matter to the Court's personnel x x x.

The other staff of Branch 51 (sic) holds office at the 3rd floor of Goseco hall, which is located across the municipal hall of Guagua,

[5] The investigation was first assigned to then Associate Justice of the Court of Appeals Romeo J. Callejo, Jr. who became a member of the Court in 2003.

Pampanga. On the other hand, all of the staff of Branch 52 (sic) is holding office at the 2nd floor of Goseco Hall.

All the records of Branches 51 and 52 are being kept at the Goseco Hall except for the records of cases which have pending incidents to be resolved, or an Order/Decision for signature, or to be heard, or is needed by respondent Judge which are in the office of the respondents at the municipal hall x x x.

Prior to November 1999, the assigned prosecutor for Branch 51 is Asst. Provincial Prosecutor Domingo C. Pineda and for Branch 52 is former Asst. Provincial Prosecutor Reyes D. Manalo. Beginning 10 November 1999 up to 31 August 2000, herein complainant was the assigned prosecutor for Branches 51 and 52.

As evidence for the charge of falsification of court records, complainant presented the following cases:

1. Civil Case No. G-3655
   Nonito Vitug vs. Gracita Sangan
   For: Annulment of Marriage
   RTC-52, Guagua, Pampanga

On 3 November 1999, there was allegedly a hearing which was held in the presence of former Asst. Provincial Prosecutor Reyes D. Manalo, wherein the plaintiff and the psychologist testified and, thereafter, the counsel of record, Atty. Ponciano C. Lobo, offered his evidence, and, without the objection of the public prosecutor, the case was deemed submitted for decision x x x. The minutes and transcript of stenographic notes were prepared by respondent Cortez.

On 9 November 1999, a Decision was rendered, which states on paragraph 3, page 1, thereof that "Prosecutor Reyes Manalo on November 3, 1999 submitted his Report that no collusion exists between the parties" but no such Report is attached to the records of the case x x x.

Former Prosecutor Reyes D. Manalo testified that as early as 25 October 1999, when he filed his Application for Leave for the month of November, he was already on leave and, from then on, has never appeared before Branch 52 of the Regional Trial Court of Guagua, Pampanga until his retirement in June 2000 x x x. This was corroborated by the stenographer of said Court, Zenaida A.C. Caraan x x x.

In the criminal cases heard on 3 November 1999, respondent Judge issued Orders declaring the hearing on said date cancelled and resetting the same to another date in view of the absence of the public prosecutor x x x.

Atty. Ponciano C. Lobo, on the other hand, testified that none of the parties is his client and that he never appeared in the said case x x x.

2. Civil Case No. G-3675
Meriam Vitug vs. Edgar Faeldon
For: Annulment of Marriage
RTC-51, Guagua, Pampanga

On 12 November 1999, Asst. Provincial Prosecutor Domingo C. Pineda allegedly issued a Manifestation finding no collusion between the parties x x x. He, however, testified that he did not issue any "Manifestation" in connection with this case x x x.

On 15 November 1999, a hearing was allegedly conducted in the presence of the said public prosecutor wherein the plaintiff testified and the case was re-set on 29 December 1999 for the presentation of the psychologist x x x. The minutes and transcript of stenographic notes were both prepared by respondent Cortez x x x.

However, the Orders in the criminal cases heard on the same date, 15 November 1999, which were also prepared by respondent Cortez and signed by respondent judge, stated that the hearing was cancelled in view of the absence of the public prosecutor x x x.

Asst. Provincial Prosecutor Domingo C. Pineda testified that he was, as of 8 November 1999, assigned to Branches 54 and 55 of the Regional [T]rial Court of Macabebe, Pampanga, and from then on, never appeared before Branch 51 of the Regional Trial Court of Guagua, Pampanga x x x. This was corroborated by the OIC-Branch Clerk of Court of the said Court, Eduardo P. Carlos x x x.

Atty. Ponciano C. Lobo again testified that none of the parties is his client and he never appeared in such case x x x.

The Decision in this case was included in the cases reported as having been decided or disposed of for the month of March 2000 x x x.

3. Civil Case No. G-3659
   Ricardo Layug vs. Zerlina Arteta
   For: Annulment of Marriage
   RTC-52, Guagua, Pampanga

On 3 November 1999, a Manifestation was allegedly issued by former Asst. Provincial Prosecutor Reyes D. Manalo x x x but he testified that he did not issue the same x x x.

On 5 November 1999, a hearing was allegedly held in the presence of the said public prosecutor wherein the plaintiff and a psychologist testified, the counsel on record, Atty. Ponciano C. Lobo, offered his evidence and without the objection of the public prosecutor, the case was submitted for resolution x x x.

Again former Asst. Provincial Prosecutor Reyes D. Manalo and Atty. Ponciano C. Lobo denied any participation in the case.

4. LRC Case No. G-73
   In re: Petition for Issuance of
   Owner's Duplicate Copy of
   TCT No. 217416-R,
   Rev. Fr. Francisco R. Lansang,
   Petitioner,
   RTC-51, Guagua, Pampanga

5. LRC Case No. G-74
   In re: Petition for Issuance of
   Owner's Duplicate Copy of
   TCT Nos. 441074-R to 441089-R,
   Beatriz Lansang, Petitioner.
   RTC-51, Guagua, Pampanga

On 25 November 1999, a hearing was allegedly held wherein the petitioners were presented, the counsel on record, Atty. Ponciano C. Lobo offered his evidence, and, thereafter, these cases were deemed submitted for resolution x x x. The minutes of hearing and transcript of stenographic notes were prepared by respondent Cortez x x x.

On December 6, 1999 separate Orders were issued granting the petitions favorably x x x. These cases were reported in June 2000 to have been decided or disposed of x x x.

Atty. Ponciano C. Lobo proffered the same testimony x x x.

6. Civil Case No. G-2579
Benito Samia, Jr. vs. Josephine L. Lorenzo-Samia
For: Annulment of Marriage
RTC-51, Guagua, Pampanga

On 21 February 2000, a Decision was rendered stating therein that a Psychological Evaluation Report was submitted but none appears on the record x x x.

Likewise, between 13 December 1999 and 21 February 2000, no other hearing was conducted despite the fact that the Order dated 13 December 1999 indicated the next hearing on 17 January 2000 and the dorsal side of page 111 of the record states "Reset 2/21/00" x x x. There was also no record that plaintiff offered his evidence, rested his case, or submitted the case for resolution x x x.

The said Decision was included in the monthly report of cases disposed of in June 2000 x x x.

7. Civil Case No. G-3717
Tomas Tamayo vs. Adoracion Sampang
For: Annulment of Marriage
RTC-52, Guagua, Pampanga

The plaintiff, Tomas Tamayo, testified that the case was filed by respondent Cortez before the Regional Trial Court of Guagua, Pampanga, after the latter agreed to help him in the "processing" of the annulment of his marriage; that he never appeared before any lawyer for the notarization of his Verified Petition; that he was initially told that there would be no hearing in his annulment case and it will be granted within three (3) months; that he gave the amount of Php 15,000.00 in connection thereto which was returned to him after he withdrew his case; that respondent Galo took from him Php4000.00 in payment of the "psychologist fee" which amount was not returned to him; that he gave the amount to respondent Galo after she identified herself as a court employee and even presented an identification card of respondent Judge x x x.

In his testimony, Atty. Ponciano C. Lobo stated that the plaintiff is not his client x x x.

8. Civil Case No. G-3677
Joseph Voltaire Datu vs. Marissa S. Tamarez
For: Annulment of Marriage
RTC-52, Guagua, Pampanga

On 11 April 2000, a Manifestation and Motion was filed by Atty. Ponciano C. Lobo denying his signature appearing on the said Complaint and claiming it to be a forgery x x x.

On the witness stand, Atty. Ponciano C. Lobo reiterated that none of the parties is his client and that the signature appearing in the Complaint is not his x x x.

9. Sum. Proc. No. G-1205
In re: Petition for Summary Proceeding
For Declaration of Presumptive Death of
Absentee Felicitas Jabilona,
Joselito Flores, Petitioner.
RTC-51, Guagua, Pampanga

On 27 July 2000, a hearing was allegedly held wherein the counsel on record, Atty. Romeo B. Torno offered his evidence x x x.

Atty. Romeo B. Torno, however, testified that he did not appear before the said Court on the said time and date as he was then appearing before Branch 50; that after his *ex parte* presentation of evidence, the next hearing was scheduled on 27 July 2000 at 3:30 o'clock in the afternoon but the same was cancelled since he has no witness to present; and that, thereafter, there was no other hearing held or conducted in this case x x x.

On August 7, 2000, an Order was issued granting the Petition x x x.

Atty. Torno suspected that respondent Cortez prepared the same and when he confronted her, she replied that "everything is okay" x x x.

10. Civil Case No. G-3730
Ofelia Enal vs. Francisco Enal Jr.
For: Annulment of Marriage
RTC-51, Guagua, Pampanga

On 30 June 2000, an Order was issued stating that a hearing was allegedly held wherein the plaintiff testified, the Psychological Evaluation Report filed, and the case deemed submitted for resolution x x x. The records of the case, however, bear an Order dated 9 June 2000 with the same contents x x x.

On even date, 9 June 2000, a Decision was issued in favor of the plaintiff x x x.

Refuting the charges against him, respondent Judge averred in his Comment[6] that:

a) his signatures appearing in the records of "*Ofelia Enal vs. Francisco Enal, Jr.*", docketed as Civil Case No. G-3730, and "*Meriam Vitug vs. Edgar Faeldon,*" docketed as Civil Case No. G-3675, were forgeries;

b) after the said cases were made known to him during the latter part of July 2000 and since he received complaints [from] litigants about the "activities" of respondent Galo, he conducted a discreet investigation, but stopped the same upon the filing of this complaint;

c) he is a victim of falsification and did not conspire or connive with the other respondents in the commission thereof.

On May 28, 2001, Judge Kapunan suffered from cardio-pulmonary arrest and died at the age of fifty-four. According to his heirs, the evidence of the complainant was insufficient to support the charges against their late father and, thus, sought the dismissal of the complaint.

From a mere examination of the signatures of Judge Kapunan on the questioned court records, it is clear that his signatures were not forged. As correctly pointed out by the complainant and the Investigating Justice, except for the abovementioned cases of *Enal* and *Vitug*, Judge Kapunan failed to specifically deny under oath his participation in the anomalous cases or to challenge the genuineness of his signature appearing in the court records of the questioned cases enumerated by Dabu. Thus, following Section 8, Rule 8 of the 1997 Rules of Civil Procedure,[7] this amounts to an admission by Judge Kapunan that he indeed signed the questioned orders, decisions and court records.

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[6] *Rollo* (RTJ-00-1600), pp. 275-284.

[7] Sec. 8. *How to contest such documents*. - When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding Section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

Also, in all the questioned cases pointed out by Dabu, including the cases of *Enal* and *Vitug*, Judge Kapunan failed to offer any evidence to support his defense that his signatures therein were forged. The rule is that he who disavows the authenticity of his signature on a public document bears the responsibility of presenting evidence to that effect.[8] Mere disclaimer is not sufficient. Under Section 22, Rule 132 of the Rules of Court,[9] the genuineness of handwriting may be proved in the following manner: [1] by any witness who believes it to be the handwriting of such person because he has seen the person write; or he has seen writing purporting to be his upon which the witness has acted on or been charged; [2] by a comparison, made by a witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. At the very least, he should present corroborating witnesses to prove his assertion. At best, he should present an expert witness.[10] As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[11] This, unfortunately, Judge Kapunan failed to do.

At any rate, contrary to the assertions of Judge Kapunan, in the case of *Vitug*, the records show that as early as May 31,

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[8] *Libres v. Delos Santos*, G.R. No. 176358, June 17, 2008, 554 SCRA 642, 655.

[9] Sec. 22.*How genuineness of handwriting proved*. — The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (23a)

[10] *Pan Pacific Industrial Sales Co., Inc. v. Court of Appeals*, G.R. No. 125283, February 10, 2006, 482 SCRA 164, 176.

[11] *Heirs of Severa P. Gregorio v. Court of Appeals*, 360 Phil. 753, 763 (1998).

2000, he already issued an order granting the appeal of the Solicitor General. He could not, therefore, claim that he was only made aware of the anomalies in *Vitug* after it was decided.

Further, as noted by the Investigating Justice, Judge Kapunan himself confirmed in his June 2000 report of decided cases that the cases of *Lansang* and *Samia* were among those he had decided. Thus, he could not claim that his signatures in the decisions of those cases were forged.

The Court finds specious the allegation of Judge Kapunan that the "processing" of cases were committed by Galo all by herself, and that he conducted a "discreet investigation" when he learned of her activities. Judge Kapunan offered no plausible reason why he failed to finish his investigation other than the lame excuse that he stopped his investigation due to the filing of the complaint. The reason is clear. There was no investigation conducted. As opined by the Investigating Justice,[12] had there been an investigation, Judge Kapunan should have completed it, found the culprit, filed the appropriate charges, and cleared his name.

With respect to Galo, she failed to appear in the proceedings below or file any comment, or any pleading. The proceedings below established that she received payments from litigants as "psychologist fee." She even admitted to Dabu on at least two occasions that she had "processed" certain cases involving annulment of marriage with the "go signal" of Judge Kapunan. In fact, she admitted to Dabu that she was "processing" one case where one of the parties was a friend of Judge Kapunan, upon orders of the latter.

On the other hand, Cortez admitted preparing the questioned orders, decisions, minutes of hearings, and transcripts. She tried to justify her actions by claiming that she only acted upon the instructions of Galo. Unfortunately, these circumstances do not justify her acts at all.

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[12] Report and Recommendation, *Rollo* (A.M. No. 01-3-138-RTC), p. 12.

Taking all these into consideration, it is undeniable that Judge Kapunan, Galo and Cortez acted together in issuing questionable orders and decisions through falsification of public documents.

With regard to Tiongco, however, there is no evidence against her. The inclusion of Tiongco in this case was only upon the initiative of the Office of the Court Administrator. As the record is bereft of any evidence to hold her liable, her exoneration is in order.

Court employees, from the presiding judge to the lowliest clerk, being public servants in an office dispensing justice, should always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. No position demands greater moral righteousness and uprightness from its holder than an office in the judiciary. Court employees should be models of uprightness, fairness and honesty to maintain the people's respect and faith in the judiciary. They should avoid any act or conduct that would diminish public trust and confidence in the courts. Indeed, those connected with dispensing justice bear a heavy burden of responsibility.[13]

Falsification of an official document such as court records is considered a grave offense. It also amounts to dishonesty. Under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service upon commission of the first offense.

Furthermore, falsification of an official document is punishable as a criminal offense under Article 171 of the Revised Penal Code and dishonesty is an impious act that has no place in the judiciary.

The penalty of dismissal, however, can no longer be imposed and carried out with respect to the late Judge Kapunan. The

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[13] *Office of the Court Administrator v. Juan,* 478 Phil. 823, 829 (2004), citing *Albior v. Auguis*, 452 Phil. 936 (2003) and *Castelo v. Florendo*, 459 Phil. 581 (2003).

administrative complaints against him have become moot and academic and the case should be deemed closed and terminated following our ruling in *Loyao, Jr. v. Caube*[14] and *Apiag v. Cantero.*[15]

WHEREFORE, finding respondents, Ma. Theresa Cortez and Leila O. Galo, *GUILTY* of falsification of official documents and dishonesty, the Court hereby orders their *DISMISSAL* from the service, with forfeiture of all retirement benefits and privileges, except accrued leave credits, if any, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

The case against respondent Judge Eduardo Roden E. Kapunan is hereby dismissed for being moot and academic due to his untimely demise.

Respondent Suzette O. Tiongco is *EXONERATED* of the charges.

SO ORDERED.

Corona, C.J., Carpio Morales, Nachura, Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza, and *Sereno, JJ.,* concur.

Velasco, Jr., J., no part due to prior action in OCA.

Perez, J., no part.

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[14] 450 Phil. 38, 47 (2003).

[15] 335 Phil. 511, 526 (1997).

EN BANC

[G.R. No. 159618. February 1, 2011]

BAYAN MUNA, as represented by Rep. SATUR OCAMPO, Rep. CRISPIN BELTRAN, and Rep. LIZA L. MAZA, *petitioner, vs.* **ALBERTO ROMULO, in his capacity as Executive Secretary, and BLAS F. OPLE, in his capacity as Secretary of Foreign Affairs,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; PARTIES; *LOCUS STANDI*; *LOCUS STANDI* IS A RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION; CONSTRUED.— *Locus standi* is "a right of appearance in a court of justice on a given question." Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result" of the act being challenged, and "calls for more than just a generalized grievance." The term "interest" refers to material interest, as distinguished from one that is merely incidental. The rationale for requiring a party who challenges the validity of a law or international agreement to allege such a personal stake in the outcome of the controversy is "to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Locus standi*, however, is merely a matter of procedure and it has been recognized that, in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act, but by concerned citizens, taxpayers, or voters who actually sue in the public interest. Consequently, in a catena of cases, this Court has invariably adopted a liberal stance on *locus standi*.

2. ID.; ID.; ID.; ID.; WHEN SUING AS A CITIZEN TO QUESTION THE VALIDITY OF A LAW OR OTHER GOVERNMENT ACTION, A PETITIONER NEED TO MEET CERTAIN SPECIFIC REQUIREMENTS TO BE CLOTHED WITH STANDING; REQUIREMENTS, CITED.— When suing as a citizen to question the validity of a law or other government action, a petitioner needs to meet certain specific requirements

before he can be clothed with standing. *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.* expounded on this requirement, thus: In a long line of cases, however, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court. When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.

3. ID.; ID.; ID.; ID.; REQUIREMENTS; PRESENT IN CASE AT BAR.— In the case at bar, petitioner's representatives have complied with the qualifying conditions or specific requirements exacted under the *locus standi* rule. As citizens, their interest in the subject matter of the petition is direct and personal. At the very least, their assertions questioning the *Agreement* are made of a public right, *i.e.*, to ascertain that the *Agreement* did not go against established national policies, practices, and obligations bearing on the State's obligation to the community of nations. At any event, the primordial importance to Filipino citizens in general of the issue at hand impels the Court to brush aside the procedural barrier posed by the traditional requirement of *locus standi*, as we have done in a long line of earlier cases, notably in the old but oft-cited emergency powers cases and *Kilosbayan v. Guingona, Jr.* In cases of transcendental importance, we wrote again in *Bayan v. Zamora*, "The Court may relax the standing requirements and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review." Moreover, bearing in mind what the Court said in *Tañada v. Angara*, "that it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse

of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government," we cannot but resolve head on the issues raised before us. Indeed, where an action of any branch of government is seriously alleged to have infringed the Constitution or is done with grave abuse of discretion, it becomes not only the right but in fact the duty of the judiciary to settle it. As in this petition, issues are precisely raised putting to the fore the propriety of the *Agreement* pending the ratification of the Rome Statute.

4. POLITICAL LAW; INTERNATIONAL LAW; EXCHANGE OF NOTES; AN EXCHANGE OF NOTES FALLS INTO THE CATEGORY OF INTERGOVERNMENTAL AGREEMENTS, WHICH IS AN INTERNATIONALLY ACCEPTED FORM OF INTERNATIONAL AGREEMENT; CONSTRUED.— An exchange of notes falls "into the category of inter-governmental agreements," which is an internationally accepted form of international agreement. The United Nations Treaty Collections (Treaty Reference Guide) defines the term as follows: An "exchange of notes" is a record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval. In another perspective, the terms "exchange of notes" and "executive agreements" have been used interchangeably, exchange of notes being considered a form of executive agreement that becomes binding through executive action. On the other hand, executive agreements concluded by the President "sometimes take the form of exchange of notes and at other times that of more formal documents denominated 'agreements' or 'protocols.'" As former US High Commissioner to the Philippines Francis B. Sayre observed in his work, *The Constitutionality of Trade Agreement Acts*: The point where ordinary correspondence between this and other governments ends and agreements –

whether denominated executive agreements or exchange of notes or otherwise – begin, may sometimes be difficult of ready ascertainment. x x x

5. ID.; ID.; INTERNATIONAL AGREEMENTS; TREATIES AND EXECUTIVE AGREEMENTS, DISTINGUISHED.— Article 2 of the Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." International agreements may be in the form of (1) treaties that require legislative concurrence after executive ratification; or (2) executive agreements that are similar to treaties, except that they do not require legislative concurrence and are usually less formal and deal with a narrower range of subject matters than treaties. Under international law, there is no difference between treaties and executive agreements in terms of their binding effects on the contracting states concerned, as long as the negotiating functionaries have remained within their powers. Neither, on the domestic sphere, can one be held valid if it violates the Constitution. Authorities are, however, agreed that one is distinct from another for accepted reasons apart from the concurrence-requirement aspect. As has been observed by US constitutional scholars, a treaty has greater "dignity" than an executive agreement, because its constitutional efficacy is beyond doubt, a treaty having behind it the authority of the President, the Senate, and the people; a ratified treaty, unlike an executive agreement, takes precedence over any prior statutory enactment.

6. ID.; ID.; ID.; *PACTA SUNT SERVANDA* PRINCIPLE; THE MATTER OF FORM TAKES A BACK SEAT WHEN IT COMES TO EFFECTIVENESS AND BINDING EFFECT OF THE ENFORCEMENT OF A TREATY OR AN EXECUTIVE AGREEMENT.— There are no hard and fast rules on the propriety of entering, on a given subject, into a treaty or an executive agreement as an instrument of international relations. The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft an international agreement in the form they so wish to further their respective interests. Verily, the matter of form takes a

back seat when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, as the parties in either international agreement each labor under the *pacta sunt servanda* principle.

7. ID.; ID.; ID.; EXECUTIVE AGREEMENT; OBLIGATORY EFFECT THEREOF WITHOUT THE CONCURRENCE OF THE SENATE, SUSTAINED.— The Court has, in *Eastern Sea Trading*, as reiterated in *Bayan*, given recognition to the obligatory effect of executive agreements without the concurrence of the Senate: x x x [T]he right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history, we have entered executive agreements covering such subjects as commercial and consular relations, most favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

8. ID.; ID.; ID.; ID.; THE POWER TO ENTER INTO EXECUTIVE AGREEMENTS HAS LONG BEEN RECOGNIZED TO BE LODGED WITH THE PRESIDENT, SUSTAINED; RATIONALE.— An act of the executive branch with a foreign government must be afforded great respect. The power to enter into executive agreements has long been recognized to be lodged with the President. As We held in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, "[t]he power to enter into an executive agreement is in essence an executive power. This authority of the President to enter into executive agreements without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence." The rationale behind this principle is the inviolable doctrine of separation of powers among the legislative, executive and judicial branches of the government. Thus, absent any clear contravention of the law, courts should exercise utmost caution in declaring any executive agreement invalid.

9. ID.; ID.; ID.; STATE-PARTY AND SIGNATORY TO A TREATY, DISTINGUISHED.— Under international law, there is a considerable difference between a State-Party and a signatory to a treaty. Under the Vienna Convention on the Law of Treaties,

a signatory state is only obliged to refrain from acts which would defeat the object and purpose of a treaty; whereas a State-Party, on the other hand, is legally obliged to follow all the provisions of a treaty in good faith. In the instant case, it bears stressing that the Philippines is only a signatory to the Rome Statute and not a State-Party for lack of ratification by the Senate. Thus, it is only obliged to refrain from acts which would defeat the object and purpose of the Rome Statute. Any argument obliging the Philippines to follow any provision in the treaty would be premature.

10. ID.; ID.; ID.; BY THEIR NATURE, TREATIES AND INTERNATIONAL AGREEMENTS ACTUALLY HAVE A LIMITING EFFECT ON THE OTHERWISE ENCOMPASSING AND ABSOLUTE NATURE OF SOVEREIGNTY; APPLICATION IN CASE AT BAR.— In the context of the Constitution, there can be no serious objection to the Philippines agreeing to undertake the things set forth in the *Agreement*. Surely, one State can agree to waive jurisdiction—to the extent agreed upon—to subjects of another State due to the recognition of the principle of extraterritorial immunity. What the Court wrote in *Nicolas v. Romulo*—a case involving the implementation of the criminal jurisdiction provisions of the RP-US Visiting Forces Agreement—is apropos: Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. x x x To be sure, the nullity of the subject non-surrender agreement cannot be predicated on the postulate that some of its provisions constitute a virtual abdication of its sovereignty. Almost every time a state enters into an international agreement, it voluntarily sheds off part of its sovereignty. The Constitution, as drafted, did not envision a reclusive Philippines isolated from the rest of the world. It even adheres, as earlier stated, to the policy of cooperation and amity with all nations. By their nature, treaties and international agreements actually have a limiting effect on the otherwise encompassing and absolute nature of sovereignty. By their voluntary act, nations may decide to surrender or waive some aspects of their state power or agree

to limit the exercise of their otherwise exclusive and absolute jurisdiction. The usual underlying consideration in this partial surrender may be the greater benefits derived from a pact or a reciprocal undertaking of one contracting party to grant the same privileges or immunities to the other. On the rationale that the Philippines has adopted the generally accepted principles of international law as part of the law of the land, a portion of sovereignty may be waived without violating the Constitution. Such waiver does not amount to an unconstitutional diminution or deprivation of jurisdiction of Philippine courts.

11. ID.; ID.; ID.; THE NON-SURRENDER AGREEMENT IS NOT IMMORAL OR VIOLATIVE OF INTERNATIONAL LAW CONCEPTS; RATIONALE.— Suffice it to state in this regard that the non-surrender agreement, as aptly described by the Solicitor General, "is an assertion by the Philippines of its desire to try and punish crimes under its national law. x x x The agreement is a recognition of the primacy and competence of the country's judiciary to try offenses under its national criminal laws and dispense justice fairly and judiciously." x x x Persons who may have committed acts penalized under the Rome Statute can be prosecuted and punished in the Philippines or in the US; or with the consent of the RP or the US, before the ICC, assuming, for the nonce, that all the formalities necessary to bind both countries to the Rome Statute have been met. For perspective, what the *Agreement* contextually prohibits is the surrender by either party of individuals to international tribunals, like the ICC, without the consent of the other party, which may desire to prosecute the crime under its existing laws. With the view we take of things, there is nothing immoral or violative of international law concepts in the act of the Philippines of assuming criminal jurisdiction pursuant to the non-surrender agreement over an offense considered criminal by both Philippine laws and the Rome Statute.

12. ID.; ID.; STATUTE OF INTERNATIONAL COURT OF JUSTICE (ICJ); LISTS OF THE SOURCES OF INTERNATIONAL LAW, CITED.— Article 38 of the Statute of the International Court of Justice (ICJ) lists the sources of international law, as follows: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a

general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59, judicial decisions and **the teachings of the most highly qualified publicists of the various nations**, as subsidiary means for the determination of rules of law.

13. ID.; ID.; ID.; ID.; CUSTOMARY INTERNATIONAL LAW OR INTERNATIONAL CUSTOM; DEFINED; ELEMENTS, CONSTRUED.— Customary international law or international custom is a source of international law as stated in the Statute of the ICJ. It is defined as the "general and consistent practice of states recognized and followed by them from a sense of legal obligation." In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and *opinio juris sive necessitates*, the subjective element. State practice refers to the continuous repetition of the same or similar kind of acts or norms by States. It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration. While, *opinio juris*, the psychological element, requires that the state practice or norm "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."

14. ID.; ID.; ID.; ID.; ID.; *JUS COGENS* NORM; EXPLAINED. — "The term '*jus cogens*' means the 'compelling law.'" Corollary, "a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles." As a result, *jus cogens* norms are deemed "peremptory and non-derogable." When applied to international crimes, "*jus cogens* crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement." These *jus cogens* crimes relate to the principle of universal jurisdiction, *i.e.*, "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists." "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community" and thus granting every State jurisdiction over the crime.

CARPIO, *J., dissenting opinion*:

1. POLITICAL LAW; INTERNATIONAL LAW; INTERNATIONAL AGREEMENTS; THE RP-US NON SURRENDER AGREEMENT VIOLATES EXISTING MUNICIPAL LAWS ON THE PHILIPPINE STATE'S OBLIGATION TO PROSECUTE PERSONS RESPONSIBLE FOR ANY OF THE INTERNATIONAL CRIMES OF GENOCIDE, WAR CRIMES AND OTHER CRIMES AGAINST HUMANITY; RATIONALE.— The RP-US Non-Surrender Agreement (Agreement) violates existing municipal laws on the Philippine State's obligation to prosecute persons responsible for any of the international crimes of genocide, war crimes and other crimes against humanity. Being a mere executive agreement that is indisputably inferior to municipal law, the Agreement cannot prevail over a prior or subsequent municipal law inconsistent with it. First, under existing municipal laws arising from the incorporation doctrine in Section 2, Article II of the Philippine Constitution, the State is required to surrender to the proper international tribunal persons accused of grave international crimes, if the State itself does not exercise its primary jurisdiction to prosecute such persons. Second, and more importantly, Republic Act No. 9851 (RA 9851) or the *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* requires that the RP-US Non-Surrender Agreement, which is in derogation of the duty of the Philippines to prosecute those accused of grave international crimes, should be ratified as a treaty by the Senate before the Agreement can take effect.

2. ID.; ID.; PHILIPPINE ACT ON CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW, GENOCIDE, AND OTHER CRIMES AGAINST HUMANITY (RA 9851); SECTION 2(E) AND 17 THEREOF IMPOSE ON THE PHILIPPINES THE DUTY TO PROSECUTE A PERSON PRESENT IN THE PHILIPPINES WHO COMMITTED A CRIME ENUMERATED THEREUNDER; OPTIONS AVAILABLE TO THE PHILIPPINES UPON ITS DECISION NOT TO PROSECUTE, EXPLAINED.— Section 2(e) and Section 17 of RA 9851 impose on the Philippines the "duty" to prosecute a person present in the Philippines, "regardless

of citizenship or residence" of such person, who is accused of committing a crime under RA 9851 "regardless of where the crime is committed." The Philippines is expressly mandated by law to prosecute the accused before its own courts. If the Philippines decides not to prosecute such accused, the Philippines has only two options. First, it may surrender the accused to the "appropriate international court" such as the International Criminal Court (ICC). Or second, it may surrender the accused to another State if such **surrender is *"pursuant to the applicable extradition laws and treaties***." Under the second option, the Philippines must have an applicable extradition law with the other State, or both the Philippines and the other State must be signatories to an applicable treaty. Such applicable extradition law or treaty must not frustrate the Philippine State policy, which embodies a generally accepted principle of international law, that it is "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes." In any case, the Philippines can exercise either option ***only if*** "**another court or international tribunal is *already* conducting the investigation or undertaking the prosecution of such crime**." In short, the Philippines should surrender the accused to another State only if there is assurance or guarantee by the other State that the accused will be prosecuted under the other State's criminal justice system. This assurance or guarantee springs from the principle of international law that it is "**the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes**." Section 17 of RA 9851 has clearly raised to a **statutory level** the surrender to another State of persons accused of any crime under RA 9851. Any agreement in derogation of Section 17, such as the surrender to the U.S. of a U.S. national accused of an act punishable under RA 9851 but not punishable under U.S. domestic laws, or the non-surrender to an international tribunal, without U.S. consent, of a U.S. national accused of a crime under RA 9851, cannot be made in a mere executive agreement or an exchange of notes. **Such surrender or non-surrender, being contrary to Section 17 of RA 9851, can only be made in an amendatory law, such as a subsequent extradition law or treaty.**

3. ID.; ID.; TREATY AND EXECUTIVE AGREEMENTS, DISTINGUISHED.— In international law, there is no

difference between treaties and executive agreements on their binding effect upon party states, as long as the negotiating functionaries have remained within their powers. However, while the differences in nomenclature and form of various types of international agreements are immaterial in international law, they have significance in the municipal law of the parties. An example is the requirement of concurrence of the legislative body with respect to treaties, whereas with respect to executive agreements, the head of State may act alone to enforce such agreements. The 1987 Philippine Constitution provides: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." This express constitutional requirement makes treaties different from executive agreements, which require no legislative concurrence. An executive agreement can only implement, and not amend or repeal, an existing law. As I have discussed in *Suplico v. National Economic and Development Authority*, although an executive agreement has the force and effect of law, just like implementing rules of executive agencies, it cannot amend or repeal prior laws, but must comply with the laws it implements. An executive agreement, being an exclusive act of the Executive branch, does not have the status of a municipal law. Acting alone, the Executive has no law-making power; and while it has rule-making power, such power must be exercised consistent with the law it seeks to implement. **Thus, an executive agreement cannot amend or repeal a prior law, but must comply with State policy embodied in an existing municipal law. This also means that an executive agreement, which at the time of its execution complies with then existing law, is deemed amended or repealed by a subsequent law inconsistent with such executive agreement. Under no circumstance can a mere executive agreement prevail over a prior or subsequent law inconsistent with such executive agreement. x x x** Under Article 7 of the Civil Code, an executive agreement contrary to a prior law is void. Similarly, an executive agreement contrary to a subsequent law becomes void upon the effectivity of such subsequent law. Since Article 7 of the Civil Code provides that "executive acts shall be valid only when they are not contrary to the laws," once an executive act becomes contrary to law such executive act becomes void even if it was valid prior to

the enactment of such subsequent law. A treaty, on the other hand, acquires the status of a municipal law upon ratification by the Senate. Hence, a treaty may amend or repeal a prior law and *vice-versa.* Unlike an executive agreement, a treaty may change state policy embodied in a prior and existing law.

4. ID.; ID.; CUSTOMARY INTERNATIONAL LAW, CONSTRUED; ELEMENTS, CITED.— Generally accepted principles of international law, as referred to in the Constitution, include customary international law. Customary international law is one of the primary sources of international law under Article 38 of the Statute of the International Court of Justice. Customary international law consists of acts which, by repetition of States of similar international acts for a number of years, occur out of a sense of obligation, and taken by a significant number of States. It is based on custom, which is a clear and continuous habit of doing certain actions, which has grown under the aegis of the conviction that these actions are, according to international law, obligatory or right. Thus, customary international law requires the concurrence of two elements: "[1] the established, wide-spread, and consistent practice on the part of the States; and [2] a psychological element known as *opinion juris sive necessitatis* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it."

5. ID.; ID.; ID.; THE PRINCIPLES OF LAW EMBODIED IN THE ROME STATUTE ARE BINDING IN THE PHILIPPINES EVEN IF THE STATUTE HAS YET TO BE RATIFIED BY THE PHILIPPINE SENATE; RATIONALE. — Some customary international laws have been affirmed and embodied in treaties and conventions. A treaty constitutes evidence of customary law if it is declaratory of customary law, or if it is intended to codify customary law. **In such a case, even a State not party to the treaty would be bound thereby. A treaty which is merely a formal expression of customary international law is enforceable on all States because of their membership in the family of nations**. For instance, the Vienna Convention on Consular Relations is binding even on non-party States because the provisions of the Convention are mostly codified rules of customary

international law binding on all States even before their codification into the Vienna Convention. Another example is the Law of the Sea, which consists mostly of codified rules of customary international law, which have been universally observed even before the Law of the Sea was ratified by participating States. Corollarily, treaties may become the basis of customary international law. While States which are not parties to treaties or international agreements are not bound thereby, such agreements, if widely accepted for years by many States, may transform into customary international laws, in which case, they bind even non-signatory States. x x x The Rome Statute of the International Criminal Court was adopted by 120 members of the United Nations (UN) on 17 July 1998. It entered into force on 1 July 2002, after 60 States became party to the Statute through ratification or accession. The adoption of the Rome Statute fulfilled the international community's long-time dream of creating a permanent international tribunal to try serious international crimes. The Rome Statute, which established an international criminal court and formally declared genocide, war crimes and other crimes against humanity as serious international crimes, **codified generally accepted principles of international law, including customary international laws**. The principles of law embodied in the Rome Statute were already generally accepted principles of international law even prior to the adoption of the Statute. Subsequently, the Rome Statute itself has been widely accepted and, as of November 2010, it has been ratified by 114 states, 113 of which are members of the UN. There are at present 192 members of the UN. Since 113 member states have already ratified the Rome Statute, more than a majority of all the UN members have now adopted the Rome Statute as part of their municipal laws. Thus, the Rome Statute itself is generally accepted by the community of nations as constituting a body of generally accepted principles of international law. **The principles of law found in the Rome Statute constitute generally accepted principles of international law enforceable in the Philippines under the Philippine Constitution**. The principles of law embodied in the Rome Statute are binding on the Philippines even if the Statute has yet to be ratified by the Philippine Senate. In short, the principles of law enunciated in the Rome Statute are now

part of Philippine domestic law pursuant to Section 2, Article II of the 1987 Philippine Constitution.

6. ID.; ID.; ID.; ANY DEROGATION FROM THE GENERALLY ACCEPTED PRINCIPLES OF INTERNATIONAL LAW EMBODIED IN THE ROME STATUTE CANNOT BE UNDERTAKEN THROUGH A MERE EXECUTIVE AGREEMENT BECAUSE AN EXECUTIVE AGREEMENT CANNOT AMEND AN EXISTING LAW; APPLICATION IN CASE AT BAR.— Any derogation from the generally accepted principles of international law embodied in the Rome Statute, which principles have the status of municipal law in this country, cannot be undertaken through a mere executive agreement because an executive agreement cannot amend existing laws. A law or a treaty ratified by the Philippine Senate is necessary to amend, for purposes of domestic law, a derogable principle of international law, such as Article 89(1) of the Rome Statute, which has the status of municipal law. **Likewise, any derogation from the surrender option of the Philippines under Section 17 of RA 9851 must be embodied in an applicable extradition law or treaty and not in a mere executive agreement because such derogation violates RA 9851, which is superior to, and prevails over, a prior executive agreement allowing such derogation. Under no circumstance can a mere executive agreement prevail over a prior or subsequent law inconsistent with such executive agreement**. Thus, the RP-US Non-Surrender Agreement to be valid and effective must be ratified by the Philippine Senate, and unless so ratified, the Agreement is without force and effect.

APPEARANCES OF COUNSEL

Public Interest Law Center and *Julius Garcia Matibag Edre U. Olalia Ephraim B. Cortez for petitioner.*

The Solicitor General for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This petition[1] for *certiorari*, *mandamus* and prohibition under Rule 65 assails and seeks to nullify the Non-Surrender Agreement concluded by and between the Republic of the Philippines (RP) and the United States of America (USA).

The Facts

Petitioner Bayan Muna is a duly registered party-list group established to represent the marginalized sectors of society. Respondent Blas F. Ople, now deceased, was the Secretary of Foreign Affairs during the period material to this case. Respondent Alberto Romulo was impleaded in his capacity as then Executive Secretary.[2]

Rome Statute of the International Criminal Court

Having a key determinative bearing on this case is the Rome Statute[3] establishing the International Criminal Court (ICC) with "*the power to exercise its jurisdiction over persons for the most serious crimes of international concern* x x x *and shall be complementary to the national criminal jurisdictions*."[4] The serious crimes adverted to cover those considered grave under international law, such as genocide, crimes against humanity, war crimes, and crimes of aggression.[5]

On December 28, 2000, the RP, through *Charge d'Affaires* Enrique A. Manalo, signed the Rome Statute which, by its terms, is "subject to ratification, acceptance or approval" by the signatory

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[1] *Rollo*, pp. 241-265.

[2] He is now the DFA Secretary.

[3] *Rollo*, pp. 74-145.

[4] ROME STATUTE, Art. 1.

[5] *Id.*, Art. 5.

states.[6] As of the filing of the instant petition, only 92 out of the 139 signatory countries appear to have completed the ratification, approval and concurrence process. The Philippines is not among the 92.

RP-US Non-Surrender Agreement

On May 9, 2003, then Ambassador Francis J. Ricciardone sent US Embassy Note No. 0470 to the Department of Foreign Affairs (DFA) proposing the terms of the non-surrender bilateral agreement (*Agreement*, hereinafter) between the USA and the RP.

Via Exchange of Notes No. BFO-028-03[7] dated May 13, 2003 (E/N BFO-028-03, hereinafter), the RP, represented by then DFA Secretary Ople, agreed with and accepted the US proposals embodied under the US Embassy Note adverted to and put in effect the *Agreement* with the US government. *In esse*, the *Agreement* aims to protect what it refers to and defines as "persons" of the RP and US from frivolous and harassment suits that might be brought against them in international tribunals.[8] It is reflective of the increasing pace of the strategic security and defense partnership between the two countries. As of May 2, 2003, similar bilateral agreements have been effected by and between the US and 33 other countries.[9]

The *Agreement* pertinently provides as follows:

1. For purposes of this Agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of one Party.

2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,

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[6] ROME STATUTE, Article 125.

[7] *Rollo*, pp. 68-69.

[8] *Id.* at 72, Paper on the RP-US Non-Surrender Agreement.

[9] *Id.* at 70.

(a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established by the UN Security Council, or

(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to any international tribunal, unless such tribunal has been established by the UN Security Council.

3. When the [US] extradites, surrenders, or otherwise transfers a person of the Philippines to a third country, the [US] will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the UN Security Council, absent the express consent of the Government of the Republic of the Philippines [GRP].

4. When the [GRP] extradites, surrenders, or otherwise transfers a person of the [USA] to a third country, the [GRP] will not agree to the surrender or transfer of that person by the third country to any international tribunal, unless such tribunal has been established by the UN Security Council, absent the express consent of the Government of the [US].

5. This Agreement shall remain in force until one year after the date on which one party notifies the other of its intent to terminate the Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

In response to a query of then Solicitor General Alfredo L. Benipayo on the status of the non-surrender agreement, Ambassador Ricciardone replied in his letter of October 28, 2003 that the exchange of diplomatic notes constituted a legally binding agreement under international law; and that, under US law, the said agreement did not require the advice and consent of the US Senate.[10]

In this proceeding, petitioner imputes grave abuse of discretion to respondents in concluding and ratifying the *Agreement* and prays that it be struck down as unconstitutional, or at least declared as without force and effect.

[10] *Id.* at 175.

For their part, respondents question petitioner's standing to maintain a suit and counter that the *Agreement*, being in the nature of an executive agreement, does not require Senate concurrence for its efficacy. And for reasons detailed in their comment, respondents assert the constitutionality of the *Agreement*.

The Issues

I. WHETHER THE [RP] PRESIDENT AND THE [DFA] SECRETARY x x x GRAVELY ABUSED THEIR DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION FOR CONCLUDING THE **RP-US NON SURRENDER AGREEMENT** BY MEANS OF [*E/N*] *BFO-028-03 DATED 13 MAY 2003*, WHEN THE PHILIPPINE GOVERNMENT HAS ALREADY SIGNED THE *ROME STATUTE OF THE [ICC]* ALTHOUGH THIS IS PENDING RATIFICATION BY THE PHILIPPINE SENATE.

A. Whether by entering into the x x x **Agreement** Respondents gravely abused their discretion when they capriciously abandoned, waived and relinquished our only legitimate recourse through the *Rome Statute of the [ICC]* to prosecute and try "persons" as defined in the x x x **Agreement**, x x x or literally any conduit of American interests, who have committed crimes of genocide, crimes against humanity, war crimes and the crime of aggression, thereby abdicating Philippine Sovereignty.

B. Whether after the signing and pending ratification of the *Rome Statute of the [ICC]* the [RP] President and the [DFA] Secretary x x x are obliged by the principle of good faith to refrain from doing all acts which would substantially impair the value of the undertaking as signed.

C. Whether the x x x **Agreement** constitutes an act which defeats the object and purpose of the *Rome Statute of the International Criminal Court* and contravenes the obligation of good faith inherent in the signature of the President affixed on the *Rome Statute of the International Criminal Court*, and if so whether the x x x **Agreement** is void and unenforceable on this ground.

D. Whether the **RP-US Non-Surrender Agreement** is void and unenforceable for grave abuse of discretion amounting to lack or excess of jurisdiction in connection with its execution.

II. WHETHER THE **RP-US NON SURRENDER AGREEMENT** IS VOID *AB INITIO* FOR CONTRACTING OBLIGATIONS THAT ARE EITHER IMMORAL OR OTHERWISE AT VARIANCE WITH UNIVERSALLY RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW.

III. WHETHER THE x x x **AGREEMENT** IS VALID, BINDING AND EFFECTIVE WITHOUT THE CONCURRENCE BY AT LEAST TWO-THIRDS (2/3) OF ALL THE MEMBERS OF THE SENATE x x x.[11]

The foregoing issues may be summarized into two: *first*, whether or not the *Agreement* was contracted validly, which resolves itself into the question of whether or not respondents gravely abused their discretion in concluding it; and *second*, whether or not the *Agreement*, which has not been submitted to the Senate for concurrence, contravenes and undermines the Rome Statute and other treaties. But because respondents expectedly raised it, we shall first tackle the issue of petitioner's legal standing.

The Court's Ruling

This petition is bereft of merit.

Procedural Issue: *Locus Standi* of Petitioner

Petitioner, through its three party-list representatives, contends that the issue of the validity or invalidity of the *Agreement* carries with it constitutional significance and is of paramount importance that justifies its standing. Cited in this regard is what is usually referred to as the emergency powers cases,[12] in

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[11] *Id.* at 25-27.

[12] *Philconsa v. Gimenez*, No. L-23326, December 18, 1965, 15 SCRA 479; *Iloilo Palay & Corn Planters Association*, No. L-24022, March 3, 1965, 13 SCRA 377; *Araneta v. Dinglasan*, 84 Phil. 368 (1949).

which ordinary citizens and taxpayers were accorded the personality to question the constitutionality of executive issuances.

Locus standi is "a right of appearance in a court of justice on a given question."[13] Specifically, it is "a party's personal and substantial interest in a case where he has sustained or will sustain direct injury as a result"[14] of the act being challenged, and "calls for more than just a generalized grievance."[15] The term "interest" refers to material interest, as distinguished from one that is merely incidental.[16] The rationale for requiring a party who challenges the validity of a law or international agreement to allege such a personal stake in the outcome of the controversy is "to assure the concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[17]

Locus standi, however, is merely a matter of procedure and it has been recognized that, in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act, but by concerned citizens, taxpayers, or voters who actually sue in the public interest.[18] Consequently, in a catena of cases,[19] this Court has invariably adopted a liberal stance on *locus standi*.

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[13] *David v. Macapagal-Arroyo*, G.R. No. 171396, May 3, 2006, 489 SCRA 160.

[14] *Jumamil v. Café*, G.R. No. 144570, September 21, 2005, 470 SCRA 475; citing *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[15] *Id*.

[16] *Id*.

[17] *Fariñas v. Executive Secretary*, G.R. Nos. 147387 & 152161, December 10, 2003, 417 SCRA 503; citing *Baker v. Carr*, 369 U.S. 186 (1962). See also *Gonzales v. Narvasa*, G.R. No. 140835, August 14, 2000, 337 SCRA 733.

[18] *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. Nos. 155001, 155547 & 155661, May 5, 2003, 402 SCRA 612.

[19] *Constantino, Jr. v. Cuisia*, G.R. No. 106064, October 13, 2005, 472 SCRA 515; *Agan, Jr., supra* note 18; *Del Mar v. Philippine Amusement and Gaming Corporation*, G.R. No. 138298, November 29, 2000, 346 SCRA

Going by the petition, petitioner's representatives pursue the instant suit primarily as concerned citizens raising issues of transcendental importance, both for the Republic and the citizenry as a whole.

When suing as a citizen to question the validity of a law or other government action, a petitioner needs to meet certain specific requirements before he can be clothed with standing. *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*[20] expounded on this requirement, thus:

> In a long line of cases, however, concerned citizens, taxpayers and legislators when specific requirements have been met have been given standing by this Court.
>
> When suing as a *citizen*, the interest of the petitioner assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of. In fine, when the proceeding involves the assertion of a public right, the mere fact that he is a citizen satisfies the requirement of personal interest.[21]

In the case at bar, petitioner's representatives have complied with the qualifying conditions or specific requirements exacted under the *locus standi* rule. As citizens, their interest in the subject matter of the petition is direct and personal. At the very least, their assertions questioning the *Agreement* are made of a public right, *i.e.*, to ascertain that the *Agreement* did not go against established national policies, practices, and obligations bearing on the State's obligation to the community of nations.

485; *Tatad v. Garcia*, G.R. No. 114222, April 6, 1995, 243 SCRA 436; *Kilosbayan v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

[20] G.R. No. 160261, November 10, 2003, 415 SCRA 45.

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

At any event, the primordial importance to Filipino citizens in general of the issue at hand impels the Court to brush aside the procedural barrier posed by the traditional requirement of *locus standi*, as we have done in a long line of earlier cases, notably in the old but oft-cited emergency powers cases[22] and *Kilosbayan v. Guingona, Jr.*[23] In cases of transcendental importance, we wrote again in *Bayan v. Zamora*,[24] "The Court may relax the standing requirements and allow a suit to prosper even where there is no direct injury to the party claiming the right of judicial review."

Moreover, bearing in mind what the Court said in *Tañada v. Angara*, "that it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government,"[25] we cannot but resolve head on the issues raised before us. Indeed, where an action of any branch of government is seriously alleged to have infringed the Constitution or is done with grave abuse of discretion, it becomes not only the right but in fact the duty of the judiciary to settle it. As in this petition, issues are precisely raised putting to the fore the propriety of the *Agreement* pending the ratification of the Rome Statute.

Validity of the RP-US Non-Surrender Agreement

Petitioner's initial challenge against the *Agreement* relates to form, its threshold posture being that E/N BFO-028-03 cannot be a valid medium for concluding the *Agreement*.

Petitioners' contention—perhaps taken unaware of certain well-recognized international doctrines, practices, and jargons– is untenable. One of these is the doctrine of incorporation, as expressed in Section 2, Article II of the Constitution, wherein

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[22] *Supra* note 12.

[23] *Supra* note 19.

[24] G.R. No. 138587, October 10, 2000, 342 SCRA 2000.

[25] G.R. No. 118295, May 2, 1997, 272 SCRA 18, 48-49.

the Philippines adopts the generally accepted principles of international law and international jurisprudence as part of the law of the land and adheres to the policy of peace, cooperation, and amity with all nations.[26] An exchange of notes falls "into the category of inter-governmental agreements,"[27] which is an internationally accepted form of international agreement. The United Nations Treaty Collections (Treaty Reference Guide) defines the term as follows:

> An "exchange of notes" is a record of a routine agreement, that has many similarities with the private law contract. The agreement consists of the exchange of two documents, each of the parties being in the possession of the one signed by the representative of the other. Under the usual procedure, the accepting State repeats the text of the offering State to record its assent. The signatories of the letters may be government Ministers, diplomats or departmental heads. The technique of exchange of notes is frequently resorted to, either because of its speedy procedure, or, sometimes, to avoid the process of legislative approval.[28]

In another perspective, the terms "exchange of notes" and "executive agreements" have been used interchangeably, exchange of notes being considered a form of executive agreement that becomes binding through executive action.[29] On the other hand, executive agreements concluded by the President "sometimes take the form of exchange of notes and at other times that of more formal documents denominated 'agreements' or 'protocols.'"[30] As former US High Commissioner to the Philippines Francis B. Sayre observed in his work, *The*

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[26] Cruz, *PHILIPPINE POLITICAL LAW* 55 (1995).

[27] Harris, *CASES AND MATERIALS ON INTERNATIONAL LAW* 801 (2004).

[28] Official Website of the UN <http://untreaty.un.org/English/guide.asp.>; cited in *Abaya v. Ebdane*, G.R. No. 167919, February 14, 2007, 515 SCRA 720.

[29] *Abaya v. Ebdane*, *supra*.

[30] *Id.*; citing *The Constitutionality of Trade Agreement Acts* by Francis Sayre.

Constitutionality of Trade Agreement Acts:

The point where ordinary correspondence between this and other governments ends and agreements – whether denominated executive agreements or exchange of notes or otherwise – begin, may sometimes be difficult of ready ascertainment.[31] x x x

It is fairly clear from the foregoing disquisition that E/N BFO-028-03—be it viewed as the Non-Surrender Agreement itself, or as an integral instrument of acceptance thereof or as consent to be bound—is a recognized mode of concluding a legally binding international written contract among nations.

Senate Concurrence Not Required

Article 2 of the Vienna Convention on the Law of Treaties defines a treaty as "an international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation."[32] International agreements may be in the form of (1) treaties that require legislative concurrence after executive ratification; or (2) executive agreements that are similar to treaties, except that they do not require legislative concurrence and are usually less formal and deal with a narrower range of subject matters than treaties.[33]

Under international law, there is no difference between treaties and executive agreements in terms of their binding effects on the contracting states concerned,[34] as long as the negotiating functionaries have remained within their powers.[35] Neither, on

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[31] Cited in *Commissioner of Customs v. Eastern Sea Trading*, 113 Phil. 333 (1961).

[32] Executive Order No. 459, dated November 25, 1997, contains a similar definition.

[33] B.A. Boczek, *INTERNATIONAL LAW: A DICTIONARY* 346 (2005).

[34] *Bayan v. Zamora*, *supra* note 24; citing Richard Erickson, "*The Making of Executive Agreements by the US Department of Defense*," 13 Boston U. Intl. L. J. 58 (1955); Randall, *The Treaty Power*, 51 Ohio St. L.J., p. 4; *see also* Restatement (Third) of Foreign Relations Law § 301 (1987), which

the domestic sphere, can one be held valid if it violates the Constitution.[36] Authorities are, however, agreed that one is distinct from another for accepted reasons apart from the concurrence-requirement aspect.[37] As has been observed by US constitutional scholars, a treaty has greater "dignity" than an executive agreement, because its constitutional efficacy is beyond doubt, a treaty having behind it the authority of the President, the Senate, and the people;[38] a ratified treaty, unlike an executive agreement, takes precedence over any prior statutory enactment.[39]

Petitioner parlays the notion that the *Agreement* is of dubious validity, partaking as it does of the nature of a treaty; hence, it must be duly concurred in by the Senate. Petitioner takes a cue from *Commissioner of Customs v. Eastern Sea Trading*, in which the Court reproduced the following observations made by US legal scholars: "[I]nternational agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties [while] those embodying adjustments of detail carrying out well established national policies and traditions

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states that "[t]he terminology used for international agreements is varied. Among the terms used are: treaty, convention, agreement, protocol, covenant, charter, statute, act, declaration, concordat, **exchange of notes**, agreed minute, memorandum of agreement, memorandum of understanding, and *modus vivendi*. Whatever their designation, all agreements have the same legal status, except as their provisions or the circumstances of their conclusion indicate otherwise." (Emphasis supplied.)

[35] *Id.* at 489; citing 5 Hackworth, *DIGEST OF INTERNATIONAL LAW* 395; cited in *USAFE Veterans Association Inc. v. Treasurer of the Philippines*, 105 Phil. 1030, 1037 (1959).

[36] *Reid v. Covert*, 354 U.S. 77 S. Ct.1230.

[37] In the US constitutional system, it is the legal force of treaties and executive agreements on the domestic plane.

[38] Henkin, *FOREIGN AFFAIRS AND THE UNITED STATES CONSTITUTION* 224 (2nd ed., 1996).

[39] Prof. Edwin Borchard, *Treaties and Executive Agreements – Reply*, Yale Law Journal, June 1945; cited in Justice Antonio T. Carpio's Dissent in *Nicolas v. Romulo*, G.R. Nos. 175888, 176051 & 176222, February 11, 2009, 578 SCRA 438.

and those involving arrangements of a more or less temporary nature take the form of executive agreements." [40]

Pressing its point, petitioner submits that the subject of the *Agreement* does not fall under any of the subject-categories that are enumerated in the *Eastern Sea Trading* case, and that may be covered by an executive agreement, such as commercial/ consular relations, most-favored nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and settlement of claims.

In addition, petitioner foists the applicability to the instant case of *Adolfo v. CFI of Zambales and Merchant*,[41] holding that an executive agreement through an exchange of notes cannot be used to amend a treaty.

We are not persuaded.

The categorization of subject matters that may be covered by international agreements mentioned in *Eastern Sea Trading* is not cast in stone. There are no hard and fast rules on the propriety of entering, on a given subject, into a treaty or an executive agreement as an instrument of international relations. The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft an international agreement in the form they so wish to further their respective interests. Verily, the matter of form takes a back seat when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, as the parties in either international agreement each labor under the *pacta sunt servanda*[42] principle.

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[40] No. L-14279, October 31, 1961, 3 SCRA 351, 356.

[41] No. L-30650, July 31, 1970, 34 SCRA 166.

[42] Latin for "agreements must be kept," BLACK'S LAW DICTIONARY (8th ed., 2004). The principle of *pacta sunt servanda*, in its most common sense, refers to private contracts, stressing that these pacts and clauses are the law between the parties, and implying that the non-fulfilment of respective obligations is a breach of the pact.

With regard to international agreements, Art. 26 of the Vienna Convention on the Law of Treaties (signed on May 23, 1969 and entered into force on January 27, 1980) states that "every treaty in force is binding upon the parties

As may be noted, almost half a century has elapsed since the Court rendered its decision in *Eastern Sea Trading*. Since then, the conduct of foreign affairs has become more complex and the domain of international law wider, as to include such subjects as human rights, the environment, and the sea. In fact, in the US alone, the executive agreements executed by its President from 1980 to 2000 covered subjects such as defense, trade, scientific cooperation, aviation, atomic energy, environmental cooperation, peace corps, arms limitation, and nuclear safety, among others.[43] Surely, the enumeration in *Eastern Sea Trading* cannot circumscribe the option of each state on the matter of which the international agreement format would be convenient to serve its best interest. As Francis Sayre said in his work referred to earlier:

> x x x It would be useless to undertake to discuss here the large variety of executive agreements as such concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade-agreement act, have been negotiated with foreign governments. x x x They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil air craft, custom matters and commercial relations generally, international claims, postal matters, the registration of trademarks and copyrights, *etc*. x x x

And lest it be overlooked, one type of executive agreement is a treaty-authorized[44] or a treaty-implementing executive

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to it and must be performed by them in good faith." *Pacta sunt servanda* is based on good faith. This entitles states to require that obligations be respected and to rely upon the obligations being respected. This good-faith basis of treaties implies that a party to the treaty cannot invoke provisions of its domestic law as justification for a failure to perform. The only limit to *pacta sunt servanda* is *jus cogens* (Latin for "compelling law"), the peremptory norm of general international law.

[43] Oona A. Hathaway, *Presidential Power Over International Law: Restoring the Balance*, 119 YLJ 140, 152 (2009).

[44] Rotunda, Nowak and Young, *TREATISE ON CONSTITUTIONAL LAW* 394; cited in then Chief Justice Puno's dissent in *Bayan v. Zamora*, *supra*.

agreement,[45] which necessarily would cover the same matters subject of the underlying treaty.

But over and above the foregoing considerations is the fact that—save for the situation and matters contemplated in Sec. 25, Art. XVIII of the Constitution[46]—when a treaty is required, the Constitution does not classify any subject, like that involving political issues, to be in the form of, and ratified as, a treaty. What the Constitution merely prescribes is that treaties need the concurrence of the Senate by a vote defined therein to complete the ratification process.

Petitioner's reliance on *Adolfo*[47] is misplaced, said case being inapplicable owing to different factual milieus. There, the Court held that an executive agreement cannot be used to amend a duly ratified and existing treaty, *i.e.*, the Bases Treaty. Indeed, an executive agreement that does not require the concurrence of the Senate for its ratification may not be used to amend a treaty that, under the Constitution, is the product of the ratifying acts of the Executive and the Senate. The presence of a treaty, purportedly being subject to amendment by an executive agreement, does not obtain under the premises.

Considering the above discussion, the Court need not belabor at length the third main issue raised, referring to the validity and effectivity of the *Agreement* without the concurrence by at least two-thirds of all the members of the Senate. The Court has, in *Eastern Sea Trading*,[48] as reiterated in *Bayan*,[49] given recognition to the obligatory effect of executive agreements without the concurrence of the Senate:

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[45] *Nicolas, supra* note 39.

[46] Sec. 25. After the expiration in 1991 of the [RP-US Military Bases Agreement] foreign military bases, troops, or facilities shall not be allowed in the Philippines except under a treaty duly concurred in by the Senate, and when Congress so requires, ratified x x x in a national referendum held for that purpose, and recognized as a treaty by the contracting state.

[47] *Supra* note 39.

[48] *Supra* note 41.

[49] *Supra* note 31.

x x x [T]he right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history, we have entered executive agreements covering such subjects as commercial and consular relations, most favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

The Agreement Not in Contravention of the Rome Statute

It is the petitioner's next contention that the *Agreement* undermines the establishment of the ICC and is null and void insofar as it unduly restricts the ICC's jurisdiction and infringes upon the effectivity of the Rome Statute. Petitioner posits that the *Agreement* was constituted solely for the purpose of providing individuals or groups of individuals with immunity from the jurisdiction of the ICC; and such grant of immunity through non-surrender agreements allegedly does not legitimately fall within the scope of Art. 98 of the Rome Statute. It concludes that state parties with non-surrender agreements are prevented from meeting their obligations under the Rome Statute, thereby constituting a breach of Arts. 27,[50] 86,[51] 89[52] and 90[53] thereof.

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50 Article 27

Irrelevance of official capacity

1. This Statue shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

51 Article 86

General Obligation to Cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.

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Article 89

Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in Article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

2. Where the person sought for surrender brings a challenge before a national court on the basis of the principle of *neb is in idem* as provided in Article 20, the requested State shall immediately consult with the Court to determine if there has been a relevant ruling on admissibility. If the case is admissible, the requested State shall proceed with the execution of the request. If an admissibility ruling is pending, the requested State may postpone the execution of the request for surrender of the person until the Court makes a determination on admissibility.

3. (a) A State Party shall authorize, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender.

(b) A request by the Court for transit shall be transmitted in accordance with article 87. The request for transit shall contain:

(i) A description of the person being transported;

(ii) A brief statement of the facts of the case and their legal characterization; and

(iii) The warrant for arrest and surrender;

(c) A person being transported shall be detained in custody during the period of transit;

(d) No authorization is required if the person is transported by air and no landing is scheduled on the territory of the transit State;

(e) If an unscheduled landing occurs on the territory of the transit State, that State may require a request for transit from the Court as provided for in subparagraph (b). The transit State shall detain the person being transported until the request for transit is received and the transit is effected, provided that detention for purposes of this subparagraph may not be extended beyond 96 hours from the unscheduled landing unless the request is received within that time.

4. If the person sought is being proceeded against or is serving a sentence in the requested State for a crime different from that for which surrender to the Court is sought, the requested State, after making its decision to grant the request, shall consult with the Court.

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Article 90

Competing requests

1. A State Party which receives a request from the Court for the surrender of a person under Article 89 shall, if it also receives a request from any other State for the extradition of the same person for the same conduct which forms the basis of the crime for which the Court seeks the person's surrender, notify the Court and the requesting State of that fact.

2. Where the requesting State is a State Party, the requested State shall give priority to the request from the Court if:

(a) The Court has, pursuant to Article 18 or 19, made a determination that the case in respect of which surrender is sought is admissible and that determination takes into account the investigation or prosecution conducted by the requesting State in respect of its request for extradition; or

(b) The Court makes the determination described in subparagraph (a) pursuant to the requested State's notification under paragraph 1.

3. Where a determination under paragraph 2 (a) has not been made, the requested State may, at its discretion, pending the determination of the Court under paragraph 2 (b), proceed to deal with the request for extradition from the requesting State but shall not extradite the person until the Court has determined that the case is inadmissible. The Court's determination shall be made on an expedited basis.

4. If the requesting State is a State not Party to this Statute the requested State, if it is not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court, if the Court has determined that the case is inadmissible.

5. Where a case under paragraph 4 has not been determined to be admissible by the Court, the requested State may, at its discretion, proceed to deal with the request for extradition from the requesting State.

6. In cases where paragraph 4 applies except that the requested State is under an existing international obligation to extradite the person to the requesting State not Party to this Statute, the requested State shall determine whether to surrender the person to the Court or extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to:

(a) The respective dates of the requests;

(b) The interests of the requesting State including, where relevant, whether the crime was committed in its territory and the nationality of the victims and of the person sought; and

(c) The possibility of subsequent surrender between the Court and the requesting State.

Petitioner stresses that the overall object and purpose of the Rome Statute is to ensure that those responsible for the worst possible crimes are brought to justice in all cases, primarily by states, but as a last resort, by the ICC; thus, any agreement—like the non-surrender agreement—that precludes the ICC from exercising its complementary function of acting when a state is unable to or unwilling to do so, defeats the object and purpose of the Rome Statute.

Petitioner would add that the President and the DFA Secretary, as representatives of a signatory of the Rome Statute, are obliged by the imperatives of good faith to refrain from performing acts that substantially devalue the purpose and object of the Statute, as signed. Adding a nullifying ingredient to the *Agreement*, according to petitioner, is the fact that it has an immoral purpose or is otherwise at variance with a priorly executed treaty.

Contrary to petitioner's pretense, the *Agreement* does not contravene or undermine, nor does it differ from, the Rome Statute. Far from going against each other, one complements the other. As a matter of fact, the principle of complementarity underpins the creation of the ICC. As aptly pointed out by respondents and admitted by petitioners, the jurisdiction of the ICC is to "be complementary to national criminal jurisdictions

7. Where a State Party which receives a request from the Court for the surrender of a person also receives a request from any State for the extradition of the same person for conduct other than that which constitutes the crime for which the Court seeks the person's surrender:

(a) The requested State shall, if it is not under an existing international obligation to extradite the person to the requesting State, give priority to the request from the Court;

(b) The requested State shall, if it is under an existing international obligation to extradite the person to the requesting State, determine whether to surrender the person to the Court or to extradite the person to the requesting State. In making its decision, the requested State shall consider all the relevant factors, including but not limited to those set out in paragraph 6, but shall give special consideration to the relative nature and gravity of the conduct in question.

8. Where pursuant to a notification under this article, the Court has determined a case to be inadmissible, and subsequently extradition to the requesting State is refused, the requested State shall notify the Court of this decision.

[of the signatory states]."[54] Art. 1 of the Rome Statute pertinently provides:

> Article 1
>
> The Court
>
> An International Criminal Court ("the Court") is hereby established. It x x x **shall have the power to exercise its jurisdiction** over persons for the most serious crimes of international concern, as referred to in this Statute, and **shall be complementary to national criminal jurisdictions**. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute. (Emphasis ours.)

Significantly, the sixth preambular paragraph of the Rome Statute declares that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes." This provision indicates that primary jurisdiction over the so-called international crimes rests, at the first instance, with the state where the crime was committed; secondarily, with the ICC in appropriate situations contemplated under Art. 17, par. 1[55] of the Rome Statute.

Of particular note is the application of the principle of *ne bis in idem*[56] under par. 3 of Art. 20, Rome Statute, which again

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[54] Tenth preambular paragraph of the ICC Statute.

[55] 1. Having regard to paragraph 10 of the Preamble and Article 1, the Court shall determine that a case is inadmissible where:

(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;

(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;

(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under Article 20, paragraph 3;

(d) The case is not of sufficient gravity to justify further action by the Court.

[56] Latin for "not twice for the same," a legal principle that means no legal action can be instituted twice for the same cause of action. In gist, it is a legal concept substantially the same as or synonymous to double jeopardy.

underscores the primacy of the jurisdiction of a state *vis-a-vis* that of the ICC. As far as relevant, the provision states that "no person who has been tried by another court for conduct x x x [constituting crimes within its jurisdiction] shall be tried by the [International Criminal] Court with respect to the same conduct x x x."

The foregoing provisions of the Rome Statute, taken collectively, argue against the idea of jurisdictional conflict between the Philippines, as party to the non-surrender agreement, and the ICC; or the idea of the *Agreement* substantially impairing the value of the RP's undertaking under the Rome Statute. Ignoring for a while the fact that the RP signed the Rome Statute ahead of the *Agreement*, it is abundantly clear to us that the Rome Statute expressly recognizes the primary jurisdiction of states, like the RP, over serious crimes committed within their respective borders, the complementary jurisdiction of the ICC coming into play only when the signatory states are unwilling or unable to prosecute.

Given the above consideration, petitioner's suggestion—that the RP, by entering into the *Agreement*, violated its duty required by the imperatives of good faith and breached its commitment under the Vienna Convention[57] to refrain from performing any act tending to impair the value of a treaty, *e.g.*, the Rome Statute––has to be rejected outright. For nothing in the provisions of the *Agreement*, in relation to the Rome Statute, tends to diminish the efficacy of the Statute, let alone defeats the purpose of the ICC. Lest it be overlooked, the Rome Statute contains a proviso that enjoins the ICC from seeking the surrender of an erring person, should the process require the requested state to perform an act that would violate some international agreement it has entered into. We refer to Art. 98(2) of the Rome Statute, which reads:

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[57] A state is obliged to refrain from acts that would defeat the object and purpose of a treaty when: (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the

Article 98

Cooperation with respect to waiver of immunity and consent to surrender

xxx xxx xxx

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

Moreover, under international law, there is a considerable difference between a State-Party and a signatory to a treaty. Under the Vienna Convention on the Law of Treaties, a signatory state is only obliged to refrain from acts which would defeat the object and purpose of a treaty;[58] whereas a State-Party, on the other hand, is legally obliged to follow all the provisions of a treaty in good faith.

In the instant case, it bears stressing that the Philippines is only a signatory to the Rome Statute and not a State-Party for lack of ratification by the Senate. Thus, it is only obliged to refrain from acts which would defeat the object and purpose of the Rome Statute. Any argument obliging the Philippines to follow any provision in the treaty would be premature.

As a result, petitioner's argument that State-Parties with non-surrender agreements are prevented from meeting their obligations under the Rome Statute, specifically Arts. 27, 86, 89 and 90, must fail. These articles are only legally binding upon State-Parties, not signatories.

Furthermore, a careful reading of said Art. 90 would show that the *Agreement* is not incompatible with the Rome Statute. Specifically, Art. 90(4) provides that "[i]f the requesting State is a State not Party to this Statute the requested State, if it is

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entry into force of the treaty and provided that such entry into force is not unduly delayed.

[58] VIENNA CONVENTION ON THE LAW OF TREATIES, Art. 18.

not under an international obligation to extradite the person to the requesting State, shall give priority to the request for surrender from the Court. x x x" In applying the provision, certain undisputed facts should be pointed out: *first*, the US is neither a State-Party nor a signatory to the Rome Statute; and *second*, there is an international agreement between the US and the Philippines regarding extradition or surrender of persons, *i.e.*, the *Agreement*. Clearly, even assuming that the Philippines is a State-Party, the Rome Statute still recognizes the primacy of international agreements entered into between States, even when one of the States is not a State-Party to the Rome Statute.

Sovereignty Limited by International Agreements

Petitioner next argues that the RP has, through the *Agreement*, abdicated its sovereignty by bargaining away the jurisdiction of the ICC to prosecute US nationals, government officials/employees or military personnel who commit serious crimes of international concerns in the Philippines. Formulating petitioner's argument a bit differently, the RP, by entering into the *Agreement*, does thereby abdicate its sovereignty, abdication being done by its waiving or abandoning its right to seek recourse through the Rome Statute of the ICC for erring Americans committing international crimes in the country.

We are not persuaded. As it were, the *Agreement* is but a form of affirmance and confirmance of the Philippines' national criminal jurisdiction. National criminal jurisdiction being primary, as explained above, it is always the responsibility and within the prerogative of the RP either to prosecute criminal offenses equally covered by the Rome Statute or to accede to the jurisdiction of the ICC. Thus, the Philippines may decide to try "persons" of the US, as the term is understood in the *Agreement*, under our national criminal justice system. Or it may opt not to exercise its criminal jurisdiction over its erring citizens or over US "persons" committing high crimes in the country and defer to the secondary criminal jurisdiction of the ICC over them. As to "persons" of the US whom the Philippines refuses to prosecute, the country would, in effect, accord discretion to the US to exercise either its national criminal jurisdiction over the "person" concerned

or to give its consent to the referral of the matter to the ICC for trial. In the same breath, the US must extend the same privilege to the Philippines with respect to "persons" of the RP committing high crimes within US territorial jurisdiction.

In the context of the Constitution, there can be no serious objection to the Philippines agreeing to undertake the things set forth in the *Agreement*. Surely, one State can agree to waive jurisdiction—to the extent agreed upon—to subjects of another State due to the recognition of the principle of extraterritorial immunity. What the Court wrote in *Nicolas v. Romulo*[59]—a case involving the implementation of the criminal jurisdiction provisions of the RP-US Visiting Forces Agreement—is apropos:

> Nothing in the Constitution prohibits such agreements recognizing immunity from jurisdiction or some aspects of jurisdiction (such as custody), in relation to long-recognized subjects of such immunity like Heads of State, diplomats and members of the armed forces contingents of a foreign State allowed to enter another State's territory. x x x

To be sure, the nullity of the subject non-surrender agreement cannot be predicated on the postulate that some of its provisions constitute a virtual abdication of its sovereignty. Almost every time a state enters into an international agreement, it voluntarily sheds off part of its sovereignty. The Constitution, as drafted, did not envision a reclusive Philippines isolated from the rest of the world. It even adheres, as earlier stated, to the policy of cooperation and amity with all nations.[60]

By their nature, treaties and international agreements actually have a limiting effect on the otherwise encompassing and absolute nature of sovereignty. By their voluntary act, nations may decide to surrender or waive some aspects of their state power or agree to limit the exercise of their otherwise exclusive and absolute jurisdiction. The usual underlying consideration in this partial surrender may be the greater benefits derived from a pact or a reciprocal undertaking of one contracting party to grant the

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[59] *Supra* note 39.

[60] CONSTITUTION, Art. II, Sec. 2.

same privileges or immunities to the other. On the rationale that the Philippines has adopted the generally accepted principles of international law as part of the law of the land, a portion of sovereignty may be waived without violating the Constitution.[61] Such waiver does not amount to an unconstitutional diminution or deprivation of jurisdiction of Philippine courts.[62]

Agreement Not Immoral/Not at Variance with Principles of International Law

Petitioner urges that the *Agreement* be struck down as void *ab initio* for imposing immoral obligations and/or being at variance with allegedly universally recognized principles of international law. The immoral aspect proceeds from the fact that the *Agreement*, as petitioner would put it, "leaves criminals immune from responsibility for unimaginable atrocities that deeply shock the conscience of humanity; x x x it precludes our country from delivering an American criminal to the [ICC] x x x."[63]

The above argument is a kind of recycling of petitioner's earlier position, which, as already discussed, contends that the RP, by entering into the *Agreement*, virtually abdicated its sovereignty and in the process undermined its treaty obligations under the Rome Statute, contrary to international law principles.[64]

The Court is not persuaded. Suffice it to state in this regard that the non-surrender agreement, as aptly described by the Solicitor General, "is an assertion by the Philippines of its desire

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[61] *Tañada v. Angara*, G.R. No. 118295, May 2, 1997, 272 SCRA 18.

[62] *Dizon v. Phil. Ryubus Command*, 81 Phil. 286 (1948); cited in Agpalo, *PUBLIC INTERNATIONAL LAW* 222-223 (2006).

[63] *Rollo*, pp. 53-54.

[64] Under VIENNA CONVENTION ON THE LAW OF TREATIES, Art. 18, a State has the obligations not to defeat the object and purpose of a treaty prior to its entry into force when (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or (b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

to try and punish crimes under its national law. x x x The agreement is a recognition of the primacy and competence of the country's judiciary to try offenses under its national criminal laws and dispense justice fairly and judiciously."

Petitioner, we believe, labors under the erroneous impression that the *Agreement* would allow Filipinos and Americans committing high crimes of international concern to escape criminal trial and punishment. This is manifestly incorrect. Persons who may have committed acts penalized under the Rome Statute can be prosecuted and punished in the Philippines or in the US; or with the consent of the RP or the US, before the ICC, assuming, for the nonce, that all the formalities necessary to bind both countries to the Rome Statute have been met. For perspective, what the *Agreement* contextually prohibits is the surrender by either party of individuals to international tribunals, like the ICC, without the consent of the other party, which may desire to prosecute the crime under its existing laws. With the view we take of things, there is nothing immoral or violative of international law concepts in the act of the Philippines of assuming criminal jurisdiction pursuant to the non-surrender agreement over an offense considered criminal by both Philippine laws and the Rome Statute.

No Grave Abuse of Discretion

Petitioner's final point revolves around the necessity of the Senate's concurrence in the *Agreement.* And without specifically saying so, petitioner would argue that the non-surrender agreement was executed by the President, thru the DFA Secretary, in grave abuse of discretion.

The Court need not delve on and belabor the first portion of the above posture of petitioner, the same having been discussed at length earlier on. As to the second portion, We wish to state that petitioner virtually faults the President for performing, through respondents, a task conferred the President by the Constitution—the power to enter into international agreements.

By constitutional fiat and by the nature of his or her office, the President, as head of state and government, is the sole

organ and authority in the external affairs of the country.[65] The Constitution vests in the President the power to enter into international agreements, subject, in appropriate cases, to the required concurrence votes of the Senate. But as earlier indicated, executive agreements may be validly entered into without such concurrence. As the President wields vast powers and influence, her conduct in the external affairs of the nation is, as *Bayan* would put it, "executive altogether." The right of the President to enter into or ratify binding executive agreements has been confirmed by long practice.[66]

In thus agreeing to conclude the *Agreement* thru E/N BFO-028-03, then President Gloria Macapagal-Arroyo, represented by the Secretary of Foreign Affairs, acted within the scope of the authority and discretion vested in her by the Constitution. At the end of the day, the President—by ratifying, thru her deputies, the non-surrender agreement—did nothing more than discharge a constitutional duty and exercise a prerogative that pertains to her office.

While the issue of ratification of the Rome Statute is not determinative of the other issues raised herein, it may perhaps be pertinent to remind all and sundry that about the time this petition was interposed, such issue of ratification was laid to rest in *Pimentel, Jr. v. Office of the Executive Secretary*.[67] As the Court emphasized in said case, the power to ratify a treaty, the Statute in that instance, rests with the President, subject to the concurrence of the Senate, whose role relative to the ratification of a treaty is limited merely to concurring in or withholding the ratification. And concomitant with this treaty-making power of the President is his or her prerogative to refuse to submit a treaty to the Senate; or having secured the latter's consent to the ratification of the treaty, refuse to ratify it.[68] This prerogative, the Court hastened to add, is the President's alone and cannot

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[65] *Bayan v. Zamora, supra*.

[66] *Id.*; citing *Commissioner of Customs, supra*.

[67] G.R. No. 158088, July 6, 2005, 462 SCRA 622.

[68] *Id.* at 637-638; citing Cruz, *INTERNATIONAL LAW* 174 (1998).

be encroached upon via a writ of *mandamus*. Barring intervening events, then, the Philippines remains to be just a signatory to the Rome Statute. Under Art. 125[69] thereof, the final acts required to complete the treaty process and, thus, bring it into force, insofar as the Philippines is concerned, have yet to be done.

Agreement Need Not Be in the Form of a Treaty

On December 11, 2009, then President Arroyo signed into law Republic Act No. (RA) 9851, otherwise known as the "Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity." Sec. 17 of RA 9851, particularly the second paragraph thereof, provides:

> **Section 17.** *Jurisdiction.* – x x x x
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> In the interest of justice, the relevant Philippine authorities ***may*** dispense with the investigation or prosecution of a crime punishable under this Act if another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime. **Instead, the authorities *may* surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State pursuant to the applicable extradition laws and treaties**. (Emphasis supplied.)

A view is advanced that the *Agreement* amends existing municipal laws on the State's obligation in relation to grave crimes against the law of nations, *i.e.*, genocide, crimes against humanity and war crimes. Relying on the above-quoted statutory

[69] Signature, ratification, acceptance, approval or accession.

1. This Statute shall be open for signature by all States in Rome, at the headquarters of the Food and Agriculture Organization of the United Nations, on 17 July 1998. Thereafter, it shall remain open for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute shall remain open for signature in New York, at United Nations Headquarters, until 31 December 2000.

2. This Statute is subject to ratification, acceptance or approval by signatory States. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Statute shall be open to accession by all States. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

proviso, the view posits that the Philippine is required to surrender to the proper international tribunal those persons accused of the grave crimes defined under RA 9851, if it does not exercise its primary jurisdiction to prosecute them.

The basic premise rests on the interpretation that if it does not decide to prosecute a foreign national for violations of RA 9851, the Philippines has only two options, to wit: (1) surrender the accused to the proper international tribunal; or (2) surrender the accused to another State if such surrender is "pursuant to the applicable extradition laws and treaties." But the Philippines may exercise these options only in cases where "another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime"; otherwise, the Philippines must prosecute the crime before its own courts pursuant to RA 9851.

Posing the situation of a US national under prosecution by an international tribunal for any crime under RA 9851, the Philippines has the option to surrender such US national to the international tribunal if it decides not to prosecute such US national here. The view asserts that this option of the Philippines under Sec. 17 of RA 9851 is not subject to the consent of the US, and any derogation of Sec. 17 of RA 9851, such as requiring the consent of the US before the Philippines can exercise such option, requires an amendatory law. In line with this scenario, the view strongly argues that the *Agreement* prevents the Philippines—without the consent of the US—from surrendering to any international tribunal US nationals accused of crimes covered by RA 9851, and, thus, in effect amends Sec. 17 of RA 9851. Consequently, the view is strongly impressed that the *Agreement* cannot be embodied in a simple executive agreement in the form of an exchange of notes but must be implemented through an extradition law or a treaty with the corresponding formalities.

Moreover, consonant with the foregoing view, citing Sec. 2, Art. II of the Constitution, where the Philippines adopts, as a national policy, the "**generally accepted principles of international law as part of the law of the land**," the Court

is further impressed to perceive the Rome Statute as declaratory of customary international law. In other words, the Statute embodies principles of law which constitute customary international law or custom and for which reason it assumes the status of an enforceable domestic law in the context of the aforecited constitutional provision. As a corollary, it is argued that any derogation from the Rome Statute principles cannot be undertaken via a mere executive agreement, which, as an exclusive act of the executive branch, can only implement, but cannot amend or repeal, an existing law. The *Agreement*, so the argument goes, seeks to frustrate the objects of the principles of law or alters customary rules embodied in the Rome Statute.

Prescinding from the foregoing premises, the view thus advanced considers the *Agreement* inefficacious, unless it is embodied in a treaty duly ratified with the concurrence of the Senate, the theory being that a Senate- ratified treaty partakes of the nature of a municipal law that can amend or supersede another law, in this instance Sec. 17 of RA 9851 and the status of the Rome Statute as constitutive of enforceable domestic law under Sec. 2, Art. II of the Constitution.

We are unable to lend cogency to the view thus taken. For one, we find that the *Agreement* does not amend or is repugnant to RA 9851. For another, the view does not clearly state what precise principles of law, if any, the *Agreement* alters. And for a third, it does not demonstrate in the concrete how the *Agreement* seeks to frustrate the objectives of the principles of law subsumed in the Rome Statute.

Far from it, as earlier explained, the *Agreement* does not undermine the Rome Statute as the former merely reinforces the primacy of the national jurisdiction of the US and the Philippines in prosecuting criminal offenses committed by their respective citizens and military personnel, among others. The jurisdiction of the ICC pursuant to the Rome Statute over high crimes indicated thereat is clearly and unmistakably complementary to the national criminal jurisdiction of the signatory states.

Moreover, RA 9851 clearly: (1) defines and establishes the crimes against international humanitarian law, genocide and other crimes against humanity;[70] (2) provides penal sanctions and criminal liability for their commission;[71] and (3) establishes special courts for the prosecution of these crimes and for the State to exercise primary criminal jurisdiction.[72] Nowhere in RA 9851 is there a proviso that goes against the tenor of the *Agreement*.

The view makes much of the above quoted second par. of Sec. 17, RA 9851 as **requiring** the Philippine State to surrender to the proper international tribunal those persons accused of crimes sanctioned under said law if it does not exercise its primary jurisdiction to prosecute such persons. This view is not entirely correct, for the above quoted proviso clearly provides **discretion** to the Philippine State on whether to surrender or not a person accused of the crimes under RA 9851. The statutory proviso uses the word "***may***." It is settled doctrine in statutory construction that the word "may" denotes discretion, and cannot be construed as having mandatory effect.[73] Thus, the pertinent second paragraph of Sec. 17, RA 9851 is simply permissive on the part of the Philippine State.

Besides, even granting that the surrender of a person is mandatorily required when the Philippines does not exercise its primary jurisdiction in cases where "another court or international tribunal is already conducting the investigation or undertaking the prosecution of such crime," still, the tenor of the *Agreement* is not repugnant to Sec. 17 of RA 9851. Said legal proviso aptly provides that the surrender may be made "to another State pursuant to the applicable extradition laws and treaties." The *Agreement* can already be considered a treaty following this Court's decision in *Nicolas v. Romulo*[74] which cited *Weinberger*

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[70] RA 9851, Secs. 4-6.

[71] *Id.*, Secs. 7-12.

[72] *Id.*, Secs. 17-18.

[73] *Republic Planters Bank v. Agana, Sr.*, G.R. No. 51765, May 3, 1997, 269 SCRA 1, 12.

[74] *Supra* note 39.

v. Rossi.[75] In *Nicolas,* We held that "an executive agreement is a 'treaty' within the meaning of that word in international law and constitutes enforceable domestic law *vis-à-vis* the United States."[76]

Likewise, the Philippines and the US already have an existing extradition treaty, *i.e*., RP-US Extradition Treaty, which was executed on November 13, 1994. The pertinent Philippine law, on the other hand, is Presidential Decree No. 1069, issued on January 13, 1977. Thus, the *Agreement*, in conjunction with the RP-US Extradition Treaty, would neither violate nor run counter to Sec. 17 of RA 9851.

The view's reliance on *Suplico v. Neda*[77] is similarly improper. In that case, several petitions were filed questioning the power of the President to enter into foreign loan agreements. However, before the petitions could be resolved by the Court, the Office of the Solicitor General filed a Manifestation and Motion averring that the Philippine Government decided not to continue with the ZTE National Broadband Network Project, thus rendering the petition moot. In resolving the case, the Court took judicial notice of the act of the executive department of the Philippines (the President) and found the petition to be indeed moot. Accordingly, it dismissed the petitions.

In his dissent in the abovementioned case, Justice Carpio discussed the legal implications of an executive agreement. He stated that "an executive agreement has the force and effect of law x x x [it] cannot amend or repeal **prior** laws."[78] Hence, this argument finds no application in this case seeing as RA 9851 is a subsequent law, not a prior one. Notably, this argument cannot be found in the *ratio decidendi* of the case, but only in the dissenting opinion.

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[75] 456 U.S. 25 (1982).

[76] *Nicolas v. Romulo*, G.R. Nos. 175888, 176051 & 176222, February 11, 2009, 578 SCRA 438, 467.

[77] G.R. No. 178830, July 14, 2008, 558 SCRA 329.

[78] *Id.* at 376. (Emphasis supplied.)

The view further contends that the RP-US Extradition Treaty is inapplicable to RA 9851 for the reason that under par. 1, Art. 2 of the RP-US Extradition Treaty, "[a]n offense shall be an extraditable offense if it is ***punishable*** **under the laws in both Contracting Parties** x x x,"[79] and thereby concluding that while the Philippines has criminalized under RA 9851 the acts defined in the Rome Statute as war crimes, genocide and other crimes against humanity, there is no similar legislation in the US. It is further argued that, citing *U.S. v. Coolidge*, in the US, a person cannot be tried in the federal courts for an international crime unless Congress adopts a law defining and punishing the offense.

This view must fail.

On the contrary, the US has already enacted legislation punishing the high crimes mentioned earlier. In fact, as early as October 2006, the US enacted a law criminalizing war crimes. Section 2441, Chapter 118, Part I, Title 18 of the United States Code Annotated (USCA) provides for the criminal offense of "war crimes" which is similar to the war crimes found in both the Rome Statute and RA 9851, thus:

(a) Offense – Whoever, whether inside or outside the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

(b) Circumstances – The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in Section 101 of the Immigration and Nationality Act).

(c) Definition – As used in this Section the term "war crime" means any conduct –

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[79] Par. 1, Art. 2, RP-US Extradition Treaty, Senate Resolution No. 11, November 27, 1995 (emphasis supplied).

(1) Defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;

(2) Prohibited by Article 23, 25, 27 or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) Which constitutes a grave breach of common Article 3 (as defined in subsection [d]) when committed in the context of and in association with an armed conflict not of an international character; or

(4) Of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.[80]

Similarly, in December 2009, the US adopted a law that criminalized genocide, to wit:

§1091. Genocide

(a) Basic Offense – Whoever, whether in the time of peace or in time of war and with specific intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group as such–

(1) kills members of that group;

(2) causes serious bodily injury to members of that group;

(3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;

(4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;

(5) imposes measures intended to prevent births within the group; or

[80] 18 U.S.C.A. § 2441.

(6) transfers by force children of the group to another group; shall be punished as provided in subsection (b).[81]

Arguing further, another view has been advanced that the current US laws do not cover every crime listed within the jurisdiction of the ICC and that there is a gap between the definitions of the different crimes under the US laws versus the Rome Statute. The view used a report written by Victoria K. Holt and Elisabeth W. Dallas, entitled "On Trial: The US Military and the International Criminal Court," as its basis.

At the outset, it should be pointed out that the report used may not have any weight or value under international law. Article 38 of the Statute of the International Court of Justice (ICJ) lists the sources of international law, as follows: (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom, as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) subject to the provisions of Article 59, judicial decisions and **the teachings of the most highly qualified publicists of the various nations**, as subsidiary means for the determination of rules of law. The report does not fall under any of the foregoing enumerated sources. It cannot even be considered as the "teachings of highly qualified publicists." A highly qualified publicist is a scholar of public international law and the term usually refers to legal scholars or "academic writers."[82] It has not been shown that the authors[83] of this report are highly qualified publicists.

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[81] 18 U.S.C.A. § 1091.

[82] Malcolm Shaw, *INTERNATIONAL LAW* 112 (2008).

[83] Victoria K. Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," The Henry L. Stimson Center, Report No. 55, March 2006, p. 92; available at <http://www.stimson.org/images/uploads/research-pdfs/US_Military_and_the_ICC_FINAL_website.pdf> last visited January 27, 2011. We quote Holt and Dallas' profiles from the report:

Victoria K. Holt is a **senior associate** at the Henry L. Stimson Center, where she co-directs the Future of Peace Operations program. She has co-authored a study of peacekeeping reforms at the United Nations, analyzing

Assuming *arguendo* that the report has weight, still, the perceived gaps in the definitions of the crimes are **nonexistent**. To highlight, the table below shows the definitions of genocide and war crimes under the Rome Statute *vis-à-vis* the definitions under US laws:

Rome Statute	US Law
Article 6 **Genocide** For the purpose of this Statute, "genocide" means any of the following acts committed with	**§1091. Genocide** (a) Basic Offense – Whoever, whether in the time of peace or in time of war and with specific

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the implementation of the 2000 Brahimi Report recommendations, and recently completed reports on African capacity for peace operations and the protection of civilians by military forces. Ms. Holt joined the Stimson Center in 2001, bringing policy and political expertise on UN and peacekeeping issues from her work at the US Department of State, in the NGO community and on Capitol Hill. She served as Senior Policy Advisor at the US State Department (Legislative Affairs), where she worked with Congress on issues involving UN peacekeeping and international organizations. Prior to joining State, she was Executive Director of the Emergency Coalition for US Financial Support of the United Nations, and also directed the Project on Peacekeeping and the UN at the Center for Arms Control and Nonproliferation in Washington, DC. From 1987 to 1994, Ms. Holt worked as a senior Congressional staffer, focusing on defense and foreign policy issues for the House Armed Services Committee. She served as Legislative Director for Rep. Thomas H. Andrews and as Senior Legislative Assistant to Rep. George J. Hochbrueckner. Ms. Holt is a graduate of the Naval War College and holds a B.A. with honors from Wesleyan University.

Elisabeth W. Dallas is a **research associate** with the Henry L. Stimson Center's Future of Peace Operations program and is focusing her work on the restoration of the rule of law in post-conflict settings. In particular, she is analyzing what legal mechanisms are required to allow for international criminal jurisdiction within UN peace operations. Prior to working at the Stimson Center, Ms. Dallas was a Senior Fellow with the Public International Law & Policy Group in Washington, DC, where she served as a political and legal advisor for parties during international peace negotiations taking place in the Middle East, the Balkans and South Asia. Ms. Dallas earned an MA from Tufts University's Fletcher School of Law & Diplomacy with a concentration in International Negotiation & Conflict Resolution and Public International Law, as well as a Certificate in Human Security and Rule of Law. She earned her BA from Haverford College. (Emphasis supplied.)

intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.	intent to destroy, in whole or in substantial part, a national, ethnic, racial or religious group as such– (1) kills members of that group; (2) causes serious bodily injury to members of that group; (3) causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques; (4) subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part; (5) imposes measures intended to prevent births within the group; or (6) transfers by force children of the group to another group; shall be punished as provided in subsection (b).
Article 8 **War Crimes** 2. For the purpose of this Statute, "war crimes" means: (a) Grave breaches of the Geneva Conventions of 12 August 1949,	(d) Definition – As used in this Section the term "war crime" means any conduct – (1) Defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to

namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: x x x[84]

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: x x x x

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:x x x x

such convention to which the United States is a party;

(2) Prohibited by Article 23, 25, 27 or 28 of the Annex to the Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;

(3) Which constitutes a grave breach of common Article 3 (as defined in subsection [d][85]) when committed in the context of and in association with an armed conflict not of an international character; or

(4) Of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on

[84] (i) Wilful killing;

(ii) Torture or inhuman treatment, including biological experiments;

(iii) Wilfully causing great suffering, or serious injury to body or health;

(iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

(v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;

(vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) Unlawful deportation or transfer or unlawful confinement;

(viii) Taking of hostages.

[85] (d) Common Article 3 violations. –

(1) Prohibited conduct – In subsection (c)(3), the term "grave breach of common Article 3" means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

(A) Torture. – The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

(B) Cruel or inhuman treatment. – The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanction), including serious physical abuse, upon another within his custody or control.

(C) Performing biological experiments. – The act of a person who subjects, or conspires or attempts to subject, one or more person within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

(D) Murder. – The act of a person who intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

(E) Mutilation or maiming.— The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

(F) Intentionally causing serious bodily injury.— The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

(G) Rape.— The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts

to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

(H) Sexual assault or abuse.— The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

(I) Taking hostages.— The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

(2) Definitions.— In the case of an offense under subsection (a) by reason of subsection (c)(3)—

(A) the term "severe mental pain or suffering" shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340 (2) of this title;

(B) the term "serious bodily injury" shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113 (b)(2) of this title;

(C) the term "sexual contact" shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246 (3) of this title;

(D) the term "serious physical pain or suffering" shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

(iv) a significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

(E) the term "serious mental pain or suffering" shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term "severe mental pain or suffering" (as defined in section 2340(2) of this title), except that —

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: x x x.	Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.[86]

Evidently, the gaps pointed out as to the definition of the crimes are not present. In fact, the report itself stated as much, to wit:

(i) the term "serious shall replace the term "sever" where it appears; and

(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term "serious and non-transitory mental harm (which need not be prolonged)" shall replace the term "prolonged mental harm" where it appears.

(3) Inapplicability of certain provisions with respect to collateral damage or incident of lawful attack.— The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (A) by reasons of subsection (C)(3) with respect to —

(A) collateral damage; or

(B) death, damage, or injury incident to a lawful attack.

(4) Inapplicability of taking hostages to prisoner exchange.— Paragraph (1)(I) does not apply to an offense under subsection (A) by reason of subsection (C)(3) in the case of a prisoner exchange during wartime.

(5) Definition of grave breaches. – The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.

[86] 18 U.S.C.A. § 2441.

Few believed there were wide differences between the crimes under the jurisdiction of the Court and crimes within the Uniform Code of Military Justice that would expose US personnel to the Court. Since US military lawyers were instrumental in drafting the elements of crimes outlined in the Rome Statute, they ensured that most of the crimes were consistent with those outlined in the UCMJ and gave strength to complementarity for the US. Small areas of potential gaps between the UCMJ and the Rome Statute, military experts argued, could be addressed through existing military laws.[87]
x x x

The report went on further to say that "[a]ccording to those involved, the elements of crimes laid out in the Rome Statute have been part of US military doctrine for decades."[88] Thus, the argument proffered cannot stand.

Nonetheless, despite the lack of actual domestic legislation, the US notably follows the doctrine of incorporation. As early as 1900, the esteemed Justice Gray in *The Paquete Habana*[89] case already held international law as part of the law of the US, to wit:

International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators who by years of labor, research, and experience have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for the trustworthy evidence of what the law really is.[90] (Emphasis supplied.)

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[87] Victoria K. Holt and Elisabeth W. Dallas, *supra* note 83, at 7.

[88] *Id.* at 35.

[89] 175 U.S. 677, 20 S.Ct. 290 (1900).

[90] *Id.* at 700; citing *Hilton v. Guyot*, 159 U.S. 113, 163, 164, 214, 215, 40 L. ed. 95, 108, 125, 126, 16 Sup. Ct. Rep. 139.

Thus, a person can be tried in the US for an international crime despite the lack of domestic legislation. The cited ruling in *U.S. v. Coolidge*,[91] which in turn is based on the holding in *U.S. v. Hudson*,[92] only applies to common law and not to the law of nations or international law.[93] Indeed, the Court in *U.S. v. Hudson* only considered the question, "whether the Circuit Courts of the United States can exercise a **common law** jurisdiction in criminal cases."[94] Stated otherwise, there is no common law crime in the US but this is considerably different from international law.

The US doubtless recognizes international law as part of the law of the land, necessarily including international crimes, even without any local statute.[95] In fact, years later, US courts would apply international law as a source of criminal liability despite the lack of a local statute criminalizing it as such. So it was that in *Ex Parte Quirin*[96] the US Supreme Court noted that "[f]rom the very beginning of its history this Court has recognized and applied the law of war as including that part of the law of nations which prescribes, for the conduct of war, the status, rights and duties of enemy nations as well as of enemy individuals."[97] It

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[91] 14 U.S. 415, 1816 WL 1770 (U.S.Mass.) (1816).

[92] 11 U.S. (7 Cranch) 32 (1812).

[93] Jordan J. Paust, *CUSTOMARY INTERNATIONAL LAW AND HUMAN RIGHTS TREATIES ARE LAW OF THE UNITED STATES*, 20 MIJIL 301, 309 (1999).

[94] 11 U.S. (7 Cranch) 32, 32 (1812).

[95] "x x x [C]ustomary international law is part of the law of the United States to the limited extent that, where there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations." *U.S. v. Yousef*, 327 F.3d 56, 92 (2003).

[96] 317 U.S. 1 (1942).

[97] *Id.* at 27-28; citing *Talbot v. Jansen*, 3 Dall. 133, 153, 159, 161, 1 L.Ed. 540; *Talbot v. Seeman*, 1 Cranch 1, 40, 41, 2 L.Ed. 15; *Maley v. Shattuck*, 3 Cranch 458, 488, 2 L.Ed. 498; *Fitzsimmons v. Newport Ins. Co.*, 4 Cranch 185, 199, 2 L.Ed. 591; *The Rapid*, 8 Cranch 155, 159-164, 3 L.Ed. 520; *The St. Lawrence*, 9 Cranch 120, 122, 3 L.Ed. 676; *Thirty Hogsheads of Sugar v. Boyle*, 9 Cranch 191, 197, 198, 3 L.Ed. 701; *The Anne*, 3 Wheat. 435, 447, 448, 4 L.Ed. 428; *United States v. Reading*, 18

went on further to explain that Congress had not undertaken the task of codifying the specific offenses covered in the law of war, thus:

> It is no objection that **Congress** in providing for the trial of such offenses **has not itself undertaken to codify that branch of international law or to mark its precise boundaries, or to enumerate or define by statute all the acts which that law condemns**. An Act of Congress punishing 'the crime of piracy as defined by the law of nations is an appropriate exercise of its constitutional authority, Art. I, s 8, cl. 10, 'to define and punish' the offense since it has adopted by reference the sufficiently precise definition of international law. x x x Similarly by the reference in the 15th Article of War to 'offenders or offenses that x x x by the law of war may be triable by such military commissions. Congress has incorporated by reference, as within the jurisdiction of military commissions, all offenses which are defined as such by the law of war x x x, and which may constitutionally be included within that jurisdiction.[98] x x x (Emphasis supplied.)

This rule finds an even stronger hold in the case of crimes against humanity. It has been held that genocide, war crimes and crimes against humanity have attained the status of customary international law. Some even go so far as to state that these crimes have attained the status of *jus cogens*.[99]

Customary international law or international custom is a source of international law as stated in the Statute of the ICJ.[100] It is

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How. 1, 10, 15 L.Ed. 291; *Prize Cases (The Amy Warwick)*, 2 Black 635, 666, 667, 687, 17 L.Ed. 459; *The Venice*, 2 Wall. 258, 274, 17 L.Ed. 866; *The William Bagaley*, 5 Wall. 377, 18 L.Ed. 583; *Miller v. United States*, 11 Wall. 268, 20 L.Ed. 135; *Coleman v. Tennessee*, 97 U.S. 509, 517, 24 L.Ed. 1118; *United States v. Pacific R.R.*, 120 U.S. 227, 233, 7 S.Ct. 490, 492, 30 L.Ed. 634; *Juragua Iron Co. v. United States*, 212 U.S. 297, 29 S.Ct. 385, 53 L.Ed. 520.

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

[99] Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*), Merits, I.C.J. judgment, February 26, 2007, § 161; M. Cherif Bassiouni, *INTERNATIONAL CRIMES: JUS COGENS AND OBLIGATIO ERGA OMNES*, 59-AUT Law & Contemp. Probs. 63, 68.

[100] I.C.J. Statute, art. 38, ¶ 1 (b) international custom, as evidence of a general practice accepted as law.

defined as the "general and consistent practice of states recognized and followed by them from a sense of legal obligation."[101] In order to establish the customary status of a particular norm, two elements must concur: State practice, the objective element; and *opinio juris sive necessitates*, the subjective element.[102]

State practice refers to the continuous repetition of the same or similar kind of acts or norms by States.[103] It is demonstrated upon the existence of the following elements: (1) generality; (2) uniformity and consistency; and (3) duration.[104] While, *opinio juris*, the psychological element, requires that the state practice or norm "be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it."[105]

"The term '*jus cogens*' means the 'compelling law.'"[106] Corollary, "a *jus cogens* norm holds the highest hierarchical position among all other customary norms and principles."[107] As a result, *jus cogens* norms are deemed "peremptory and non-derogable."[108] When applied to international crimes, "*jus cogens* crimes have been deemed so fundamental to the existence of a just international legal order that states cannot derogate from them, even by agreement."[109]

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[101] *North Sea Continental Shelf*, 1969 I.C.J. ¶ 77; cited in Patrick Simon S. Perillo, *Transporting the Concept of Creeping Expropriation from De Lege Ferenda to De Lege Lata: Concretizing the Nebulous Under International Law*, 53 ATENEO L.J. 434, 509-510 (2008).

[102] *North Sea Continental Shelf*, 1969 I.C.J. ¶ 77; D.J. Harris, *CASES AND MATERIALS ON INTERNATIONAL LAW*, 22 (2004).

[103] *North Sea Continental Shelf*, 1969 I.C.J. at 175 (Tanaka, J., dissenting).

[104] Fisheries Jurisdiction (*U.K. v. Ice*) (Merits), 1974 I.C.J. 3, 89-90 (de Castro, J., separate opinion).

[105] *North Sea Continental Shelf*, 1969 I.C.J. ¶ 77.

[106] M. Cherif Bassiouni, *International Crimes: Jus Cogens and Obligatio Erga Omnes*, 59-AUT Law & Contemp. Probs. 63, 67.

[107] *Id*.

[108] *Id*.

[109] Carlee M. Hobbs, *THE CONFLICT BETWEEN THE ALIEN TORT STATUTE LITIGATION AND FOREIGN AMNESTY LAWS*, 43 Vand. J.

These *jus cogens* crimes relate to the principle of universal jurisdiction, *i.e.*, "any state may exercise jurisdiction over an individual who commits certain heinous and widely condemned offenses, even when no other recognized basis for jurisdiction exists."[110] "The rationale behind this principle is that the crime committed is so egregious that it is considered to be committed against all members of the international community"[111] and thus granting every State jurisdiction over the crime.[112]

Therefore, even with the current lack of domestic legislation on the part of the US, it still has both the doctrine of incorporation and universal jurisdiction to try these crimes.

Consequently, no matter how hard one insists, the ICC, as an international tribunal, found in the Rome Statute is ***not*** declaratory of customary international law.

The first element of customary international law, *i.e.*, "established, widespread, and consistent practice on the part of States,"[113] does not, under the premises, appear to be obtaining as reflected in this simple reality: As of October 12, 2010, only 114[114] States have ratified the Rome Statute, subsequent to its coming into force eight (8) years earlier, or on July 1, 2002. The fact that 114 States out of a total of 194[115] countries in the world, or roughly 58.76%, have ratified the Rome Statute casts doubt on whether or not the perceived principles contained in

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Transnat'l L. 505, 521 (2009-2010); citing Jeffrey L. Dunoff, *et al.*, *INTERNATIONAL LAW: NORMS, ACTORS PROCESS* 58-59 (2d ed., 2006).

[110] *Id.*; citing Jeffrey L. Dunoff, *et al.*, *INTERNATIONAL LAW*: *NORMS, ACTORS PROCESS* 380 (2d ed., 2006).

[111] *Id.*

[112] *Id.*

[113] *Pharmaceutical and Health Care Association of the Philippines v. Duque III*, G.R. No. 173034, October 9, 2007, 535 SCRA 265.

[114] See <http://www.icc-cpi.int/Menus/ASP/states+parties/> (last visited January 26, 2011).

[115] <http://www.nationsonline.org oneworld /states.org> (last visited October 18, 2010). The list does not include dependent territories.

the Statute have attained the status of customary law and should be deemed as obligatory international law. The numbers even tend to argue against the urgency of establishing international criminal courts envisioned in the Rome Statute. Lest it be overlooked, the Philippines, judging by the action or inaction of its top officials, does not even feel bound by the Rome Statute. *Res ipsa loquitur*. More than eight (8) years have elapsed since the Philippine representative signed the Statute, but the treaty has not been transmitted to the Senate for the ratification process.

And this brings us to what Fr. Bernas, S.J. aptly said respecting the application of the concurring elements, thus:

> Custom or customary international law means "a general and consistent practice of states followed by them from a sense of legal obligation [*opinio juris*] x x x." This statement contains the two basic elements of custom: the material factor, that is how the states behave, and the psychological factor or subjective factor, that is, why they behave the way they do.
>
> xxx xxx xxx
>
> The initial factor for determining the existence of custom is **the actual behavior of states**. This includes several elements: duration, consistency, and generality of the practice of states.
>
> The required duration can be either short or long. x x x
>
> xxx xxx xxx
>
> Duration therefore is not the most important element. More important is the consistency and the generality of the practice. x x x
>
> xxx xxx xxx
>
> **Once the existence of state practice has been established,** it becomes necessary **to determine why states behave the way they do**. Do states behave the way they do because they consider it obligatory to behave thus or do they do it only as a matter of courtesy? *Opinio juris*, or the belief that a certain form of behavior is obligatory, is what makes practice an international rule. Without it, practice is not law.[116] (Emphasis added.)

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[116] Joaquin G. Bernas, S.J., *AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW* 10-13 (2002); cited in *Pharmaceutical and Health*

Evidently, there is, as yet, no overwhelming consensus, let alone prevalent practice, among the different countries in the world that the prosecution of internationally recognized crimes of genocide, *etc*. **should be handled by a particular international criminal court**.

Absent the widespread/consistent-practice-of-states factor, the second or the psychological element must be deemed non-existent, for an inquiry on why states behave the way they do presupposes, in the first place, that they are actually behaving, as a matter of settled and consistent practice, in a certain manner. This implicitly requires belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it.[117] Like the first element, the second element has likewise not been shown to be present.

Further, the Rome Statute itself rejects the concept of universal jurisdiction over the crimes enumerated therein as evidenced by it requiring State consent.[118] Even further, the Rome Statute specifically and unequivocally requires that: "This **Statute is *subject* to ratification**, acceptance or approval by signatory States."[119] These clearly negate the argument that such has already attained customary status.

Care Association of the Philippines v. Duque III, *supra* note 113, at 292.

[117] *Pharmaceutical and Health Care Association of the Philippines*, *supra* note 113, at 290-291; citation omitted.

[118] Article 12. Preconditions to the exercise of jurisdiction.

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of Article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft.

(b) The State of which the person accused of the crime is a national.

[119] ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, Art. 25, par. 2.

More importantly, an act of the executive branch with a foreign government must be afforded great respect. The power to enter into executive agreements has long been recognized to be lodged with the President. As We held in *Neri v. Senate Committee on Accountability of Public Officers and Investigations*, "[t]he power to enter into an executive agreement is in essence an executive power. This authority of the President to enter into executive agreements without the concurrence of the Legislature has traditionally been recognized in Philippine jurisprudence."[120] The rationale behind this principle is the inviolable doctrine of separation of powers among the legislative, executive and judicial branches of the government. Thus, absent any clear contravention of the law, courts should exercise utmost caution in declaring any executive agreement invalid.

In light of the above consideration, the position or view that the challenged RP-US Non-Surrender Agreement ought to be in the form of a treaty, to be effective, has to be rejected.

WHEREFORE, the petition for certiorari, mandamus and prohibition is hereby *DISMISSED* for lack of merit. No costs.

SO ORDERED.

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

Sereno, J., concurs in the result.

Carpio, J., see dissenting opinion.

Carpio Morales, J., joins the dissent of *J. Carpio.*

Brion, J., no part.

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[120] G.R. No. 180643, September 4, 2003, 564 SCRA 152, 197-198.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

The RP-US Non-Surrender Agreement (Agreement) violates existing municipal laws on the Philippine State's obligation to prosecute persons responsible for any of the international crimes of genocide, war crimes and other crimes against humanity. Being a mere executive agreement that is indisputably inferior to municipal law, the Agreement cannot prevail over a prior or subsequent municipal law inconsistent with it.

First, under existing municipal laws arising from the incorporation doctrine in Section 2, Article II of the Philippine Constitution,[1] the State is required to surrender to the proper international tribunal persons accused of grave international crimes, if the State itself does not exercise its primary jurisdiction to prosecute such persons.

Second, and more importantly, Republic Act No. 9851 (RA 9851) or the *Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* requires that the RP-US Non-Surrender Agreement, which is in derogation of the duty of the Philippines to prosecute those accused of grave international crimes, should be ratified as a treaty by the Senate before the Agreement can take effect.

Section 2 of RA 9851 adopts as a State policy the following:

Section 2. *Declaration of Principles and State Policies.*—

(a) x x x

xxx xxx xxx

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[1] CONSTITUTION (1987), Art. II, Sec. 2 provides: "The Philippines xxx **adopts the generally accepted principles of international law as part of the law of the land** and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations."

(e) The most serious crimes of concern to the international community as a whole must not go unpunished and their effective prosecution must be ensured by taking measures at the national level, in order to put an end to impunity for the perpetrators of these crimes and thus contribute to the prevention of such crimes, **it being the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes**. (Emphasis supplied)

To implement this State policy, Section 17 of RA 9851 provides:

Section 17. *Jurisdiction*. - The State shall exercise jurisdiction over persons, whether military or civilian, suspected or accused of a crime defined and penalized in this Act, regardless of where the crime is committed, provided, any one of the following conditions is met:

(a) The accused is a Filipino citizen;

(b) **The accused, regardless of citizenship or residence, is present in the Philippines**; or

(c) The accused has committed the said crime against a Filipino citizen.

In the interest of justice, the relevant Philippine authorities may dispense with the investigation or prosecution of a crime punishable under this Act **if another court or international tribunal is *already* conducting the investigation or undertaking the prosecution of such crime. Instead, the authorities may surrender or extradite suspected or accused persons in the Philippines to the appropriate international court, if any, or to another State *pursuant to the applicable extradition laws and treaties***. (Boldfacing, italicization and underscoring supplied)

Section 2(e) and Section 17 impose on the Philippines the "duty" to prosecute a person present in the Philippines, "regardless of citizenship or residence" of such person, who is accused of committing a crime under RA 9851 "regardless of where the crime is committed." The Philippines is expressly mandated by law to prosecute the accused before its own courts.

If the Philippines decides not to prosecute such accused, the Philippines has only two options. First, it may surrender the accused to the "appropriate international court" such as the

International Criminal Court (ICC). Or second, it may surrender the accused to another State if such **surrender is *"pursuant to the applicable extradition laws and treaties***." Under the second option, the Philippines must have an applicable extradition law with the other State, or both the Philippines and the other State must be signatories to an applicable treaty. Such applicable extradition law or treaty must not frustrate the Philippine State policy, which embodies a generally accepted principle of international law, that it is "the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes."

In any case, the Philippines can exercise either option ***only if*** "**another court or international tribunal is *already* conducting the investigation or undertaking the prosecution of such crime**." In short, the Philippines should surrender the accused to another State only if there is assurance or guarantee by the other State that the accused will be prosecuted under the other State's criminal justice system. This assurance or guarantee springs from the principle of international law that it is "**the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes**."

There is at present no *"applicable"* extradition law or treaty allowing the surrender to the United States of U.S. nationals accused of crimes under RA 9851, specifically, Crimes against International Humanitarian Law or War Crimes,[2] Genocide,[3] and Other Crimes against Humanity.[4]

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[2] Section 4 of RA 9851 provides:

Section 4. War Crimes. - For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

(a) In case of an international armed conflict , grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under provisions of the relevant Geneva Convention:

(1) Willful killing;

(2) Torture or inhuman treatment, including biological experiments;

(3) Willfully causing great suffering, or serious injury to body or health;

(4) Extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly;

(5) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(6) Arbitrary deportation or forcible transfer of population or unlawful confinement;

(7) Taking of hostages;

(8) Compelling a prisoner, a prisoner of war or other protected person to serve in the forces of a hostile power; and

(9) Unjustifiable delay in the repatriation of prisoners of war or other protected persons.

(b) In case of a non-international armed conflict, serious violations of common Article 3 to the four (4) Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including member of the armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause;

(1) Violence to life and person, in particular, willful killings, mutilation, cruel treatment and torture;

(2) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

(3) Taking of hostages; and

(4) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

(1) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(2) Intentionally directing attacks against civilian objects, that is, object which are not military objectives;

(3) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions or Additional Protocol III in conformity with intentional law;

(4) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(5) Launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or

widespread, long-term and severe damage to the natural environment which would be excessive in relation to the concrete and direct military advantage anticipated;

(6) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, and causing death or serious injury to body or health.

(7) Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives, or making non-defended localities or demilitarized zones the object of attack;

(8) Killing or wounding a person in the knowledge that he/she is *hors de combat*, including a combatant who, having laid down his/her arms or no longer having means of defense, has surrendered at discretion;

(9) Making improper use of a flag of truce, of the flag or the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions or other protective signs under International Humanitarian Law, resulting in death, serious personal injury or capture;

(10) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives. In case of doubt whether such building or place has been used to make an effective contribution to military action, it shall be presumed not to be so used;

(11) Subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind, or to removal of tissue or organs for transplantation, which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his/her interest, and which cause death to or seriously endanger the health of such person or persons;

(12) Killing, wounding or capturing an adversary by resort to perfidy;

(13) Declaring that no quarter will be given;

(14) Destroying or seizing the enemy's property unless such destruction or seizure is imperatively demanded by the necessities of war;

(15) Pillaging a town or place, even when taken by assault;

(16) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

(17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;

(18) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;

(19) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions or a serious violation of common Article 3 to the Geneva Conventions;

(20) Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;

(21) Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies as provided for under the Geneva Conventions and their Additional Protocols;

(22) In an international armed conflict, compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;

(23) In an international armed conflict, declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

(24) Committing any of the following acts:

(i) Conscripting, enlisting or recruiting children under the age of fifteen (15) years into the national armed forces;

(ii) Conscripting, enlisting or recruiting children under the age of eighteen (18) years into an armed force or group other than the national armed forces; and

(iii) Using children under the age of eighteen (18) years to participate actively in hostilities; and

(25) Employing means of warfare which are prohibited under international law, such as:

(i) Poison or poisoned weapons;

(ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and

(iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict.

xxx xxx xxx

[3] Section 5 of RA 9851 provides:

Section 5. Genocide. - (a) For the purpose of this Act, "genocide" means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such:

(1) Killing members of the group;

(2) Causing serious bodily or mental harm to members of the group;

(3) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(4) Imposing measures intended to prevent births within the group; and

(5) Forcibly transferring children of the group to another group.

(b) It shall be unlawful for any person to directly and publicly incite others to commit genocide.

xxx xxx xxx

[4] Section 6 of RA 9851 provides:

Section 6. *Other Crimes Against Humanity*. - For the purpose of this Act, "other crimes against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Willful killing;

(b) Extermination;

(c) Enslavement;

(d) Arbitrary deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, sexual orientation or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime defined in this Act;

(i) Enforced or involuntary disappearance of persons;

(j) Apartheid; and

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

xxx xxx xxx

The RP-US Extradition Treaty cannot be considered an applicable extradition law or treaty. Paragraph 1, Article 2 of the RP-US Extradition Treaty provides: "An offense shall be an extraditable offense if it is **punishable under the laws in both Contracting Parties** xxx."[5]

The rule in the United States is that a person cannot be tried in the federal courts for an international crime unless the U.S. Congress adopts a law defining and punishing the offense.[6] In *Medellin v. Texas*,[7] the U.S. Supreme Court held that "**while treaties may comprise international commitments ... they are not domestic law unless Congress has either enacted implementing statutes or the treaty itself conveys an intention that it be self-executing' and is ratified on these terms**." The U.S. Congress has not enacted legislation to implement the *Geneva Conventions of 1949 (Geneva Conventions)*[8] which is one of the foundations of the principles of International Humanitarian Law. While the U.S. Senate has ratified the Geneva Conventions,[9] the ratification was not intended to make

[5] Emphasis supplied.

[6] *U.S. v. Coolidge*, 14 U.S. 415, 1816 WL 1770 (U.S. Mass.) 4 L.Ed. 124, 1 Wheat. 415.

[7] 552 U.S. 491, 128 S. Ct. 1346 (2008).

[8] The Geneva Conventions of 12 August 1949 consists of four Conventions or International Agreements:

Convention I - for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. (1864);

Convention II - for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (1906);

Convention III - Relative to the Treatment of Prisoners of War (1929); and *Convention IV* - Relative to the Protection of Civilian Persons in Time of War (1949). There are three Protocols to the Geneva Conventions:

Protocol I - Relating to the Protection of Victims of International Armed Conflicts, 8 June 1977;

Protocol II - Relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977; and

Protocol III - Relating to the Adoption of an Additional Distinctive Emblem, 8 December 2005. See http://www.icrc.org/web/eng/siteeng0.nsf/html/genevaconventions; last visited on 21 July 2010.

[9] The U.S. ratified the Geneva Conventions of 1949 on 02 August 1955; the U.S. made Reservations on 02 August 1955, 04 March 1975, and 31 December

the Geneva Conventions self-executing under U.S. domestic law.[10]

The United States has not ratified the *Rome Statute of International Criminal Court* (Rome Statute). While the Philippines has also not ratified the Rome Statute, it has criminalized under RA 9851 all the acts defined in the Rome Statute as Genocide, War Crimes and Other Crimes against Humanity. **There is no similar legislation in the United States**.

Not all crimes punishable under the Rome Statute are considered crimes under U.S. laws. A report[11] based partly on interviews with representatives of the U.S. delegation in Rome stated: "The domestic laws of the United States xxx do not cover *every* crime listed within the jurisdiction of the [International Criminal] Court."[12] The report further explained the **gap** between the definitions of Genocide, War Crimes and Other Crimes against Humanity, under the Rome Statute and under U.S. domestic laws, in this wise:[13]

1974. See http://www.icrc.org/ihl.nsf/NORM/D6B53F5B5D14F35AC1256402003 F9920?OpenDocument; last visited on 21 July 2010.

[10] In *Medellin v. Texas, supra* note 7, the U.S. Supreme Court emphasized:

"This Court has long recognized the distinction between treaties that automatically have effect as domestic law, and those that- while they constitute international law commitments- do not by themselves function as binding federal law. xxx a treaty is 'equivalent to an act of the legislature,' and hence self-executing, when it' 'operates of itself without the aid of any legislative provision.' xxx When, in contrast, '[treaty] stipulations are not self-executing they can only be enforced pursuant to legislation to carry them into effect.'" (Citations omitted)

[11] Victoria K. Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," The Henry L. Stimson Center, Report No. 55, March 2006; available at http://www.stimson.org/fopo/pdf/US_Military_and_the_ICC_FINAL_website.pdf; last visited on 02 August 2010.

This is a Report issued by the Henry Stimson Center which is described as a nonprofit, nonpartisan institution devoted to enhancing international peace and security through a unique combination of rigorous analysis and outreach. It has a stated mission of "urging pragmatic steps toward the ideal objectives of international peace and security." See http://www.stimson.org/ about/ ?sn=AB2001110512; last visited on 11 August 2010.

[12] *Id.* at 34-35.

The "Court" refers to the International Criminal Court.

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

ICC Statute in Contrast to the US Code

In conversations with both proponents and opponents of the Court, many suggested that while the US has objected to the Court's potential authority over US service members, what really lies behind that concern is the recognition that those most vulnerable to the scrutiny of the Court are notably higher up in the chain of command: the civilian and senior military leadership.

Legal experts, both in the military and outside, pointed out that there were more likely to be "gaps" between the US Code and the Rome Statute than gaps with the Uniform Code of Military Justice. After retirement, military personnel are not covered by the UCMJ, but instead would be held accountable to the US Code, in particular Title 10 and Title 18. For some retired military personnel, this was an area of some concern.

These individuals offered that former leaders, in particular the "Henry Kissingers of the world," are most at risk. Indeed, they stressed that as the main concern for the US: that the Court will take up cases of former senior civilian leadership and military officials who, acting under the laws of war, are no longer covered by the UCMJ and therefore, potentially open to gaps in federal law where the US ability to assert complementarity is nebulous. The fear is that they could be subject to ICC prosecution for actions they did previously in uniform.

One legal scholar pointed out that several crimes defined within the Rome Statute do not appear on the US books (*e.g.*, apartheid, persecution, enslavement, and extermination.) While similar laws exist, it would be within the competency of the Chief Prosecutor to argue before the Pre-Trial Chamber[14] **that in fact, the US does not have laws to prosecute for the crimes that have been committed**. A similar situation arose in 1996, when Congressman Walter Jones (R-NC) determined through a series of investigations that civilians serving overseas under a contract with the US military were not covered under the UCMJ. It had been assumed that the US Code gave US primacy over civilians serving in a military

[14] The International Criminal Court has four organs: the Chambers, the Presidency, the Registry and the Office of the Prosecutor. The Chambers is composed of 18 judges divided into three divisions: the Pre-Trial Chamber, the Trial Chamber and the Appeals Chamber. [*Id.* at 22.]

capacity, but instead it was discovered that if a civilian serving with a military unit deployed overseas is accused of war crime, the foreign state whose territory the crimes were committed in would in fact have primary jurisdiction to try the case. Therefore, Rep. Jones authored the "War Crimes Act of 1996," which was designed to cover civilian serving in a military capacity.[15]

To ensure that no gaps exist between the US Code, the UCMJ, and the crimes within the Court's jurisdiction, a similar effort could be made. This process would need to identify first where crimes exist in the Statute that are not covered in some context through Title 10 and Title 18 of the US Code and then draft legislation – modeled after the War Crimes Act – designed to fill gaps. This would protect former US service members and senior civilian leadership from ICC prosecution.

There is very little discussion today about the gaps in law. Scholars are aware of the potential gaps and see this area as one where the US might be able to move forward to clarify legal ambiguities that may exist, and to make corrections to US laws. This exercise would strengthen the US assertion of complementarity. (Emphasis supplied)

The same report added, "At Rome, the U.S. was concerned with the definition of crimes, especially the definition of war crimes and, to lesser extent, the definition of crimes against humanity xxx";[16] that the crime of genocide was acceptable to the U.S. delegation; and that throughout the negotiations, the U.S. position was to seek one hundred percent assurance that U.S. service members would only be held accountable to U.S. systems of justice.[17]

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[15] Report's Footnote: "He amended Article 18 section 2441 of the US Federal Code 2441. US Code, Title 18, Part 1, Chapter 118, Section 2441, states... '(b) Circumstances – The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).'" [*Id.* at 45.]

[16] *Id.* at 34.

[17] *Id.*, citing Interviews with representatives of the US delegation in Rome, 28 June 2005 and 6 October 2005, and comments from the Stimson Workshop.

With the existing gap between the crimes of Genocide, War Crimes and Other Crimes against Humanity under the Rome Statute - now all criminalized in the Philippines under RA 9851 on the one hand, and U.S. domestic laws on the other, these crimes cannot be considered **"punishable under the laws in both Contracting Parties"** as required under the RP-US Extradition Treaty, and hence, cannot be considered as extraditable offenses under the treaty. The crimes considered as Genocide, War Crimes, and Other Crimes against Humanity under the Rome Statute and RA 9851 may not necessarily be considered as such crimes under United States laws. Consequently, the RP-US Extradition Treaty does not qualify as an **"applicable"extradition law or treaty** under Section 17 of RA 9851, which allows the Philippines to surrender to another state a person accused of Genocide, War Crimes and Other Crimes against Humanity. **In short, the Philippines cannot surrender to the United States a U.S. national accused of any of these grave international crimes, when the United States does not have the same or similar laws to prosecute such crimes.**

Neither is the RP-US Non-Surrender Agreement an "applicable" extradition law or treaty as required in Section 17 of RA 9851. Thus, the Agreement cannot be implemented by the Philippine Government in the absence of an applicable extradition law or treaty allowing the surrender to the United States of U.S. nationals accused of crimes under RA 9851.

If a U.S. national is under investigation or prosecution by an international tribunal for any crime punishable under RA 9851, the Philippines has the option to surrender such U.S. national to the international tribunal if the Philippines decides not to prosecute such U.S. national in the Philippines. This option of the Philippine Government under Section 17 of RA 9851 is not subject to the consent of the United States. **Any derogation from Section 17, such as requiring the consent of the United States before the Philippines can exercise such option, requires an amendment to RA 9851 by way of either an extradition law or treaty. Such an amendment cannot be embodied in**

a mere executive agreement or an exchange of notes such as the assailed Agreement.

Section 17 of RA 9851 has clearly raised to a **statutory level** the surrender to another State of persons accused of any crime under RA 9851. Any agreement in derogation of Section 17, such as the surrender to the U.S. of a U.S. national accused of an act punishable under RA 9851 but not punishable under U.S. domestic laws, or the non-surrender to an international tribunal, without U.S. consent, of a U.S. national accused of a crime under RA 9851, cannot be made in a mere executive agreement or an exchange of notes. **Such surrender or non-surrender, being contrary to Section 17 of RA 9851, can only be made in an amendatory law, such as a subsequent extradition law or treaty.**

Moreover, Section 17 of RA 9851 allows the surrender to another State only "**if another court xxx is *already* conducting the investigation or undertaking the prosecution of such crime**." This means that ***only if*** the other State is already investigating or prosecuting the crime can the Philippines surrender the accused to such other State. The RP-US Non-Surrender Agreement does not require that the United States must already be investigating or prosecuting the crime before the Philippines can surrender the accused. In fact, a U.S. national accused of a crime under RA 9851 may not even be chargeable of such crime in the U.S. because the same act may not be a crime under U.S. domestic laws. In such a case, the U.S. cannot even conduct an investigation of the accused, much less prosecute him for the same act. Thus, the RP-US Non-Surrender Agreement violates the condition in Section 17 of RA 9851 that the other State must ***already*** be investigating or prosecuting the accused for the crime penalized under RA 9851 before the Philippines can surrender such accused.

To repeat, the assailed Agreement prevents the Philippines, **without the consent of the United States**, from surrendering to any international tribunal U.S. nationals accused of crimes under RA 9851. Such consent is not required under RA 9851which mandates that any non-surrender without the consent of another

State must be embodied in an extradition law or treaty. The assailed Agreement also dispenses with the condition in Section 17 that before the Philippines can surrender the accused to the United States, the accused must already be under investigation or prosecution by the United States for the crime penalized under RA 9851, a condition that may be impossible to fulfill because not all crimes under RA 9851 are recognized as crimes in the United States. **Thus, the Agreement violates Section 17 of RA 9851 as well as existing municipal laws arising from the incorporation doctrine of the Constitution.** The Agreement cannot be embodied in a simple executive agreement or an exchange of notes, but must be implemented through an extradition law or a treaty ratified with the concurrence of at least two-thirds of all the members of the Senate.

In international law, there is no difference between treaties and executive agreements on their binding effect upon party states, as long as the negotiating functionaries have remained within their powers.[18] However, while the differences in nomenclature and form of various types of international agreements are immaterial in international law, they have significance in the municipal law of the parties.[19] An example is the requirement of concurrence of the legislative body with respect to treaties, whereas with respect to executive agreements, the head of State may act alone to enforce such agreements.[20]

The 1987 Philippine Constitution provides: "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."[21] This express constitutional requirement makes treaties

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[18] *Bayan v. Zamora*, G.R. No. 138570, 10 October 2000, 342 SCRA 449, 489, citing Richard J. Erickson, "The Making of Executive Agreements by the United States Department of Defense: An Agenda for Progress," 13 Boston U. Intl. L.J. 58 (1995).

[19] Jorge R. Coquia and Miriam Defensor Santiago, *Public International Law* (1984), p. 585.

[20] *Id*.

[21] CONSTITUTION (1987), Art. VII, Sec. 21.

different from executive agreements, which require no legislative concurrence.

An executive agreement can only implement, and not amend or repeal, an existing law. As I have discussed in *Suplico v. National Economic and Development Authority*,[22] although an executive agreement has the force and effect of law, just like implementing rules of executive agencies, it cannot amend or repeal prior laws, but must comply with the laws it implements.[23] An executive agreement, being an exclusive act of the Executive branch, does not have the status of a municipal law.[24] Acting alone, the Executive has no law-making power; and while it has rule-making power, such power must be exercised consistent with the law it seeks to implement.[25]

Thus, an executive agreement cannot amend or repeal a prior law, but must comply with State policy embodied in an existing municipal law.[26] This also means that an executive agreement, which at the time of its execution complies with then existing law, is deemed amended or repealed by a subsequent law inconsistent with such executive agreement. Under no circumstance can a mere executive agreement prevail over a prior or subsequent law inconsistent with such executive agreement.

This is clear from Article 7 of the Civil Code, which provides:

Article 7. x x x

Administrative or **executive acts**, orders and regulations **shall be valid only when they are not contrary to the laws** or the Constitution. (Emphasis supplied)

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[22] Dissenting Opinion, G.R. No. 178830, 14 July 2008, 558 SCRA 329, 360-391.

[23] *Id.* at 376, citing *Land Bank of the Philippines v. Court of Appeals*, 319 Phil. 246 (1995).

[24] *Id*.

[25] *Id*.

[26] *Id*.

An executive agreement like the assailed Agreement is an executive act of the President. Under Article 7 of the Civil Code, an executive agreement contrary to a prior law is void. Similarly, an executive agreement contrary to a subsequent law becomes void upon the effectivity of such subsequent law. Since Article 7 of the Civil Code provides that "executive acts shall be valid only when they are not contrary to the laws," once an executive act becomes contrary to law such executive act becomes void even if it was valid prior to the enactment of such subsequent law.

A treaty, on the other hand, acquires the status of a municipal law upon ratification by the Senate. Hence, a treaty may amend or repeal a prior law and *vice-versa*.[27] Unlike an executive agreement, a treaty may change state policy embodied in a prior and existing law.

In the United States, from where we adopted the concept of executive agreements, the prevailing view is that **executive agreements cannot alter existing law but must conform to all statutory requirements**.[28] The U.S. State Department made a distinction between treaties and executive agreements in this manner:

> x x x it may be desirable to point out here the well-recognized distinction between an executive agreement and a treaty. In brief, it is that **the former cannot alter the existing law and must conform to all statutory enactments**, whereas a treaty, if ratified by and with the advice and consent of two-thirds of the Senate, as required by the Constitution, itself becomes the supreme law of the land and takes precedence over any prior statutory enactments.[29] (Emphasis supplied)

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[27] *Id.*, citing *Secretary of Justice v. Lantion*, 379 Phil. 165 (2000).

[28] *Id.* at 377.

[29] *Id.*, citing Prof. Edwin Borchard (Justus S. Hotchkiss Professor of Law, Yale Law School), *Treaties and Executive Agreements - A Reply*, Yale Law Journal, June 1945, citing Current Information Series, No. 1, 3 July 1934, quoted in 5 Hackworth, Digest of International Law (1943) pp. 425-426.

The Agreement involved in this case is an executive agreement entered into via an exchange of notes.[30] The parties to the Agreement (RP and US) agree not to surrender each other's nationals[31] to any international tribunal or to a third party for the purpose of surrendering to any international tribunal, **without the other's consent**, pursuant to the pronounced objective of "protect[ing] Philippine and American personnel from frivolous and harassment suits that might be brought against them in international tribunals."[32] **The Agreement amends existing Philippine State policy as embodied in municipal law arising from generally accepted principles of international law which form part of the law of the land**. The Agreement also runs counter to RA 9851 which criminalized wholesale all acts defined as international crimes in the Rome Statute, an international treaty which the Philippines has signed but has still to ratify.[33] The Agreement frustrates the objectives of generally accepted principles of international law embodied in the Rome Statute. Thus, considering its nature, the Agreement should be embodied not in an executive agreement, but in a treaty which, under the Philippine Constitution, shall be valid and effective only if concurred in by at least two-thirds of all the members of the Senate.

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[30] E/N BFO-028-03; Paper on the RP-US Non-Surrender Agreement, *rollo*, p. 72.

An "exchange of notes" is "an interchange of diplomatic notes between a diplomatic representative and the minister of foreign affairs of the State to which he is accredited. xxx" [Coquia and Santiago, *supra* note 3, p. 584.] It is a record of routine agreement, consisting of the exchange of two or more documents, each of the parties being in the possession of the one signed by the representative of the other, and is resorted to because of its speedy procedure, or to avoid the process of legislative approval. [Ruben Agpalo, *Public International Law* (2006), p. 379.]

[31] The Agreement actually uses the term "persons" which refer to "Government officials, employees (including contractors), or military personnel or nationals of one Party." See *rollo*, p. 68.

[32] Paper on the RP-US Non-Surrender Agreement, *supra* note 30.

[33] The Philippines signed the *Rome Statute of International Criminal Court* on 28 December 2000, but has yet to ratify the same. See www.iccnow.org; last visited on 12 July 2010.

The 1987 Philippine Constitution states as one of its principles, as follows:

> The Philippines x x x adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.[34]

This constitutional provision enunciates the doctrine of incorporation which mandates that the Philippines is bound by generally accepted principles of international law which automatically form part of Philippine law by operation of the Constitution.[35]

In *Kuroda v. Jalandoni*,[36] this Court held that this constitutional provision "is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory." The pertinent portion of Kuroda states:

> **It cannot be denied that the rules and regulation of The Hague and Geneva Conventions form part of and are wholly based on the generally accepted principles of international law. x x x Such rule and principles, therefore, form part of the law of our nation even if the Philippines was not a signatory to the conventions embodying them**, for our Constitution has been deliberately general and extensive in its scope and is not confined to the recognition of rules and principles of international law as contained in treaties to which our government may have been or shall be a signatory.[37] (Emphasis supplied)

Hence, generally accepted principles of international law form part of Philippine laws even if they do not derive from treaty obligations of the Philippines.[38]

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[34] CONSTITUTION (1987), Art. II, Sec. 2.

[35] Agpalo, *supra* note 30, p. 421.

[36] 83 Phil. 171, 178 (1949).

[37] *Id.*

[38] *Mijares v. Ranada*, G.R. No. 139325, 12 April 2005, 455 SCRA 397, 421 citing H. Thirlway, "*The Sources of International Law*," International Law (ed. by M. Evans, 1st ed., 2003), p. 124.

Generally accepted principles of international law, as referred to in the Constitution, include customary international law.[39] Customary international law is one of the primary sources of international law under Article 38 of the Statute of the International Court of Justice.[40] Customary international law consists of acts which, by repetition of States of similar international acts for a number of years, occur out of a sense of obligation, and taken by a significant number of States.[41] It is based on custom, which is a clear and continuous habit of doing certain actions, which has grown under the aegis of the conviction that these actions are, according to international law, obligatory or right.[42] Thus, customary international law requires the concurrence of two elements: "[1] the established, wide-spread, and consistent practice on the part of the States; and [2] a psychological element known as *opinion juris sive necessitatis* (opinion as to law or necessity). Implicit in the latter element is a belief that the practice in question is rendered obligatory by the existence of a rule of law requiring it."[43]

Some customary international laws have been affirmed and embodied in treaties and conventions. A treaty constitutes evidence

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[39] Jovito Salonga and Pedro Yap, *Public International Law*, 5th ed. (1992), p. 12.

[40] Article 38 of the Statute of International Court of Justice reads:

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

xxx xxx xxx

[41] Agpalo, *supra* note 30, p. 6.

[42] *Id.*, citing Oppenheimer's *International Law*, 9th ed., p. 27.

[43] *Id.* at 7, citing *Mijares v. Ranada*, *supra* note 38.

of customary law if it is declaratory of customary law, or if it is intended to codify customary law. **In such a case, even a State not party to the treaty would be bound thereby.**[44] **A treaty which is merely a formal expression of customary international law is enforceable on all States because of their membership in the family of nations**.[45] For instance, the Vienna Convention on Consular Relations is binding even on non-party States because the provisions of the Convention are mostly codified rules of customary international law binding on all States even before their codification into the Vienna Convention.[46] Another example is the Law of the Sea, which consists mostly of codified rules of customary international law, which have been universally observed even before the Law of the Sea was ratified by participating States.[47]

Corollarily, treaties may become the basis of customary international law. While States which are not parties to treaties or international agreements are not bound thereby, such agreements, if widely accepted for years by many States, may transform into customary international laws, in which case, they bind even non-signatory States.[48]

In *Republic v. Sandiganbayan*,[49] this Court held that even in the absence of the Constitution,[50] generally accepted principles

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[44] Isagani Cruz, *International Law* (1998), p. 23.

[45] *Id.* at 175.

[46] Agpalo, *supra* note 30, p. 9.

[47] *Id*.

[48] *Id.* at 6.

[49] G.R. No. 104768, 23 July 2003, 407 SCRA 10, 51, 56-57.

[50] The 1973 Philippine Constitution also provides for the Doctrine of Incorporation, to wit:

Article II
Declaration of Principles and State Policies

xxx xxx xxx

Section 3. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part

of international law remain part of the laws of the Philippines. During the interregnum, or the period after the actual takeover of power by the revolutionary government in the Philippines, following the cessation of resistance by loyalist forces up to 24 March 1986 (immediately before the adoption of the Provisional Constitution), the 1973 Philippine Constitution was abrogated and there was no municipal law higher than the directives and orders of the revolutionary government. Nevertheless, this Court ruled that even during this period, the provisions of the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights, to which the Philippines is a signatory, remained in effect in the country. The Covenant and Declaration are based on generally accepted principles of international law which are applicable in the Philippines even in the absence of a constitution, as during the interregnum. Consequently, applying the provisions of the Covenant and the Declaration, the Filipino people continued to enjoy almost the same rights found in the Bill of Rights despite the abrogation of the 1973 Constitution.

The Rome Statute of the International Criminal Court was adopted by 120 members of the United Nations (UN) on 17 July 1998.[51] It entered into force on 1 July 2002, after 60 States became party to the Statute through ratification or accession.[52] The adoption of the Rome Statute fulfilled the international community's long-time dream of creating a permanent international tribunal to try serious international crimes. The Rome Statute, which established an international criminal court and formally declared genocide, war crimes and other crimes against humanity as serious international crimes, **codified generally accepted principles of international law, including customary international laws**. The principles of law embodied in the Rome Statute were already generally accepted principles of international

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of the law of the land, and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

[51] http://www.un.org/News/facts/iccfact.htm; last visited on 1 November 2010.

[52] *Id.*

law even prior to the adoption of the Statute. Subsequently, the Rome Statute itself has been widely accepted and, as of November 2010, it has been ratified by 114 states, 113 of which are members of the UN.[53]

There are at present 192 members of the UN. Since 113 member states have already ratified the Rome Statute, more than a majority of all the UN members have now adopted the Rome Statute as part of their municipal laws. Thus, the Rome Statute itself is generally accepted by the community of nations as constituting a body of generally accepted principles of international law. **The principles of law found in the Rome Statute constitute generally accepted principles of international law enforceable in the Philippines under the Philippine Constitution**. The principles of law embodied in the Rome Statute are binding on the Philippines even if the Statute has yet to be ratified by the Philippine Senate. In short, the principles of law enunciated in the Rome Statute are now part of Philippine domestic law pursuant to Section 2, Article II of the 1987 Philippine Constitution.

Article 89(1) of the Rome Statute provides as follows:

Surrender of persons to the Court

1. The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

xxx xxx xxx

It is a principle of international law that a person accused of genocide, war crimes and other crimes against humanity shall be prosecuted by the international community. A State where such a person may be found has the primary

[53] See http://www.un.org/en/members/index.shtml and http://www.icc-cpi.int/Menus/ASP/ states+parties; last visited on 1 November 2010.

jurisdiction to prosecute such person, regardless of nationality and where the crime was committed. However, if a State does not exercise such primary jurisdiction, then such State has the obligation to turn over the accused to the international tribunal vested with jurisdiction to try such person. *This principle has been codified in Section 2(e) and Section 17 of RA 9851*.

Moreover, Section 15 of RA 9851 has expressly adopted "[**r]elevant and applicable international human rights instruments**" as sources of international law in the application and interpretation of RA 9851, thus:

> Section 15. ***Applicability of International Law***. - In the application and interpretation of this Act, Philippine courts shall be guided by the following sources:
>
> (a) x x x
>
> xxx xxx xxx
>
> (e) The rules and principles of customary international law;
>
> xxx xxx xxx
>
> (g) **Relevant and applicable international human rights instruments**;
>
> (h) Other relevant international treaties and conventions ratified or acceded to by the Republic of the Philippines; and
>
> xxx xxx xxx. (Emphasis supplied)

The Rome Statute is the most relevant and applicable international human rights instrument in the application and interpretation of RA 9851. Section 15(g) of RA 9851 authorizes the use of the Rome Statute as a source of international law even though the Philippines is not a party to the Rome Statute. Section 15(g) does not require ratification by the Philippines to such relevant and applicable international human rights instruments. International human rights instruments to which the Philippines is a party are governed by Section 15(h), referring to treaties or conventions "ratified or acceded to" by the Philippines, which constitute a different category of sources

of international law under Section 15 of RA 9851. Thus, Section 15(g) and Section 15(h) refer to different instruments, the former to international human rights instruments to which the Philippines is not a party, and the latter to international human rights instruments to which the Philippines is a party. By mandate of Section 15 of RA 9851, both categories of instruments are sources of international law in the application and interpretation of RA 9851.

However, paragraph 2 of the assailed RP-US Non-Surrender Agreement provides as follows:

> 2. Persons of one Party present in the territory of the other shall not, absent the express consent of the first Party,
>
> (a) be surrendered or transferred by any means to any international tribunal for any purpose, unless such tribunal has been established by the UN Security Council, or
>
> (b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to any international tribunal, unless such tribunal has been established by the UN Security Council.

Clearly, the Agreement is in derogation of Article 89(1) of the Rome Statute. While Article 98(2) of the Rome Statute, which states as follows:

> 2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under **international agreements** pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender. (Emphasis supplied)

allows for derogation of Article 89(1) if there is an **international agreement** between States allowing such derogation, such international agreement, being in derogation of an existing municipal law insofar as the Philippines is concerned, **must be embodied in a treaty and ratified by the Philippine Senate**. Article 98(2) does not *ipso facto* allow a derogation of

Article 89(1), but requires a further act, that is, the execution of an international agreement. **Since such international agreement is in derogation of Article 89(1) of the Rome Statute and Section 17 of RA 8951, such international agreement must be ratified by the Senate to become valid and effective**.

Incidentally, the RP-US Non-Surrender Agreement allows the Philippines to surrender, **even without U.S. consent**, a U.S. national accused of a crime under RA 9851 provided that the surrender is made to an "international tribunal xxx established by the UN Security Council." The United States agrees to this because it has a veto power in the UN Security Council, a blocking power which it does not have, and cannot have, in the International Criminal Court.

The International Criminal Court created under the Rome Statute was designed to complement the efforts of states to prosecute their own citizens domestically while ensuring that those who violate international law would be brought to justice.[54] A state is given a chance to exercise complementarity[55] by informing the ICC of its choice to investigate and prosecute its own nationals through its own domestic courts.[56] Thus, the

[54] Victoria K. Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," The Henry L. Stimson Center, Report No. 55, *supra* note 11, pp. 21-22.

[55] "Under the premise of complementarity, the primary jurisdiction for any case lies first with the state's national judicial systems." [*Id.* at 35.]

[56] If the ICC Prosecutor believes that the crime committed is within the ICC's discretion and that investigations should be initiated, the Prosecutor must seek authorization from the Pre-Trial Chamber, which is the judicial body charged with evaluating and commencing investigations. If the Pre-Trial Chamber believes there is a "reasonable basis to proceed with an investigation," and the case "appears to fall within the jurisdiction of the Court," the Prosecutor must inform the states and parties involved. "xxx [A] state, whether or not a member of the ICC, can exercise complementarity by informing the Court within one month of notification by the Prosecutor, that it chooses to investigate the case and, if sufficient evidence exists, to prosecute through its own national criminal justice systems. Under the Rome Statute, the Prosecutor must defer to the state's request to investigate and prosecute at that national level unless the Pre-Trial Chamber determines that the state is unable or

State has the primary jurisdiction to investigate and prosecute its own nationals in its custody who may have committed the grave international crimes specified in the Rome Statute. Under the same precept, Article 98(2) of the Rome Statute allows the State of the accused to act consistently with its obligations under international agreements, and the ICC "may not proceed with a request for surrender" which would require such State to act otherwise. The ICC steps in and assumes jurisdiction only if the State having primary jurisdiction and custody of the accused refuses to fulfill its international duty to prosecute those responsible for grave international crimes.

The United States has not ratified the Rome Statute, and instead, entered into bilateral non-surrender agreements with countries, citing its ability to do so under Article 98(2) of the Rome Statute.[57] These agreements, also called Bilateral Immunity Agreements (BIA),[58] were intended as "**means [to provide] assurances that no U.S. citizen would be handed over to the (International Criminal) Court for investigation and prosecution of alleged crimes that fell within the Court's jurisdiction**. xxx"[59] There is currently an argument within the international community about the use of Article 98 agreements, as negotiated by the U.S. after the adoption of the Rome Statute, and whether they should be recognized as having precedent over ICC's authority.[60] When Article 98 was originally included in the Rome Statute, it was intended to cover Status of Forces Agreements (SOFAs) and Status of Missions Agreements

unwilling to exercise jurisdiction effectively and decides to authorize the Prosecutor to investigate the claim. [*Id.* at 24-25, citing the Rome Statute, Articles 15(4), 18(1-3) and 19.]

[57] *Id.* at 16.

[58] *Id.* at 53.

[59] *Id.* at 11.

As of May 2005, the U.S. Administration has signed bilateral agreements with 100 countries, 42 of which are states parties to the Rome Statute, in which they pledged not to turn American citizens over to the Court. [*Id.* at 13 and 53.]

[60] *Id.* at 54.

(SOMAs),[61] which establish the responsibilities of a nation sending troops to another country, as well as where jurisdiction lies between the U.S. and the host government over criminal and civil issues involving the deployed personnel.[62] However, under the BIAs, the standard definition of "persons" covered is "current or former Government officials, employees (including contractors), or military personnel or **nationals of one party**."[63] The Bush Administration[64] contends that "such bilateral non-surrender agreements are Article 98(2) agreements and that all US citizens of whatever character are covered by any such agreement, xxx [and this] US position on scope of the bilateral non-surrender agreements, namely that it **includes US citizens acting in their private capacity**, 'is legally supported by the text, the negotiating record, and precedent.'"[65] **Meanwhile, international legal**

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[61] *Id.*, citing AMICC, "Bilateral Immunity Agreements," available at http://www.amicc.org/usinfo/ administration_policy_BIAs.html.

[62] *Id.*, citing Global Security, "Status of Forces Agreements," available at http://www.globalsecurity. org/military/facility/sofa.htm.

SOFAs define the legal status of U.S. personnel and property in the territory of another country. Their purpose is to set forth rights and responsibilities between the U.S. and the host country on such matters as civil and criminal jurisdiction, the wearing of the uniform, the carrying of arms, tax and customs relief, entry and exit of personnel and property, and resolving damage claims. [Global Security, "Status of Forces Agreements," *id.*; last visited on 11 August 2010.]

[63] David Scheffer, "Article 98(2) of the Rome Statute: America's Original Intent," pp. 344-345; available at http://jicj.oxfordjournals.org/cgi/reprint/3/2/333; last visited on 6 August 2010.

[64] The administration of former U.S. President George W. Bush.

[65] David Scheffer, "Article 98(2) of the Rome Statute: America's Original Intent," *supra* note 63, pp. 344-345; citing "Proposed Text of Article 98 Agreements with the United States," July 2002, available at http://www.iccnow.org/documents/otherissues/impunityart98/USArticle98Agreement/Aug02.pdf; and L. Bloomfield, "The U.S. Government and the International Criminal Court," Remarks to the Parliamentarians for Global Action, Consultative Assembly of Parliamentarians for the International criminal Court and the Rule of Law, New York, 12 September 2003, available at http://www.amicc.org/docs/ Bolton11_3_03.pdf.

scholars and members of the US JAG Corps involved in the drafting of the Rome Statute expressed frustration with the "expansive use of Article 98 agreements to apply to all Americans, not just those individuals usually covered in SOFAs and SOMAs."[66] There are even those who contend that since the BIAs do not deal solely with the conduct of official business, rather, they apply to a wide variety of persons who may be on the territory of either party for any purpose at any time, then "the Rome Statute does not authorize these agreements and by adhering to them, the countries will violate their obligations to the [ICC] under the Statute."[67] Regardless of these contentions, however, the ultimate judge as to what agreement qualifies under Article 98(2) of the Rome Statute is the ICC itself.[68]

The assailed RP-US Non-Surrender Agreement covers "officials, employees, military personnel, and **nationals**." Under the Agreement, the Philippines is not allowed, without U.S. consent, to surrender to an international tribunal, including the ICC, U.S. nationals — whether military personnel or plain civilians — accused of genocide, war crimes and other crimes against humanity, that is, the crimes covered by the Rome Statute and RA 9851. Whether or not this Agreement would be recognized by the ICC as an "international agreement" qualified under Article 98(2) depends on the ICC itself. In the domestic sphere, however, the Agreement, being in derogation of the generally accepted principles of international law embodied in Article 89(1) of the Rome Statute, as well as being contrary to the provisions of Section 17 of RA 9851, should be ratified by the Philippine

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[66] Victoria K. Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," The Henry L. Stimson Center, Report No. 55, *supra* note 11, citing the Stimson Workshop.

[67] AMICC, "Bilateral Immunity Agreements," *supra* note 61; last visited on 11 August 2010.

[68] The determination would be done by the ICC's *Chambers* comprised of 18 judges. [Victoria K. Holt and Elisabeth W. Dallas, "On Trial: The US Military and the International Criminal Court," The Henry L. Stimson Center, Report No. 55; *supra* note 11, pp. 54 and 22; see also note 14.]

Senate to be valid and effective.

In sum, any derogation from the generally accepted principles of international law embodied in the Rome Statute, which principles have the status of municipal law in this country, cannot be undertaken through a mere executive agreement because an executive agreement cannot amend existing laws. A law or a treaty ratified by the Philippine Senate is necessary to amend, for purposes of domestic law, a derogable principle of international law, such as Article 89(1) of the Rome Statute, which has the status of municipal law.

Likewise, any derogation from the surrender option of the Philippines under Section 17 of RA 9851 must be embodied in an applicable extradition law or treaty and not in a mere executive agreement because such derogation violates RA 9851, which is superior to, and prevails over, a prior executive agreement allowing such derogation. Under no circumstance can a mere executive agreement prevail over a prior or subsequent law inconsistent with such executive agreement. Thus, the RP-US Non-Surrender Agreement to be valid and effective must be ratified by the Philippine Senate, and unless so ratified, the Agreement is without force and effect.

ACCORDINGLY, I vote to *GRANT* the petition and to *DECLARE* the RP-US Non-Surrender Agreement ineffective and unenforceable unless and until ratified by the Senate of the Philippines.

THIRD DIVISION

[G.R. No. 159781. February 2, 2011]

PETER BEJARASCO, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; THE CLIENT IS BOUND BY THE COUNSEL'S ACTS, INCLUDING EVEN MISTAKES IN THE REALM OF PROCEDURAL TECHNIQUE; EXCEPTION; NOT PRESENT IN CASE AT BAR.— The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique. The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him. Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.

2. REMEDIAL LAW; APPEALS; THE RIGHT TO APPEAL IS NOT A NATURAL RIGHT OR A PART OF DUE PROCESS, BUT IS MERELY A STATUTORY PRIVILEGE THAT MAY

BE EXERCISED ONLY IN THE MANNER PRESCRIBED BY LAW.— The petitioner's failure to know or to find out the real status of his appeal rendered him undeserving of any sympathy from the Court *vis-à-vis* the negligence of his former counsel. The right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. So it is with the petitioner.

APPEARANCES OF COUNSEL

New Law Firm of Cahig Canares & Clarin for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the dire consequences of a litigant's failure to periodically follow up with his counsel on the developments of his appeal.

The petitioner was convicted on February 16, 2001, for *grave threats* and *grave oral defamation* in the Municipal Trial Court (MTC) in Sibonga, Cebu. On July 31, 2001, the Regional Trial Court (RTC), Branch 26, in Argao, Cebu affirmed the convictions. In due course, the petitioner, then represented by the Public Attorney's Office (PAO), sought the reconsideration of the RTC decision, claiming that he had not filed his appeal memorandum because of the MTC's failure to give him free copies of the transcripts of stenographic notes. He argued that the RTC's decision should be set aside and the criminal cases against him should be dismissed due to the prematurity and the serious errors of facts and law. However, the RTC denied the petitioner's *motion for reconsideration* on September 24, 2001.

On October 12, 2001, the petitioner, this time represented by Atty. Luzmindo B. Besario (Atty. Besario), a private practitioner, filed in the Court of Appeals (CA) a motion for extension of time to file his petition for review (C.A.-G.R. CR No. UDK-181). The CA granted his motion. Instead of filing his petition for review within the period granted, however, Atty. Besario sought another extension, but still failed in the end to file the petition for review. Thus, on March 13, 2002, the CA dismissed his appeal. After the dismissal became final and executory, entry of judgment was made on April 4, 2002.

Thereafter, on March 31, 2003, the MTC issued a warrant of arrest against the petitioner, who surrendered himself on May 22, 2003.

On July 16, 2003, the petitioner filed in the CA his petition for review through another attorney, alleging that Atty. Besario had recklessly abandoned him and had disappeared without leaving a trace.

In its resolution dated August 14, 2003, the CA denied admission to the petition for review and ordered it expunged from the records; and reiterated its March 13, 2002 resolution of dismissal.[1]

Aggrieved, the petitioner is now before the Court to plead his cause. He submits that Atty. Besario's reckless abandonment of his case effectively deprived him of his day in court and of his right to due process; and that said former counsel's actuation constituted reckless and gross negligence that should not be binding against him.

The petition is denied due course.

That Atty. Besario was negligent in handling the petitioner's case was clear. Indeed, his abject failure to file the petition for review in the CA despite his two motions for extension for that purpose warranted no other conclusion but that he was negligent.

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[1] *Rollo*, p. 46.

Nonetheless, we find no justification to reverse the CA's disposition of the appeal. The petitioner was bound by Atty. Besario's negligence.

The general rule is that a client is bound by the counsel's acts, including even mistakes in the realm of procedural technique.[2] The rationale for the rule is that a counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself.[3] A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

Truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case;[4] hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough.

Here, the petitioner took nearly 16 months from the issuance of the entry of judgment by the CA, and almost 22 months from when the RTC affirmed the convictions before he actually

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[2] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 126620, April 17, 2002, 381 SCRA 185, 192.

[3] *People v. Bitanga*, G.R. No. 159222, June 26, 2007, 525 SCRA 623, 632.

[4] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 31, citing *Bernardo v. Court of Appeals (Special Sixth Division)*, G.R. No. 106153, July 14, 1997, 275 SCRA 413.

filed his petition for review in the CA. He ought to have been sooner alerted about his dire situation by the fact that an unreasonably long time had lapsed since the RTC had handed down its dismissal of his appeal without Atty. Besario having updated him on the developments, including showing to him a copy of the expected petition for review. Also, he could have himself verified at the CA whether or not the petition for review had been filed, especially upon realizing that Atty. Besario had started making himself scarce to him. In short, the petitioner's failure to know or to find out the real status of his appeal rendered him undeserving of any sympathy from the Court *vis-à-vis* the negligence of his former counsel.

The right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by the law.[5] The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. So it is with the petitioner.

WHEREFORE, the Court affirms the resolution promulgated on August 14, 2003 in C.A. G.R. CR No. UDK-181 for failure of the petitioner to show a reversible error committed by the Court of Appeals.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

[5] *Estate of Felomina G. Macadangdang v. Gaviola*, G.R. No. 156809, March 4, 2009, 580 SCRA 565, 573.

SECOND DIVISION

[G.R. No. 165575. February 2, 2011]

ADELIA C. MENDOZA and as Attorney-in-Fact of ALICE MALLETA, *petitioners, vs.* **UNITED COCONUT PLANTERS BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; RIGHT TO APPEAL, NEITHER A NATURAL NOR A PART OF DUE PROCESS.— The right to appeal is neither 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. An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court.

2. ID.; APPEAL TO THE COURT OF APPEALS; CONTENTS OF APPELLANT'S BRIEF, ENUMERATED.— In regard to ordinary appealed cases to the Court of Appeals, such as this case, Section 13, Rule 44 of the 1997 Rules of Civil Procedure provides for the contents of an Appellant's Brief, thus: Sec. 13. *Contents of appellant's brief.*—The appellant's brief shall contain, in the order herein indicated, the following: (a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited; (b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively; (c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record; (d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating

thereto in sufficient detail to make it clearly intelligible, with page references to the record; (e) A clear and concise statement of the issues of fact or law to be submitted to the court for its judgment; (f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found; (g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and (h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

3. ID.; ID.; ID.; FUNCTION OF THE SUBJECT INDEX, EXPLAINED.— ***De Liano v. Court of Appeals*** declared that the subject index functions like a table of contents, facilitating the review of appeals by providing ready reference. It held that: [t]he first requirement of an appellant's brief is a subject index. The index is intended to facilitate the review of appeals by providing ready reference, functioning much like a table of contents. Unlike in other jurisdictions, there is no limit on the length of appeal briefs or appeal memoranda filed before appellate courts. The danger of this is the very real possibility that the reviewing tribunal will be swamped with voluminous documents. This occurs even though the rules consistently urge the parties to be "brief" or "concise" in the drafting of pleadings, briefs, and other papers to be filed in court. The subject index makes readily available at one's fingertips the subject of the contents of the brief so that the need to thumb through the brief page after page to locate a party's arguments, or a particular citation, or whatever else needs to be found and considered, is obviated.

4. ID.; ID.; ID.; ASSIGNMENT OF ERRORS; DISTINGUISHED FROM THE STATEMENT OF THE ISSUES OF FACT OR LAW.— The requirement under Section 13, Rule 44 of the 1997 Rules of Civil Procedure for an "*assignment of errors*" in paragraph (b) thereof is different from a "statement of the *issues* of fact or law" in paragraph (e) thereof. The statement of issues is not to be confused with the assignment of errors, since they are not one and the same; otherwise, the rules would not require a separate statement for each. An assignment of errors is an enumeration by the appellant of the errors alleged

to have been committed by the trial court for which he/she seeks to obtain a reversal of the judgment, while the statement of issues puts forth the questions of fact or law to be resolved by the appellate court.

5. ID.; ID.; ID.; ID.; ABSENCE THEREOF AND PAGE REFERENCES TO THE RECORD IN THE STATEMENT OF FACTS ARE GROUNDS FOR DISMISSAL OF APPEAL. — The assignment of errors and page references to the record in the statement of facts are important in an Appellant's Brief as the absence thereof is a basis for the dismissal of an appeal under Section 1 (f), Rule 50, of the 1997 Rules of Civil Procedure, thus: SECTION 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds: x x x x (f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44.

6. ID.; ID.; FORMAL REQUIREMENTS UNDER THE RULES OF CIVIL PROCEDURE ARE DESIGNED FOR THE PROPER AND PROMPT DISPOSITION OF CASES BEFORE THE COURT OF APPEALS; SUSTAINED IN CASE AT BAR.— Rules 44 and 50 of the 1997 Rules of Civil Procedure are designed for the proper and prompt disposition of cases before the Court of Appeals. Rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose. The Court of Appeals noted in its Resolution denying petitioners' motion for reconsideration that despite ample opportunity, petitioners never attempted to file an amended appellants' brief correcting the deficiencies of their brief, but obstinately clung to their argument that their Appellants' Brief substantially complied with the rules. Such obstinacy is incongruous with their plea for liberality in construing the rules on appeal. ***De Liano v. Court of Appeals*** held: Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something

> so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration. It comes as an unpleasant shock to us that the contents of an appellant's brief should still be raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, which took effect on July 1, 1940, as well as the Revised Rules of Court, which took effect on January 1, 1964, until they were superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions.

APPEARANCES OF COUNSEL

Lagman Lagman and Mones Law Firm for petitioner.
Lainez & Partners Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Court of Appeals' Resolution dated July 2, 2004, in CA-G.R. CV No. 79796, and its Resolution dated September 9, 2004, denying petitioners' motion for reconsideration. The Court of Appeals dismissed the Appellants' Brief filed by petitioners for failure to comply with the requirements under Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure.

The facts are as follows:

On November 5, 2001, petitioner Adelia Mendoza, attorney-in-fact of petitioner Alice Malleta, filed a Complaint[2] for annulment of titles, foreclosure proceedings and certificate of sale with the Regional Trial Court (RTC) of Lipa City, Fourth Judicial Region.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 41-91.

In their Complaint, herein petitioners stated that on October 6, 1995, they entered into a Real Estate Mortgage Contract with respondent United Coconut Planters Bank (UCPB) in the amount of ₱4,925,000.00.[3] On August 27, 1998, the properties were sold at public auction in the total amount of ₱31,300,00.00 to UCPB. On September 17, 2001, an Affidavit of Consolidation was executed by UCPB.

Petitioners contended that the foreclosure proceedings violated due process and the legal requirements under Act No. 3135, as amended, on the following grounds:

a) There was no valid and legal notice to petitioner Adelia Mendoza of the foreclosure proceedings;

b) There was no valid and legal notice of the auction sale;

c) There was no valid and legal notice of the consolidation of ownership;

d) There was no valid publication and notice as required by law;

e) There was a violation of Republic Act No. 3765, "An Act to Require the Disclosure of Finance Charges in Connection with Extensions of Credit," specifically Section 6 of the law;

f) There was no clear and accurate financial statement showing the application of payments of the plaintiffs (petitioners herein); and

g) There was no valid letter of demand showing the clear finance charges.

Petitioners prayed that the foreclosure proceedings and Certificate of Sale be annulled, and that if ever any new title is issued in lieu of their Transfer Certificates of Titles,[4] the same should be cancelled and annulled; that respondent be ordered to pay petitioners attorney's fees of ₱50,000.00 and litigation expenses of ₱20,000.00.

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[3] Annex "A", *id.* at 47.

[4] Annexes "A-1" to "A-63", records, pp. 14-76.

In its Answer with Compulsory Counterclaim,[5] respondent UCPB denied that petitioners entered into a Real Estate Mortgage Contract with it in the amount of ₱4,925,000.00, the truth being that petitioner Adelia Mendoza executed several promissory notes in the total principal amount of ₱27,500,000.00, and to secure these obligations she executed, together with petitioner Alice Malleta, several real estate mortgages over several parcels of land in favor of UCPB.

Respondent denied that the foreclosure proceedings were legally defective, as the said proceedings were done in accordance with the provisions of Act No. 3135, as amended. It countered that the law does not require personal notice to the mortgagor of the foreclosure proceedings and the auction sale, as the publication of the notice of sale in a newspaper of general circulation constitutes constructive notice to the whole world. Moreover, there is no legal requirement of personal notice to the mortgagor of the consolidation of ownership, as the registration of the certificate of sale with the Register of Deeds constitutes notice to the whole world that the mortgagor or any interested party has one year from the date of such registration to redeem the foreclosed properties. Respondent claimed that it complied with the posting requirements, and that it had also complied with the provisions of Republic Act No. 3765 and had regularly furnished petitioners with statements of account pursuant to standard banking practice.

Respondent contended that petitioners knew that the foreclosure was forthcoming due to their default in the payment of their obligations. Petitioners had been sent several verbal and written demands to pay their obligations and had been warned that failure to settle their obligations would result in the foreclosure of their properties. Further, petitioners had one year from the date of registration of the certificate of sale to redeem their property, but they failed to do so.

Respondent denied that there was "non-disclosure of finance charges without lawful and legal demand," since it had regularly

[5] Records, p. 96.

sent petitioners statements of account and had regularly given verbal and written notices to pay their obligations. It also denied the allegations of lack of reconciliation and verification of accounts. In this regard, respondent stated that petitioners could have easily verified their account with the account officers of UCPB, but they failed to do so.

As special and affirmative defenses, respondent stated that on August 9, 1994, petitioner Mendoza applied for and was granted a credit line in the amount of ₱25 million, which is supported by a Loan Agreement.[6] On October 9, 1995, the credit line was increased by ₱2.5 million, as evidenced by a Loan Agreement.[7] Petitioner Mendoza availed of the said credit line in the aggregate principal amount of Twenty-Seven Million Five Hundred Thousand Pesos (₱27.5 million) and executed promissory notes[8] therefor. Among other conditions, the promissory notes carried acceleration clauses, making these notes immediately due and payable even before maturity in case an event of default occurred, including, but not limited to, payment of principal and interest amortizations.

Moreover, respondent stated that on August 10, 1995, as partial security for the promissory notes, petitioner Malleta, through her attorney-in-fact, petitioner Adelia Mendoza, executed a real estate mortgage in favor of UCPB over several parcels of land registered under the name of Alice B. Malleta with the Register of Deeds of Lipa City. Later, pursuant to petitioner Mendoza's commitment with UCPB, the titles of the mortgaged properties were transferred under the name of Adelia B. Mendoza upon release of the loan proceeds and the mortgage annotation was carried over to the new titles.

According to respondent, on October 6, 1995, petitioner Mendoza executed a real estate mortgage over 12 parcels of

[6] Annex "1", *id*. at 107.

[7] Annex "2", *id*. at 113.

[8] Annexes, "3", "4", "5", *id*. at 119, 120, 121.

land,[9] all registered in her name, as additional security for the said promissory notes.

Respondent stated that petitioner Mendoza failed to discharge her obligations under the promissory notes, despite written and verbal demands made by UCPB upon her, the latest of which was the demand letter dated January 29, 1998.[10] Hence, it had no other recourse but to initiate foreclosure proceedings on the aforementioned securities.

Respondent averred that on May 6, 1998, it filed a Petition[11] for Extrajudicial Foreclosure of the mortgaged properties before the *Ex Officio* Sheriff of Lipa City.

On July 21, 1998, the Sheriff prepared a Notice of Sale[12] and set the date of the public sale on August 27, 1998.[13] On July 28, 1998, the Sheriff posted the Notice of Sale in three public places and the Notice was, likewise, published in *Tambuling Batangas*, a newspaper of general circulation, on July 22 and 29, 1998, and on August 5, 1998. The certificate of posting and publisher's affidavit of publication were attached as Annexes "12",[14] and "13",[15] respectively.

The public sale was conducted on August 28, 1998. The mortgaged properties were sold in the amount of ₱31,300,000.00 to UCPB as the highest and winning bidder. A Certificate of Sale[16] was issued in favor of UCPB, which was duly registered in July 2000 at the back of the certificates of title of the mortgaged properties with the Register of Deeds of Lipa City.

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[9] Annex "8", *id*. at 133.

[10] Annex "9", *id*. at 143.

[11] Annex "10", *id*. at 145.

[12] Annex "11", *id*. at 148.

[13] Annexes "10" and "11", *id*. at 145, 148.

[14] Records, p. 149.

[15] *Id*. at 150.

[16] Annex "15", *id*. at 169.

Petitioners failed to redeem the foreclosed properties within the one-year redemption period that expired on July 21, 2001. Consequently, UCPB consolidated its ownership over the said properties and new certificates of title were issued under its name.

Respondent stated that on August 27, 1998, the date of the auction sale, petitioners' outstanding obligation was ₱58,692,538.63, as evidenced by a Statement of Account.[17]

According to respondent, the proceeds of the foreclosure sale amounted to ₱31,300,000.00, leaving a deficiency of ₱27,392,538.63, an amount which it is entitled to payment from petitioner Mendoza, together with penalties and interest due thereon.

Respondent prayed that, after hearing, judgment be rendered (1) dismissing the Complaint for lack of merit; (2) on the counterclaim, ordering petitioners to pay the deficiency claim of ₱27,392,538.63, including the penalties and interests due thereon from August 27, 1998, and ₱1 million as attorney's fees and ₱200,000.00 as litigation expenses.

On March 25, 2003, respondent filed a Motion to Dismiss[18] for failure to prosecute. Respondent contended that petitioners, through counsel, received a copy of its Answer on August 26, 2002, as shown by the photocopy of the registry return receipt. It stated that under Section 1, Rule 18 of the 1997 Rules of Civil Procedure, petitioners have the positive duty to promptly set the case for pre-trial after the last pleading had been filed. It stated that the Answer was the last pleading, since petitioners failed to file a Reply thereon within the reglementary period.

Respondent stated that since August 26, 2002, or almost a period of six months, petitioners had not taken steps to set the case for pre-trial as mandated by the rules. Respondent submitted that the case should be dismissed for failure to prosecute for an unreasonable period of time as provided by Section 3, Rule 17

[17] Annex "17", *id.* at 238.

[18] Records, p. 239.

of the 1997 Rules of Civil Procedure. It asserted that failure to set the case for pre-trial for almost six (6) months is an unreasonable period of time, as a period of three (3) months had been found to constitute an unreasonable period of time in ***Montejo v. Urotia***.[19]

Petitioners, through counsel Atty. Jose P. Malabanan, filed an *Opposition to the Motion to Dismiss and Motion to Set the Case for Pre-trial*,[20] and stated therein that their counsel on record is Atty. Monchito C. Rosales, who died on December 22, 2002; that Atty. Jose P. Malabanan forgot the case because of the death of Atty. Rosales (who is his law partner), and that he was setting the case for pre-trial. Petitioners prayed that the Opposition and motion to set the case for pre-trial be granted.

On April 15, 2003, the RTC of Lipa City, Branch 12 issued an Order[21] dismissing the case. The court found the Motion to Dismiss (for failure to prosecute) to be in accordance with the rules. It stated that the records of the case showed that since August 20, 2002, the issues in this case had already been joined, and that Atty. Monchito C. Rosales was still alive then, yet he did not take any step to have the case set for pre-trial. It found the claim of Atty. Jose P. Malabanan, that he forgot about the case because of the death of Atty. Rosales, as unpardonable, flimsy and an invalid excuse.

The Motion for Reconsideration of the Order dated April 15, 2003 was denied for lack of merit by the trial court in an Order dated May 26, 2003.[22]

Thereafter, petitioners appealed the trial court's Orders to the Court of Appeals, and filed an Appellant's Brief on April 5, 2004.

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[19] 148-B Phil. 43, 50 (1971).

[20] Records, p. 245.

[21] *Id.* at 248.

[22] *Id.* at 257.

On May 20, 2004, respondent filed a Motion to Dismiss Appeal on the ground that the Appellant's Brief failed to comply with the requirements under Section 13, Rule 44 of the 1997 Rules of Civil Procedure. Respondent contended that the Appellant's Brief contained only the following topics: (1) Prefaratory Statement; (2) Statement of Facts and Antecedent Proceedings; (3) Parties; (4) Statement of the Case; (5) Issues; (6) Arguments/Discussion; and (7) Prayer. The Appellants' Brief did not have the following items: (1) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited; (2) an assignment of errors; (3) on the authorities cited, references to the page of the report at which the case begins and page of the report on which the citation is found; (4) page references to the record in the Statement of Facts and Statement of the Case.

Respondent contended that the absence of a specific assignment of errors or of page references to the record in the Appellants' Brief is a ground for dismissal of the appeal under Section 1 (f), Rule 50 of the 1997 Rules of Civil Procedure.[23]

On June 4, 2004, petitioners filed an *Opposition to Motion to Dismiss Appeal*.[24] They contended that the assignment of errors were only designated as "Issues" in their Appellants' Brief; and although the designation of the "Assignment of Error" may vary, the substance thereof remains. Moreover, petitioners stated that the textbooks and statutes were cited immediately after the portion where they are quoted, which is more convenient

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[23] Rule 50, Section 1. *Grounds for dismissal of appeal*. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44.

[24] CA *rollo*, p. 135.

and facilitates ready reference of the legal and jurisprudential basis of the arguments. They claimed that the absence of a subject index does not substantially deviate from the requirements of the Rules of Court, because one can easily go over the Appellants' Brief and can designate the parts with nominal prudence. They pointed out that Section 6 of the Rules of Court provides for a liberal construction of the Rules in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

On July 2, 2004, the Court of Appeals issued a Resolution dismissing the appeal. The dispositive portion of the Resolution reads:

> WHEREFORE, in view of the foregoing, the defendant-appellee UCPB's Motion to Dismiss Appeal is hereby GRANTED. This appeal is ordered DISMISSED for failure to comply with Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure.[25]

The Court of Appeals held that the right to appeal is a statutory right and a party who seeks to avail of the right must faithfully comply with the rules. It found that the Appellants' Brief failed to comply with Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure, thus:

> In this case, the plaintiff-appellant's brief failed to provide an index, like a table of contents, to facilitate the review of appeals by providing ready references to the records and documents referred to therein. This Court has to thumb through the brief page after page to locate the party's arguments, or a particular citation, or whatever else needs to be found and considered. In so doing, the plaintiff-appellant unreasonably abdicated her duty to assist this Court in the appreciation and evaluation of the issues on appeal.
>
> Further, the statement of facts is not supported by page references to the record. Instead of reasonably complying with the requirements of the rules, plaintiff-appellant annexed the plain photocopy of the documents being referred to in the statements of facts. Thus, if only to verify the veracity of the allegations in the brief and the existence of the attached documents, this Court has to pore over the entire

[25] *Id.* at 147.

records of this case.

There is no merit in the plaintiff-appellant's argument that the "Assignment of Error" was merely designated as "Issues" but the substance thereof remains and should not cause the dismissal of the appeal. The Supreme Court categorically stated in *De Liano vs. Court of Appeals* that the statement of issues is not to be confused with the assignment of errors because they are not one and the same, for otherwise, the rules would not have required a separate statement of each.[26]

Petitioners' motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution dated September 9, 2004. The appellate court held that petitioners merely reiterated the arguments raised in their *Opposition to Motion to Dismiss Appeal*, which arguments were already passed upon by the court. Moreover, the Court of Appeals noted that despite ample opportunity, petitioners never attempted to remedy the deficiency in their Appellants' Brief by filing another brief in conformity with the rules, but obstinately maintained that their Appellants' Brief substantially complied with the rules.

Hence, petitioners filed this petition raising the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE APPEAL NOTWITHSTANDING THE PETITIONERS' SUBSTANTIAL COMPLIANCE [WITH] SECTION 13, RULE 44 [OF] THE 1997 RULES OF CIVIL PROCEDURE.

II

THE HONORABLE REGIONAL TRIAL COURT OF LIPA CITY, BRANCH 12 ERRED IN ORDERING THE DISMISSAL OF PETITIONERS' COMPLAINT ON THE GROUND OF FAILURE TO PROSECUTE THEIR CAUSE OF ACTION FOR AN UNREASONABLE PERIOD OF TIME.

III

THE HONORABLE REGIONAL TRIAL COURT OF LIPA CITY, BRANCH 12 ERRED IN NOT HOLDING THAT RESPONDENT'S

[26] *Id.* at 162-163.

NON-COMPLIANCE WITH THE POSTING REQUIREMENT UNDER SECTION 3, ACT NO. 3135 IS FATAL TO THE VALIDITY OF THE FORECLOSURE PROCEEDINGS.

IV

THE EXTRAJUDICIAL FORECLOSURE PROCEEDINGS AND AUCTION SALE OF THE SUBJECT REALTIES VIOLATE THE PROVISIONS OF ARTICLE XVII OF THE CONTRACT OF MORTGAGE ENTERED INTO BY AND BETWEEN THE PETITIONERS AND RESPONDENT ON 06 OCTOBER 1995.

V

RESPONDENT UNITED COCONUT PLANTERS BANK VIOLATED SECTION 4 OF REPUBLIC ACT NO. 3765 ON THE REQUIREMENT OF FULL DISCLOSURE OF FINANCE CHARGES IN CONNECTION WITH THE EXTENSIONS OF CREDIT.

VI

PETITIONERS ARE ENTITLED TO REASONABLE ATTORNEY'S FEES.[27]

The main issue is whether or not the Court of Appeals erred in dismissing petitioners' appeal on the ground that their Appellants' Brief failed to comply with Section 13, Rule 44 of the 1997 Rules of Civil Procedure as the said brief did not have a subject index, an assignment of errors, and page references to the record in the Statement of Facts.

Petitioners argue that the absence of a subject index in their Appellants' Brief is not a material deviation from the requirements of Section 13, Rule 44 of the 1997 Revised Rules of Civil Procedure, and that each portion of the 12-page brief was boldly designated to separate each portion.

Moreover, petitioners contend that while the "assignment of errors" was not designated as such in their Appellants' Brief, the assignment of errors were clearly embodied in the "Issues" thereof, which substantially complies with the rules.

The petition is without merit.

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[27] *Rollo*, pp. 7-8.

The right to appeal is neither 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.[28] An appeal being a purely statutory right, an appealing party must strictly comply with the requisites laid down in the Rules of Court.[29]

In regard to ordinary appealed cases to the Court of Appeals, such as this case, Section 13, Rule 44 of the 1997 Rules of Civil Procedure provides for the contents of an Appellant's Brief, thus:

Sec. 13. *Contents of appellant's brief.*—The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

(b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy, with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

(e) A clear and concise statement of the issues of fact or law to be submitted to the court for its judgment;

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[28] *Mejillano v. Lucillo*, G.R. No. 154717, June 19, 2009, 590 SCRA 1, 9-10.

[29] *Id.* at 10.

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

(g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and

(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

In this case, the Appellants' Brief of petitioners did not have a subject index. The importance of a subject index should not be underestimated. ***De Liano v. Court of Appeals***[30] declared that the subject index functions like a table of contents, facilitating the review of appeals by providing ready reference. It held that:

[t]he first requirement of an appellant's brief is a subject index. The index is intended to facilitate the review of appeals by providing ready reference, functioning much like a table of contents. Unlike in other jurisdictions, there is no limit on the length of appeal briefs or appeal memoranda filed before appellate courts. The danger of this is the very real possibility that the reviewing tribunal will be swamped with voluminous documents. This occurs even though the rules consistently urge the parties to be "brief" or "concise" in the drafting of pleadings, briefs, and other papers to be filed in court. The subject index makes readily available at one's fingertips the subject of the contents of the brief so that the need to thumb through the brief page after page to locate a party's arguments, or a particular citation, or whatever else needs to be found and considered, is obviated.[31]

Moreover, the Appellants' Brief had no assignment of errors, but petitioners insist that it is embodied in the "Issues" of the brief. The requirement under Section 13, Rule 44 of the 1997 Rules of Civil Procedure for an "*assignment of errors*" in paragraph (b) thereof is different from a "statement of the *issues*

[30] 421 Phil. 1033 (2001).

[31] *Id.* at 1042.

of fact or law" in paragraph (e) thereof. The statement of issues is not to be confused with the assignment of errors, since they are not one and the same; otherwise, the rules would not require a separate statement for each.[32] An assignment of errors is an enumeration by the appellant of the errors alleged to have been committed by the trial court for which he/she seeks to obtain a reversal of the judgment, while the statement of issues puts forth the questions of fact or law to be resolved by the appellate court.[33]

Further, the Court of Appeals found that the Statement of Facts was not supported by page references to the record. ***De Liano v. Court of Appeals*** held:

> x x x The facts constitute the backbone of a legal argument; they are determinative of the law and jurisprudence applicable to the case, and consequently, will govern the appropriate relief. Appellants should remember that the Court of Appeals is empowered to review both questions of law *and* of facts. Otherwise, where only a pure question of law is involved, appeal would pertain to this Court. An appellant, therefore, should take care to state the facts accurately though it is permissible to present them in a manner favorable to one party. x x x Facts which are admitted require no further proof, whereas facts in dispute must be backed by evidence. Relative thereto, the rule specifically requires that one's statement of facts should be supported by page references to the record. Indeed, disobedience therewith has been punished by dismissal of the appeal. Page references to the record are not an empty requirement. **If a statement of fact is unaccompanied by a page reference to the record, it may be presumed to be without support in the record and may be stricken or disregarded altogether**.[34]

The assignment of errors and page references to the record in the statement of facts are important in an Appellant's Brief as the absence thereof is a basis for the dismissal of an appeal under Section 1 (f), Rule 50, of the 1997 Rules of Civil Procedure, thus:

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[32] *Id.* at 1044. (Emphasis supplied.)

[33] *Id.* at 1042, 1044.

[34] *Id.* at 1044.

SECTION 1. *Grounds for dismissal of appeal*. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d) and (f) of Rule 44.

Rules 44 and 50 of the 1997 Rules of Civil Procedure are designed for the proper and prompt disposition of cases before the Court of Appeals.[35] Rules of procedure exist for a noble purpose, and to disregard such rules in the guise of liberal construction would be to defeat such purpose.[36] The Court of Appeals noted in its Resolution denying petitioners' motion for reconsideration that despite ample opportunity, petitioners never attempted to file an amended appellants' brief correcting the deficiencies of their brief, but obstinately clung to their argument that their Appellants' Brief substantially complied with the rules. Such obstinacy is incongruous with their plea for liberality in construing the rules on appeal.[37]

De Liano v. Court of Appeals held:

Some may argue that adherence to these formal requirements serves but a meaningless purpose, that these may be ignored with little risk in the smug certainty that liberality in the application of procedural rules can always be relied upon to remedy the infirmities. This misses the point. We are not martinets; in appropriate instances, we are prepared to listen to reason, and to give relief as the circumstances may warrant. However, when the error relates to something so elementary as to be inexcusable, our discretion becomes nothing more than an exercise in frustration. It comes as an unpleasant shock to us that the contents of an appellant's brief should still be

[35] *Lumbre v. Court of Appeals*, G.R. No. 160717, July 23, 2008, 559 SCRA 419, 431.

[36] *Id*. at 434.

[37] *Del Rosario v. Court of Appeals*, G.R. No. 113890, February 22, 1995, 241 SCRA 553.

raised as an issue now. There is nothing arcane or novel about the provisions of Section 13, Rule 44. The rule governing the contents of appellants' briefs has existed since the old Rules of Court, which took effect on July 1, 1940, as well as the Revised Rules of Court, which took effect on January 1, 1964, until they were superseded by the present 1997 Rules of Civil Procedure. The provisions were substantially preserved, with few revisions.[38]

In fine, the Court upholds the Resolutions of the Court of Appeals dismissing the appeal of petitioners on the ground that their Appellants' Brief does not comply with the requirements provided in Section 13, Rule 44 of the 1997 Rules of Civil Procedure, as the dismissal is supported by Section 1 (f), Rule 50 of the 1997 Rules of Civil Procedure and jurisprudence.[39] With the dismissal of the appeal, the other issues raised by petitioners need not be discussed by the Court.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' Resolutions dated July 2, 2004 and September 9, 2004, in CA-G.R. CV No. 79796, are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[38] *De Liano v. Court of Appeals*, *supra* note 30, at 1046-1047.

[39] *Id.*; *Estate of Tarcila Vda. de Villegas v. Gaboya*, G.R. No. 143006, July 14, 2006, 495 SCRA 30, 41, citing *Del Rosario v. Court of Appeals*, *supra* note 37 and *Bucad v. Court of Appeals,* 216 SCRA 423 (1993).

SECOND DIVISION

[G.R. No. 165851. February 2, 2011]

MANUEL CATINDIG, represented by his legal representative EMILIANO CATINDIG-RODRIGO, *petitioner, vs.* **AURORA IRENE *VDA. DE* MENESES,** *respondent.*

[G.R. No. 168875. February 2, 2011]

SILVINO ROXAS, SR., represented by FELICISIMA VILLAFUERTE ROXAS, *petitioner, vs.* C**OURT OF APPEALS and AURORA IRENE *VDA. DE* MENESES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT; GENERALLY FINAL AND CONCLUSIVE WHEN AFFIRMED BY THE COURT OF APPEALS. – The issue on the genuineness of the deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.

2. CIVIL LAW; SPECIAL CONTRACTS; SALES; THE SALE IS VOID IF THE PRICE STATED IN THE DEED OF SALE IS SIMULATED; THE DECLARATION FOR AN INEXISTENT CONTRACT DOES NOT PRESCRIBE. – It is a well-entrenched rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. Moreover, Article 1471 of the Civil Code, provides that "if the price is simulated, the sale is void," which applies to the instant case, since the price purportedly paid as indicated in the contract of sale was simulated for no payment was actually made. Since it was well established that the Deed

of Sale is simulated and, therefore void, petitioners' claim that respondent's cause of action is one for annulment of contract, which already prescribed, is unavailing, because only voidable contracts may be annulled. On the other hand, respondent's defense for the declaration of the inexistence of the contract does not prescribe.

3. REMEDIAL LAW; CIVIL PROCEDURE; *ACCION PUBLICIANA*; THE OBJECTIVE OF THE PLAINTIFFS IS TO RECOVER POSSESSION ONLY, HOWEVER, WHERE THE PARTIES RAISED THE ISSUE OF OWNERSHIP THE COURT MAY PASS UPON THE ISSUE TO DETERMINE WHO BETWEEN THE PARTIES HAS THE RIGHT OF POSSESSION; ADJUDICATION THEREOF, EXPLAINED.— It must be emphasized that this case is one for recovery of possession, also known as *accion publiciana*, which is a plenary action for recovery of possession in an ordinary civil proceeding, in order to determine the better and legal right to possess, independently of title. The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.

4. CIVIL LAW; PROPERTY; POSSESSION; THE REGISTERED OWNER HAS A BETTER RIGHT TO POSSESS PROPERTY THAN THE HOLDER OF AN UNREGISTERED DEED OF SALE; SUSTAINED.— In *Pascual v. Coronel,* the Court held that as against the registered owners and the holder of an unregistered deed of sale, it is the former who has a better right to possess. In that case, the Court held that: Even if we sustain the petitioner's arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property. In *Co v. Militar*, the Court was confronted with a similar issue of which between

the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess. There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner as opposed to the unregistered deeds of sale of respondents. x x x Likewise, in the recent case of *Umpoc v. Mercado,* the Court declared that the trial court did not err in giving more probative weight to the TCT in the name of the decedent *vis-a-vis* the contested unregistered Deed of Sale. x x x There is even more reason to apply this doctrine here, because the subject Deed of Sale is not only unregistered, it is undated and unnotarized.

5. ID.; ID.; ID.; THE RIGHT OF THE REGISTERED OWNER TO EVICT ANY PERSON ILLEGALLY OCCUPYING HIS PROPERTY IS IMPRESCRIPTIBLE; SUSTAINED.— 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. It is conclusive evidence with respect to the ownership of the land described therein. Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof. In addition, as the registered owner, respondent's right to evict any person illegally occupying her property is imprescriptible. In the recent case of *Gaudencio Labrador, represented by Lulu Labrador Uson, as Attorney-in-Fact v. Sps. Ildefonso Perlas and Pacencia Perlas and Sps. Rogelio Pobre and Melinda Fogata Pobre*, the Court held that: 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.

6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* UNDER PREVAILING PROCEDURAL RULES AND

JURISPRUDENCE, ERRORS OF JUDGMENT ARE NOT PROPER SUBJECTS THEREOF; RATIONALE. – When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. Where the issue or question involved affects the wisdom or legal soundness of the decision, and not the jurisdiction of the court to render said decision, the same is beyond the province of a special civil action for *certiorari*.

7. ID.; ID.; ID.; REMEDIES OF APPEAL AND *CERTIORARI* ARE MUTUALLY EXCLUSIVE, NOT ALTERNATIVE OR SUCCESSIVE; DISTINGUISHED.— Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.

8. ID.; CIVIL PROCEDURE; JUDGMENTS; WHEN A DECISION BECOMES FINAL AND EXECUTORY, THE COURT LOSES JURISDICTION OVER THE CASE AND NOT EVEN THE APPELLATE COURT WILL HAVE THE POWER TO REVIEW THE SAID JUDGMENT.— It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect,

even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land. When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justifiable controversies with finality.

9. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* IN ACCORDANCE WITH THE LIBERAL SPIRIT, PETITION FOR *CERTIORARI* MAY BE TREATED AS FILED UNDER RULE 45; NOT APPLICABLE IN CASE AT BAR, PRIMARILY BECAUSE THE PETITION WAS FILED WAY BEYOND THE 15-DAY REGLEMENTARY PERIOD WITHIN WHICH TO FILE THE PETITION FOR REVIEW. — While it is true that this Court, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, may treat a Petition for *Certiorari* as having been filed under Rule 45, the instant Petition cannot be treated as such, primarily because it was filed way beyond the 15-day reglementary period within which to file the Petition for Review. Though there are instances when *certiorari* was granted despite the availability of appeal, none of these recognized exceptions were shown to be present in the case at bar.

APPEARANCES OF COUNSEL

Usita Pua & Singson Law Offices for Manuel Catindig.
Maximino Noble III for Aurora Irene *Vda. de* Meneses.
Geronimo-Javier & Javier Law Offices for Silvino Roxas, Sr.

D E C I S I O N

PERALTA, *J.*:

Before this Court are two consolidated cases, namely, (1) Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, docketed as G.R. No. 165851, filed by petitioner

Manuel Catindig, represented by Emiliano Catindig-Rodrigo, assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 65697, which affirmed the Decision of the Regional Trial Court of Malolos, Bulacan in Civil Case No. 320-M-95; and (2) Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as G.R. No. 168875, filed by petitioner Silvino Roxas, Sr., represented by Felicisima Villafuerte Roxas, seeking to set aside the Decision[2] and Resolution[3] of the CA in CA-G.R. CV No. 65697, which affirmed the decision of the Regional Trial Court of Malolos, Bulacan in Civil Case No. 320-M-95.

The property subject of this controversy pertains to a parcel of land situated in Malolos, Bulacan, with an area of 49,139 square meters, titled in the name of the late Rosendo Meneses, Sr., under Transfer Certificate of Title (TCT) No. T-1749 (hereinafter referred to as the Masusuwi Fishpond). Respondent Aurora Irene C. *Vda. de* Meneses is the surviving spouse of the registered owner, Rosendo Meneses, Sr. She was issued Letters of Administration over the estate of her late husband in Special Proceedings Case No. 91498 pending before the then Court of First Instance of the City of Manila, Branch 22. On May 17, 1995, respondent, in her capacity as administratrix of her husband's estate, filed a Complaint for Recovery of Possession, Sum of Money and Damages against petitioners Manuel Catindig and Silvino Roxas, Sr. before the Regional Trial Court of Malolos, Bulacan, to recover possession over the Masusuwi Fishpond.

Respondent alleged that in September 1975, petitioner Catindig, the first cousin of her husband, deprived her of the possession over the Masusuwi Fishpond, through fraud, undue influence and intimidation. Since then, petitioner Catindig unlawfully leased the property to petitioner Roxas. Respondent verbally demanded that petitioners vacate the Masusuwi Fishpond, but all were futile, thus, forcing respondent to send demand letters to petitioners

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Romeo A. Brawner and Mariano C. Del Castillo, concurring; *rollo*, (G.R. No. 165851), pp. 27-36; (G.R. No. 168875), pp. 5-14.

[2] *Id.* at 5-14; *id*. at 27-36.

[3] *Rollo*, (G.R. No. 168875), pp. 15-16.

Roxas and Catindig. However, petitioners still ignored said demands. Hence, respondent filed a suit against the petitioners to recover the property and demanded payment of unearned income, damages, attorney's fees and costs of suit.

In his Answer, petitioner Catindig maintained that he bought the Masusuwi Fishpond from respondent and her children in January 1978, as evidenced by a Deed of Absolute Sale. Catindig further argued that even assuming that respondent was indeed divested of her possession of the Masusuwi Fishpond by fraud, her cause of action had already prescribed considering the lapse of about 20 years from 1975, which was allegedly the year when she was fraudulently deprived of her possession over the property.

Petitioner Roxas, on the other hand, asserted in his own Answer that respondent has no cause of action against him, because Catindig is the lawful owner of the Masusuwi Fishpond, to whom he had paid his rentals in advance until the year 2001.

After trial, the trial court ruled in favor of respondent, thus:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff [respondent herein],

(a) Ordering the defendants [petitioners herein] to vacate the Masusuwi Fishpond and turn over the possession/occupancy thereof to plaintiff [respondent herein];

(b) Ordering the defendants [petitioners herein] to pay and/or reimburse plaintiff [respondent herein] the amount of ₱90,000.00 per year since 1985 up to the time possession of the fishpond is surrendered to plaintiff [respondent herein];

(c) Ordering the defendants [petitioners herein] jointly and severally to pay plaintiff [respondent herein] the amount of ₱100,000.00 as attorney's fees, and to pay the costs of suit.

The counterclaims of defendants [petitioners herein] are ordered dismissed, for lack of merit.

SO ORDERED.[4]

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[4] *Rollo* (G.R. No. 165851), p. 77.

The trial court found that the Deed of Absolute Sale executed between respondent and petitioner Catindig was simulated and fictitious, and therefore, did not convey title over the Masusuwi Fishpond to petitioner Catindig. It gave due credence to the testimony of respondent that petitioner Catindig convinced her to sign the said deed of sale, because it was intended to be a mere proposal subject to the approval of the trial court wherein the proceedings for the settlement of the estate of Rosendo Meneses, Sr. was still pending. The court *a quo* was further convinced that the Deed of Absolute Sale lacked consideration, because respondent and her children never received the stipulated purchase price for the Masusuwi Fishpond which was pegged at PhP150,000.00. Since ownership over the property never transferred to Catindig, the trial court declared that he has no right to lease it to Roxas. The court also found that petitioner Roxas cannot claim good faith in leasing the Masusuwi Fishpond, because he relied on an incomplete and unnotarized Deed of Sale.

Aggrieved, petitioners separately challenged the trial court's Decision before the CA. The CA dismissed both the petitioners' appeals and affirmed the RTC. The CA ruled that the trial court properly rejected petitioners' reliance on the deed of absolute sale executed between respondent and petitioner Catindig. The CA also found that since it is settled that a Torrens title is a constructive notice to the whole world of a property's lawful owner, petitioner Roxas could not invoke good faith by relying on the Deed of Absolute Sale in favor of his lessor, petitioner Catindig.

Hence, petitioner Catindig filed this Petition for Review on *Certiorari* under Rule 45, raising the following issues:

1. WHETHER THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE TRIAL COURT'S DECISION IN NOT HOLDING THAT RESPONDENT'S CAUSE OF ACTION IS IN REALITY, ONE FOR ANNULMENT OF CONTRACT UNDER ARTICLES 1390 AND 1391 OF THE NEW CIVIL CODE.

2. WHETHER THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE TRIAL COURT'S DECISION IN NOT

HOLDING THAT RESPONDENT'S CAUSE OF ACTION IS BASED ON ALLEGED FRAUD AND/OR INTIMIDATION, HAS NOT PRESCRIBED.

3. WHETHER THE COURT OF APPEALS SERIOUSLY AND GRAVELY ERRED IN DISREGARDING THE GENUINENESS AND DUE EXECUTION OF THE DEED OF ABSOLUTE SALE.

On the other hand, petitioner Silvino Roxas, Sr. filed a Petition for *Certiorari* under Rule 65, raising this lone issue:

WHETHER THE HONORABLE COURT OF APPEALS HAS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT THE PETITIONER IS JOINTLY AND SOLIDARILY LIABLE WITH HIS CO-DEFENDANT; AND IN NOT CONSIDERING THAT HE WAS A LESSEE IN GOOD FAITH OF THE SUBJECT PROPERTY.

The issues raised by petitioner Catindig could be reduced into whether the Deed of Sale was genuine or simulated.

Petitioner Catindig maintains that the deed of sale was voluntarily signed by respondent and her children, and that they received the consideration of PhP150,000.00 stipulated therein. Even on the assumption that they were defrauded into signing the agreement, this merely makes the deed voidable, at most, due to vitiated consent. Therefore, any cause of action respondent may have, had already prescribed, and the contract was already ratified by respondent's failure to file any action to annul the deed within four years from 1978, the year when respondent discovered the fraud.

Respondent, on the other hand, insists that the deed of sale is not merely voidable, but void for being simulated. Hence, she could not have filed an action for annulment of contract under Articles 1390 and 1391 of the Civil Code, because this remedy applies to voidable contracts. Instead, respondent filed an action for recovery of possession of the Masusuwi Fishpond.

The issue on the genuineness of the deed of sale is essentially a question of fact. It is settled that this Court is not duty-bound to analyze and weigh again the evidence considered in the

proceedings below. This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal.[5]

The Court finds that there exists no reason for Us to disturb the trial court's finding that the deed of sale was simulated. The trial court's discussion on the said issue is hereby quoted:

> After evaluating the evidence, both testimonial and documentary, presented by the parties, this court is convinced that the Deed of Absolute Sale relied upon by the defendants [petitioners herein] is simulated and fictitious and has no consideration.
>
> On its face, the Deed of Absolute sale (Exh. "G", Exh. "1") is not complete and is not in due form. It is a 3-page document but with several items left unfilled or left blank, like the day the document was supposed to be entered into, the tax account numbers of the persons appearing as signatories to the document and the names of the witnesses. In other words, it was not witnessed by any one. More importantly, it was not notarized. While the name Ramon E. Rodrigo, appeared typed in the Acknowledgement, it was not signed by him (Exhs. "G", "G-1", "G-4").
>
> The questioned deed was supposedly executed in January, 1978. Defendant [petitioner herein] Catindig testified that his brother Francisco Catindig was with him when plaintiff [respondent herein] signed the document. The evidence, however, shows that Francisco Catindig died on January 1, 1978 as certified to by the Office of the Municipal Civil Registrar of Malolos, Bulacan and the Parish Priest of Sta. Maria Assumpta Parish, Bulacan, Bulacan.
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> The document mentions 49,130 square meters, as the area sold by plaintiff [respondent herein] and her two (2) children to defendant [petitioner herein] Catindig. But this is the entire area of the property as appearing in the title and they are not the only owners. The other owner is Rosendo Meneses, Jr. [stepson of herein respondent] whose name does not appear in the document. The declaration of defendant [petitioner herein] Catindig that Rosendo Meneses, Jr. likewise sold his share of the property to him in another document does not inspire rational belief. This other document was not presented in evidence

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[5] *Pascual v. Coronel,* G.R. No. 159292, July 12, 2007, 527 SCRA 474, 483.

and Rosendo Meneses, Jr., did not testify, if only to corroborate defendant's [petitioner herein] claim.[6]

The Court also finds no compelling reason to depart from the court *a quo's* finding that respondent never received the consideration stipulated in the simulated deed of sale, thus:

> Defendant [petitioner herein] Catindig declared that plaintiff [respondent herein] and her children signed the instrument freely and voluntarily and that the consideration of ₱150,000.00 as so stated in the document was paid by him to plaintiff [respondent herein]. However, it is not denied that the title to this property is still in the name of Rosendo Meneses, Sr., and the owner's duplicate copy of the title is still in the possession of the plaintiff [respondent herein]. If defendant [petitioner herein] Catindig was really a legitimate buyer of the property who paid the consideration with good money, why then did he not register the document of sale or had it annotated at the back of the title, or better still, why then did he not have the title in the name of Rosendo Meneses, Sr. canceled so that a new title can be issued in his name? After all, he claims that Rosendo Meneses, Jr. [stepson of herein respondent] also sold his share of the property to him. This will make him the owner of the entire property. But the owner's duplicate copy of the title remains in the possession of the plaintiff [respondent herein] and no evidence was presented to show that at anytime from 1978, he ever attempted to get it from her. Equally telling is defendant's (Catindig) failure to pay the real estate taxes for the property from 1978 up to the present. x x x[7]

It is a well-entrenched rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration. Moreover, Article 1471 of the Civil Code, provides that "if the price is simulated, the sale is void," which applies to the instant case, since the price purportedly paid as indicated in the contract of sale was simulated for no payment was actually made.[8]

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[6] *Rollo* (G.R. No. 165851), p. 74.

[7] *Id*. at 74-75.

[8] *Lequin v. Vizconde*, G.R. No. 177710, October 12, 2009, 603 SCRA 407, 422.

Since it was well established that the Deed of Sale is simulated and, therefore void, petitioners' claim that respondent's cause of action is one for annulment of contract, which already prescribed, is unavailing, because only voidable contracts may be annulled. On the other hand, respondent's defense for the declaration of the inexistence of the contract does not prescribe.[9]

Besides, it must be emphasized that this case is one for recovery of possession, also known as *accion publiciana*, which is a plenary action for recovery of possession in an ordinary civil proceeding, in order to determine the better and legal right to possess, independently of title.[10] The objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication, however, is not a final and binding determination of the issue of ownership; it is only for the purpose of resolving the issue of possession where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property.[11]

Thus, even if we sustain petitioner Catindig's arguments and rule that the Deed of Sale is valid, this would still not help petitioners' case. It is undisputed that the subject property is covered by TCT No. T-1749, registered in the name of respondent's husband. On the other hand, petitioner Catindig's claim of ownership is based on a Deed of Sale. In *Pascual v. Coronel*,[12] the Court held that as against the registered owners and the holder of an unregistered deed of sale, it is the former

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[9] Civil Code, Art. 1410.

[10] *Bejar v. Caluag*, G.R. No. 171277, February 17, 2007, 516 SCRA 84, 90.

[11] *Asuncion Urieta Vda. de Aguilar, represented by Orlando U. Aguilar v. Spouses Ederlina B. Alfaro and Raul Alfaro*, G.R. No. 164402, July 5, 2010.

[12] *Supra* note 5.

who has a better right to possess. In that case, the court held that:

> Even if we sustain the petitioner's arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property. In *Co v. Militar*, the Court was confronted with a similar issue of which between the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess. There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner as opposed to the unregistered deeds of sale of respondents. x x x
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> Likewise, in the recent case of *Umpoc v. Mercado*, the Court declared that the trial court did not err in giving more probative weight to the TCT in the name of the decedent *vis-a-vis* the contested unregistered Deed of Sale. x x x[13]

There is even more reason to apply this doctrine here, because the subject Deed of Sale is not only unregistered, it is undated and unnotarized.

Further, 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.[14] It is conclusive evidence with respect to the ownership of the land described therein.[15] Moreover, the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.[16]

In addition, as the registered owner, respondent's right to evict any person illegally occupying her property is imprescriptible.

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[13] *Id.* at 484-485.

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

[15] *Asuncion Urieta Vda. de Aguilar, represented by Orlando U. Aguilar v. Spouses Ederlina B. Alfaro and Raul Alfaro, supra* note 11.

[16] *Caña v. Evangelical Free Church of the Philippines, supra* note 14, at 238-239.

In the recent case of *Gaudencio Labrador, represented by Lulu Labrador Uson, as Attorney-in-Fact v. Sps. Ildefonso Perlas and Pacencia Perlas and Sps. Rogelio Pobre and Melinda Fogata Pobre*,[17] the Court held that:

> 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:
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> > 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.[18]

Petitioner Roxas assailed the Decision and the Resolution of the CA via Petition for *Certiorari* under Rule 65, when the proper remedy should have been the filing of a Petition for Review on *Certiorari* under Rule 45.

While petitioner Roxas claims that the CA committed grave abuse of discretion, this Court finds that the assailed findings of the CA, that Roxas is jointly and severally liable with petitioner Catindig and in not considering him as a lessee in good faith of the subject property, amount to nothing more than errors of judgment, correctible by appeal. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil

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[17] G.R. No. 173900, August 8, 2010.

[18] *Id*. (Emphasis supplied.)

action for *certiorari*.[19] Where the issue or question involved affects the wisdom or legal soundness of the decision, and not the jurisdiction of the court to render said decision, the same is beyond the province of a special civil action for *certiorari*.[20]

Settled is the rule that where appeal is available to the aggrieved party, the special civil action for *certiorari* will not be entertained – remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[21] Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45.[22] One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[23]

In the present case, the CA issued its Decision and Resolution dated October 22, 2004 and May 20, 2005, respectively, dismissing the appeal filed by petitioner Roxas. Records show that petitioner Roxas received a copy of the May 20, 2005 Resolution of the CA denying the motion for reconsideration

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[19] *Sebastian v. Hon. Morales*, 445 Phil. 595, 608 (2003).

[20] *Land Bank of the Phils. v. Court of Appeals*, 456 Phil. 755, 787 (2003).

[21] *Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, G.R. No. 170244, November 28, 2007, 539 SCRA 178, 189.

[22] *Sable v. People*, G.R. No. 177961, April 7, 2009, 584 SCRA 619, 629.

[23] *Artistica Ceramica, Inc., Ceralinda, Inc., Cyber Ceramics, Inc. and Millennium, Inc. v. Ciudad Del Carmen Homeowner's Association, Inc. and Bukluran Purok II Residents Association*, G.R. Nos. 167583-84, June 16, 2010.

on May 30, 2005. Instead of filing a petition for review on *certiorari* under Rule 45 within 15 days from receipt thereof,[24] petitioner, in addition to his several motions for extension, waited for almost four months before filing the instant petition on September 22, 2005. Indubitably, the Decision and the Resolution of the CA, as to petitioner Roxas, had by then already become final and executory, and thus, beyond the purview of this Court to act upon.[25]

It is settled that a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land.[26] When a decision becomes final and executory, the court loses jurisdiction over the case and not even an appellate court will have the power to review the said judgment. Otherwise, there will be no end to litigation and this will set to naught the main role of courts of justice to assist in the enforcement of the rule of law and the maintenance of peace and order by settling justifiable controversies with finality.[27]

Finally, while it is true that this Court, in accordance with the liberal spirit which pervades the Rules of Court and in the interest of justice, may treat a Petition for *Certiorari* as having been filed under Rule 45, the instant Petition cannot be treated as such, primarily because it was filed way beyond the 15-day reglementary period within which to file the Petition for Review.[28]

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[24] Rule 45, Section 2 states: The petition shall be filed within fifteen (15) days from notice of the judgment, or final order or resolution appealed from or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. x x x.

[25] *Land Bank of the Phils. v. Court of Appeals, supra* note 20, at 791.

[26] *Peña v. Government Service Insurance System*, G.R. No.159520, September 19, 2006, 502 SCRA 383, 404.

[27] *Estinozo v. Court of Appeals*, G.R. No. 150276, February 12, 2008, 544 SCRA 422, 431-432.

[28] *Iloilo La Filipina Uygongco Corporation v. Court of Appeals, supra* note 21, at 190.

Though there are instances when *certiorari* was granted despite the availability of appeal,[29] none of these recognized exceptions were shown to be present in the case at bar.

WHEREFORE, the petition in G.R. No. 165851 is *DENIED*. The Decision of the Court of Appeals dated October 22, 2004 in CA-G.R. CV No. 65697, which affirmed the decision of the Regional Trial Court of Malolos, Bulacan in Civil Case No. 320-M-95, is *AFFIRMED*. The petition in G.R. No. 168875 is *DISMISSED*. The Decision and the Resolution of the Court of Appeals, dated October 22, 2004 and May 20, 2005, respectively, in CA-G.R. CV No. 65697, which affirmed the Decision of the Regional Trial Court of Malolos, Bulacan in Civil Case No. 320-M-95, are *AFFIRMED*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 169871. February 2, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE N. MEDIADO,** *accused-appellant.*

[29] (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. (*Iloilo La Filipina Uygongco Corporation v. Court of Appeals*, *supra* note 21)

SYLLABUS

1. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE AND DEFENSE OF RELATIVES; REQUISITES; NOT PRESENT IN CASE AT BAR.— The *Revised Penal Code* delineates the standards for self-defense and defense of a relative in Article 11. x x x Indeed, upon invoking the justifying circumstance of self-defense, Jose assumed the burden of proving the justification of his act with clear and convincing evidence. This is because his having admitted the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission. It is also notable that unlawful aggression is the condition *sine qua non* for the justifying circumstances of self-defense and defense of a relative. There can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense. As the CA pointed out, however, Jose did not support his claim that Jimmy had committed aggression by punching Rodolfo and by throwing stones at him and his father. In fact, he and his father were not able to identify any weapon used by Jimmy aside from the stone that he supposedly picked up from the ground. Even that testimony was contrary, for Jose testified that he had unsheathed his bolo and hacked Jimmy after dodging the stone thrown at him. Plainly, he did not establish with clear and convincing proof that Jimmy had assaulted him or his father as to pose to either of them an imminent threat of great harm before he mounted his own attack on Jimmy.

2. ID.; ID.; ID.; THE NATURE, NUMBER AND GRAVITY OF THE VICTIM'S WOUNDS SPOKE NOT OF DEFENSE BUT OF A CRIMINAL INTENT TO KILL.— The post-mortem examination disclosed that Jimmy had sustained a total of seven wounds: two *incised* wounds and five *hack* wounds. Three of the hack wounds were inflicted on Jimmy's neck, one of which fatally extended to and cut the trachea, esophagus, and the carotid and jugular vessels that supplied blood to the heart and brain of Jimmy. Dr. Moll Lee, the medico-legal expert, opined at the trial that the injuries were possibly sustained by Jimmy from the assailant who was behind him and while he was already down. This opinion was consistent with Lilia's testimony to

the effect that Jose had attacked Jimmy from behind as well as when Jimmy was already lying on the ground. The nature, number, and gravity of Jimmy's wounds spoke not of defense on the part of Jose but of a criminal intent to kill Jimmy. They indicated beyond doubt the treacherous manner of the assault, that is, that Jose thereby ensured that the killing would be without risk and would deny to Jimmy any opportunity to defend himself.

3. ID.; AWARD OF DAMAGES; AMOUNTS WERE MODIFIED TO MAKE THEM CONSISTENT WITH THE LAW AND JURISPRUDENCE.— We modify the award of damages to make their amounts consistent with the law and jurisprudence relating to an accused adjudged guilty of a crime covered by Republic Act No. 7659, regardless of aggravating or mitigating circumstances. The correct amounts are ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages, all to be granted without proof or pleading. In addition, the Court notes that actual damages awarded to the heirs was only ₱24,000.00. In furtherance of justice and consistent with our ruling in *People v. Villanueva* that when actual damages proven by receipts is lower than ₱25,000.00, the award of ₱25,000.00 as temperate damages is justified in lieu of actual damages of a lesser amount.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

An accused who asserts self-defense admits his infliction of the fatal blows and bears the burden of satisfactorily establishing all the elements of self-defense. Otherwise, his conviction for the felony of murder or homicide will be affirmed.

In this appeal, Jose N. Mediado (Jose) appeals the decision of the Court of Appeals (CA) finding him guilty beyond reasonable doubt of the crime of murder for the killing of Jimmy Llorin

(Jimmy),[1] thereby affirming the decision of the Regional Trial Court, Branch 35, in Iriga City (RTC) convicting him of that felony and imposing on him the penalty of *reclusion perpetua* and the payment of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱24,000.00 as actual damages.[2]

Antecedents

At around 9:00 a.m. on March 20, 1997, Jimmy was having a conversation with Rodolfo Mediado (Rodolfo) at the dancing hall located in Pulang Daga, Balatan, Camarines Sur. He was around 35 meters away from Lilia, his wife, who was at a meeting of the Mr. and Mrs. Club in the *barangay* hall. At that moment, Lilia witnessed Jose emerge from behind Jimmy and hack Jimmy twice on the head with a bolo. She next saw Jose move to Jimmy's left side and continue hacking him although he had already fallen to the ground. Jose fled, but Juan Clorado (Clorado), a former *barangay kagawad*, ran after him. Upon catching up, Clorado seized and took the bolo from Jose, and brought Jose to the PNP station in Balatan, Camarines Sur. Lilia believed that Jose fatally assaulted Jimmy for fear that he would report to the police authorities that Jose had attacked one Vicente Parañal during the town fiesta two days earlier.[3]

Jose confessed to killing Jimmy but claimed that he did so only to defend himself and his father (Rodolfo). Jose related that he had passed by the *barangay* hall on his way to work, and had observed Jimmy punch Rodolfo and hit him with a stone; that Jimmy then picked up a stone and threw it at him (Jose); that to fend off the attack, he (Jose) unsheathed his bolo and hacked Jimmy until he fell to the ground; and that he remained in the place for ten minutes and later yielded to Clorado

[1] *Rollo*, pp. 3-16; penned by Associate Justice Noel J. Tijam, with Associate Justice Jose L. Sabio, Jr. (retired) and Associate Justice Mariflor P. Punzalan Castillo, concurring.

[2] CA *Rollo*, pp. 55-66; penned by Presiding Judge Alfredo D. Agawa.

[3] TSN dated July 26, 2000, pp. 4-11.

who accompanied him to the police station where he surrendered to Police Officer Ramon Maumay.[4]

As stated, both the RTC and the CA rejected Jose's claim of self-defense and defense of a relative, and found that treachery was employed by Jose when he attacked Jimmy from behind.

Hence, this appeal.

We affirm the CA decision.

We reiterate that findings of the CA upon factual matters are conclusive and ought not to be disturbed unless they are shown to be contrary to the evidence on record.[5] Here, Jose has not demonstrated to our satisfaction that the CA committed any reversible error in making its findings of fact against Jose.

Specifically, the RTC and the CA correctly rejected Jose's claim of self-defense and defense of a relative because he did not substantiate it with clear and convincing proof.

The *Revised Penal Code* delineates the standards for self-defense and defense of a relative in Article 11, *viz*:

Article 11. *Justifying circumstances*. The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur:

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those

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[4] TSN dated August 27, 1998, pp. 3-8.

[5] *People v. Torrefiel*, G.R. No. 115431, April 18, 1996, 256 SCRA 369, 379.

by consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the provocation was given by the person attacked, that the one making defense had no part therein.

xxx xxx xxx

Indeed, upon invoking the justifying circumstance of self-defense, Jose assumed the burden of proving the justification of his act with clear and convincing evidence. This is because his having admitted the killing required him to rely on the strength of his own evidence, not on the weakness of the Prosecution's evidence, which, even if it were weak, could not be disbelieved in view of his admission.[6]

It is also notable that unlawful aggression is the condition *sine qua non* for the justifying circumstances of self-defense and defense of a relative. There can be no self-defense unless the victim committed unlawful aggression against the person who resorted to self-defense.[7] As the CA pointed out, however, Jose did not support his claim that Jimmy had committed aggression by punching Rodolfo and by throwing stones at him and his father.[8] In fact, he and his father were not able to identify any weapon used by Jimmy aside from the stone that he supposedly picked up from the ground. Even that testimony was contrary, for Jose testified that he had unsheathed his bolo and hacked Jimmy after dodging the stone thrown at him. Plainly, he did not establish with clear and convincing proof that Jimmy had assaulted him or his father as to pose to either of them an

[6] *People v. Tanduyan,* G.R. No. 108784, September 13, 1994, 236 SCRA 433; *People v. Quiño,* G.R. No. 105580, May 17, 1994, 232 SCRA 400; *People v. Molina,* G.R. No. 59436, August 28, 1992, 213 SCRA 52; *People v. Boholst-Caballero,* G.R. No. 23249, November 25, 1974, 61 SCRA 180; *People v. Dorico,* G.R. No. L-31568, November 29, 1973, 54 SCRA 172; *People v. Embalido,* 58 Phil. 152 (1933); *People vs. Gutierrez,* 53 Phil. 609 (1929); *People v. Baguio,* 43 Phil. 683 (1922); *United States v. Capisonda,* 1 Phil. 575 (1902).

[7] *Razon v. People,* G.R. No. 158053, June 21, 2007, 525 SCRA 284, 298.

[8] *Rollo,* p. 12.

imminent threat of great harm before he mounted his own attack on Jimmy.

Moreover, the post-mortem examination disclosed that Jimmy had sustained a total of seven wounds: two *incised* wounds and five *hack* wounds.[9] Three of the hack wounds were inflicted on Jimmy's neck, one of which fatally extended to and cut the trachea, esophagus, and the carotid and jugular vessels that supplied blood to the heart and brain of Jimmy.[10] Dr. Moll Lee, the medico-legal expert, opined at the trial that the injuries were possibly sustained by Jimmy from the assailant who was behind him and while he was already down.[11] This opinion was consistent with Lilia's testimony to the effect that Jose had attacked Jimmy from behind as well as when Jimmy was already lying on the ground.[12] The nature, number, and gravity of Jimmy's wounds spoke not of defense on the part of Jose but of a criminal intent to kill Jimmy.[13] They indicated beyond doubt the treacherous manner of the assault, that is, that Jose thereby ensured that the killing would be without risk and would deny to Jimmy any opportunity to defend himself.[14]

Lastly, the testimonies of Jose and Rodolfo were infected with inconsistencies. For one, Rodolfo did not mention that his son had carried a bolo during the incident; instead, Rodolfo recalled that Jose and Jimmy had engaged in a *fistfight*.[15] Also, Rodolfo's claim that he chose to return home after being badly hurt from Jimmy's attack was unnatural, for, if that were true,

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[9] TSN dated July 20, 2000, p. 15.

[10] Records, p. 19; See also testimony of Dr. Wilson C. Moll Lee, TSN dated July 20, 2000, p. 11.

[11] TSN, dated July 20, 2000, pp. 9-13.

[12] *Supra* at note 3.

[13] *People v. Albao*, G.R. No. 117481, March 6, 1998, 287 SCRA 129.

[14] See *People v. Beltran, Jr.*, G.R. No. 168051, September 27, 2006, 503 SCRA 715; *People v. Cabansay*, G.R. No. 138646, March 6, 2001, 353 SCRA 686; and *People v. Basadre,* G.R. No. 131851, February 22, 2001, 352 SCRA 573, 585.

[15] TSN dated December 10, 1998, pp. 6-7.

he was thereby unnaturally leaving his son to engage the attacker alone.

We modify the award of damages to make their amounts consistent with the law and jurisprudence relating to an accused adjudged guilty of a crime covered by Republic Act No. 7659,[16] regardless of aggravating or mitigating circumstances.[17] The correct amounts are ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱30,000.00 as exemplary damages, all to be granted without proof or pleading. In addition, the Court notes that actual damages awarded to the heirs was only ₱24,000.00. In furtherance of justice and consistent with our ruling in *People v. Villanueva*[18] that when actual damages proven by receipts is lower than ₱25,000.00, the award of ₱25,000.00 as temperate damages is justified in lieu of actual damages of a lesser amount.[19]

WHEREFORE, the Court affirms the Decision promulgated on May 19, 2005 in C.A.-G.R. CR.-H.C. No. 00589 entitled *People of the Philippines v. Jose Mediado,* subject to the modification that Jose N. Mediado is ordered to indemnify the heirs of Jimmy Llorin in the amounts of ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages; and ₱25,000.00 as temperate damages.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

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[16] *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for other Purposes*.

[17] *People v. Arbalate,* G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[18] 456 Phil. 14 (2003).

[19] *Id.* at 29.

SECOND DIVISION

[G.R. No. 170463. February 2, 2011]

THE BOARD OF TRUSTEES OF THE GOVERNMENT SERVICE INSURANCE SYSTEM and WINSTON F. GARCIA, in his capacity as GSIS President and General Manager, *petitioners, vs.* **ALBERT M. VELASCO and MARIO I. MOLINA**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; JURISDICTION AND VENUE OF ACTION, PROPERLY LAID IN CASE AT BAR; SUSTAINED.— The petition for prohibition filed by respondents is a special civil action which may be filed in the Supreme Court, the Court of Appeals, the Sandiganbayan or the Regional Trial Court, as the case may be. It is also a personal action because it does not affect the title to, or possession of real property, or interest therein. Thus, it may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, at the election of the plaintiff. Since respondent Velasco, plaintiff before the trial court, is a resident of the City of Manila, the petition could properly be filed in the City of Manila. The choice of venue is sanctioned by Section 2, Rule 4 of the Rules of Court. Moreover, Section 21(1) of BP 129 provides: Sec. 21. *Original jurisdiction in other cases*. - Regional Trial Courts shall exercise original jurisdiction: (1) In the issuance of **writs of** *certiorari*, **prohibition**, *mandamus*, *quo warranto*, *habeas corpus* and **injunction**, **which may be enforced in any part of their respective regions**; x x x Since the National Capital Judicial Region is comprised of the cities of Manila, Quezon, Pasay, Caloocan, Malabon, Mandaluyong, Makati, Pasig, Marikina, Parañaque, Las Piñas, Muntinlupa, and Valenzuela and the municipalities of Navotas, San Juan, Pateros, and Taguig, a writ of prohibition issued by the regional trial court sitting in the City of Manila, is enforceable in Pasay City. Clearly, the RTC did not err when it took cognizance of respondents'

petition for prohibition because it had jurisdiction over the action and the venue was properly laid before it.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; RULES AND REGULATIONS ADOPTED BY GOVERNMENT AGENCIES; ONLY THOSE OF GENERAL OR OF PERMANENT CHARACTER ARE TO BE FILED WITH THE UP LAW CENTER; NOT APPLICABLE IN CASE AT BAR.—** Not all rules and regulations adopted by every government agency are to be filed with the UP Law Center. Only those of general or of permanent character are to be filed. According to the UP Law Center's guidelines for receiving and publication of rules and regulations, "interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the Administrative agency and not the public," need not be filed with the UP Law Center. Resolution No. 372 was about the new GSIS salary structure, Resolution No. 306 was about the authority to pay the 2002 Christmas Package, and Resolution No. 197 was about the GSIS merit selection and promotion plan. Clearly, the assailed resolutions pertained only to internal rules meant to regulate the personnel of the GSIS. There was no need for the publication or filing of these resolutions with the UP Law Center.

3. **ID.; LAW ON PUBLIC OFFICERS AND EMPLOYEES; ACTUAL SERVICE, DEFINED.—** A grant of step increment on the basis of length of service requires that an employee must have rendered at least three years of continuous and satisfactory service in the same position to which he is an incumbent. To determine whether service is continuous, it is necessary to define what actual service is. "Actual service" refers to the period of continuous service since the appointment of the official or employee concerned, including the period or periods covered by any previously approved leave with pay.

4. **ID.; ID.; SUSPENSION FROM SERVICE AS PENALTY; EFFECT THEREOF UPON THE CONTINUITY OF GOVERNMENT SERVICE, EXPLAINED.—** If an employee is suspended as a penalty, it effectively interrupts the continuity of his government service at the commencement of the service of the said suspension. This is because a person under penalty of suspension is not rendering actual service. The suspension will undoubtedly be considered a gap in the continuity of the

service for purposes of the computation of the three year period in the grant of step increment. However, this does not mean that the employee will only be entitled to the step increment after completing another three years of continuous satisfactory service reckoned from the time the employee has fully served the penalty of suspension. The CSC has taken this to mean that the computation of the three year period requirement will only be extended by the number of days that the employee was under suspension. In other words, the grant of step increment will only be delayed by the same number of days that the employee was under suspension. This is akin to the status of an employee who incurred vacation leave without pay for purposes of the grant of step increment. Employees who were on approved vacation leave without pay enjoy the liberal application of the rule on the grant of step increment under Section 60 of CSC.

5. ID.; ID.; PREVENTIVE SUSPENSION PENDING INVESTIGATION IS NOT A PENALTY; NATURE THEREOF, DISCUSSED.— Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. Therefore, on the matter of step increment, if an employee who was suspended as a penalty will be treated like an employee on approved vacation leave without pay, then it is only fair and reasonable to apply the same rules to an employee who was preventively suspended, more so considering that preventive suspension is not a penalty. If an employee is preventively suspended, the employee is not rendering actual service and this will also effectively interrupt the continuity of his government service. Consequently, an employee who was preventively suspended will still be entitled to step increment after serving the time of his preventive suspension even if the pending administrative case against him has not yet been resolved or dismissed. The grant of step increment will only be delayed for the same number of days, which must not exceed 90 days, that an official or employee was serving the preventive suspension.

6. LABOR AND SOCIAL LEGISLATION; SOCIAL LEGISLATION SHOULD BE LIBERALLY CONSTRUED AND ADMINISTERED IN FAVOR OF THE PERSONS BENEFITED.— Social legislation like the circular on the grant of step increment, being remedial in character, should be liberally construed and administered in favor of the persons to be benefited. The liberal approach aims to achieve humanitarian purposes of the law in order that the efficiency, security and well-being of government employees may be enhanced.

APPEARANCES OF COUNSEL

GSIS Legal Services Group for petitioners.
Barbers Molina & Molina for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 24 September 2004 Decision[2] and the 7 October 2005 Order[3] of the Regional Trial Court of Manila, Branch 19 (trial court), in Civil Case No. 03-108389. In its 24 September 2004 Decision, the trial court granted respondents Albert M. Velasco[4] and Mario I. Molina's[5] (respondents) petition for prohibition. In its 7 October 2005 Order, the trial court denied petitioners Board of Trustees of the Government Service Insurance System (GSIS) and Winston F. Garcia's (petitioners) motion for reconsideration.

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

[2] *Rollo*, pp. 34-37. Penned by Judge Zenaida R. Daguna.

[3] *Id.* at 38.

[4] Respondent Albert M. Velasco holds the position of Attorney V in the Department of Investigation.

[5] Respondent Mario I. Molina holds the position of Attorney V in the Legal Department. Sometimes appears in the records as "Mario T. Molina."

The Facts

On 23 May 2002, petitioners charged respondents administratively with grave misconduct and placed them under preventive suspension for 90 days.[6] Respondents were charged for their alleged participation in the demonstration held by some GSIS employees denouncing the alleged corruption in the GSIS and calling for the ouster of its president and general manager, petitioner Winston F. Garcia.[7]

In a letter dated 4 April 2003, respondent Mario I. Molina (respondent Molina) requested GSIS Senior Vice President Concepcion L. Madarang (SVP Madarang) for the implementation of his step increment.[8] On 22 April 2003, SVP Madarang denied the request citing GSIS Board Resolution No. 372 (Resolution No. 372)[9] issued by petitioner Board of Trustees of the GSIS (petitioner GSIS Board) which approved the new GSIS salary structure, its implementing rules and regulations, and the adoption of the supplemental guidelines on step increment and promotion.[10] The pertinent provision of Resolution No. 372 provides:

A. Step Increment

xxx xxx xxx

III. Specific Rules:

xxx xxx xxx

3. The step increment adjustment of an employee who is on preventive suspension shall be withheld until such time that a decision on the case has been rendered. x x x x

Respondents also asked that they be allowed to avail of the employee privileges under GSIS Board Resolution No. 306 (Resolution No. 306) approving Christmas raffle benefits for

[6] Records, pp. 24-28.

[7] Respondent Albert M. Velasco was also charged with violation of rules on office decorum and gross insubordination.

[8] Records, pp. 35-36.

[9] *Id.* at 19-23. Issued on 21 November 2000.

all GSIS officials and employees effective year 2002.[11] Respondents' request was again denied because of their pending administrative case.

On 27 August 2003, petitioner GSIS Board issued Board Resolution No. 197 (Resolution No. 197) approving the following policy recommendations:

> B. On the disqualification from promotion of an employee with a pending administrative case
>
> To adopt the policy that an employee with pending administrative case shall be disqualified from the following during the pendency of the case:
>
> a) Promotion;
>
> b) Step Increment;
>
> c) Performance-Based Bonus; and
>
> d) Other benefits and privileges.

On 14 November 2003, respondents filed before the trial court a petition for prohibition with prayer for a writ of preliminary injunction.[12] Respondents claimed that they were denied the benefits which GSIS employees were entitled under Resolution No. 306. Respondents also sought to restrain and prohibit petitioners from implementing Resolution Nos. 197 and 372. Respondents claimed that the denial of the employee benefits due them on the ground of their pending administrative cases violates their right to be presumed innocent and that they are being punished without hearing. Respondent Molina also added that he had already earned his right to the step increment before Resolution No. 372 was enacted. Respondents also argued that the three resolutions were ineffective because they were not registered with the University of the Philippines (UP) Law Center pursuant to the Revised Administrative Code of 1987.[13]

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[10] *Id.* at 37.

[11] *Id.* at 33-34. Issued on 23 October 2002.

[12] *Id.* at 5-18.

[13] *Id.* at 38.

On 24 November 2003, petitioners filed their comment with motion to dismiss and opposition.[14] On 2 December 2003, respondents filed their opposition to the motion to dismiss.[15] On 5 December 2003, petitioners filed their reply.[16]

On 16 January 2004, the trial court denied petitioners' motion to dismiss and granted respondents' prayer for a writ of preliminary injunction.[17]

Petitioners filed a motion for reconsideration.[18] In its 26 February 2004 Order, the trial court denied petitioners' motion.[19]

In its 24 September 2004 Decision, the trial court granted respondents' petition for prohibition. The dispositive portion of the 24 September 2004 Decision provides:

> WHEREFORE, the petition is GRANTED and respondents' Board Resolution No. 197 of August 27, 2003 and No. 372 of November 21, 2000 are hereby declared null and void. The writ of preliminary injunction issued by this Court is hereby made permanent.
>
> SO ORDERED.[20]

Petitioners filed a motion for reconsideration. In its 7 October 2005 Order, the trial court denied petitioners' motion.

Hence, this petition.

The Ruling of the Trial Court

On the issue of jurisdiction, the trial court said it can take cognizance of the petition because the "territorial area" referred to in Section 4, Rule 65 of the Rules of Court "does not necessarily delimit to a particular locality but rather to the judicial region

[14] *Id.* at 42-46.

[15] *Id.* at 49-52.

[16] *Id.* at 53-58.

[17] *Id.* at 68-70.

[18] *Id.* at 83-88.

[19] *Id.* at 140.

[20] *Rollo*, p. 37.

where the office or agency is situated so that the prohibitive writ can be enforced."

On the merits of the case, the trial court ruled that respondents were entitled to all employee benefits as provided under the law by reason of their employment. According to the trial court, to deny respondents these employee benefits for the reason alone that they have pending administrative cases is unjustified since it would deprive them of what is legally due them without due process of law, inflict punishment on them without hearing, and violate their right to be presumed innocent.

The trial court also found that the assailed resolutions were not registered with the UP Law Center, per certification of the Office of the National Administrative Register (ONAR).[21] Since they were not registered, the trial court declared that the assailed resolutions have not become effective citing Sections 3 and 4, Chapter 2, Book 7 of the Revised Administrative Code of 1987.[22]

The Issues

Petitioners raise the following issues:

[21] Records, p. 38.

[22] SEC. 3. Filing. - (1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party of persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to the public inspection.

SEC. 4. Effectivity. - In addition to other rule-making requirements provided by law not inconsistent with this Book, each rule shall become effective fifteen (15) days from the date of filing as above provided unless a different date is fixed by law, or specified in the rule in cases of imminent danger to public health, safety and welfare, the existence of which must be expressed in a statement accompanying the rule. The agency shall take appropriate measures to make emergency rules known to persons who may be affected by them.

I

Whether the jurisdiction over the subject matter of Civil Case No. 03-108389 (*Velasco, et al. vs. The Board of Trustees of GSIS, et al.*, RTC-Manila, Branch 19) lies with the Civil Service Commission (CSC) and not with the Regional Trial Court of Manila, Branch 19.

II

Whether a Special Civil Action for Prohibition against the GSIS Board or its President and General Manager exercising quasi-legislative and administrative functions in Pasay City is outside the territorial jurisdiction of RTC-Manila, Branch 19.

III

Whether internal rules and regulations need not require publication with the Office of the National [Administrative] Register for their effectivity, contrary to the conclusion of the RTC-Manila, Branch 19.

IV

Whether a regulation, which disqualifies government employees who have pending administrative cases from the grant of step increment and Christmas raffle benefits is unconstitutional.

V

Whether the nullification of GSIS Board Resolutions is beyond an action for prohibition, and a writ of preliminary injunction cannot be made permanent without a decision ordering the issuance of a writ of prohibition.[23]

The Ruling of the Court

The petition is partly meritorious.

Petitioners argue that the Civil Service Commission (CSC), not the trial court, has jurisdiction over Civil Case No. 03-108389 because it involves claims of employee benefits. Petitioners point out that the trial court should have dismissed the case for lack of jurisdiction.

Sections 2 and 4, Rule 65 of the Rules of Court provide:

[23] *Rollo*, p. 157.

Sec. 2. *Petition for Prohibition*. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and **praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein**, or otherwise granting such incidental reliefs as law and justice may require.

Sec. 4. *Where petition 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 related to 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. (Emphasis supplied)

Civil Case No. 03-108389 is a petition for prohibition with prayer for the issuance of a writ of preliminary injunction. Respondents prayed that the trial court declare all acts emanating from Resolution Nos. 372, 197, and 306 void and to prohibit petitioners from further enforcing the said resolutions.[24] Therefore, the trial court, not the CSC, has jurisdiction over respondents' petition for prohibition.

Petitioners also claim that the petition for prohibition was filed in the wrong territorial jurisdiction because the acts sought to be prohibited are the acts of petitioners who hold their principal office in Pasay City, while the petition for prohibition was filed in Manila.

[24] Records, p. 16.

Section 18 of Batas Pambansa Blg. 129 (BP 129)[25] provides:

SEC. 18. *Authority to define territory appurtenant to each branch.* - **The Supreme Court shall define the territory over which a branch of the Regional Trial Court shall exercise its authority. The territory thus defined shall be deemed to be the territorial area of the branch concerned for purposes of determining the venue of all suits, proceedings or actions, whether civil or criminal**, as well as determining the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts over which the said branch may exercise appellate jurisdiction. The power herein granted shall be exercised with a view to making the courts readily accessible to the people of the different parts of the region and making attendance of litigants and witnesses as inexpensive as possible. (Emphasis supplied)

In line with this, the Supreme Court issued Administrative Order No. 3[26] defining the territorial jurisdiction of the regional trial courts in the National Capital Judicial Region, as follows:

a. Branches I to LXXXII, inclusive, with seats at Manila – over the City of Manila only.

b. Branches LXXXIII to CVII, inclusive, with seats at Quezon City – over Quezon City only.

c. Branches CVIII to CXIX, inclusive, with seats at Pasay City – over Pasay City only.

xxx xxx xxx

The petition for prohibition filed by respondents is a special civil action which may be filed in the Supreme Court, the Court of Appeals, the Sandiganbayan or the regional trial court, as the case may be.[27] It is also a personal action because it does not affect the title to, or possession of real property, or interest therein. Thus, it may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, at the election of the

[25] The Judiciary Reorganization Act of 1980.

[26] Dated 19 January 1983.

[27] RULES OF COURT, Sec. 4, Rule 65.

plaintiff.[28] Since respondent Velasco, plaintiff before the trial court, is a resident of the City of Manila,[29] the petition could properly be filed in the City of Manila.[30] The choice of venue is sanctioned by Section 2, Rule 4 of the Rules of Court.

Moreover, Section 21(1) of BP 129 provides:

> Sec. 21. *Original jurisdiction in other cases*. - Regional Trial Courts shall exercise original jurisdiction:
>
> (1) In the issuance of **writs of** *certiorari*, **prohibition**, *mandamus*, *quo warranto*, *habeas corpus* and **injunction**, **which may be enforced in any part of their respective regions**; x x x (Emphasis supplied)

Since the National Capital Judicial Region is comprised of the cities of Manila, Quezon, Pasay, Caloocan, Malabon, Mandaluyong, Makati, Pasig, Marikina, Parañaque, Las Piñas, Muntinlupa, and Valenzuela and the municipalities of Navotas, San Juan, Pateros, and Taguig, a writ of prohibition issued by the regional trial court sitting in the City of Manila, is enforceable in Pasay City. Clearly, the RTC did not err when it took cognizance of respondents' petition for prohibition because it had jurisdiction over the action and the venue was properly laid before it.

Petitioners also argue that Resolution Nos. 372, 197, and 306 need not be filed with the UP Law Center ONAR since they are, at most, regulations which are merely internal in nature – regulating only the personnel of the GSIS and not the public.

Not all rules and regulations adopted by every government agency are to be filed with the UP Law Center. Only those of general or of permanent character are to be filed. According to the UP Law Center's guidelines for receiving and publication of rules and regulations, "interpretative regulations and those merely internal in nature, that is, regulating only the personnel

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[28] RULES OF COURT, Sec. 2, Rule 4.

[29] Records, p. 7. In the petition for prohibition, respondent Velasco stated that his residence is "at 639-A Cristobal Street, Sampaloc, Manila."

[30] See *Notre Dame de Lourdes Hospital v. Mallare-Phillips*, 274 Phil. 467 (1991).

of the Administrative agency and not the public," need not be filed with the UP Law Center.

Resolution No. 372 was about the new GSIS salary structure, Resolution No. 306 was about the authority to pay the 2002 Christmas Package, and Resolution No. 197 was about the GSIS merit selection and promotion plan. Clearly, the assailed resolutions pertained only to internal rules meant to regulate the personnel of the GSIS. There was no need for the publication or filing of these resolutions with the UP Law Center.

Petitioners insist that petitioner GSIS Board has the power to issue the assailed resolutions. According to petitioners, it was within the power of petitioner GSIS Board to disqualify respondents for step increment and from receiving GSIS benefits from the time formal administrative charges were filed against them until the cases are resolved.

The Court notes that the trial court only declared Resolution Nos. 197 and 372 void. The trial court made no ruling on Resolution No. 306 and respondents did not appeal this matter. Therefore, we will limit our discussion to Resolution Nos. 197 and 372, particularly to the effects of preventive suspension on the grant of step increment because this was what respondents raised before the trial court.

First, entitlement to step increment depends on the rules relative to the grant of such benefit. In point are Section 1(b), Rule II and Section 2, Rule III of Joint Circular No. 1, series of 1990, which provide:

Rule II. Selection Criteria

Section 1. Step increments shall be granted to all deserving officials and employees x x x

(b) Length of Service – For those who have rendered continuous satisfactory service in a particular position for at least three (3) years.

Rule III. Step Increments

xxx xxx xxx

Section 2. Length of Service – A one (1) step increment shall be granted officials and employees for every three (3) years of continuous satisfactory service in the position. Years of service in the position shall include the following:

(a) Those rendered before the position was reclassified to a position title with a lower or the same salary grade allocation; and

(b) Those rendered before the incumbent was transferred to another position within the same agency or to another agency without a change in position title and salary grade allocation.

In the initial implementation of step increments in 1990, an incumbent shall be granted step increments equivalent to one (1) step for every three (3) years of continuous satisfactory service in a given position occupied as of January 1, 1990.

A grant of step increment on the basis of length of service requires that an employee must have rendered at least three years of continuous and satisfactory service in the same position to which he is an incumbent.[31] To determine whether service is continuous, it is necessary to define what actual service is.[32] "Actual service" refers to the period of continuous service since the appointment of the official or employee concerned, including the period or periods covered by any previously approved leave with pay.[33]

Second, while there are no specific rules on the effects of preventive suspension on step increment, we can refer to the CSC rules and rulings on the effects of the penalty of suspension and approved vacation leaves without pay on the grant of step increment for guidance.

Section 56(d), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service provides:

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[31] CSC Resolution No. 02-1479, Sison, Maricon – Re: Query; Step Increment, 8 November 2002.

[32] *Id*.

[33] Section 28, CSC Memorandum Circular No. 41, series of 1988. Also known as the Revised Omnibus Rules on Leave.

Section 56. *Duration and effect of administrative penalties.* - The following rules shall govern in the imposition of administrative penalties: x x x

(d) The penalty of suspension shall result in the temporary cessation of work for a period not exceeding one (1) year.

Suspension of one day or more shall be considered a gap in the continuity of service. During the period of suspension, respondent shall not be entitled to all money benefits including leave credits.

If an employee is suspended as a penalty, it effectively interrupts the continuity of his government service at the commencement of the service of the said suspension. This is because a person under penalty of suspension is not rendering actual service. The suspension will undoubtedly be considered a gap in the continuity of the service for purposes of the computation of the three year period in the grant of step increment.[34] However, this does not mean that the employee will only be entitled to the step increment after completing another three years of continuous satisfactory service reckoned from the time the employee has fully served the penalty of suspension.[35] The CSC has taken this to mean that the computation of the three year period requirement will only be extended by the number of days that the employee was under suspension.[36] In other words, the grant of step increment will only be delayed by the same number of days that the employee was under suspension.

This is akin to the status of an employee who incurred vacation leave without pay for purposes of the grant of step increment.[37] Employees who were on approved vacation leave without pay enjoy the liberal application of the rule on the grant of step increment under Section 60 of CSC Memorandum Circular No. 41, series of 1998, which provides:

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[34] CSC Resolution No. 021564, Traspadillo, John Marlon M. - Re: Step Increment; Suspension as a Gap in the Service, 17 December 2002.

[35] *Id*.

[36] *Id*.

[37] *Id*.

Section 60. Effect of vacation leave without pay on the grant of length of service step increment. - For purposes of computing the length of service for the grant of step increment, approved vacation leave without pay for an aggregate of fifteen (15) days shall not interrupt the continuity of the three-year service requirement for the grant of step increment. However, if the total number of authorized vacation leave without pay included within the three-year period exceeds fifteen (15) days, the grant of one-step increment **will only be delayed for the same number of days that an official or employee was absent without pay**. (Emphasis supplied)

Third, on preventive suspension, Sections 51 and 52, Chapter 7, Subtitle A, Title I, Book V of the Revised Administrative Code of 1987 provide:

SEC. 51. *Preventive Suspension*. - The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

SEC. 52. *Lifting of Preventive Suspension. Pending Administrative Investigation*. - **When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service**: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided. (Emphasis supplied)

Preventive suspension pending investigation is not a penalty.[38] It is a measure intended to enable the disciplining authority to

[38] Section 24 of Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 and other Pertinent Civil Service Laws. Section 24 provides:

SEC. 24. Preventive suspension is not a punishment or penalty for misconduct in office but is considered to be a preventive measure.

investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him.[39] If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated.

Therefore, on the matter of step increment, if an employee who was suspended as a penalty will be treated like an employee on approved vacation leave without pay,[40] then it is only fair and reasonable to apply the same rules to an employee who was preventively suspended, more so considering that preventive suspension is not a penalty. If an employee is preventively suspended, the employee is not rendering actual service and this will also effectively interrupt the continuity of his government service. Consequently, an employee who was preventively suspended will still be entitled to step increment after serving the time of his preventive suspension even if the pending administrative case against him has not yet been resolved or dismissed. The grant of step increment will only be delayed for the same number of days, which must not exceed 90 days, that an official or employee was serving the preventive suspension.

Fourth, the trial court was correct in declaring that respondents had the right to be presumed innocent until proven guilty. This means that an employee who has a pending administrative case filed against him is given the benefit of the doubt and is considered innocent until the contrary is proven.[41]

In this case, respondents were placed under preventive suspension for 90 days beginning on 23 May 2002. Their preventive suspension ended on 21 August 2002. Therefore, after serving the period of their preventive suspension and without the administrative case being finally resolved, respondents should

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[39] *Juan v. People of the Philippines*, 379 Phil. 125 (2000); *Gloria v. Court of Appeals*, 365 Phil. 744 (1999).

[40] CSC Resolution No. 021564, Traspadillo, John Marlon M. - Re: Step Increment; Suspension as a Gap in the Service, 17 December 2002.

[41] CSC Resolution No. 992456, Asperilla, Dominador O. - Re: Special Leave Benefits; Query, 5 November 1999.

have been reinstated and, after serving the same number of days of their suspension, entitled to the grant of step increment.

On a final note, social legislation like the circular on the grant of step increment, being remedial in character, should be liberally construed and administered in favor of the persons to be benefited. The liberal approach aims to achieve humanitarian purposes of the law in order that the efficiency, security and well-being of government employees may be enhanced.[42]

WHEREFORE, we *DENY* the petition. We *AFFIRM with MODIFICATION* the 24 September 2004 Decision and the 7 October 2005 Order of the Regional Trial Court of Manila, Branch 19 in Civil Case No. 03-108389. We *DECLARE* the assailed provisions on step increment in GSIS Board Resolution Nos. 197 and 372 *VOID*. We *MODIFY* the 24 September 2004 Decision of the Regional Trial Court of Manila, Branch 19 and rule that GSIS Board Resolution Nos. 197, 306 and 372 need not be filed with the University of the Philippines Law Center.

SO ORDERED.

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

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[42] *Tria v. Employees' Compensation Commission*, G.R. No. 96787, 8 May 1992, 208 SCRA 834; *Ortiz v. COMELEC*, 245 Phil. 780 (1988).

FIRST DIVISION

[G.R. No. 171238. February 2, 2011]

F.A.T. KEE COMPUTER SYSTEMS, INC., *petitioner, vs.* **ONLINE NETWORKS INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* THE ATTACHMENT REQUIRED IS NOT MEANT TO BE AN IRONCLAD RULE SUCH THAT THE FAILURE TO FOLLOW THE SAME WOULD MERIT THE OUTRIGHT DISMISSAL OF THE PETITION; EXPLAINED.— Rule 45, Section 4 of the Rules of Court indeed requires the attachment to the petition for review on *certiorari* "such material portions of the record as would support the petition." However, such a requirement was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, "the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate." More importantly, Section 8 of Rule 45 declares that "[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice." Given that the TSN of the proceedings before the RTC forms part of the records of the instant case, the failure of FAT KEE to attach the relevant portions of the TSN was already cured by the subsequent elevation of the case records to this Court. This pronouncement is likewise in keeping with the doctrine that procedural rules should be liberally construed in order to promote their objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.

2. ID.; ID.; ID.; QUESTION OF LAW DISTINGUISHED FROM QUESTION OF FACT; PETITION FOR REVIEW ON *CERTIORARI* SHALL RAISE ONLY QUESTION OF LAW; EXCEPTION.— A question of law arises when there is doubt

as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. Rule 45, Section 1 of the Rules of Court dictates that a petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth." This rule is, however, subject to exceptions, one of which is when the findings of fact of the Court of Appeals and the RTC are conflicting.

3. CIVIL LAW; ESTOPPEL; DOCTRINE OF ESTOPPEL, CONSTRUED; ELEMENTS.— In *British American Tobacco v. Camacho*, the Court emphasized the doctrine of estoppel as follows: Estoppel, an equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. The principle is codified in Article 1431 of the Civil Code, which provides: Through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon. Estoppel can also be found in Rule 131, Section 2 (a) of the Rules of Court. x x x The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.

4. ID.; ID.; LACK OF DILIGENCE BY THE PARTY CLAIMING ESTOPPEL IS GENERALLY FATAL; RATIONALE.— *Mijares v. Court of Appeals* is instructive in declaring that: One who claims the benefit of an estoppel on the ground that he has been misled by the representations of another must not have been misled through his own want of reasonable care and circumspection. A lack of diligence by a party claiming an estoppel is generally fatal. If the party conducts himself with careless indifference to means of information reasonably at

hand, or ignores highly suspicious circumstances, he may not invoke the doctrine of estoppel. Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth, and accordingly estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it, at least where actual fraud has not been practised on the party claiming the estoppel.

APPEARANCES OF COUNSEL

Poblador Bautista & Reyes for respondent.

D E C I S I O N

LEONARDO – DE CASTRO, *J.*:

For consideration of the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, which seeks to challenge the Decision[2] dated September 26, 2005 of the Court of Appeals in CA-G.R. CV No. 71910. The appellate court reversed and set aside the Decision[3] dated November 7, 2000 of the Regional Trial Court (RTC) of Makati City, Branch 148, in Civil Case No. 99-167, which dismissed the complaint filed by herein respondent Online Networks International, Inc. (ONLINE).

Petitioner F.A.T. Kee Computer Systems, Inc. (FAT KEE) is a domestic corporation engaged in the business of selling computer equipment and conducting maintenance services for the units it sold.

ONLINE is also a domestic corporation principally engaged in the business of selling computer units, parts and software.

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[1] *Rollo*, pp. 11-31.

[2] *Id.* at 32-42; penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Delilah Vidallon-Magtolis and Fernanda Lampas-Peralta, concurring.

[3] *Id.* at 129-135; penned by Judge Oscar B. Pimentel.

On January 25, 1999, ONLINE filed a Complaint[4] for Sum of Money against FAT KEE docketed as Civil Case No. 99-167. ONLINE alleged that sometime in November 1997, it sold computer printers to FAT KEE for which the latter agreed to pay the purchase price of **US$136,149.43**. The agreement was evidenced by Invoice Nos. 4680, 4838, 5090 and 5096[5] issued by ONLINE to FAT KEE. The invoice receipts contained a stipulation that "interest at 28% *per annum* is to be charged on all accounts overdue" and "an additional sum equal to 25% of the amount will be charged by vendor for attorney's fees plus cost of collection in case of suit."[6] It was further asserted in the Complaint that thereafter, FAT KEE, through its President Frederick Huang, Jr., offered to pay its US dollar obligations in Philippine pesos using the exchange rate of ₱40:US$1. ONLINE claimed to have duly accepted the offer. The amount payable was then computed at ₱5,445,977.20. FAT KEE then made several payments amounting to ₱2,502,033.06 between the periods of March and May 1998.[7] As of May 12, 1998, the balance of FAT KEE purportedly amounted to ₱2,943,944.14. As the obligations of FAT KEE matured in December 1997, ONLINE applied the 28% interest on the unpaid amount. However, in view of the good business relationship of the parties, ONLINE allegedly applied the interest on the balance for a period of three months only. Thus, the total amount due, plus interest, was ₱3,012,636.17.[8] FAT KEE subsequently made additional payments in the amount of ₱2,256,541.12. A balance of **₱756,095.05**, thus, remained according to ONLINE's computations. Despite repeated demands, FAT KEE failed to

[4] Records, pp. 1-7.

[5] *Id.* at 100-103.

[6] *Id.*

[7] *Id.* at 3.

[8] The total amount due as computed by ONLINE, plus 28% interest *per annum* for three months, was ₱3,012,636.17. However, this is inaccurate. The said amount is the result obtained upon the application of the 28% interest on the alleged unpaid balance of ₱2,943,944.14 for a period of one (1) month only. A recomputation of the figures shows that the correct total amount should have been **₱3,150,020.23**.

pay its obligations to ONLINE without any valid reason. ONLINE was allegedly constrained to send a final demand letter for the payment of the aforementioned balance. As FAT KEE still ignored the demand, ONLINE instituted the instant case, praying that FAT KEE be ordered to pay the principal amount of ₱756,095.05, plus 28% interest *per annum* computed from July 28, 1998 until full payment. ONLINE likewise sought the payment of 25% of the total amount due as attorney's fees, as well as litigation expenses and costs of suit.

FAT KEE duly answered[9] the complaint alleging, *inter alia*, that it did not reach an agreement with ONLINE for the payment of its obligations in US dollars. FAT KEE claimed that the invoice receipts of the computer printers, which quoted the purchase price in US dollars, were unilaterally prepared by ONLINE. While FAT KEE admitted that it offered to pay its obligations in Philippine pesos, it averred that the amount owing to ONLINE was only **₱5,067,925.34**, as reflected in the Statement of Account (SOA) sent by ONLINE dated December 9, 1997.[10] FAT KEE stated that payments in Philippine pesos were tendered to ONLINE, in accordance with the SOA, and the latter accepted the same. FAT KEE denied that it agreed to the conversion rate of ₱40:US$1 and claimed that it had already fully paid its total obligations to ONLINE. FAT KEE, thus, prayed for the dismissal of the complaint and, by way of counterclaim, sought the payment of ₱250,000.00 as attorney's fees.

The trial of the case ensued thereafter.

ONLINE first called Peter Jeoffrey Goco to the witness stand. Goco testified that he was the Legal Officer of ONLINE, whose duty was to monitor the outstanding or unpaid accounts of ONLINE's clients, as well as to send demand letters and recommend the filing of cases should the clients fail to pay.[11] FAT KEE was one of the clients of ONLINE, which had an

[9] Records, pp. 37-45.

[10] *Id.* at 175.

[11] TSN, July 29, 1999, p. 6.

outstanding balance of a little over ₱756,000.00.[12] Goco stated that the invoice receipts sent to FAT KEE were denominated in US dollars as the business of ONLINE was to sell imported computer products, in wholesale and retail. In view of the currency fluctuations during those times, ONLINE deemed that the better business policy was to bill their clients in US dollars.[13] FAT KEE allegedly had an outstanding balance of roughly around US$136,000.00.[14] When ONLINE demanded payment, FAT KEE negotiated that it be allowed to pay in Philippine pesos. Goco attested that the parties subsequently agreed to a conversion rate of ₱40:US$1. FAT KEE was able to remit partial payments to ONLINE, but as of May 1998, the amount of ₱756,095.05 remained unpaid.[15] As FAT KEE failed to settle its obligations, ONLINE included the payment of interests on the latter's claim.[16] FAT KEE then sent a letter to ONLINE, insisting that there was no agreement as to the exchange rate to be used in converting the unpaid obligations of FAT KEE and that the latter could not pay because of the extraordinary currency fluctuations.[17] The lawyers of ONLINE eventually sent a demand letter[18] to FAT KEE for the payment of the outstanding balance, but this too went unheeded. ONLINE, thus, filed the instant case.[19]

The next witness to be presented by ONLINE was James Payoyo, an Account Manager for the said company. Payoyo testified, among others, that sometime in November 1997, FAT KEE submitted their Purchase Order[20] for Hewlett Packard computers and printers, which was quoted in US dollars.[21] Prior

[12] *Id.* at 9.

[13] *Id.* at 14-15.

[14] *Id.* at 18.

[15] *Id.* at 20.

[16] *Id.* at 24.

[17] *Id.* at 24-25.

[18] Records, pp. 118-119.

[19] TSN, July 29, 1999, p. 27.

[20] The Purchase Order was dated November 26, 1997; records, p. 120.

[21] TSN, August 5, 1999, p. 7.

to this, FAT KEE likewise sent ONLINE a Purchase Order[22] dated October 23, 1997 and the same was denominated in US dollars.[23] Payoyo related that, on January 15, 1998, the officials of ONLINE met with Frederick Huang, Jr., the President of FAT KEE, and the latter's lawyer. The parties discussed the payment scheme for the outstanding balance of FAT KEE. ONLINE proposed that the total unpaid amount of more than US$136,000.00 shall be divided in two, such that 50% of the amount was to be paid in US dollars and the other half was to be settled in Philippine pesos. The exchange rate to be applied to the Philippine peso component was ₱41:US$1.[24] FAT KEE then offered to renegotiate the exchange rate, offering to pay ₱35:US$1, but ONLINE rejected the same. According to Payoyo, the parties subsequently agreed to a ₱40:US$1 conversion rate.[25]

Lastly, ONLINE called on Sonia Magpili to likewise testify to the fact that FAT KEE renegotiated with ONLINE for the conversion rate of ₱40:US$1. Magpili stated that she was then the Executive Vice President of ONLINE[26] and was among the company officials who met with FAT KEE President Huang on January 15, 1998.[27] Discussed in the meeting was the proposal to split the payment to be made by FAT KEE.[28] Frederick Huang, Jr. subsequently called the office of ONLINE to request for the lowering of the exchange rate to ₱40:US$1, to which ONLINE agreed.[29] FAT KEE made partial payments from March 1998, but later tried to negotiate again for a lower exchange rate. Magpili testified that ONLINE no longer agreed to this proposal as the account of FAT KEE had already fallen due as of December

[22] Records, p. 121.

[23] TSN, August 5, 1999, pp. 12-13.

[24] *Id.* at 20-22.

[25] *Id.* at 26.

[26] TSN, September 7, 1999, p. 7.

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

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

[29] *Id.* at 14-15.

1997.[30] On cross-examination, however, Magpili admitted that FAT KEE did not execute any written confirmation to signify its agreement to the proposal to split its outstanding balance and the conversion rate of ₱40:US$1.[31]

FAT KEE, afterwards, presented its testimonial evidence, calling forth Frederick Huang, Jr. to the witness stand. Pertinently, Huang testified that the exchange rate they used in order to compute their total unpaid obligation to ONLINE was **₱34:US$1**. Huang explained that this figure was arrived at by taking into account the SOA dated December 9, 1997. Therein, the unpaid dollar amounts in the assailed Invoice Nos. 4680 and 4838[32] were denominated in Philippine pesos as ₱2,343,414.33 and ₱1,502,033.06, respectively. A simple computation[33] then revealed that the rate of exchange rate thereon was ₱34:US$1.[34] FAT KEE also applied the said rate on Invoice Nos. 5090 and 5096,[35] such that the dollar amounts stated thereon were respectively converted to ₱384,107.52 and ₱466,480.00.

Huang also stated that FAT KEE quoted in US dollars the Purchase Order dated November 26, 1997, since the same was upon the instructions of Payoyo. During that time, the fluctuations of the Philippine peso were rapid and the Accounting Department of ONLINE informed Huang that the computer equipment ordered by FAT KEE would not be delivered unless FAT KEE issued a Purchase Order in US dollars. Huang also said that there was no agreement between FAT KEE and ONLINE for the payment in US dollars, nor did the parties agree to a specific exchange rate.[36] On January 15, 1998, the parties met, but they failed to

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[30] *Id.* at 17.

[31] *Id.* at 21.

[32] The amount stated in Invoice No. 4680 was $66,954.70, while the amount in Invoice No. 4838 was $44,177.45.

[33] By dividing the amounts in Philippine pesos by the amounts in US dollars.

[34] TSN, November 11, 1999, pp. 18-20.

[35] The amount stated in Invoice No. 5090 was $11,297.28, while the amount in Invoice No. 5096 was $13,720.00.

[36] TSN, February 23, 2000, pp. 13-14.

reach any agreement regarding the exchange rate and the payment in US dollars. The next day, ONLINE, through Payoyo, wrote a letter to FAT KEE, confirming their supposed agreement on an exchange rate of ₱41:US$1.[37] On February 23, 1998, Payoyo again wrote to Huang, informing him that the new exchange rate to be applied was ₱40:US$1. On March 2, 1998, Huang communicated to Payoyo, stating that the Board of Directors of FAT KEE agreed to settle the outstanding balance of the company at the rate of ₱37:US$1.[38] Huang then testified that FAT KEE continued to pay its obligation in Philippine pesos until its obligation was fully paid.[39] Later, FAT KEE received demand letters from ONLINE, directing the former to pay the amount of ₱756,095.05.[40]

Mayumi Huang also testified for FAT KEE. Being the Operations Manager[41] of FAT KEE, she admitted that she was the one who issued the Purchase Order dated November 26, 1997 to ONLINE for $13,720.00.[42]

As rebuttal evidence, ONLINE offered the testimony of Melissa Tan to prove that the SOA dated December 9, 1997 that was purportedly issued by ONLINE was in fact unauthorized and FAT KEE was duly informed of the same. Tan stated that she was the Credit and Collection Supervisor for ONLINE.[43] Sometime in December 1997, Magpili showed her a copy of the SOA dated December 9, 1997, asking Tan if she approved the said document. Tan declared that she did not issue the SOA, nor was she even aware of its issuance.[44] Tan explained that the absence of her signature on the SOA meant that the

[37] *Id.* at 16.

[38] *Id.* at 17.

[39] *Id.* at 20-21.

[40] *Id.* at 22.

[41] TSN, May 11, 2000, p. 20.

[42] *Id.* at 21-22.

[43] TSN, June 15, 2000, p. 5.

[44] *Id.* at 7-9.

same was not authorized by ONLINE. The standard procedure was for Tan to review and approve such documents first before the same were issued.[45] Tan noted that the SOA was prepared by Edwin Morales, an Accountant of ONLINE. When confronted about the SOA, Morales reasoned that he merely wanted to give FAT KEE an initial computation of the latter's outstanding balance, but he mistakenly included the billings that were denominated in US dollars.[46] At the meeting between ONLINE and FAT KEE on January 15, 1998, the latter was informed that the SOA was not official and the parties negotiated the applicable conversion rate.[47] Upon cross-examination, Tan revealed that ONLINE did not rectify or correct the entries contained in the SOA. No disciplinary action was likewise taken against Morales for the unauthorized issuance of the said document.[48]

Finally, FAT KEE presented the testimony of Frederick Huang, Jr. as surrebuttal evidence. Huang again maintained that the parties failed to reach an agreement as regards the payment of FAT KEE's obligations to ONLINE, as well as the proposal to apply the exchange rate of ₱37:US$1.[49]

In a Decision dated November 7, 2000, the RTC dismissed the complaint of ONLINE, ratiocinating thus:

> After assessing the evidence presented by both parties, the court is of the belief that [ONLINE] failed to establish its claim against [FAT KEE]. While indeed [FAT KEE] purchased computer printers from [ONLINE], [the latter] has not established the fact that at the time when the obligation became due and demandable, there was an agreement as to the conversion rate between [ONLINE] and [FAT KEE] as to the rate of exchange from US dollars into Philippine Peso in the payment of purchase price of printers. When there is no

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

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

[47] *Id.* at 15-16.

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

[49] *Id.* at 29.

agreement between [ONLINE] and [FAT KEE] as to the rate of exchange from US dollars to Philippine peso, while it is correct to say that it is the prevailing rate of exchange at the time when the obligation became due and demandable, the prevailing rate should be used that prevailing rate, is the rate pegged by [ONLINE], which was contained in the Statement of Account dated 9 December 1997.

x x x Edwin Morales in the Statement of Account he sent to [FAT KEE] dated 9 December 1997 computed the obligation of [FAT KEE] in Philippine currency and after computing the total obligation, by simple mathematical computation, it appears indeed that the exchange rate used by [ONLINE] is PHP34.00 for every US$1.00. [ONLINE], therefore, is estopped from claiming that the rate of exchange rate should be at the rate of either PHP41.50 or PHP40.00 per US$1.00, as the rate which [ONLINE] itself used is PHP34.00 for every US$1.00 by [ONLINE's] own computation. [FAT KEE] even paid an excess of PHP62,539.24.

Considering that [FAT KEE] have fully paid the amount and there being really no dispute as to the exchange rate by [ONLINE's] own admission in its Statement of Account dated 9 December 1997, it is but proper to consider that [FAT KEE] has fully paid its obligation with [ONLINE] as evidenced by various receipts presented during the trial.

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With all these, considering that [ONLINE] failed to prove through preponderance of evidence its claim against [FAT KEE] and therefore [ONLINE's] complaint must be dismissed.

However, [FAT KEE] in its counterclaim claimed among others that [FAT KEE] is entitled to attorney's fees in the amount of ₱250,000.00. It having been satisfactorily proven by [FAT KEE] that [it] is entitled to attorney's fees, the court, in its discretion, awards to [FAT KEE] the amount of PHP100,000.00 for and as attorney's fees, which [ONLINE] must pay to [FAT KEE] considering that the claim of [ONLINE] is incorrect and its complaint baseless.

WHEREFORE, premises considered, [judgment] is hereby rendered in favor of [FAT KEE] and as against [ONLINE]. As a consequence, [ONLINE's] Complaint is dismissed, and [ONLINE] is therefore adjudged to pay [FAT KEE] the amount of ₱100,000.00 for and as attorney's fees.

Costs against [ONLINE].[50]

On February 20, 2001, ONLINE filed a Motion for Reconsideration[51] of the above decision. ONLINE argued that estoppel may not be invoked against it as FAT KEE did not act or rely on the representations in the SOA dated December 9, 1997. ONLINE maintained that FAT KEE was informed that the SOA was erroneous and unauthorized and the parties subsequently met and negotiated on the exchange rate to be applied. Likewise, ONLINE challenged the award of attorney's fees in favor of FAT KEE.

In an Order dated July 25, 2001, the RTC denied ONLINE's motion for lack of merit. Said the RTC:

> The principle of Estoppel properly applies to [ONLINE] brought about by the Statement of Account dated December 9, 1997 which was sent to [FAT KEE] through [ONLINE's] own collection clerk employee, Mr. Edwin Morales. While, indeed, there is no exchange rate agreed upon between [ONLINE] and [FAT KEE], [the latter] actually made payments using the exchange rate of ₱34 for every US dollar after the Statement of Account dated December 9, 1997 was received by [FAT KEE]. Neither was there any formal action to correct the alleged unauthorized Statement of Account received by [FAT KEE] nor was the employee, Mr. Edwin Morales meted appropriate disciplinary action for the acts. On the contrary, it was only during the rebuttal stage of the case when [ONLINE] tried to rectify the alleged mistake committed and not at the time when the same was discovered. Moreover, [ONLINE's] claim that [FAT KEE] did not reply on the Statement of Account aforestated is not entirely correct as the payments made by [FAT KEE] which [ONLINE] accepted were actually based on the Statement of Account using the rate of exchange of ₱34 for every US Dollar.
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> In the matter of the award for Attorney's fees, the same is justified and reasonable under the circumstances. The complaint being unfounded and baseless, [FAT KEE] was forced to litigate and to engage the services of counsel for the protection of its interest.

[50] *Rollo*, pp. 132-134.

[51] Records, pp. 265-287.

The Court therefore finds justifiable and equitable reason for attorney's fees to be awarded.

WHEREFORE, premises considered, for lack of substantial merit and for reasons stated above, the Motion for Reconsideration is hereby DENIED.[52]

ONLINE thereafter filed a Notice of Appeal,[53] elevating the case to the Court of Appeals.

On September 26, 2005, the Court of Appeals rendered a Decision, reversing the judgment of the RTC in this wise:

We find the appeal meritorious.

In the proceedings below, both parties harped on the propriety of using the exchange rate of ₱40:$1 as against the stated rate contained in the December SOA which the court *a quo* fixed at ₱34.00. However, after scrutinizing the pieces of evidence submitted by the contending parties, We found the pronouncement of the court *a quo* wanting of bases and support. Thus, in light of this conclusion, this Court is constrained to take exception from the findings of the trial court considering that there were pieces [of] evidence which had been misappreciated that will compel a contrary conclusion if properly taken into account.[54]

On the issue of estoppel on the part of ONLINE, the Court of Appeals adjudged that:

As borne by the records, ONLINE and FAT KEE had previous dealings with each other. Out of all their transactions in the month of November 1997, six of these were transacted using the US Currency in their price quotations; two of these were actually paid in said notes. While We agree that Invoice Nos. 4680 and 4838 were included in the December SOA, it should not however, be assumed that the same was the applicable conversion rate upon which FAT KEE relied on.

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[52] *Id.* at 311-312.

[53] *Id.* at 313-316.

[54] *Rollo,* p. 36.

Even granting that FAT KEE was of the impression that ₱34:$1 was the applicable rate for its obligation, this was however, immediately rectified by ONLINE when the parties met on January 1998, barely two months from FAT KEE's receipt of the subject statement of account and before any payment for the same was advanced by FAT KEE, in order to negotiate the conversion rate of its obligation. x x x The fact that FAT KEE started paying its obligation under the dollar denominated invoices only on March 1998 fortifies the fact that both parties did not intend to be bound by the December SOA with respect to the subject invoices.

Clearly, no estoppel as regards the December SOA may be ascribed to ONLINE because FAT KEE was not misled by ONLINE's actuations, and even assuming *arguendo* that it was in fact misled, it still cannot invoke the principle as it was clearly negligent in not fully scrutinizing the receipts issued to it, which on their face made specific reference as to where payment was to be applied. x x x In pegging the amount at ₱34:$1, a peculiar situation will result where FAT KEE will be allowed to gain from defaulting payment despite absolute knowledge of its transactions with ONLINE. x x x.

x x x Other than its bare assertion, there were no indications to show that [FAT KEE] sought to correct the alleged irregular transactions. Neither is there any evidence on record demonstrating that sometime after making the purchase order, it made known its intention to take exception from the currency to be used. By and large, FAT KEE cannot now be permitted to escape liability by simply alleging that the subject transactions were made solely upon the insistence of ONLINE.

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In this present recourse, it is undeniable that FAT KEE had given its assent to the foreign currency-based transaction with full knowledge of its probable effects and consequences that may spring therefrom. This is evident from its acquiescence to the varying rates of exchange that ONLINE was charging the dollar transactions and its willingness to negotiate on the conversion rate. x x x And while this single proof of payment may not be regarded as a customary business practice, this however, may be taken as an *indicium* of FAT KEE's

concurrence to enter into a transaction that involves a foreign currency.[55] (Emphases ours.)

As regards the applicable conversion rate, the appellate court held that:

Nevertheless, despite the above findings, this Court does not agree that the rate of conversion has been pegged by the parties at ₱40:$1. It is evident that when the parties met on 15 January 1999, ONLINE's proposal to FAT KEE to use the exchange rate of ₱41:$1 was declined by the latter and instead, FAT KEE made a counter offer of ₱35:$1. Further renegotiations then ensued with ONLINE proposing a rate of ₱40:$1. On the other hand, FAT KEE, in a correspondence dated 2 March 1998, offered to use the exchange rate of ₱37:$1 for the satisfaction of its remaining obligation. Thereafter, no further negotiations took place. Significantly, on 17 March 1998, FAT KEE started to make payments for its remaining obligations, which ONLINE accepted without any protest.

In fine, if ONLINE is to be held in estoppel, it is not from the issuance of the December SOA but rather from the last offer which pegged the exchange rate at the ratio of 37:1. To Our mind, the silence of ONLINE and its receipt of the FAT KEE's payment fifteen (15) days after the last correspondence may be taken as an implied acquiescence to the latter's offer to pay in Philippine currency pegging the exchange rate at ₱37.00 to a US dollar.

Thereby, from its actions subsequent to FAT KEE's last offer, ONLINE is now barred from adopting an inconsistent position that would eventually cause loss or injury to another. x x x

On the other hand, ONLINE's bare denial that this last offer was refused by the company simply contradicts the course of its action and at best, self serving. Accordingly, utilizing the ratio of 37:1, FAT KEE's obligation under Invoice Nos. 4680, 4838, 5090 and 5096 stands in the total amount of ₱5,148,528.91. Admittedly, FAT KEE had already made payments for these invoices in the total amount of ₱4,758,574.18 from 17 March to 19 May 1998 and thus, only the amount of ₱389,954.73 remains unpaid.[56]

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[55] *Id.* at 36-39.

[56] *Id.* at 39-40.

Thus, the Court of Appeals resolved the case as follows:

The only issue now left for resolution is where ONLINE's claim should be computed at the fixed rate of exchange or the rate prevailing at the time of payment of the obligation.

Under Republic Act No. 8183, repealing Republic Act No. 529, parties to a contract may now agree that the obligation or transaction shall be settled in any currency other than the Philippine Currency at the time of payment. The repeal of R.A. No. 529 by R.A. No. 8183 has the effect of removing the prohibition on the stipulation of currency other than Philippine currency, such that obligations or transactions may now be paid in the currency agreed upon by the parties. Just like R.A. No. 529, however, the new law does not provide for the applicable rate of exchange for the conversion of foreign currency-incurred obligations in their peso equivalent. It follows, therefore, that the jurisprudence established in R.A. No. 529 regarding the rate of conversion remains applicable.

Thus, in *Asia World Recruitment, Inc. v. National Labor Relations Commission*, the High Court, applying R.A. No. 8183, sustained the ruling of the NLRC that obligations in foreign currency may be discharged in Philippine currency based on the prevailing rate at the time of payment. The wisdom on which the jurisprudence interpreting R.A. No. 529 is based, equally holds true with R.A. No. 8183. Verily, it is just and fair to preserve the real value of the foreign exchange-incurred obligation to the date of its payment.

In this present recourse, We observed that ONLINE failed to sufficiently establish that the obligation was payable in US currency. On the other hand, its actuations of negotiating for the mode of payment and allowing FAT KEE to settle its obligation in pesos are indicia of the want of any unequivocal agreement between the parties. With no definite agreement that the transaction shall be settled in US Currency at the time of payment and considering the agreement of the parties to peg the rate at ₱37:$1, it now becomes an ineluctable conclusion that FAT KEE's unpaid obligation shall be based at the rate of ₱37:$1 for the reasons discussed above. Further validating this is ONLINE's insistence that FAT KEE was liable to pay the amount of ₱756,095.05 and its allegations that the remaining unsettled controversy was confined to the amount of the applicable exchange rate. Thus, it now becomes indubitable that the obligation was payable in a fixed rate.

Prescinding from the foregoing, We find that the exchange rate to be applied on FAT KEE's obligation is the ratio of 37:1, and after deducting the amounts already paid, FAT KEE still owes ONLINE the amount of ₱389,954.73 excluding interest at the rate of 28% *per annum*, as stated on the face of the pertinent invoices, commencing from July 1998. In the same manner and for having been compelled to institute this suit to vindicate its rights, attorney's fees are also awarded to the [ONLINE] but the same is reduced to 10% of the total award.

WHEREFORE, the foregoing considered, the appeal is hereby **GRANTED** and the decision of the court *a quo* **REVERSED** and **SET ASIDE**. Accordingly, the [FAT KEE] is ordered to pay the amount of ₱389,954.73 to [ONLINE] with interest at the rate [of] 28% per annum from July 1998 until paid, plus 10% of the total award representing attorney's fees.[57]

FAT KEE filed a Motion for Reconsideration[58] of the above decision, but the Court of Appeals denied the same in a Resolution dated January 26, 2006.

Hence, this petition.

FAT KEE invokes for resolution the following legal issues, to wit:

I

THE PETITION IS COMPLETE IN FORM AND SUBSTANCE

II

F.A.T. KEE DID NOT AGREE TO ENTER INTO A FOREIGN CURRENCY TRANSACTION

III

THERE WAS NO AGREEMENT TO USE A 1:37 PESO TO DOLLAR EXCHANGE RATE

IV

ONLINE WAS ESTOPPED BY THE 9 DECEMBER 1997 STATEMENT OF ACCOUNT.

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[57] *Id.* at 40-42.

[58] CA *rollo*, pp. 201-208.

The Court shall determine the procedural questions first.

FAT KEE contests the argument of ONLINE that the instant petition is fatally defective for the failure of the former to attach the transcript of stenographic notes (TSN) of the RTC proceedings. FAT KEE counters that there is no need to annex the said TSN given that ONLINE does not dispute the accuracy of the quoted portions of the transcripts and the petition does not request for a reevaluation of the evidence of the parties. Assuming *arguendo* that the TSN should have been attached to the petition, FAT KEE begs for the relaxation of the rules so as not to frustrate the ends of substantive justice. FAT KEE also rejects the contention of ONLINE that the petition raises only factual issues, which are not proper in a petition for review on *certiorari*. FAT KEE argues that the Court of Appeals likewise erred in re-evaluating the evidence and substituted its own interpretation of the testimonies of the witnesses.

On this preliminary procedural issue, we rule that the non-attachment of the relevant portions of the TSN does not render the petition of FAT KEE fatally defective.

Rule 45, Section 4 of the Rules of Court indeed requires the attachment to the petition for review on *certiorari* "such material portions of the record as would support the petition."[59] However,

[59] SEC. 4. *Contents of petition*. - The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents; (b) indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received; (c) set forth concisely a statement of the matters involved, and the reasons or arguments relied on for the allowance of the petition; **(d) be accompanied by a clearly legible duplicate original, or a certified true copy of the judgment or final order or resolution certified by the clerk of court of the court *a quo* and the requisite number of plain copies thereof, and such material portions of the record as would support the petition**; and (e) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. (Emphasis ours.)

such a requirement was not meant to be an ironclad rule such that the failure to follow the same would merit the outright dismissal of the petition. In accordance with Section 7 of Rule 45, "the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate."[60] More importantly, Section 8 of Rule 45 declares that "[i]f the petition is given due course, the Supreme Court may require the elevation of the complete record of the case or specified parts thereof within fifteen (15) days from notice."[61] Given that the TSN of the proceedings before the RTC forms part of the records of the instant case, the failure of FAT KEE to attach the relevant portions of the TSN was already cured by the subsequent elevation of the case records to this Court. This pronouncement is likewise in keeping with the doctrine that procedural rules should be liberally construed in order to promote their objective and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding.[62]

As to the substantive issues raised in the instant petition, the Court finds that, indeed, questions of fact are being invoked by FAT KEE. A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same

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[60] SEC. 7. *Pleadings and documents that may be required; sanctions*.- For purposes of determining whether the petition should be dismissed or denied pursuant to Section 5 of this Rule, or where the petition is given due course under Section 8 hereof, the Supreme Court may require or allow the filing of such pleadings, briefs, memoranda or documents as it may deem necessary within such periods and under such conditions as it may consider appropriate, and impose the corresponding sanctions in case of non-filing or unauthorized filing of such pleadings and documents or non-compliance with the conditions therefor.

[61] See *Grand Boulevard Hotel v. Genuine Labor Organization of Workers in Hotel, Restaurant and Allied Industries (GLOWHRAIN)*, 454 Phil. 463 (2003).

[62] Rules of Court, Rule 1, Section 6.

must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[63]

Rule 45, Section 1 of the Rules of Court dictates that a petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth."[64] This rule is, however, subject to exceptions,[65] one of which is when the findings of fact of the Court of Appeals and the RTC are conflicting. Said exception applies to the instant case.

Substantially, FAT KEE primarily argues there was neither any agreement to enter into a foreign currency-based transaction, nor to use a dollar exchange rate of ₱37:US$1. The invoice

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[63] *Tirazona v. Court of Appeals*, G.R. No. 169712, March 14, 2008, 548 SCRA 560, 581.

[64] 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. (As amended by A.M. No. 07-7-12-SC.)

[65] The exceptions are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. (*Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.)

receipts denominated in US dollars were unilaterally prepared by ONLINE. Similarly, the Accounting Department of ONLINE required that the Purchase Order to be submitted by FAT KEE be denominated in US dollars and Frederick Huang, Jr. merely complied with the same upon the instructions of Payoyo. Contrary to ONLINE's claim, it issued the SOA dated December 9, 1997 with the alleged unpaid obligation of FAT KEE quoted in Philippine pesos. FAT KEE also takes issue with the ruling of the Court of Appeals that it assented to the payment in US dollars of the transactions covered under Invoice Nos. 4680, 4838, 5090 and 5096. Lastly, FAT KEE reiterates the ruling of the RTC that ONLINE was estopped from seeking payment in US dollars since the outstanding obligation of FAT KEE was denominated in Philippine pesos in the SOA dated December 9, 1997. Claiming that the SOA was its only basis for payment, FAT KEE allegedly paid its obligations in accordance therewith and ONLINE duly accepted the payments.

After a meticulous review of the records, we resolve to deny the petition.

FAT KEE subscribes to the rulings of the RTC in the Decision dated November 7, 2000 and the Order dated July 25, 2001. The trial court found that there was no agreement as to the exchange rate for the conversion of the outstanding balance of FAT KEE to Philippine pesos. A reading of the RTC rulings reveals that the trial court principally relied on the SOA dated December 9, 1997 and the testimony of Frederick Huang, Jr. in setting the exchange rate at ₱34:US$1. The RTC ruled that ONLINE was estopped from claiming otherwise since FAT KEE actually paid its outstanding balance in accordance with the SOA. Furthermore, the RTC determined that ONLINE failed to undertake any action to correct the SOA, which the latter claimed was unauthorized. No disciplinary action was likewise taken against Edwin Morales, the employee who allegedly issued the SOA without authority.

In *British American Tobacco v. Camacho*,[66] the Court emphasized the doctrine of estoppel as follows:

[66] G.R. No. 163583, August 20, 2008, 562 SCRA 511.

Estoppel, an equitable principle rooted in natural justice, prevents persons from going back on their own acts and representations, to the prejudice of others who have relied on them. The principle is codified in Article 1431 of the Civil Code, which provides:

> Through estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon.

Estoppel can also be found in Rule 131, Section 2 (a) of the Rules of Court, *viz:*

> Sec. 2. *Conclusive presumptions*. — The following are instances of conclusive presumptions:
>
> (a) Whenever a party has by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission be permitted to falsify it.

The elements of estoppel are: *first*, the actor who usually must have knowledge, notice or suspicion of the true facts, communicates something to another in a misleading way, either by words, conduct or silence; *second*, the other in fact relies, and relies reasonably or justifiably, upon that communication; *third*, the other would be harmed materially if the actor is later permitted to assert any claim inconsistent with his earlier conduct; and *fourth*, the actor knows, expects or foresees that the other would act upon the information given or that a reasonable person in the actor's position would expect or foresee such action.[67]

In the instant case, we find that FAT KEE cannot invoke estoppel against ONLINE for the latter's issuance of the SOA on December 9, 1997. The Court agrees with the Court of Appeals' ruling that any misconception on the part of FAT KEE engendered by the issuance of the SOA should have already been rectified when the parties subsequently met on January 15, 1998. The testimonial evidence of both ONLINE and FAT KEE establish that, during the meeting, the parties tried but failed to reach an agreement as regards the payment of FAT KEE's

[67] *Id.* at 536-537.

outstanding obligation and the exchange rate to be applied thereto. Whether or not FAT KEE was duly informed of the fact that the SOA was unauthorized is no longer of much importance. By their act of submitting their respective proposals and counter-proposals on the mode of payment and the exchange rate, FAT KEE and ONLINE demonstrated that it was not their intention to be further bound by the SOA, especially with respect to the exchange rate to be used. Moreover, FAT KEE only started making payments *vis-à-vis* the subject invoice receipts on March 17, 1998, or two months after the aforementioned meeting.

At this point, *Mijares v. Court of Appeals*[68] is instructive in declaring that:

> One who claims the benefit of an estoppel on the ground that he has been misled by the representations of another must not have been misled through his own want of reasonable care and circumspection. A lack of diligence by a party claiming an estoppel is generally fatal. If the party conducts himself with careless indifference to means of information reasonably at hand, or ignores highly suspicious circumstances, he may not invoke the doctrine of estoppel. Good faith is generally regarded as requiring the exercise of reasonable diligence to learn the truth, and accordingly estoppel is denied where the party claiming it was put on inquiry as to the truth and had available means for ascertaining it, at least where actual fraud has not been practised on the party claiming the estoppel.[69]

Thus, after participating in the meeting on January 15, 1998, submitting its own proposals and further renegotiating for the lowering of the exchange rate, FAT KEE cannot anymore insist that it was completely under the impression that the applicable exchange rate was ₱34:US$1 as purportedly indicated in the December 9, 1997 SOA.

Anent the proper exchange rate to be applied in this case, we likewise uphold the ruling of the Court of Appeals that estoppel finds application in this case as regards the implied acquiescence of ONLINE to the use of the ₱37:US$1 exchange rate. On

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[68] 338 Phil. 274 (1997).

[69] *Id.* at 286-287.

March 2, 1998, after a series of proposals on the conversion rate to be applied, FAT KEE finally offered to settle its outstanding balance at the rate of ₱37:US$1. To this offer, ONLINE did not respond. Thereafter, on March 17, 1998, FAT KEE began remitting payments continuously, which ONLINE duly accepted. Following the dictum stated in *British American Tobacco*, ONLINE communicated, through its silence and acceptance of payments, that it was agreeable to the ₱37:US$1 rate. Indeed, ONLINE should not be allowed to adopt a contrary position to the detriment of FAT KEE.

Premises considered, we find therefore that the applicable exchange rate to determine the outstanding balance of FAT KEE is ₱37:US$1. We note, however, that the Court of Appeals inadvertently erred in computing the remaining balance to be paid by FAT KEE. According to Invoice Nos. 4680, 4838, 5090 and 5096, the total unpaid amount is **US$136,149.43**. By applying ₱37:US$1 rate on the unpaid amount, the resulting balance is **₱5,037,528.91**, not ₱5,148,528.91 as determined by the Court of Appeals. As FAT KEE has already paid a total amount of **₱4,758,574.18**,[70] the total unpaid amount owed to ONLINE is **₱278,954.73**.

WHEREFORE, the Petition for Review on *Certiorari* is *DENIED*. The Decision dated September 26, 2005 of the Court of Appeals in CA-G.R. CV No. 71910 is hereby *AFFIRMED* with *MODIFICATION* that F.A.T. Kee Computer Systems, Inc. is ordered to pay the amount of **₱278,954.73** to Online Networks International, Inc., with interest at the rate of 28% *per annum* from July 1998 until fully paid, plus 10% of the total award as attorney's fees. No costs.

SO ORDERED.

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

[70] Records, pp. 104-111.

SECOND DIVISION

[G.R. No. 172230. February 2, 2011]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **MAGIN FERRER, ANTONIO V. FERRER, and RAMON V. FERRER, represented by their Attorney-in-fact, ATTY. RAFAEL VILLAROSA,** *respondents.*

[G.R. No. 179421. February 2, 2011]

DEPARTMENT OF AGRARIAN REFORM, represented by Secretary NASSER C. PANGANDAMAN, *petitioner, vs.* **ANTONIO V. FERRER and RAMON V. FERRER,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM LAWS; JUST COMPENSATION; CONSIDERING THE PASSAGE OF REPUBLIC ACT NO. 6657 (RA 6657) BEFORE THE COMPLETION OF THE AGRARIAN REFORM PROCESS, THE JUST COMPENSATION SHOULD BE DETERMINED AND THE PROCESS CONCLUDED UNDER THE SAID LAW; APPLICATION IN CASE AT BAR.— The issue as to which agrarian law between P. D. No. 27/E.O. No. 228 and R.A. No. 6657 should apply in the determination of just compensation has been laid to rest in a number of cases. In the case of *Land Bank of the Philippines v. Hon. Eli G. C. Natividad*, it was ruled that: Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. **Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect**, conformably with our ruling in *Paris v. Alfeche.* Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of

just compensation, X X X **It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.** In *Land Bank of the Philippines v. Manuel O Gallego, Jr.*, the Court handed down the same ruling. Thus: The Court has already ruled on the applicability of agrarian laws, namely, P.D. No. 27/E.O. No. 228 in relation to Republic Act (R.A.) No. 6657, in prior cases concerning just compensation. In *Paris v. Alfeche*, the Court held that **the provisions of R.A. No. 6657 are also applicable to the agrarian reform process of lands placed under the coverage of P.D. No. 27/E.O. No. 228, which has not been completed upon the effectivity of R.A. No. 6657**. Citing *Land Bank of the Philippines v. Court of Appeals*, the Court in *Paris* held that P.D. No. 27 and E.O. No. 228 have suppletory effect to R.A. No. 6657. x x x **This eloquently demonstrates that RA [No.] 6657 includes PD [No.] 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17 and 18 of the Act should be adhered to**. In *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*, this Court applied the provisions (of) RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD [No.] 27 lands through the different modes stated in Sec. 18. Particularly, in *Land Bank of the Philippines v. Natividad*, where the agrarian reform process in said case "is still incomplete as the just compensation to be paid private respondents has yet to be settled," the Court held therein that **just compensation should be determined and the process concluded under R.A. No. 6657**. The retroactive application of R.A. No. 6657 is not only statutory but is also founded on equitable considerations. In *Lubrica v. Land Bank of the Philippines*, the Court declared **that it would be highly inequitable on the part of the landowners therein to compute just compensation using the values at the time of**

taking in 1972, and not at the time of payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred in their names. The same equitable consideration is applicable to the factual milieu of the instant case. The records show that respondents' property had been placed under the agrarian reform program in 1972 and had already been distributed to the beneficiaries but respondents have yet to receive just compensation due them. The above rulings were reiterated in the recent cases of *Land Bank of the Philippines v. Rizalina Gustilo Barrido and Heirs of Romeo Barrido* and *Land Bank of the Philippines v. Enrique Livioco.* The CA was, therefore, correct in ruling that the agrarian reform process in this particular case was still incomplete because the just compensation due to the Ferrers had yet to be settled. Since R.A. No. 6657 was already in effectivity before the completion of the process, the just compensation should be determined and the process concluded under this law.

2. **ID.; ID.; ID.; APPOINTMENT OF COMMISSIONERS, PROPER BECAUSE THE APPLICABLE LAW IS R.A. NO. 6657.—** With respect to the appointment of the commissioners, it is an issue not properly brought and ventilated in the trial courts below and only raised for the first time on appeal. At any rate, the appointment was proper because the applicable law is R.A. No. 6657.

APPEARANCES OF COUNSEL

LBP Legal Department for Land Bank of the Philippines.
DAR Legal Affairs Office for Department of Agrarian Reform.
Feliciano Buenaventura for respondents.

D E C I S I O N

MENDOZA, *J.*:

Challenged in these consolidated petitions for review are the August 30, 2005[1] and the January 24, 2007[2] Decisions of the Court of Appeals *(CA)* in C.A. G.R. SP No. 88012 and C.A. G.R. SP No. 88008, respectively. The separate CA decisions affirmed the decision of the Regional Trial Court, Branch 33, Guimba, Nueva Ecija (*RTC*). The CA ruled that Republic Act *(R.A.)* No. 6657, and not Presidential Decree *(P.D.)* No. 27, should govern in the determination of just compensation after the effectivity of said act.

The Facts

The consolidated records show that on October 11, 2000, Magin V. Ferrer, Antonio V. Ferrer and Ramon V. Ferrer *(the Ferrers)*, represented by their attorney-in-fact, Rafael Villarosa, filed their *Petition for Determination and Payment of Just Compensation* against the Land Bank of the Philippines *(LBP)* before the RTC, docketed as Agrarian Case No. 1142-G. Later, the Ferrers filed an amended petition impleading the Department of Agrarian Reform *(DAR)* as well.

In their petition, the Ferrers alleged that they were the absolute owners *pro-indiviso* of a parcel of agricultural land with an area of 11.7297 hectares located in Bagong Bayan, San Jose, Nueva Ecija. It was one of the parcels of land they inherited from their deceased mother, Liberata Villarosa, who died *ab intestato* on January 23, 1968. It was also among the properties covered in the Deed of Extra-Judicial Partition executed by and between them; their deceased grandfather, Gonzalo F. Villarosa; their deceased aunt, Matilde Villarosa, and Rafael Villarosa.

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[1] *Rollo* (G.R. No. 172230), pp. 46-57. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justice Salvador J. Valdez, Jr. and Associate Justice Magdangal M. De Leon, concurring.

[2] *Rollo* (G.R. No. 179421), pp. 27-36. Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justice Elvi John S. Asuncion and Associate Justice Enrico A. Lanzanas, concurring.

The Ferrers further alleged that they found out that an Emancipation Patent covering 3.5773 hectares of the subject agricultural land was secretly issued in the name of Alfredo Carbonel, one of its occupants, without payment of just compensation. The LBP then fixed the just compensation at a very low price of ₱132,685.67 or approximately ₱12,050.00 per hectare in violation of the guidelines in R.A. No. 6657, otherwise known as "*The Comprehensive Agrarian Reform Law*." They asserted that the just compensation of the subject agricultural land should at least be computed at ₱250,000.00 per hectare, or the total sum of ₱2,930,000.00 for the entire 11.7297 hectares considering that it was irrigated and strategically located.

On the other hand, the LBP and the DAR were of the position that the subject agricultural property had been placed under the coverage of the Operation Land Transfer *(OLT)* Program and, therefore, the provisions of P.D. No. 27 (*Emancipation Decree of Tenants*) and/or Executive Order *(E.O.)* No. 228 (*Declaring Full Land Ownership to Qualified Farmer-Beneficiaries covered by PD 27; Determining the Value of Remaining Unvalued Rice and Corn Lands subject of PD 27; and Providing for the Manner of Payment By the Farmer Beneficiary and Mode of Compensation to the Landowner*) should apply. Thus, they insisted that the value of the subject agricultural land be in accordance with P.D. No. 27.

In the proceedings below, the RTC appointed three (3) commissioners who were tasked to determine the amount of just compensation to be paid to the Ferrers. On September 27, 2004, after the written reports of the commissioners were submitted, the RTC rendered a decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered:

1. Fixing the just compensation for plaintiffs' 4.6203 hectares of land at ₱208,000.00 per hectare or a total of ₱961,022.50;

2. Ordering the defendants DAR and LBP to pay the above amount of money to the plaintiffs in the manner provided by law and existing legislations.

SO ORDERED.

Unsatisfied with the decision, the LBP and the DAR filed separate motions for reconsideration which were both denied by the RTC in its Order dated December 1, 2004.

Thereafter, the LBP and the DAR filed their respective petitions for review before the CA. The LBP petition was docketed as CA-G.R. SP No. 88012 and raffled to the Eighth Division while the DAR petition was docketed as CA-G.R. SP No. 88008 and raffled to the Eleventh Division.

On August 30, 2005, the CA-Eighth Division, in CA-G.R. SP No. 88012, rendered a decision affirming the RTC decision. On January 24, 2007, the CA-Eleventh Division, in CA-G.R. SP No. 88008, likewise affirmed the decision.

As earlier stated, the two divisions of the CA similarly ruled that R.A. No. 6657, and not P.D. No. 27, should govern in the determination of just compensation in this case. They reasoned out that although the subject property was tenanted and devoted to rice production in 1972 when P.D. No. 27 was issued, the just compensation cannot be based on the value of the property in 1972 because there was then no taking of the subject land as there was no payment yet to the private respondents. The CA explained that the land shall be considered taken only upon payment of just compensation because it would complete the agrarian reform process. The CA further stated that R.A. No. 6657 was the law of primary jurisdiction while P.D. No. 27 and other agrarian laws not inconsistent with R.A. No. 6657 shall only apply suppletorily.

The LBP and the DAR filed their respective motions for reconsideration but these were denied by the CA in its resolutions dated April 7, 2006[3] and August 22, 2007,[4] respectively.

Dissatisfied with the CA decisions, the LBP and the DAR filed their separate petitions before this Court. The LBP petition

[3] *Rollo* (G.R. No. 172230), pp. 59-60.

[4] *Rollo* (G.R. No. 179421), pp. 38-39.

was docketed as G.R. No. 172230 and the DAR petition as G.R. No. 179421. On December 3, 2007, the Court issued a resolution[5] consolidating the two petitions because both cases involved the same subject matter and questions of law and fact.

Both petitions basically raise this

ISSUE

Whether or not the Court of Appeals erred in ruling that RA 6657, rather than P.D. No. 27/E.O. No. 228, is the law that should apply in the determination of just compensation for the subject agricultural land.

Positions of the Parties

The LBP and the DAR basically argue that P.D. No. 27, as reaffirmed by E.O. No. 228, should be applied in determining the just compensation for the subject property. They contend that P.D. No. 27 and E.O. No. 228 prescribe the formula in determining the just compensation of rice and corn lands tenanted as of October 21, 1972. As the subject property was tenanted and devoted to rice production in 1972, the just value should be fixed at the prevailing rate at that time, when the emancipation of the tenant-farmers from the bondage of the soil was declared in P.D. No. 27.

As to R.A. No. 6657, both the LBP and the DAR insist that it applies only to ricelands and cornlands not tenanted as of October 21, 1972. R.A. No. 6657 does not cover ricelands and cornlands acquired under P.D. No. 27 and E.O. No. 228. The government's OLT program on tenanted privately-owned rice and corn lands pursuant to P.D. No. 27 continues separately and distinctly from the Comprehensive Agrarian Reform Program *(CARP)* acquisition and distribution program under R.A. No. 6657 because 1) R.A. No. 6657 operates prospectively; and 2) Congress intended that lands subject to or governed by existing government programs such as the OLT and homestead under P.D. No. 27 are to be treated distinctly.

[5] *Id*. at 50.

With respect to the appointment of commissioners, the LBP and the DAR argue that there was no legal basis therefor because 1) there were no long accounts or difficult questions of fact that required the expertise and know-how of the commissioners; and 2) the formula for just compensation was already provided under P.D. No. 27 and E.O. No. 228.

On the other hand, the Ferrers adopted the common ruling of the CA stating that it did not err in applying the provisions of R.A. No. 6657 in fixing the just compensation for the subject property.

The Court's Ruling

The issue as to which agrarian law between P. D. No. 27/E.O. No. 228 and R.A. No. 6657 should apply in the determination of just compensation has been laid to rest in a number of cases. In the case of *Land Bank of the Philippines v. Hon. Eli G. C. Natividad*,[6] it was ruled that:

> Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. **Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect**, conformably with our ruling in *Paris v. Alfeche*.[7]
>
> Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:
>
> Sec. 17. *Determination of* Just Compensation.—In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farm-workers and by the

[6] 497 Phil. 738 (2005).

[7] 416 Phil. 473 (2001).

> Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample. [Emphases supplied]

In *Land Bank of the Philippines v. Manuel O. Gallego, Jr.*,[8] the Court handed down the same ruling. Thus:

> The Court has already ruled on the applicability of agrarian laws, namely, P.D. No. 27/E.O. No. 228 in relation to Republic Act (R.A.) No. 6657, in prior cases concerning just compensation.
>
> In *Paris v. Alfeche*,[9] the Court held that **the provisions of R.A. No. 6657 are also applicable to the agrarian reform process of lands placed under the coverage of P.D. No. 27/E.O. No. 228, which has not been completed upon the effectivity of R.A. No. 6657**. Citing *Land Bank of the Philippines v. Court of Appeals*,[10] the Court in *Paris* held that P.D. No. 27 and E.O. No. 228 have suppletory effect to R.A. No. 6657, to wit:
>
> **We cannot see why Sec. 18 of RA [No.] 6657 should not apply to rice and corn lands under PD [No.] 27. Section 75 of RA [No.] 6657 clearly states that the provisions of PD [No.] 27 and EO [No.] 228 shall only have a suppletory effect**. Section 7 of the Act also provides –
>
> Sec. 7. *Priorities*.—The DAR, in coordination with the PARC shall plan and program the acquisition and distribution of all

[8] G.R. No. 173226, January 20, 2009, 576 SCRA 680.

[9] 416 Phil 473 (2001).

[10] 378 Phil. 1248 (1999).

> agricultural lands through a period of (10) years from the effectivity of this Act. Lands shall be acquired and distributed as follows:
>
> Phase One: *Rice and Corn lands under P.D.* 27; all idle or abandoned lands; all private lands voluntarily offered by the owners of agrarian reform; x x x and all other lands owned by the government devoted to or suitable for agriculture, which shall be acquired and distributed immediately upon the effectivity of this Act, with the implementation to be completed within a period of not more than four (4) years (emphasis supplied).

This eloquently demonstrates that RA [No.] 6657 includes PD [No.] 27 lands among the properties which the DAR shall acquire and distribute to the landless. And to facilitate the acquisition and distribution thereof, Secs. 16, 17 and 18 of the Act should be adhered to. In *Association of Small Landowners of the Philippines v. Secretary of Agrarian Reform*, this Court applied the provisions (of) RA 6657 to rice and corn lands when it upheld the constitutionality of the payment of just compensation for PD [No.] 27 lands through the different modes stated in Sec. 18.[11]

Particularly, in *Land Bank of the Philippines v. Natividad*, where the agrarian reform process in said case "is still incomplete as the just compensation to be paid private respondents has yet to be settled," the Court held therein that **just compensation should be determined and the process concluded under R.A. No. 6657**.[12]

The retroactive application of R.A. No. 6657 is not only statutory but is also founded on equitable considerations. In *Lubrica v. Land Bank of the Philippines*,[13] the Court declared **that it would be highly inequitable on the part of the landowners therein to compute just compensation using the values at the time of taking in 1972, and not at the time of payment, considering that the government and the farmer-beneficiaries have already benefited from the land although ownership thereof has not yet been transferred in their names**. The same equitable consideration is

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[11] *Association of Small Landowners in the Philippines, Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777 (1989).

[12] 497 Phil. 738 (2005).

[13] G.R. No. 170220, November 20, 2006, 507 SCRA 415.

applicable to the factual milieu of the instant case. The records show that respondents' property had been placed under the agrarian reform program in 1972 and had already been distributed to the beneficiaries but respondents have yet to receive just compensation due them. [Emphases supplied]

The above rulings were reiterated in the recent cases of *Land Bank of the Philippines v. Rizalina Gustilo Barrido and Heirs of Romeo Barrido*[14] and *Land Bank of the Philippines v. Enrique Livioco.*[15]

The CA was, therefore, correct in ruling that the agrarian reform process in this particular case was still incomplete because the just compensation due to the Ferrers had yet to be settled. Since R.A. No. 6657 was already in effectivity before the completion of the process, the just compensation should be determined and the process concluded under this law.

With respect to the appointment of the commissioners, it is an issue not properly brought and ventilated in the trial courts below and only raised for the first time on appeal. At any rate, the appointment was proper because the applicable law is R.A. No. 6657.

WHEREFORE, the petitions for review on *certiorari* are *DENIED*.

SO ORDERED.

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

[14] G.R. No. 183688, April 18, 2010.

[15] G.R. No. 170685, September 22, 2010.

SECOND DIVISION

[G.R. No. 172879. February 2, 2011]

ATTY. RICARDO B. BERMUDO, *petitioner, vs.* **FERMINA TAYAG-ROXAS,** *respondent.*

[G.R. No. 173364. February 2, 2011]

FERMINA TAYAG-ROXAS, *petitioner, vs.* **HON. COURT OF APPEALS and ATTY. RICARDO BERMUDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* PROPER REMEDY IN CONTESTING THE TRIAL COURT'S EXERCISE OF DISCRETION IN ASCERTAINING WHAT CONSTITUTES 20% OF THE VALUE OF THE ESTATE LAND; CASE AT BAR.— The CA decided with finality the award of attorney's fees in Atty. Bermudo's favor in CA-G.R. CV 53143 when it fixed such fees at 20% of the value of the estate's lands. On remand of the case to the RTC, Atty. Bermudo filed a motion for execution of the award in his favor which could be carried out only after the RTC shall have determined what represented 20% of the value of the estate's lands. The fixing of such value at ₱12,644,300.00 was not appealable since it did not constitute a new judgment but an implementation of a final one. Indeed, an order of execution is not appealable. Consequently, Roxas' remedy in contesting the RTC's exercise of discretion in ascertaining what constitutes 20% of the value of the estate's lands is a special civil action of *certiorari*.

2. LEGAL ETHICS; ATTORNEY'S FEES; ACTING AS COUNSEL IN A SUIT THAT ASSAILED THE RIGHT OF HIS CLIENT OVER THE ESTATE IS NOT PART OF THE LAWYER'S DUTY AS ADMINISTRATOR OF THE ESTATE, THUS, THE SAID LAWYER IS ENTITLED TO BE PAID HIS ATTORNEY'S FEES.— Roxas asserts that Atty. Bermudo

is not entitled to attorney's fees but only to compensation as administrator in accordance with Section 7, Rule 85 of the Rules of Court. But Atty. Bermudo did not only serve as administrator of the estate. He also served as Roxas' counsel in the suit that assailed her right as sole heir. Atty. Bermudo brought the contest all the way up to this Court to defend her rights to her uncle's estate. And Atty. Bermudo succeeded. Acting as counsel in that suit for Roxas was not part of his duties as administrator of the estate. Consequently, it was but just that he is paid his attorney's fees. Besides, Atty. Bermudo's right to attorney's fees had been settled with finality in CA-G.R. CV 53143. This Court can no longer entertain Roxas' lament that he is not entitled to those fees.

3. ID.; ID.; REDUCED COMPUTATION, PROPER.— Atty. Bermudo assails the CA's reduction of his attorney's fees from ₱12,644,300.00 to ₱4,234,770.00. In fixing the higher amount, the RTC relied on the advice of an *amicus curiae* regarding the value of the lands belonging to the estate. But the CA found such procedure unwarranted, set aside the RTC's valuation, and used the values established by the Angeles City Assessor for computing the lawyer's fees of Atty. Bermudo. The Court finds no compelling reason to deviate from the CA's ruling. Given their wide experience and the official nature of their work, the city assessors' opinions deserve great weight and reliability. Thus, the Court must sustain the CA's computation based on the market values reflected on the schedule proposed by the Angeles City Assessor.

APPEARANCES OF COUNSEL

Villanueva De Leon Hipolito Cusi & Tuazon for Fermina Tayag-Roxas.

Jesse M. Caguiat for Atty. Ricardo B. Bermudo.

D E C I S I O N

ABAD, *J.*:

These cases pertain to the right of an administrator, who happened to be a lawyer, to collect attorney's fees from the sole heir for successfully representing the latter in the suit contesting her right to inherit.

The Facts and the Case

On October 19, 1979 Atty. Ricardo Bermudo (Atty. Bermudo), as executor, filed a petition for his appointment as administrator of the estate of Artemio Hilario (Hilario) and for the allowance and probate of the latter's will before the Regional Trial Court (RTC) of Angeles City. The testator instituted Fermina Tayag-Roxas (Roxas) as his only heir but several persons, who claimed to be Hilario's relatives, opposed the petition. On October 28, 1987 the RTC rendered a decision, allowing the will and recognizing Roxas as Hilario's sole heir. On appeal, the Court of Appeals (CA) affirmed the RTC decision. This Court sustained the CA decision on December 7, 1992.

When the decision constituting Roxas as the sole heir became final, Atty. Bermudo who also served as counsel for her in the actions concerning her inheritance filed a motion to fix his legal fees and to constitute a charging lien against the estate for the legal services he rendered. On August 16, 1995 the RTC granted him fees equivalent to 20% of the estate and constituted the same as lien on the estate's property. Roxas appealed the order to the CA in CA-G.R. CV 53143.

On July 27, 2000 the CA rendered a decision that modified the RTC Order, limiting Atty. Bermudo's compensation as administrator to what Section 7, Rule 85 of the Rules of Court provides and making his lawyer's fees 20% of the value of the land belonging to the estate. Atty. Bermudo subsequently filed a motion with the RTC for execution and appraisal of the estate on which his 20% compensation would be based. On October 1,

2004 the RTC granted the motion and ordered Roxas to pay Atty. Bermudo ₱12,644,300.00 as attorney's fees with interest at the rate of 6% per annum. Roxas challenged the order before the CA through a petition for *certiorari*.

On December 19, 2005, using a different valuation of the land of the estate, the CA ordered Roxas to pay Atty. Bermudo a reduced amount of ₱4,234,770.00 as attorney's fees with interest at 6% per annum. Atty. Bermudo's motion for reconsideration having been denied, he filed a petition for review before this Court in G.R. 172879. Roxas also filed a motion for partial reconsideration of the CA decision and when this was denied, she filed a petition for *certiorari* with this Court in G.R. 173364.

The Issues Presented

The issues presented in these cases are:

1. Whether or not the CA erred in not dismissing Roxas' special civil action of *certiorari* when her remedy should have been an appeal from the settlement of his account as administrator;

2. Whether or not the CA erred in holding that Atty. Bermudo, as administrator, is entitled to collect attorney's fees; and

3. Whether or not the CA erred in reducing Atty. Bermudo's attorney's fees from ₱12,644,300.00 to ₱4,234,770.00.

The Court's Rulings

One. Atty. Bermudo points out that Roxas' remedy for contesting the RTC order of execution against her should be an ordinary appeal to the CA. He invokes Section 1, Rule 109 of the Revised Rules of Court which enumerates the orders or judgments in special proceedings from which parties may appeal. One of these is an order or judgment which settles the account of an executor or administrator.[1] The rationale behind this multi-appeal mode is to enable the rest of the case to proceed in the event that a separate and distinct issue is resolved by the court

[1] RULES OF COURT, Rule 109, Sec. 1 (d).

and held to be final.[2]

But the earlier award in Atty. Bermudo's favor did not settle his account as administrator. Rather, it fixed his attorney's fees for the legal services he rendered in the suit contesting Roxas' right as sole heir. Consequently, Section 1 (d) of Rule 109 does not apply.

Actually, the CA decided with finality the award of attorney's fees in Atty. Bermudo's favor in CA-G.R. CV 53143 when it fixed such fees at 20% of the value of the estate's lands. On remand of the case to the RTC, Atty. Bermudo filed a motion for execution of the award in his favor which could be carried out only after the RTC shall have determined what represented 20% of the value of the estate's lands. The fixing of such value at ₱12,644,300.00 was not appealable since it did not constitute a new judgment but an implementation of a final one. Indeed, an order of execution is not appealable.[3] Consequently, Roxas' remedy in contesting the RTC's exercise of discretion in ascertaining what constitutes 20% of the value of the estate's lands is a special civil action of *certiorari*.

Two. Roxas asserts that Atty. Bermudo is not entitled to attorney's fees but only to compensation as administrator in accordance with Section 7, Rule 85 of the Rules of Court.

But Atty. Bermudo did not only serve as administrator of the estate. He also served as Roxas' counsel in the suit that assailed her right as sole heir. Atty. Bermudo brought the contest all the way up to this Court to defend her rights to her uncle's estate. And Atty. Bermudo succeeded. Acting as counsel in that suit for Roxas was not part of his duties as administrator of the estate. Consequently, it was but just that he is paid his attorney's fees.

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[2] *Roman Catholic Archbishop of Manila v. Court of Appeals*, 327 Phil. 810, 819 (1996).

[3] RULES OF COURT, Rule 41, Sec. 1 (f).

Besides, Atty. Bermudo's right to attorney's fees had been settled with finality in CA-G.R. CV 53143. This Court can no longer entertain Roxas' lament that he is not entitled to those fees.

Three. Atty. Bermudo assails the CA's reduction of his attorney's fees from ₱12,644,300.00 to ₱4,234,770.00. In fixing the higher amount, the RTC relied on the advice of an *amicus curiae* regarding the value of the lands belonging to the estate. But the CA found such procedure unwarranted, set aside the RTC's valuation, and used the values established by the Angeles City Assessor for computing the lawyer's fees of Atty. Bermudo. The Court finds no compelling reason to deviate from the CA's ruling. Given their wide experience and the official nature of their work, the city assessors' opinions deserve great weight and reliability.[4] Thus, the Court must sustain the CA's computation based on the market values reflected on the schedule proposed by the Angeles City Assessor.

WHEREFORE, the Court *AFFIRMS* the decision of the Court of Appeals in CA-G.R. SP 87411 dated December 19, 2005.

SO ORDERED.

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

[4] *Francisco v. Matias*, 119 Phil. 351, 360 (1964).

SECOND DIVISION

[G.R. No. 173575. February 2, 2011]

IMMACULATE CONCEPTION ACADEMY and the late DR. PAULO C. CAMPOS substituted by his heirs, DR. JOSE PAULO E. CAMPOS, ATTY. PAULO E. CAMPOS, JR. and DR. ENRIQUE E. CAMPOS,[1] *petitioners, vs.* **AMA COMPUTER COLLEGE, INCORPORATED,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LEASE; RESCISSION OF CONTRACT UNDER ARTICLE 1660 OF THE CIVIL CODE ASSUMES THAT THE STRUCTURAL DEFECTS OF THE BUILDING WERE IRREMEDIABLE AND THAT THE PARTIES HAD NO AGREEMENT FOR RECTIFYING THEM; NOT PRESENT IN CASE AT BAR.— Article 1660 is evidently intended to protect human lives. If ICA's building was structurally defective and in danger of crashing down during an earthquake or after it is made to bear the load of a crowd of students, AMA had no right to waive those defects. It can rescind the lease contract under Article 1660. But this assumes that the defects were irremediable and that the parties had no agreement for rectifying them. As pointed out above, the lease contract implicitly gave ICA the option to repair structural defects at its expense. If that had been done as the contract provides, the risk to human lives would have been removed and the right to rescind, rendered irrelevant. In any event, the fact is that the local building official found ICA's building structurally defective and unsafe. Such finding is presumably true. For this reason, ICA has no justification for keeping AMA's deposit and advance rentals. Still, the Court holds that AMA is not entitled to recover more than the return of its deposit and advance rental considering that, contrary to AMA's claim, ICA acted in good faith and did not mislead it about the condition of the building.

[1] Per Resolution dated December 3, 2007.

2. ID.; DAMAGES; MORAL DAMAGES; DUE TO THE UNTIMELY DEMISE OF THE PETITIONER BEFORE THE FINALITY OF THE CASE, HIS CLAIM FOR MORAL DAMAGES DOES NOT SURVIVE AND IS NOT TRANSMISSIBLE TO HIS HEIRS.— To be entitled to moral damages, ICA needed to prove that it had a good reputation and that AMA's action besmirched the same. Such proof is wanting in this case. As for Dr. Campos, he has amply proved that he suffered mental anguish, serious anxiety, and social humiliation following AMA's unfounded accusation that he fraudulently misled AMA regarding the structural condition of ICA's building. However, due to his untimely demise before the finality of this case, his claim for moral damages does not survive and is not transmissible to his substitutes, for being extremely personal to him.

3. ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; GRANTED.— Since AMA acted in a reckless, wanton, oppressive, and malevolent manner in imputing fraud and deceit on ICA and Dr. Campos, the Court finds ground for awarding them exemplary damages. Further, the Court holds that, having been compelled to litigate in order to protect their interests, ICA and Dr. Campos are also entitled to attorney's fees.

APPEARANCES OF COUNSEL

Kalaw Sy Selva & Campos for petitioners.
Almazan Veloso Mira & Partners for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the rescission of a lease contract on the ground that the building turned out to be structurally unsafe even as the lessee had previously inspected the same.

The Facts and the Case

Immaculate Conception Academy (ICA) owned a three-storey building in Dasmariñas, Cavite. The property caught the eye of AMA Computer College, Inc. (AMA) and it sought to buy

the same but did not succeed. Subsequently, after inspecting the building, AMA settled on leasing it.[2] The parties signed a contract of lease for 10 years from September 22, 1997 to September 21, 2007. The agreed rent was ₱561,000.00 plus VAT per month. In accordance with the contract, AMA paid ICA ₱500,000.00 in earnest money, three months advance rentals, and security deposit.

After the signing of the contract, officials of AMA re-inspected the building and began renovating it for the upcoming school year. But during an inspection, AMA's Chief Operating Officer for its Cavite Campus noted several cracks on the floor and walls of the building's second storey. This prompted more inspections. Eventually, AMA applied with the municipal engineer's office for an occupancy permit.[3] After inspection, Municipal Engineer Gregorio C. Bermejo wrote AMA a letter dated September 29, 1997, detailing his findings and conclusion, thus:

xxx xxx xxx

[The] inspection reveals the following defects in the building, such as:

1. Multiple cracks in the second floor slabs showing signs of insufficient or improper reinforcements.

2. Deflections in the second floor slabs and bears ranging from 20 mm to 50 mm which are beyond normal and allowable.

3. Unusual vibrations in the second floor level which are apparent when subjected to live loadings.

Based from the above observations we are in doubt as to the structural soundness and stability of that three-storey building. Whether it can withstand against any natural calamity is presently under question. We are convinced that the building is structurally unsafe for human occupancy.[4]

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[2] TSN, October 15, 1998, p. 26.

[3] TSN, November 21, 2000, p. 5.

[4] Records, Vol. I, p. 28.

On the same date, September 29, 1997, AMA wrote ICA demanding the return of all that it paid within 24 hours from notice. AMA cited the building's structural deficiency, which it regarded as a violation of ICA's implied warranty against hidden defects. AMA did not pursue the lease contract and instead leased another property from a different party.

When its request for reimbursement remained unheeded, AMA filed an action[5] for breach of contract and damages with prayer for the issuance of a writ of preliminary attachment against ICA before the Regional Trial Court (RTC) of Dasmariñas, Cavite. In its complaint, AMA alleged that ICA (represented by the late Dr. Paulo C. Campos) fraudulently entered into the lease agreement, fraudulently breached the same, and violated its implied warranty against hidden defects; that despite knowledge of the instability of the building, ICA insisted on offering it to AMA; and that ICA had been unable to produce the building's certificate of occupancy. AMA prayed for restitution of the amounts it paid to ICA with interest and award of exemplary damages and attorney's fees.

In its Answer, ICA denied that AMA asked for the building's certificate of occupancy. ICA alleged that it was AMA's responsibility to secure the certificate from the municipal government as stipulated in the contract. Further, ICA claims that it never misrepresented the condition of the building and that AMA inspected it before entering into the contract of lease.

In its Decision dated April 8, 2003, the RTC took AMA's side and ruled that the latter entered into the lease contract without knowing the actual condition of the building. The RTC held that ICA failed to disclose the building's condition, thus justifying AMA's rescission of the contract. The RTC ordered ICA to return the ₱4,072,150.00 it got from AMA, representing five months security deposit and three months advance rentals plus interest of 6% per annum, from January 19, 1998 until full

[5] Docketed as Civil Case 1662-98.

payment and, further, to pay AMA ₱300,000.00 and ₱200,000.00 as exemplary damages and attorney's fees, respectively.[6]

On appeal,[7] the Court of Appeals (CA) rendered a Decision dated February 27, 2006, holding that ICA did not violate its implied warranty against hidden defects, misrepresent the building's condition, or act in bad faith since AMA inspected the building before it entered into the lease agreement. It should have noticed the patent cracks on the second floor. Still, the CA ruled that AMA was justified in rescinding the lease contract considering ICA's default in repairing the defects in the building's structure. The CA held that AMA's demand for the certificate of occupancy amounted to a demand for repairs. Thus, the CA affirmed the decision of the RTC but deleted the grant of exemplary damages and attorney's fees. ICA now turns to this Court for succor.

The Issues Presented

The issues presented in this case are:

1. Whether or not AMA was justified in rescinding the contract of lease either on account of ICA's fraudulent representation regarding the condition of its building or on account of its failure to make repairs on the same upon demand; and

2. Whether or not ICA and Dr. Campos are entitled to their claims for damages against AMA.

The Court's Rulings

One. The Court is not convinced that AMA was justified in rescinding the contract of lease on account of ICA's alleged fraudulent representation regarding the true condition of its building. The fact is that AMA's representatives inspected the

[6] Thereafter, AMA moved for execution of the Decision dated April 8, 2003 pending appeal which the RTC granted. ICA questioned the Order of the RTC allowing execution of the decision pending appeal on *certiorari* with the CA. The CA reversed the Order of the RTC and disallowed the execution of the decision. AMA filed a petition for review on the decision of the CA and is now pending before this Court [G.R. 161398].

[7] Docketed as CA-G.R. CV 82266.

building to determine if it was suitable for their school's needs. The cracks on the floor and on the walls were too obvious to suggest to them that something was amiss. It was their fault that they did not check the significance of such signs. ICA for its part was candid about the condition of the building and did not in fact deny AMA access to it.

Apparently, AMA did not, at the beginning, believe that the cracks on the floor and on the walls were of a serious nature. It realized that such cracks were manifestations of structural defects only when it sought the issuance of a municipal occupancy permit. The local building official inspected the cracks and concluded that they compromised the building's structural safety.

The CA ruled that, upon the discovery of the building's structural defects, AMA had the right to seek their repair by ICA on the strength of the following stipulations in their contract:[8]

xxx xxx xxx

LESSEE shall comply with any and all laws, ordinances, regulations or orders of national or local governments concerned arising from the occupation and/or sanitation of the leased PROPERTY.

xxx xxx xxx

8. REPAIRS – LESSEE hereby agrees that all minor repairs or those caused by the use of the leased PROPERTY or use due to any ordinary wear and tear shall be for the account of the LESSEE while the major repairs or those affecting the structural condition of the building and those due to fortuitous events shall be for the account of the LESSOR. (Underscoring supplied)

The CA ruled that AMA's demand for ICA to produce a certificate of occupancy covering the building from the local building official amounted to a demand for ICA to undertake a repair of its structural defects.

But this ruling reads from AMA's letter a demand for repair that was not there. AMA simply asked ICA to produce a

[8] Records, Vol. I, pp. 12-17.

certificate of occupancy for the building even when the contract placed on AMA the responsibility for complying with the government's occupancy requirement. Indeed, it was AMA that applied for the certificate of occupancy.[9] A demand to repair the defects in the building's structure, a clearly difficult and costly proposition, cannot be so easily implied from AMA's demand that ICA produce such certificate.

True, the quoted provision of the lease contract requires ICA to undertake major repairs "affecting the structural condition of the building and those due to fortuitous events." But AMA's outright rescission of the lease contract and demand that ICA return the deposit and advance rentals it got within 24 hours from such demand precluded ICA, first, from contesting the findings of the local building official or getting some structural specialists to verify such findings or, second, from making the required repair. Clearly, AMA's hasty rescission of the contract gave ICA no chance to exercise its options.

AMA belatedly invokes Article 1660 of the Civil Code which reads:

Art. 1660. If a dwelling place or any other building intended for human habitation is in such a condition that its use brings imminent and serious danger to life or health, the lessee may terminate the lease at once by notifying the lessor, even if at the time the contract was perfected the former knew of the dangerous condition or waived the right to rescind the lease on account of this condition.

AMA is actually changing its theory of the case. It claimed in its complaint that it was entitled to rescind the contract of lease because ICA fraudulently hid from it the structural defects of its building. The CA did not agree with this theory but held that AMA was nonetheless entitled to rescind the contract for failure of ICA to make the repairs mentioned in the contract. Now, AMA claims that it has a statutory right to rescind the lease contract on the ground mentioned in Article 1660, even if it may be deemed to have initially waived such right.

[9] *Supra* note 3.

Article 1660 is evidently intended to protect human lives. If ICA's building was structurally defective and in danger of crashing down during an earthquake or after it is made to bear the load of a crowd of students, AMA had no right to waive those defects. It can rescind the lease contract under Article 1660. But this assumes that the defects were irremediable and that the parties had no agreement for rectifying them. As pointed out above, the lease contract implicitly gave ICA the option to repair structural defects at its expense. If that had been done as the contract provides, the risk to human lives would have been removed and the right to rescind, rendered irrelevant.

In any event, the fact is that the local building official found ICA's building structurally defective and unsafe. Such finding is presumably true.[10] For this reason, ICA has no justification for keeping AMA's deposit and advance rentals. Still, the Court holds that AMA is not entitled to recover more than the return of its deposit and advance rental considering that, contrary to AMA's claim, ICA acted in good faith and did not mislead it about the condition of the building.

Two. Aside from seeking the dismissal of the complaint, ICA and Dr. Campos separately seek moral and exemplary damages in the amount of ₱90 million and ₱10 million plus attorney's fees and cost of suit.

To be entitled to moral damages, ICA needed to prove that it had a good reputation and that AMA's action besmirched the same.[11] Such proof is wanting in this case. As for Dr. Campos, he has amply proved that he suffered mental anguish, serious anxiety, and social humiliation following AMA's unfounded accusation that he fraudulently misled AMA regarding the structural condition of ICA's building. However, due to his untimely demise before the finality of this case, his claim for

[10] RULES OF COURT, Rule 131, Sec. 3, "(m) That official duty has been regularly performed"; x x x.

[11] *Manila Electric Company v. T.E.A.M. Electronics Corporation*, G.R. No. 131723, December 13, 2007, 540 SCRA 62, 81-82, cited in *Handbook on Philippine Commercial Law*, 2nd Ed., Divina, N., 2010.

moral damages does not survive and is not transmissible to his substitutes, for being extremely personal to him.[12]

Since AMA acted in a reckless, wanton, oppressive, and malevolent manner in imputing fraud and deceit on ICA and Dr. Campos, the Court finds ground for awarding them exemplary damages. Further, the Court holds that, having been compelled to litigate in order to protect their interests, ICA and Dr. Campos are also entitled to attorney's fees.

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* and *SETS ASIDE* the Decision of the Court of Appeals in CA-G.R. CV 82266 dated February 27, 2006. Further, the Court:

1. *DIRECTS* petitioner Immaculate Conception Academy to return to respondent AMA Computer College, Inc. its security deposit and advance rentals for the lease of the subject building totaling ₱4,072,150.00 plus interest of 6% per annum from the date of the finality of this decision until it is fully paid; and

2. *DIRECTS* respondent AMA Computer College, Inc. to pay the heirs of Dr. Paulo C. Campos, namely, Jose Paulo, Paulo, Jr., and Enrique, all surnamed Campos and the Immaculate Conception Academy ₱100,000.00 as exemplary damages and ₱50,000.00 as attorney's fees.

SO ORDERED.

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

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[12] *See Bonilla v. Barcena*, 163 Phil. 516, 521 (1976), cited in *Cruz v. Cruz*, G.R. No. 173292, September 1, 2010 and *Ruiz v. Court of Appeals*, 363 Phil. 263, 269 (1999): "The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the cause of action which survive, the wrong complained [of] affects primarily and principally property and property rights, the injuries to the person being merely incidental, **while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental**." (Emphasis supplied)

SECOND DIVISION

[G.R. No. 173846. February 2, 2011]

JOSE MARCEL PANLILIO, ERLINDA PANLILIO, NICOLE MORRIS and MARIO T. CRISTOBAL, *petitioners, vs.* **REGIONAL TRIAL COURT, BRANCH 51, CITY OF MANILA, represented by HON. PRESIDING JUDGE ANTONIO M. ROSALES; PEOPLE OF THE PHILIPPINES; and the SOCIAL SECURITY SYSTEM,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; CORPORATE REHABILITATION; DEFINED AND CONSTRUED.— To begin with, corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. A principal feature of corporate rehabilitation is the suspension of claims against the distressed corporation. Section 6 (c) of Presidential Decree No. 902-A, as amended, provides for suspension of claims against corporations undergoing rehabilitation, to wit: Section 6 (c). x x x Provided, finally, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims** against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body, **shall be suspended** accordingly.

2. ID.; ID.; ID.; THE REHABILITATION AND THE SETTLEMENT OF CLAIMS AGAINST THE CORPORATION IS NOT A LEGAL GROUND FOR THE EXTINCTION OF ITS

OFFICERS' CRIMINAL LIABILITIES; EXPLAINED.— The SSS law clearly "criminalizes" the non-remittance of SSS contributions by an employer to protect the employees from unscrupulous employers. Therefore, public interest requires that the said criminal acts be immediately investigated and prosecuted for the protection of society. The rehabilitation of SIHI and the settlement of claims against the corporation is not a legal ground for the extinction of petitioners' criminal liabilities. There is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. As correctly observed in *Rosario*, it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer. The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court. The penal sanctions as a consequence of violation of the SSS law, in relation to the revised penal code can therefore be implemented if petitioners are found guilty after trial. However, any civil indemnity awarded as a result of their conviction would be subject to the stay order issued by the rehabilitation court. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch or body where there are pending actions for claims against the distressed corporation.

3. CIVIL LAW; FINANCIAL REHABILITATION AND INSOLVENCY ACT OF 2010 (R.A. NO. 10142); EXPLICITLY PROVIDES THAT CRIMINAL ACTIONS AGAINST INDIVIDUAL OFFICER OF A CORPORATION ARE NOT SUBJECT TO STAY OR SUSPENSION ORDER IN REHABILITATION PROCEEDINGS.— On a final note, this Court would like to point out that Congress has recently enacted Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010. Section 18 thereof explicitly provides that criminal actions against the individual officer of a corporation are not subject to the Stay or Suspension Order in rehabilitation proceedings, to wit: The Stay or Suspension Order shall not apply: x x x (g) any criminal action against individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act.

APPEARANCES OF COUNSEL

Manicad Ong Dela Cruz & Fallarme Law Offices for petitioners.

Saguisag Carao & Associates for Mario Cristobal.

The Solicitor General for public respondent.

Edmond Marino for SSS.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, seeking to set aside the April 27, 2006 Decision[2] and August 2, 2006 Resolution[3] of the Court of the Appeals (CA) in CA-G.R. SP No. 90947.

The facts of the case are as follows:

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[1] *Rollo*, pp. 9- 23.

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Rosmari D. Carandang and Japar B. Dimaampao, concurring, *id*. at 31-37.

[3] *Id*. at 28.

On October 15, 2004, Jose Marcel Panlilio, Erlinda Panlilio, Nicole Morris and Marlo Cristobal (petitioners), as corporate officers of Silahis International Hotel, Inc. (SIHI), filed with the Regional Trial Court (RTC) of Manila, Branch 24, a petition for Suspension of Payments and Rehabilitation[4] in SEC Corp. Case No. 04-111180.

On October 18, 2004, the RTC of Manila, Branch 24, issued an Order[5] staying all claims against SIHI upon finding the petition sufficient in form and substance. The pertinent portions of the Order read:

> Finding the petition, together with its annexes, sufficient in form and substance and pursuant to Section 6, Rule 4 of the Interim Rules on Corporate Rehabilitation, the Court hereby:
>
> xxx xxx xxx
>
> 2) Stays the enforcement of all claims, whether for money or otherwise and whether such enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor.[6]

At the time, however, of the filing of the petition for rehabilitation, there were a number of criminal charges[7] pending against petitioners in Branch 51 of the RTC of Manila. These criminal charges were initiated by respondent Social Security System (SSS) and involved charges of violations of Section 28 (h)[8] of Republic Act 8282, or the Social Security

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[4] *Id*. at 102-110.

[5] *Id*. at 111-113.

[6] *Id*. at 112.

[7] Crim. Cases Nos. 00-184890, 00-183031 to 71, 03-213284 to 88, 03-206273, 03-207141, 03-214539, 03-214667, 03-215273, 03-215650, 03-215651, 03-216015 and 03-216187.

[8] (h) Any employer who, after deducting the monthly contributions or loan amortizations from his employee's compensation, fails to remit the said deduction to the SSS within thirty (30) days from the date they became due, shall be presumed to have misappropriated such contributions or loan amortizations and shall suffer the penalties provided in Article Three hundred fifteen of the Revised Penal Code.

Act of 1997 (SSS law), in relation to Article 315 (1) (b)[9] of the Revised Penal Code, or Estafa. Consequently, petitioners filed with the RTC of Manila, Branch 51, a Manifestation and Motion to Suspend Proceedings.[10] Petitioners argued that the stay order issued by Branch 24 should also apply to the criminal charges pending in Branch 51. Petitioners, thus, prayed that Branch 51 suspend its proceedings until the petition for rehabilitation was finally resolved.

On December 13, 2004, Branch 51 issued an Order[11] denying petitioners' motion to suspend the proceedings. It ruled that the stay order issued by Branch 24 did not cover criminal proceedings, to wit:

xxx xxx xxx

Clearly then, the issue is, whether the stay order issued by the RTC commercial court, Branch 24 includes the above-captioned criminal cases.

The Court shares the view of the private complainants and the SSS that the said stay order does not include the prosecution of criminal offenses. Precisely, the law "criminalizes" the non-remittance of SSS contributions by an employer to protect the employees from unscrupulous employers. Clearly, in these cases, public interest requires that the said criminal acts be immediately investigated and prosecuted for the protection of society.

From the foregoing, the inescapable conclusion is that the stay order issued by RTC Branch 24 does not include the above-captioned cases which are criminal in nature.[12]

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[9] (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[10] *Rollo*, pp. 114-120.

[11] Records, pp. 375-376.

[12] *Id*. at 376.

Branch 51 denied the motion for reconsideration filed by petitioners.

On August 19, 2005, petitioners filed a petition for *certiorari*[13] with the CA assailing the Order of Branch 51.

On April 27, 2006, the CA issued a Decision denying the petition, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Petition is hereby DENIED and is accordingly DISMISSED. No costs.[14]

The CA discussed that violation of the provisions of the SSS law was a criminal liability and was, thus, personal to the offender. As such, the CA held that the criminal proceedings against the petitioners should not be considered a claim against the corporation and, consequently, not covered by the stay order issued by Branch 24.

Petitioners filed a Motion for Reconsideration,[15] which was, however, denied by the CA in a Resolution dated August 2, 2006.

Hence, herein petition, with petitioners raising a lone issue for this Court's resolution, to wit:

> x x x WHETHER OR NOT THE STAY ORDER ISSUED BY BRANCH 24, REGIONAL TRIAL COURT OF MANILA, IN SEC CORP. CASE NO. 04-111180 COVERS ALSO VIOLATION OF SSS LAW FOR NON-REMITTANCE OF PREMIUMS AND VIOLATION OF [ARTICLE] [3] 515 OF THE REVISED PENAL CODE.[16]

The petition is not meritorious.

To begin with, corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible

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[13] *Rollo*, pp. 150-168.

[14] *Id*. at 37.

[15] *Id.* at 169-174.

[16] *Id*. at 14.

and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated.[17] It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[18]

A principal feature of corporate rehabilitation is the suspension of claims against the distressed corporation. Section 6 (c) of Presidential Decree No. 902-A, as amended, provides for suspension of claims against corporations undergoing rehabilitation, to wit:

Section 6 (c). x x x

x x x Provided, finally, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, **all actions for claims** against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body, **shall be suspended** accordingly.[19]

In November 21, 2000, this Court *En Banc* promulgated the Interim Rules of Procedure on Corporate Rehabilitation,[20] Section 6, Rule 4 of which provides a stay order on all claims against the corporation, thus:

Stay Order. - If the court finds the petition to be sufficient in form and substance, it shall, not later than five (5) days from the filing of the petition, issue an Order x x x; (b) **staying enforcement of all claims**, whether for money or otherwise and whether such

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[17] Rule 2, Section 1 of the Rules of Procedure on Corporate Rehabilitation, effective January 19, 2009, supplanting the Interim Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC).

[18] *Negros Navigation Co., Inc. v. Court of Appeals*, G.R. Nos. 163156 and 166845, December 10, 2008, 573 SCRA 434, 450.

[19] Emphasis supplied.

[20] A.M. No. 00-8-10-SC, [November 21, 2000].

enforcement is by court action or otherwise, against the debtor, its guarantors and sureties not solidarily liable with the debtor; x x x[21]

In *Finasia Investments and Finance Corporation v. Court of Appeals*,[22] the term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid. The purpose for suspending actions for claims against the corporation in a rehabilitation proceeding is to enable the management committee or rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company.[23]

The issue to be resolved then is: does the suspension of "all claims" as an incident to a corporate rehabilitation also contemplate the suspension of criminal charges filed against the corporate officers of the distressed corporation?

This Court rules in the negative.

In *Rosario v. Co*[24] *(Rosario)*, a case of recent vintage, the issue resolved by this Court was whether or not during the pendency of rehabilitation proceedings, criminal charges for violation of *Batas Pambansa Bilang 22* should be suspended, was disposed of as follows:

> x x x the *gravamen* of the offense punished by *B.P. Blg. 22* is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. It is designed to prevent damage to trade, commerce, and banking caused by worthless checks. In *Lozano v. Martinez*, this Court declared that it is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects

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[21] Emphasis supplied.

[22] G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450.

[23] *BF Homes, Incorporated. v. Court of Appeals*, G.R. Nos. 76879 and 77143, October 3, 1990, 190 SCRA 262, 269.

[24] G.R. No. 133608, August 26, 2008, 563 SCRA 239.

on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, to reform and rehabilitate him or, in general, to maintain social order. Hence, the criminal prosecution is designed to promote the public welfare by punishing offenders and deterring others.

Consequently, the filing of the case for violation of B.P. Blg. 22 is not a "claim" that can be enjoined within the purview of P.D. No. 902-A. True, although conviction of the accused for the alleged crime could result in the restitution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the felonious act of the accused, nevertheless, prosecution for violation of B.P. Blg. 22 is a criminal action.

A criminal action has a dual purpose, namely, the punishment of the offender and indemnity to the offended party. The dominant and primordial objective of the criminal action is the punishment of the offender. The civil action is merely incidental to and consequent to the conviction of the accused. The reason for this is that criminal actions are primarily intended to vindicate an outrage against the sovereignty of the state and to impose the appropriate penalty for the vindication of the disturbance to the social order caused by the offender. On the other hand, the action between the private complainant and the accused is intended solely to indemnify the former.[25]

Rosario is at fours with the case at bar. Petitioners are charged with violations of Section 28 (h) of the SSS law, in relation to Article 315 (1) (b) of the Revised Penal Code, or Estafa. The SSS law clearly "criminalizes" the non-remittance of SSS contributions by an employer to protect the employees from unscrupulous employers. Therefore, public interest requires that the said criminal acts be immediately investigated and prosecuted for the protection of society.

The rehabilitation of SIHI and the settlement of claims against the corporation is not a legal ground for the extinction of petitioners' criminal liabilities. There is no reason why criminal

[25] *Id.* at 250-251. (Emphasis supplied.) (Citations omitted.)

proceedings should be suspended during corporate rehabilitation, more so, since the prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.[26] As correctly observed in *Rosario*,[27] it would be absurd for one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.

The prosecution of the officers of the corporation has no bearing on the pending rehabilitation of the corporation, especially since they are charged in their individual capacities. Such being the case, the purpose of the law for the issuance of the stay order is not compromised, since the appointed rehabilitation receiver can still fully discharge his functions as mandated by law. It bears to stress that the rehabilitation receiver is not charged to defend the officers of the corporation. If there is anything that the rehabilitation receiver might be remotely interested in is whether the court also rules that petitioners are civilly liable. Such a scenario, however, is not a reason to suspend the criminal proceedings, because as aptly discussed in *Rosario*, should the court prosecuting the officers of the corporation find that an award or indemnification is warranted, such award would fall under the category of claims, the execution of which would be subject to the stay order issued by the rehabilitation court.[28] The penal sanctions as a consequence of violation of the SSS law, in relation to the revised penal code can therefore be implemented if petitioners are found guilty after trial. However, any civil indemnity awarded as a result of their conviction would be subject to the stay order issued by the rehabilitation court. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch or body where there are pending actions for claims against the distressed corporation.[29]

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[26] *Ramiscal v. Sandiganbayan*, 487 Phil. 384, 405 (2004).

[27] *Supra* note 24, at 252.

[28] *Id*. at 252-253.

[29] *Id*. at 253.

On a final note, this Court would like to point out that Congress has recently enacted Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010.[30] Section 18 thereof explicitly provides that criminal actions against the individual officer of a corporation are not subject to the Stay or Suspension Order in rehabilitation proceedings, to wit:

The Stay or Suspension Order shall not apply:

xxx xxx xxx

(g) any criminal action against individual debtor or owner, partner, director or officer of a debtor shall not be affected by any proceeding commenced under this Act.

Withal, based on the foregoing discussion, this Court rules that there is no legal impediment for Branch 51 to proceed with the cases filed against petitioners.

WHEREFORE, premises considered, the petition is *DENIED*. The April 27, 2006 Decision and August 2, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 90947 are *AFFIRMED*. The Regional Trial Court of Manila, Branch 51, is *ORDERED* to proceed with the criminal cases filed against petitioners.

SO ORDERED.

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

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[30] AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per raffle dated June 22, 2009.

[**] Designated as an additional member in lieu of Associate Justice Roberto A. Abad, per raffle dated July 12, 2010.

THIRD DIVISION

[G.R. No. 176631. February 2, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AVELINO FELAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** The law applicable is Article 335 of the *Revised Penal Code*, as amended by Section 11 of Republic Act No. 7659, which provides: Article 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 State competently and sufficiently established these elements beyond reasonable doubt. AAA rendered a complete and credible narration of her ordeal at the hands of the accused, whom she positively identified. In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in this case. Here, the victim's testimony was even corroborated on material points by the testimonies of Mrs. Aris and Dr. Pastor as well as by the documentary evidences adduced.

2. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF THE VICTIM; THE TRIAL COURT'S EVALUATION, WHEN AFFIRMED BY THE COURT OF APPEALS IS BINDING ON THE SUPREME COURT; RATIONALE.—** We accord great weight to the trial judge's assessment of the credibility of AAA and of her testimony because the trial judge, having personally observed AAA's conduct and demeanor as a witness, was thereby enabled to discern if she was telling or inventing the truth. The trial judge's evaluation, when affirmed by the CA, is binding on the Court, and it becomes the burden of the accused to project to us facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted which,

when duly considered, would materially affect the disposition of the case differently. We do not vary from this rule now, however, considering that the accused did not make any showing that the RTC, in the first instance, and the CA, on review, ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.

3. ID.; ID.; DENIAL; CANNOT OVERCOME THE POSITIVE DECLARATION AGAINST THE ACCUSED AND THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE VICTIM; PRESENT IN CASE AT BAR.— The denial of the accused, being worthless, was properly disregarded. It was both self-serving and uncorroborated. It could not, therefore, overcome the positive declarations against the accused and the positive identification of the accused by AAA, whose good motive to impute such a heinous act to her own father was not disproved or refuted. We do consider to be highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, as we observed before, it takes "a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame."

4. CRIMINAL LAW; RAPE; THE VICTIM'S MORAL CHARACTER WAS IMMATERIAL IN THE PROSECUTION AND CONVICTION OF AN ACCUSED FOR RAPE.— The attempt to discredit AAA on the ground of her being a user of illegal drugs and of her having engaged in prostitution deserved no consideration. First of all, AAA's use of illegal drugs and engaging in prostitution, even if true, did not destroy her credibility as a witness or negate the rape. Indeed, the Court has ruled that the victim's moral character was immaterial in the prosecution and conviction of an accused for rape, there being absolutely no nexus between it and the odious deed committed. Moreover, even a prostitute or a woman of loose morals could fall victim of rape, for she could still refuse a man's lustful advances.

5. ID.; ID.; QUALIFYING CIRCUMSTANCE OF MINORITY; NOT ESTABLISHED IN CASE AT BAR.— The CA correctly pronounced the accused liable for simple rape and properly

punished him with *reclusion perpetua*. Under Article 335 of the *Revised Penal Code*, as amended by Section 11 of Republic Act No. 7659, *supra*, rape is qualified and punished by death if it is alleged and proved that the victim was a minor during the commission of the crime and that the offender was her parent. Although the information alleged that the victim was only 14 years of age at the time of the rape, the State did not duly establish such circumstance because no birth certificate, or baptismal certificate, or other competent document showing her age was presented. Her testimony regarding her age without any independent proof is not sufficient. As a result, the penalty for simple rape was properly *reclusion perpetua*.

6. ID.; CIVIL LIABILITY; AWARD OF DAMAGES, EXPLAINED. — Prevailing jurisprudence leads us to affirm the CA's ruling that AAA was entitled to ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages, without need of any pleading and proof. Similarly correct was the CA's grant of ₱25,000.00 as exemplary damages. In *People v. Mira*, we observed that "when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence may be considered as an aggravating circumstance." In this case, the relationship between the victim and the accused is an aggravating circumstance because it was alleged in the information and duly proved during the trial. Thus, conformably with Article 2230 of the *Civil Code*, which provides that "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 circumstance," we ratify the award of exemplary damages.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

His own daughter commenced the prosecution of Avelino Felan for qualified rape through her complaint dated May 30, 1996.[1] The information subsequently filed in the Regional Trial Court (RTC) in Ormoc City alleged:

> That on or about the 12th day of February 1995, at around 10:00 o'clock in the evening, at Brgy. Tambulilid, Ormoc City, and within the jurisdiction of this Honorable Court, the above-named accused AVELINO FELAN, by means of violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with his very own daughter, AAA,[2] a fourteen (14) years old lass, against her will.[3]

The Prosecution showed that at about 10:00 p.m. on February 12, 1995, the accused roused his daughter AAA, the complainant, then 14 years old, from sleep inside their house; that he told her not to be afraid; that he removed her panty, spread her legs, and went on top of her; that she resisted but he overpowered her; that he inserted his penis into her vagina and made pumping movements until he satisfied himself; that she cried due to vaginal pain; that she left the house and stayed with her friends, who advised her to report the rape to Mrs. Charito Aris, a social worker of the Department of Social Welfare and Development (DSWD) in Ormoc City; that Mrs. Aris later brought her first to the police station for reporting of the rape, and then to Dr. Gloria Esmero Pastor, City Health Officer of Ormoc City, for medical examination; that Dr. Pastor found

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[1] Records, p. 2-3.

[2] Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real name of the victim and the real names of her immediate family members are withheld and, instead, fictitious initials are used to represent her to protect her privacy. See also *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] *Supra* note 1.

that AAA's hymen was torn; and that Dr. Pastor concluded that the hymenal laceration could be caused by sexual intercourse.

The accused denied the accusation, branding it as the fabrication of AAA out of anger at him for not giving her basic needs and for admonishing her to stop using illegal drugs.

After trial, on November 26, 1997, the RTC convicted the accused of qualified rape and imposed the death penalty. He was also ordered to pay AAA ₱50,000.00 as civil indemnity.[4]

On July 14, 2006, the Court of Appeals (CA) modified the criminal and civil liabilities of the accused after finding him guilty of simple rape on account of AAA's minority not being established beyond reasonable doubt. The CA lowered the penalty to *reclusion perpetua* and sentenced him to pay an amount of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages in addition to the civil indemnity of ₱50,000.00.[5]

In his appeal to this Court, the accused contends that the RTC and the CA erred in relying mainly on AAA's testimony, despite her not being a credible witness and although her testimony was doubtful by reason of her having used illegal drugs and having engaged in prostitution, aside from possessing a poor memory. He insists that he could control his sexual urge.[6]

The appeal lacks merit and persuasion. We affirm the conviction.

The law applicable is Article 335 of the *Revised Penal Code*, as amended by Section 11 of Republic Act No. 7659,[7] which provides:

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[4] Records, pp. 191-200.

[5] *Rollo*, pp. 7-14; penned by Associate Justice Agustin S. Dizon (retired), with Associate Justice Isaias P. Dicdican and Associate Justice Apolinario D. Bruselas, Jr., concurring.

[6] CA *rollo*, pp. 33-40.

[7] *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Laws, and for other Purposes*. (The law took effect on December 31, 1993).

Article 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 State competently and sufficiently established these elements beyond reasonable doubt. AAA rendered a complete and credible narration of her ordeal at the hands of the accused, whom she positively identified. In a prosecution for rape, the accused may be convicted solely on the basis of the testimony of the victim that is credible, convincing, and consistent with human nature and the normal course of things, as in this case.[8] Here, the victim's testimony was even corroborated on material points by the testimonies of Mrs. Aris and Dr. Pastor as well as by the documentary evidences adduced.

It is notable that the RTC and the CA both found and considered AAA as a credible witness whose testimony should be believed. We accord great weight to the trial judge's assessment of the credibility of AAA and of her testimony because the trial judge, having personally observed AAA's conduct and demeanor as a witness, was thereby enabled to discern if she was telling or inventing the truth.[9] The trial judge's evaluation, when affirmed by the CA, is binding on the Court, and it becomes the burden of the accused to project to us facts or circumstances of weight that were overlooked, misapprehended, or misinterpreted which, when duly considered, would materially affect the disposition of the case differently.[10] We do not vary from this rule now,

[8] *People v. Montesa*, G.R. No. 181899, November 27, 2008, 572 SCRA 317, 331.

[9] *People v. Lantano*, G.R. No. 176734, January 28, 2008, 542 SCRA 640, 651-652.

[10] *People v. Domingo*, G.R. No. 184958, September 17, 2009, 600 SCRA 280, 288; *Gerasta v. People*, G.R. No. 176981, December 24, 2008, 575 SCRA 503, 512.

however, considering that the accused did not make any showing that the RTC, in the first instance, and the CA, on review, ignored, misapprehended, or misinterpreted facts or circumstances supportive of or crucial to his defense.

The denial of the accused, being worthless, was properly disregarded. It was both self-serving and uncorroborated. It could not, therefore, overcome the positive declarations against the accused and the positive identification of the accused by AAA,[11] whose good motive to impute such a heinous act to her own father was not disproved or refuted. We do consider to be highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, as we observed before, it takes "a certain amount of psychological depravity for a young woman to concoct a story which would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame."[12]

The attempt to discredit AAA on the ground of her being a user of illegal drugs and of her having engaged in prostitution deserved no consideration. First of all, AAA's use of illegal drugs and engaging in prostitution, even if true, did not destroy her credibility as a witness or negate the rape. Indeed, the Court has ruled that the victim's moral character was immaterial in the prosecution and conviction of an accused for rape, there being absolutely no nexus between it and the odious deed committed.[13] Moreover, even a prostitute or a woman of loose morals could fall victim of rape, for she could still refuse a man's lustful advances.[14]

The CA correctly pronounced the accused liable for simple rape and properly punished him with *reclusion perpetua*. Under Article 335 of the *Revised Penal Code*, as amended by Section 11

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[11] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, June 3, 2004, 430 SCRA 450.

[12] *People v. Javier*, G.R. No. 126096, July 26, 1999, 311 SCRA 122, 133.

[13] *Supra* note 11, p. 466.

[14] *Ibid*.

of Republic Act No. 7659, *supra*, rape is qualified and punished by death if it is alleged and proved that the victim was a minor during the commission of the crime and that the offender was her parent.[15] Although the information alleged that the victim was only 14 years of age at the time of the rape, the State did not duly establish such circumstance because no birth certificate, or baptismal certificate, or other competent document showing her age was presented. Her testimony regarding her age without any independent proof is not sufficient.[16] As a result, the penalty for simple rape was properly *reclusion perpetua*.

Prevailing jurisprudence leads us to affirm the CA's ruling that AAA was entitled to ₱50,000.00 as civil indemnity,[17] and ₱50,000.00 as moral damages,[18] without need of any pleading and proof. Similarly correct was the CA's grant of ₱25,000.00 as exemplary damages.[19] In *People v. Mira*,[20] we observed that "when either one of the qualifying circumstances of relationship and minority is omitted or lacking, that which is pleaded in the information and proved by the evidence may be

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[15] Article 335. xxx

xxx xxx xxx

The death penalty shall be imposed if the crime of rape is 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, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

xxx xxx xxx

[16] *People v. Mira*, G.R. No. 175324, October 10, 2007, 535 SCRA 543, 561.

[17] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807, 816.

[18] *People v. Gragasin*, G.R. No. 186496, August 25, 2009, 597 SCRA 214, 233.

[19] *People v. Arcosiba*, G.R. No. 181081, September 4, 2009, 598 SCRA 517, 525.

[20] *Supra*, note 16, p. 562.

considered as an aggravating circumstance." In this case, the relationship between the victim and the accused is an aggravating circumstance because it was alleged in the information and duly proved during the trial. Thus, conformably with Article 2230 of the *Civil Code,* which provides that "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 circumstance," we ratify the award of exemplary damages.

WHEREFORE, the Court affirms the decision promulgated on July 14, 2006 in CA-G.R. CR. H.C. No. 00158.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 179217. February 2, 2011]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **GABRIEL ADVINCULA, *ET AL.,*** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; RETIREMENT PLAN; EARLY RETIREMENT INCENTIVE PACKAGE (ERIP) OF THE METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS); EXPLAINED.— It is undisputed that respondents were all qualified to retire under RA 1616 at the time of the reorganization and privatization of MWSS in 1996 and 1997, respectively. x x x It is clear from the provision of Section 1 of RA. 1616 that an employee who has rendered at

> least 20 years of service may retire under RA 1616 and receive a retirement gratuity of 1 month salary for every year of service. MC No. 26-96, on the other hand, provides for the computation of the separation benefit applicable to permanent officials who are not qualified to retire under any existing law and those who are qualified to retire. Those who are not qualified to retire, for as long as they served for more than a year, may avail of the gratuity corresponding to their length of service. As for those employees who are qualified to retire, they may only receive a separation pay equivalent to the difference between the incentive package and the retirement benefit under any existing retirement law. x x x Taking into consideration the provisions of both RA 1616 and MC No. 26-96, the separation benefit due to the affected employees should be the balance received in MC No. 26-96 and the retirement benefit received in RA 1616. Hence, those who have rendered at least 20 but less than 30 years of service should receive 1 month salary for every year of service; and those who have rendered more than 30 years should receive 1.5 month salary for every year of service.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
Bernardo Cabidoy for respondents.

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 Resolution dated 14 August 2007[2] and Decision dated 28 February 2007[3] of the Court of Appeals (CA) in CA-G.R. SP No. 92391.

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

[2] *Rollo*, p. 25. Penned by Justice Ricardo R. Rosario with Justices Rebecca de Guia-Salvador and Magdangal M. de Leon, concurring.

[3] *Id.* at 8-23.

The Facts

Sometime in 1996, petitioner Metropolitan Waterworks and Sewerage System (MWSS) was reorganized[4] pursuant to Republic Act No. 8041[5] (RA 8041) or the National Water Crisis Act of 1995, and its implementing guidelines Executive Order No. 286[6] (EO 286). Because of the reorganization, MWSS offered separation benefits[7] to its affected official and employees through

[4] Section 7 of Republic Act No. 8041 states:

Section 7. *Reorganization of the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Waterworks and Utilities Administration (LWUA)* – Within six (6) months from the approval of this Act, the President of the Republic is hereby empowered to revamp the executive leadership and reorganize the MWSS and the LWUA, including the privatization of any or all segments of these agencies, operations or facilities if necessary, to make them more effective and innovative to address the looming water crisis. For this purpose, the President may abolish or create offices, transfer functions, equipment, properties, records and personnel; institute drastic cost-cutting and other related measures to carry out the said objectives. Moreover, in the implementation of this provision, the prescriptions of Republic Act No. 7430, otherwise known as the Attrition Law, shall not apply. Nothing in this section shall result in the diminution of the present salaries and benefits of the personnel of the MWSS and the LWUA: *Provided,* That any official or employee of the said agencies who may be phased out by reason of the reorganization authorized herein shall be entitled to such benefits as may be determined by existing laws. x x x

[5] An Act to Address the National Water Crisis and for Other Purposes. Approved on 7 June 1995.

[6] Reorganizing the Metropolitan Waterworks and Sewerage System (MWSS) and the Local Water and Utilities Administration (LWUA) pursuant to Republic Act No. 8041, otherwise known as the National Water Crisis Act of 1995. Issued on 6 December 1995.

[7] Section 6 of EO 286 states:

Section 6. *Separation Pay.* – Any official or employee of the MWSS and LWUA who may be phased out by reason of the reorganization shall be entitled to such benefits as may be determined by existing laws. For this purpose, the MWSS, LWUA and DBM are hereby directed to study and propose schemes or measures to provide personnel who shall voluntarily retire from the service incentives and other benefits, including the possibility of accelerating the application of the revised compensation package under the Salary Standardization Law, Republic Act No. 6758. The recommendation should be submitted to the President not later than thirty (30) days from the date hereof.

the Revised Early Retirement Incentive Package (ERIP I). MWSS Memorandum Circular (MC) Nos. 26-96,[8] 26-96(b),[9] 26-96(c) and 26-96(d) governed the implementation of ERIP I, which was availed of by around 2,000 MWSS employees.

MC No. 26-96, provided, among others, that MWSS pay separation benefits to its affected permanent officials and employees who have served at least one year:

Years of Service	Equivalent ERIP Gratuity
First 20 years	1.5 per year x Basic Monthly Pay
20 to 30 years	2.0 per year x Basic Monthly Pay
Over 30 years	2.5 per year x Basic Monthly Pay

In 1997, MWSS entered into concession agreements with Maynilad Water Services, Inc. and Manila Water Company, Inc. for the privatization of its waterworks and sewerage systems. On account of the privatization, MWSS again offered a retirement plan called Early Retirement Incentive Package II (ERIP II) to around 5,000 of its employees who would be affected or terminated if they were not absorbed by the concessionaires.

Under ERIP II, MWSS paid separation and other benefits in this manner: (1) all employees, regardless of the length of service, were given one month pay for every year of service; (2) those who served for 15 to 20 years received one month pay for every year of service in addition to the retirement package under Republic Act No. 8291,[10] cash payment from the Government Service Insurance System (GSIS) equivalent to 18 months salary

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[8] Guidelines for the Implementation of the Revised ERIP pursuant to EO 286; issued on 25 July 1996.

[9] MWSS Circular which provided for the payment of the Revised ERIP and Terminal Leave with detailed procedure in processing the claims. Issued on 21 August 1996.

[10] Also known as the Government Service Insurance System Act of 1997; An Act Amending Presidential Decree No. 1146, as amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes. Signed on 30 May 1997.

plus monthly pension upon reaching the age of 60; and (3) those who served for more than 20 years received a return of their premium from GSIS.

On 21 January 2004, respondents, who comprise 550 of MWSS's past and present employees,[11] and who were all qualified

[11] Lulu Christina Anchuvas, Lucito Andal, Ben Andrade, Carlito Angat, Norma Angat, Angelito Angeles, Fidel Angeles, Jose Angeles, Rhodora Angeles, Valentino Angeles, Ricardo Antonio, Manuel Ape, Mario Apiado, Delia Araña, Ma. Teresa Arceo, Alessandro Arenas, Ligaya Arguelles, Cecilia Arias, Henry Arimbuyutan, Antonio Armalda, Madelaine Asuncion, Romeo Asuncion, Honorata Astrero, Asuncion Atamosa, Melchor Atienza, Ernesto Aton, Eugenio Austria, Jose Flor Austria, Jose Austria, Jr., Angelito Auxillo, Ferdinand Avendaño, Sr., Ma. Vanessa Avendaño, Zaldy Ayones, Lupo Azaras, Herminigildo Babao, Rolando Bachicha, Luciano Bactol, Elsa Baladad, Rodolfo Balignasay, Ricardo Balingit, Larry Ballesteros, Eduardo Baluyot, Teotimo Bajan, Hilario Baluyot, Alicia Banaag, Leandro Banson, Joselito Bantug, Rodolfo Barbero, Elvira Barranta, Samuel Barrios, Alfredo Bartolome, Josephine Basa, Magdalena Basco, Virgilio Basco, Arnel Basilio, Marites Batac, Daniel Bacli, Carlito Bautista, Edgar Bautista, Fernado Bautista, Dante Benedicto, Redella Benerayan, Eduardo Bergonia, Exequiel Bernabe, Ponciano Bernalo, Joel Bernadez, Ruben Bolaton, Melchor Bolivar, Felix Bona, Adolfino Bondoc, Rogel Bonifacio, Rufino Boo, Benito Borja, Armando Borsigue, Ricardo Briones, Fufronio Brosas, Danilo Buenvenida, Harry Bustarde, Benedicto Cabanding, Alejandro Cabarloc, Danilo Cabero, Judith Cadapan, Rosalia Cailao, Jose Cajucom, Daniel Calma, Elena Calingasan, Reneson Caluya, Anecito Camelon, Bonifacio Campos, Arturo Cancino, Jorge Candare, Jr., Elsie Cantoria, Felix Capitulo, Jr., Amante Cardenas, Loreto Cartagena, Fortunato Carcante, Jr., Edwin Caseñas, Rosalito Casiño, Emmanuel Castillo, Ricardo Castillo, Brilly Catamio, Jimmy Catamio, Renato Castro, Pedro Cayabyab, Jr., Ma. Felisa Cayanan, Eldie Cepeda, Antonio Cervera, Jr., Rodrigo Chua, Mariano Clemente, Nick Clores, Florentino Colcol, Edna Collado, Carlito Coloma, Rolando Coronado, Armando Corpuz, Danilo Corpuz, Ronaldo Cristobal, Ignacio Crisostomo, Milagros Crisostomo, Santos Crisostomo, Ronaldo Cruz, Servando Cruz, Nerie Cueno, Fe Cunanan, Rico Dabay, Sandro Danila, Gil Datiles, Bernardino Dayao, Rodolfo Dayaon, Ernesto Decano, Arnel De Guzman, Baltazar De Guzman, George De Guzman, Pablo De Guzman, Jefferson De Leon, Jesse M. De Leon, Pascual De Leon, Ramsie De Leon, Donato De Luna, Jr., Wilfredo De Luna, Reynaldo De Roma, Arnel De Vera, Wenceslao De Vera, Eluderio Del Carmen, Encarnacion Dela Cruz, Julieta Dela Cruz, Leonardo Dela Cruz, Robert Dela Cruz, Nelson Dela Cuesta, Hipolito Dela Peña, Ruben Del Pozo, Ricardito Delos Reyes, Eric Castro Derain, Paulita Devisfruto, Joaquin Diamante, Jr., Ferdinand Diloy, Nerissa Dismantilac, Domingo Diones, Florencio Dipad, Andres Distrito, Alfredo Dizon, Arsenio Domingo, Reynaldo Doromal, Furgencia Domagsang, Lauro Dumlao,

Andres Dumo, Rodolfo Duñego, Eusebio Escaño, Ma. Theresa Ecija, Conrado Eclarin, Belinda Elarmo, Rhoderick Elarmo, Ranier Elizon, Virgilio Enaje, Florentino Escueta, Juanito Esmeralda, Salvador Espayos, Pantaleon Esplana, Michael Evangelista, Rodrigo Enaje, Rolando Eisma, Mauricio Esmeralda, Taurino Frayna, Ernesto Fernandez, Armando Flor, Corazon Francisco, Hilario Faraon, Manuel Felonia, Orchit Fallurin, Tomasito Fuentes, Telesforo Francoso, Freddie Feria, Loreto Francisco, Catherine Francisco, Nida Gonzales, Ernesto Gonzales, Alberto Guiam, Benito Golampes, Joel Gardaya, Cesar Gamet, Dominador Ilagan, Jr., Lourdes Intal, Edgardo Gomilla, Pablito Garcia, Reynaldo Garcia, Jaime Galario, Danilo Cunando, Linda Gonzales, Danilo Garcia, Pepito Guerta, Albino Gulfan, Jr., Maria Cecilia Gatchalian, Celso Gonzales, Roberto Garcia, Imelda Guinhawa, Florante Bayani Guinhawa, Eric Gallana, Carmen, Golingtu, Danilo Gayla, Sylvia Gabriel, Bonifacio Gementiza, Efren Glorioso, Dolores Goze, Mario Gillado, Leonor Gamolo, Randy Gonzales, Rolando Halili, Jacinta Holgado, Vicmar Herman, Lilian Holguin, Norma Ingaran, Cecilia Intal, Emmanuel Inocencio, Ronald Ipac, Rene Ilagan, Luis Inciong, Norman Mendoza Isip, Danilo Imperial, Roland Inocahip, Leo Carlo Intup, Wilfredo Imperial, Juan Jimenez, Romeo Jasa, Ramon Javier, Nelson Jimenez, Meliton Japsay, Priscilla Joson, Romeo Jose, Marcial Juan, Jr., Romeo Joson, Fernando Laguna, Ma. Cristina Lachico, Stephen Laurora, Bayani Lopez, Ronaldo Lanario, Rogelio Lagamson, Afredo Laraño, Eduardo Loreto, Nerissa Luleod, Feliciano Lopez, Corazon Lagang, Angelito Llong, Arnulfo Luzon, Nanette Loyola, Joseph Nobleza Latorre, Princesito Lopez, Antonio Llanita, Erwin Liboro, Arnulfo Laguardia, Bayani Lopez, Lamayo Luther Venus, Cesar Legaspi, Jimmy Layug, Josefina Leiro, Jaime Leynes, Raul Paquiao Lapinig, Benny Leysa, Marcelino Labrador, Buenaventura Motetira, Benedicto Maranan, Jr., Cynthia Lacap-Marquez, Angelito Mendoza, Caroline Mahusay, Aurelio Mallari III, Wilfredo Medenilla, Alejandro Mamanas, Fortunato Mariñas, Jr., Francisco Montenegro, Lovell Millanes, Richard Mendoza, Roel Martinez, Rogelio Mallari, Manuel Manzano, Noel Manahan, Diosdado Manuel, Jr., Alfredo Mallari, Resurreccion Medrano, Jose Marcelino, Narciso Macaraeg, Ofelia Mendoza, Aillu Molina, Mayo Manalo, Edgar Mati, Geronimo Mateo, Roberto Menor, Diomedes Mallabo, Roberto Muñez, Armando Liona Mison, Christopher Mapua, Ma. Cristina Micoleta, Aurora Magday, Rogelio Morano, Rogelio Molina, Roberto Malavega, Ramon Magtira, Jimmy Menecos, Hermogenes Manalo, Ariel Marcelino, Ricardo Moreno, Allan Mendoza, Bayani Mendoza, Jorge Mariñas, Archimedes Marquez, Sr., Rolando Miguel, Leovelito Morano, Lindbergh Malubay, Jose Ferrer Mendoza, Wilfredo Masangya, Valentino Mojica, Eduardo Mabeza, Luz Majosinte, Leonardo Masuqui, Santiago Marquez, Melissa Advincula Marquez, Edilberto Mercado, Monsanto Jose Nocoto, Bernardo Navalta, Romulo Nepomuceno, Jr., Trifon Nale, Luis Nomabiles, Delfin Nuada, Celestino Nava, Leopoldo Napiñas, Romeo Nepomuceno, Ma. Siegrud Navarette, Ernesto Nicolas, Lorenzo Nuada, Hilario Nicolas, Alfonso Navarma, Amalia Ormas, Macario Ocampo,

Jr., Aurora Obmerga, Efren Oloroso, Antonio Ono, Bernardo Olmedo, Lucila Olero, Rafael Ortega, Ma. Corazon Oriondo, Patrick Padrigon, Sr., Mario Peligro, Jaime Planos, Ronimo Perez, Fermin Penafiel, Danilo Pascua, Armando Padilla, Antonio Padrique, Rolando Prudencio, Marcelo Pineda, Evelyn Policarpio, Raycel Prado, Antonio Pagaduan, Arnel Porcadilla, Bernardo Palacio, Jr., Rafael Parungao, Felipe Paulo, Marcelino Patulot, Jr., Lito Peralta, Zaida Pulido, Ernesto Pablo, Wilfredo Plol, Ernesto Pascua, Fernando Padrigon, Angelito Pinanonang, Brigido Panganiban, Samuel Partina, Jose Jame Perez, Josefino Pangiligan, Ma. Dinah Quiambao, Henry Quibrantos, Renato Quinalayo, Antonio Ramiro, Ma. Cristina Penollo, Virgilio Reyes, Julio Rivera, Pablito Rondero, John Raymundo, Jonny Ramos, Raul Roldan, Ponciano Rivera, Mario Ramirez, Mary Jane Ramos, Jesus Reblora, Myrna Rebadajo, Jaime Rosario, Rodrigo Rebong, Jesus Rosales, Perpetuo Reyes, Arsenio Rombada, Danilo Rafael, Rolando Ramos, Rogelio Rubina, Gonzalo Remo, Luisito Rascano, Angel Reyes, Silvestre Rances, Jr., Froilan Rapi, Roberto Roxas, Jimmy Reyes, Ernesto Raciles, Jr., Marcelino Ranoy, Jesus Reblora, Carlos Romulo, Jr., Generoso Roblado, Jr., Roberto Rolloque, Rolando Rosas, Roberto Remotin, Francisco Roxas, Jr., Edilberto Romero, Ernani Romero, Efren Reganit, Remedios Santome, Elvira Sanchez, Wenceslao Siwala, Jr., Guillermo Salazar, Jhonny Sevilleno, Domingo Salvador, Jaime Sermino, Roberto Santiago, Wilson Suyat, Ruben Salcedo, Solomon Santos, Jovineo Sola, Wilfredo Bexon, Josefino Santos, Zaldy Santos, Casiano Saturnino, Jr., Marco Sionilo, Dominador Santiago, Aniceto Siobal, Romeo Susas, Renato Santos, Ricardo Simon, Josefina Sacramento, Tito Saluta, Julian San Jose, Francisca Dominga Salinas, Ariel Sayo, Jose Sombillo, Jr., Raul Salazar, Mario Sison, Wilfredo Ocampo Suba, Jaime Santos, Oliva Saavedra, Daniel Santos, Josefino Samson, Noel Siodina, Ramon Sales, Susana Santiago, Rodolfo Sta. Maria, John Sadiwa, Edgardo Santos, Federico Servan, Romeo Tayo, Arnelito Tolentino, Jocelyn Torralba, Restituto Torno, Eduardo Tomas, Jr., Carlos Tabirao, Ferdinand Taruc, Danilo Tealban, Raymundo Taruc, Gemma Tarlengco, Roseminia Toralde, Nathaniel Tabago, Patricio Tulali, Abdullah Tahir, Francisco Tibay, Jr., Rolando Tolentino, Roberto Torres, Fortunato Tienzo, Jr., Jose Tepace, Bernabe Tubay, Rogelio Taculao, Salvacion Tupaz, Marciano Ugaban, Jr., Joselito Urrea, Wilherminio Umbac, Roderico Umilda, Juanito Usman, Jr., Mariano Urgel, Jr., Ricardo Ulanday, Rodrigo Villalobos, Jose Viray, Jr., Roberto Villalba, Nilo Villalobos, Alma Valdez, Alfredo Villano, Arturo Villanueva, Rogelio Valdemoso, Renato Villanueva, Manuel Vega, Manuel Vela III, Cornelio Vibal, Peter Meynard Veriño, Egardo Vasayllahe, Emma Velches, Jacinto Valdez, Nicasio Villamor, Jr., Romulo Valdez, Jocelyn Velasquez, Felipe Villona, Jr., Jocelyn Villacentino, Milagros Venzueta, Rodolfo Villanueva, Consuelo Valencia, Vicente Valientes, Manuel Velarde, Elias Valdez, Ruben Villarico, Jose Veniga, Ponciano Villalobos, Eddie Villegas, Reynaldo Valdeztamon, Ronilo Villegas, Manuel Villon, Jose Tamane, Jr., Ricardo Yu, Edison Zarate, Ramir Yutuc, Edgardo Zarate.

to retire at the time ERIP I and ERIP II were issued, filed a petition for *mandamus*[12] against MWSS with the Regional Trial Court (RTC) of Quezon City, Branch 87, for the alleged non-payment of their separation pay.

In their petition, respondents prayed that MWSS be compelled to pay them their full separation benefits provided under MC No. 26-96, in addition to the retirement gratuity they received under Republic Act No. 1616[13] (RA 1616). Respondents averred that they only received from the MWSS these separation benefits: (1) under ERIP I, 1.5 month salary for every year of service; and (2) under ERIP II, 1 month salary for every year of service. As a result, they alleged that they did not receive the full separation benefits due them: (1) under ERIP I, an additional of 0.5 month salary for every year of service; and (2) under ERIP II, an additional 1 month pay for every year of service.

In an Order dated 18 August 2005, the RTC granted the issuance of the writ of *mandamus*. The dispositive portion states:

WHEREFORE, let a Writ of *Mandamus* [issue] against the respondent MWSS, through its Chairman and Board of Directors, directing said respondent to release the payment of the following:

— 0.5 of the equivalent monthly salary times (x) the number of years of service, to each petitioner, regular employee, who retired in 1996 under ERIP I; and

— one (1) month salary times (x) the number of years of service, to each petitioner, regular employee who retired in 1997 under ERIP II;

— twelve (12%) percent interest per annum on the amount payable to each petitioner computed since 1996 and 1997, respectively, until the full amount is satisfied;

from which ten (10%) percent of the total amount payable to the petitioners as and for attorney's fees and other litigation expenses

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[12] Docketed as Civil Case No. Q-03-51030.

[13] An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six (Section 12 of Commonwealth Act No. 186), as amended, by Prescribing Two Other Modes of Retirement and for Other Purposes. Took effect on 31 May 1957.

must be segregated/deducted and be payable as such, to the legal representation.

SO ORDERED.[14]

MWSS filed an appeal with the CA.

The Ruling of the Court of Appeals

In a Decision dated 28 February 2007, the CA partially granted the appeal and affirmed with modification the RTC's Order dated 18 August 2005. The dispositive portion of the CA Decision states:

WHEREFORE, the appeal is PARTIALLY GRANTED.

The assailed Order is AFFIRMED WITH THE MODIFICATION that the *Writ of Mandamus* issued against appellant Metropolitan Waterworks and Sewerage System (MWSS) commands it to release the payment of the balance of the ERIP separation pay in the amount equivalent to 0.5 per year times BMP (basic monthly pay) only to the following employees who retired in 1997 under ERIP II, to wit: (1) employees who have rendered less than fifteen (15) years of service provided they were not excluded by paragraph 1, MC No. 26-96(c), and provided further, that they were not absorbed by the private concessionaires during the reorganizations; and (2) those who have served for more than thirty (30) years.

The rest of the Order is reversed and set aside.

SO ORDERED.[15]

Both parties filed their respective motions for reconsideration which the CA denied for lack of merit in a Resolution dated 14 August 2007.

Respondents filed a petition for review on *certiorari* with this Court docketed as G.R. No. 179365 and entitled *"Gabriel A. Advincula, et al. v. Metropolitan Waterworks and Sewerage System."* The petition was denied in a Resolution[16] dated 10

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[14] *Rollo*, pp. 11-12.

[15] *Id.* at 22-23.

[16] *Id.* at 681-682.

October 2007 for failure to comply with the necessary requirements stated in Rule 45 of the Revised Rules of Court. Respondents filed a motion for reconsideration which was denied in a Resolution[17] dated 12 December 2007. Through an Entry of Judgment[18] issued by this Court, the case became final and executory on 4 February 2008.

On 25 October 2007, petitioner filed this petition for review on *certiorari* dated 21 September 2007.

The Issue

The main issue is whether the Court of Appeals erred in allowing the writ of *mandamus* against petitioner commanding it to pay the balance of 0.5 month salary for every year of service of unpaid separation benefits to those employees who have served for more than 30 years and retired in 1997 under ERIP II.

The Court's Ruling

The petition lacks merit.

Petitioner agrees with the ruling of the CA with regard to the additional payment of separation benefit amounting to 0.5 month salary for every year of service to an employee who has rendered at least 15 years of service and not excluded by paragraph 1 of MC No. 26-96(c) which states: "x x x those who shall be offered appointments for positions they applied for but shall refuse such appointments shall not be entitled to ERIP." This payment, however, is still conditioned on whether or not the employee decides to resign instead of continuing his employment within the prescribed period under the Concession Agreement between MWSS and the private concessionaire.

On the other hand, petitioner disagrees with the same ruling that an employee who has served for more than 30 years is entitled to the same benefit of 0.5 month salary for every year of service. Petitioner contends that according to MC No. 26-96(b),

[17] *Id.* at 683.

[18] *Id.* at 684-685.

those who have served for more than 30 years are entitled to 2.5 month salary for every year of service. In the 2.5 month salary computation, 1 month had already been paid by petitioner while the other month was covered by RA 1616. The remaining balance of 0.5 is not mandatory but is still dependent on whether the employee had been absorbed by the private concessionaire or actually resigned from the service.

We disagree.

It is undisputed that respondents were all qualified to retire under RA 1616 at the time of the reorganization and privatization of MWSS in 1996 and 1997, respectively.

Section 1 of RA 1616 provides:

> Section 1. Section twelve of Commonwealth Act Numbered One hundred eighty-six, as amended, is hereby further amended by adding two new paragraphs after paragraph (a) which reads as follows:
>
> "(b) x x x
>
> (c) **Retirement is likewise allowed to a member,** regardless of age, **who has rendered at least twenty years of service. The benefit shall,** in addition to the return of his personal contributions plus interest, **be only a gratuity equivalent to one month salary for every year of service**, based on the highest rate received, but not to exceed twenty-four months. This gratuity is payable by the employer or office concerned which is hereby authorized to provide the necessary appropriation or pay the same from savings in its appropriations." (Emphasis supplied)

It is clear from the provision that an employee who has rendered at least 20 years of service may retire under RA 1616 and receive a retirement gratuity of 1 month salary for every year of service.

MC No. 26-96, on the other hand, provides for the computation of the separation benefit applicable to permanent officials who are not qualified to retire under any existing law and those who are qualified to retire. Those who are not qualified to retire, for as long as they served for more than a year, may avail of the gratuity corresponding to their length of service. As for those

employees who are qualified to retire, they may only receive a separation pay equivalent to the difference between the incentive package and the retirement benefit under any existing retirement law.[19] The relevant portions of MC No. 26-96 state:

II. NATURE OF THE ERIP

A. The ERIP for affected permanent officials and employees of the MWSS who have served at least one (1) year shall be computed as follows:

Years of Service	Equivalent ERIP Gratuity
First 20 years	1.5 per year x Basic Monthly Pay
20 to 30 years	2.0 per year x Basic Monthly Pay
Over 30 years	2.5 per year x Basic Monthly Pay

For this purpose, basic monthly pay shall be based on the full implementation of the Salary Standardization Law II salary rates at the designated salary step as of December 31, 1995. The number of service years for qualified retirees under GSIS existing retirement laws shall be certified by the GSIS.

The ERIP to be paid by MWSS to officials or employees qualified to retire shall be the difference between the incentive package and the retirement benefit under any existing retirement law (RA 1616, 1146 or 660).[20]

Taking into consideration the provisions of both RA 1616 and MC No. 26-96, the separation benefit due to the affected employees should be the balance received in MC No. 26-96 and the retirement benefit received in RA 1616. Hence, those who have rendered at least 20 but less than 30 years of service should receive 1 month salary for every year of service; and those who have rendered more than 30 years should receive 1.5 month salary for every year of service.

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[19] See *Laraño v. Commission on Audit*, G.R. No. 164542, 18 December 2007, 540 SCRA 553.

[20] CA Decision, *rollo*, pp. 15-16.

In the present case, MWSS already gave the affected employees under ERIP II, regardless of the length of service, a separation benefit equivalent to 1 month salary for every year of service. Thus, those employees who have rendered at least 20 but less than 30 years of service already received the payment due them. However, MWSS is still obligated to pay those affected employees who have rendered more than 30 years for the balance of 0.5 month salary for every year of service.

The reasoning forwarded by petitioner that the remaining balance of 0.5 is not mandatory but is still dependent on whether the employee had been absorbed by the private concessionaire or actually resigned from the service only applies to those employees who have served less than 15 years. As correctly observed by the CA:

x x x [T]here are three (3) categories of employees-beneficiaries under the ERIP:

1. regular permanent officials of MWSS who are not qualified to retire under any existing law (the non-retirables);
2. those who are qualified to retire (the retirables); and the
3. casuals.

Those belonging to the first category shall receive:

1. 1.5 per year times Basic Monthly Pay (BMP) if they have rendered 1 up to 20 years of service;
2. 2.0 per year times BMP if they have rendered 20 up to 30 years of service; and
3. 2.5 per year times BMP if they have rendered over 30 years of service.

Those belonging to the second category, on the other hand, shall receive the difference between the incentive package and the retirement benefit under any existing retirement law while those in the third category or the casual employees shall receive one (1) month basic salary for every year of service.

On 21 August 1996, MC No. 26-96b, which prescribes the guidelines for the Revised Early Retirement Package (ERIP), was issued. The relevant parts of the circular read:

3. Employees who entered the government service after May 31, 1977 and have rendered at least fifteen (15) years of service but less than twenty (20) years of government service shall retire under PD 1146. Their retirement application shall be submitted to the GSIS and they shall claim their retirement benefits upon reaching the age of 60. However, they shall be paid the ERIP by the System.

4. Employees who have rendered less than fifteen (15) years of government service shall not be required to submit their retirement applications to GSIS. Their ERIP claims shall be paid directly by the [S]ystem.

As can be gleaned from the foregoing, employees who have rendered at least fifteen years of service but less than twenty (20) years are already categorized as retirables under PD 1146.

xxx xxx xxx

It is evident that appellant has fully paid the non-retirables, or those who had rendered less than fifteen (15) years of service, their ERIP separation benefit of 1.5 per year times BMP. What is not immediately evident is whether or not appellant has fully paid the retirables their ERIP separation benefit. Appellant claims that it has in fact paid the retirables more than what they were entitled to. Appellees claim otherwise.

Under *Republic Act No. 1616* (RA 1616), the retirees, or those who have served at least twenty (20) years, are entitled to a gratuity equivalent to one (1) month for every year of service, in addition to the return of his personal contribution plus interest. x x x [I]t thus appears that the amount equivalent to 1.5 per year times BMP that appellant paid its employees, specifically the retirables, reasonably covers their ERIP separation pay, which is only equivalent to the difference between the incentive package and the retirement benefit provided by the applicable law. x x x

In the case of those who were separated in 1997 under ERIP II, it is undisputed that all the employees were given one (1) month salary for every year of service. In addition, those who served for 15-20 years received the benefits under *Republic Act No. 8291* and an amount equivalent to their eighteen (18) months salary from GSIS while those who served for 20 years or more received from the GSIS the return of their premiums.

It is readily apparent that those employees who have rendered less than fifteen (15) years of service have been underpaid by 0.5 per year times BMP of their separation pay. However, this is not applicable to employees who were offered appointments in the new organizations for positions they applied for who refused such offer of appointments; or to employees who were absorbed by the private concessionaires. The reason for the latter is that these employees were never separated from the service by virtue of the reorganizations of appellant pursuant to RA No. 8041.

Those who served twenty (20) years or more apparently were separated from the service under RA 1616 which provides as retirement benefit a gratuity equivalent to one (1) month salary for every year of service, in addition to the return of the employee's personal contributions. Under the ERIP, those who have served for 20-30 years are entitled to 2.0 per year times BMP minus the retirement benefit. Thus, these employees were entitled to a separation pay of 1.0 per year times BMP which was already given by appellant.

On the other hand, those who have rendered more than thirty (30) years of service are entitled to 2.5 per year times BMP minus the retirement benefit of one (1) month salary for every year of service. Appellant should pay them 1.5 per year times BMP instead of the one month salary for every year of service actually given them as separation pay. Thus, appellant owes these appellees 0.5 per year times BMP.

As for those who have served from 15-20 years, the 1.0 per year times BMP ERIP benefit that they received is more than enough payment of their separation pay on top of their retirement benefits.

In fine, We find that the following appellees who were separated from appellant in 1997 under ERIP II have a clear legal right to the payment of the balance of their separation pay in the amount equivalent to 0.5 per year times BMP pursuant to MC No. 26-96 and the accompanying circulars issued pursuant to E.O. 286, *viz*: (1) employees who have rendered less than fifteen (15) years of service provided they were not excluded by paragraph 1, MC No. 26-96(c), and provided further, that they were not absorbed by the private concessionaires during the reorganizations;

and (2) those who have served for more than thirty (30) years. x x x[21]

In sum, we see no reason to disturb the findings of the appellate court. MWSS must properly compensate those employees who have served for more than 30 years and have separated from the MWSS in 1997 under ERIP II for an additional separation benefit of 0.5 month salary per year of service.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 28 February 2007 and Resolution dated 14 August 2007 of the Court of Appeals in CA-G.R. SP No. 92391.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 181827. February 2, 2011]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSE GALVEZ *y* BLANCA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF FACT OF THE TRIAL COURT THEREON ARE GIVEN GREAT WEIGHT.— The trial court, which had the opportunity to observe both AAA and accused-appellant directly and to test their credibility by their demeanor on the witness stand, was completely persuaded by the x x x testimony of AAA as regards the events of June 21, 2002. Other than

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

the fact that we give great weight to the findings of fact of the trial court, an independent reading of said testimony compels us to conclude that AAA's version is indeed worthy of credence especially when compared to the bare denial of accused-appellant who did not even offer an alibi. As observed by the Court of Appeals, AAA's testimony is "unflinching and resolute" and "passes the test of credibility nary any indication whatsoever of a concocted testimony." Furthermore, it is almost cliché to add that "[c]ourts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice."

2. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; EXTERNAL SIGNS OF PHYSICAL INJURIES ARE NOT INDISPENSABLE TO APPEAR ON THE VICTIM; LACERATIONS, WHETHER HEALED OR FRESH, ARE CONVINCING PHYSICAL EVIDENCE OF RAPE.— The shallow healed laceration at 9:00 o'clock position on complainant's hymen, presented in the testimony of Dr. Viray, is in fact convincing physical evidence of the rape, especially considering the age of AAA and the fact that accused-appellant used a knife to threaten her. Thus, in *People v. Cuadro*, we held: Further, the medical findings of Dr. Obedoza are indicative of rape. It is not indispensable that marks of external bodily injuries should appear on the victim of rape. Considering that in the commission of the first, second and third rapes, appellant threatened the victim with a knife, it is logical that no external injuries would appear on her body. What is more telling is that the victim, at her young age, sustained lacerations in her genitalia. We have ruled that lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.

3. ID.; ID.; ID.; FORCE AND INTIMIDATION; NEED NOT BE EMPLOYED IN INCESTUOUS RAPE OF MINOR.— [E]ven if we assume for the sake of argument that AAA did not put up a struggle against accused-appellant, we have consistently held that actual force or intimidation need not be employed in incestuous rape of a minor. Thus, in the case at bar, we find that the moral and physical dominion of the ascendant is sufficient to take the place of actual force or intimidation.

4. CIVIL LAW; DAMAGES; DAMAGES AWARDED IN CASE AT BAR.— Consistent with prevailing jurisprudence on qualified rape, we also affirm the modification made by the Court of Appeals to the trial court's Decision as regards the civil indemnity and moral damages that should be granted to AAA in the amount of Seventy-Five Thousand Pesos (₱75,000.00) each. Established jurisprudence, however, further warrant that we increase the award of exemplary damages 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.*:

This is an appeal from the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02275 dated July 13, 2007 affirming the conviction of accused-appellant Jose Galvez *y* Blanca of the crime of rape.

Five separate Informations were filed against accused-appellant Galvez in the Regional Trial Court (RTC) of Malolos, Bulacan:

Criminal Case No. 3190-M-2002:

That sometime in the year 1999, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, taking advantage of the tender age and innocence of said AAA,[2] then ten (10) years old and

[1] *Rollo*, pp. 2-16; penned by then Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa, concurring.

[2] 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.

with lewd designs, did then and there willfully, unlawfully and feloniously kiss, touch the breasts and insert his finger into the private parts of said AAA, thereby endangering her health and safety and badly affecting her emotional and psychological well being and development.[3]

Criminal Case No. 3191-M-2002:

That sometime in the year 2000, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then eleven (11) years old, against her will and without her consent.[4]

Criminal Case No. 3192-M-2002:

That sometime in the year 2001, in the Municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then twelve (12) years old, against her will and without her consent.[5]

Criminal Case No. 3193-M-2002:

That sometime in the first quarter of the year 2002, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then thirteen (13) years old, against her will and without her consent.[6]

Criminal Case No. 3194-M-2002:

That on or about the 21st day of June 2002, in the municipality of Angat, province of Bulacan, Philippines, and within the jurisdiction

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[3] Records, p. 1.

[4] *Id*. at 8.

[5] *Id*. at 11.

[6] *Id*. at 13.

of this Honorable Court, the above-named accused, armed with a bladed weapon did then and there willfully, unlawfully and feloniously, by means of force, violence and intimidation and with lewd designs, have carnal knowledge with his granddaughter AAA, then thirteen (13) years old and 9 months old, against her will and without her consent.[7]

The trial court summarized the narration of complainant AAA as follows:

In her initial direct examination on March 31, 2003, private complainant testified that she was born on August 22, 1988 (Exh. "A"). Accused whom [she] identified in Court is her grandfather, the father of her mother. On June 21, 2002 at around 12:00 o'clock midnight, she was in their house at Barangay Peri, Sta. Lucia, Angat, Bulacan sleeping with her siblings, accused, her grandmother Damiana, who is the mother of her father, and her grandfather Popeng, who is the father of her father. Her mother lives in Masbate, while her father works in Manila and comes home only on week-ends. While she was sleeping, accused crawled beside her and inserted his penis in her vagina. She pushed the accused but he threatened her with a knife which he poked at her side. He told her not to tell anyone. After inserting his penis in her vagina, [he] touched her breasts. She told the pastor of her church about the incident sometime in June during a church service. She and her pastor thereafter went to the police station to give her statement, which she identified in Court (Exh. "B"). She testified that this was the first time that accused raped her.

Continuing her direct-examination on February 8, 2004, private complainant testified that the June 21, 2002 incident was not the first time that the accused raped her. She could not, however, remember the dates these incidents were committed against her by the accused. She remembers that accused raped her many times, the first time of which was when she was twelve (12) years old. This incident happened in Pacific, Angat, Bulacan at their residence. At this incident, accused inserted his penis in her vagina. This happened in the bedroom of their house while her three (3) siblings were playing outside the house. Accused did not say anything to her before the incident. She resisted with no avail. She reported this incident to her aunt Gloria in 2002 when she was already thirteen (13) years

[7] *Id.* at 15.

old. It took her three (3) years before she reported the incident because her grandfather told her not to tell anyone about what happened or else he will kill her. After this incident when she was twelve (12) years old, he again raped her sometime in 2002. Aside from the incidents when she was twelve (12) years old, and on June 21, 2002, she was thirteen (13) years old when she was raped again in their house in Peri, Sta. Lucia, Angat, Bulacan. As to how this rape happened, she stated that [it is] "the same", *i.e.*, he inserted his penis in her vagina. Her grandfather raped her many times, almost everyday since she was thirteen (13) years old up to when she was fourteen (14) years old. Even so, she only reported the incident to her aunt in 2002 because she could not bear what accused [w]as doing to her. At that time, aside from accused and her three (3) siblings, her other grandparents and her aunt Gloria were living with her. Her father was then working in Meycauayan, Bulacan while her mother is in Masbate. Aside from her aunt Gloria, she also reported the incident to her pastor, Imelda Loyola. She was with her aunt and pastor when she reported the incident to the police.

Continuing her direct examination on February 24, 2005, she testified that after reporting the incident to the police, they went to the doctor for examination. She identified accused in court.[8]

The prosecution also presented Dr. Ivan Richard Viray, who examined AAA on July 4, 2002. He presented his conclusion that AAA is no longer a virgin; that there are no external signs of application of any trauma; and that there was a shallow healed laceration at 9:00 o'clock position on complainant's hymen.[9]

On the other hand, the defense presented accused-appellant Galvez, who simply denied the accusations against him. He did not offer any alibi.

On April 20, 2006, the trial court rendered its Decision convicting accused-appellant Galvez in Criminal Case No. 3094-M-2002, but acquitting him in the other four cases:

WHEREFORE, premises considered, accused is hereby ACQUITTED in Criminal Case Nos. 3090-M-2002, 3091-M-2002, 3092-M-2002 and 3093-M-2002.

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[8] CA *rollo*, pp. 12-14.

[9] Records, p. 4.

Accused is, however, found GUILTY beyond reasonable doubt of the crime of rape in Criminal Case No. 3094-M-2002 and hereby sentence him to suffer the penalty of *RECLUSION PERPETUA*.

Accused is also ordered to pay private complainant AAA civil indemnity *ex-delicto* of ₱50,000.00, exemplary damages of ₱25,000.00 and moral damages of ₱50,000.00.[10]

In arriving at the foregoing disposition, the trial court noted that there was no testimony at all as regards the alleged rapes to which accused-appellant was accused of in Criminal Case Nos. 3090-M-2002 and 3091-M-2002. As regards Criminal Case Nos. 3092-M-2002 and 3093-M-2002, the trial court found AAA's testimony to be very general, as she appeared to have failed to remember any detail other than that the accused-appellant inserted his penis into her vagina.[11] The trial court likewise noted the discrepancy in AAA's testimony on March 31, 2003 (wherein she testified that she was raped by accused-appellant for the first time on June 21, 2002), and her testimony on February 2, 2004 (wherein she testified that she was raped many times before June 21, 2002).[12] The trial court further found her statement that she was raped many times contrary to the physical evidence presented, since Dr. Viray found only one healed shallow laceration.[13] The trial court therefore acquitted accused-appellant in Criminal Case Nos. 3090-M-2002 to 3093-M-2002.

The trial court, however, found AAA's testimony as regards Criminal Case No. 3094-M-2002 to be clear, convincing, full of details and consistent, and ruled that there is no doubt in its mind that accused-appellant indeed sexually molested AAA on June 21, 2002.

Accused-appellant elevated the case to the Court of Appeals where it was docketed as CA-G.R. CR.-H.C. No. 02275 and was raffled to its Second Division. On July 13, 2007, the appellate court, finding AAA's testimony unflinching and

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[10] CA *rollo*, p. 30.

[11] *Id*. at 17-18.

[12] *Id*. at 18.

[13] *Id*. at 23.

resolute,[14] affirmed the conviction of accused-appellant. The Court of Appeals, however, modified the civil damages imposed upon accused-appellant as follows:

> The trial court, therefore, correctly found appellant guilty beyond reasonable doubt of one count of qualified rape under par. 3, Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659, but erred in imposing the penalty of *reclusion perpetua* considering that at the time of the promulgation of its Decision on April 20, 2006, the proper penalty for such crime then is death. However, in view of the passage of Republic Act No. 9346 on June 24, 2006, which expressly prohibits the imposition of the death penalty, this Court is now constrained to affirm the imposition of *Reclusion Perpetua* under Article 266B(1) of the Revised Penal Code, as amended. As shown by her Certificate of Live Birth (Exh. "A", records, p. 103), [AAA] was born on August 22, 1988, and thus was only thirteen years and nine months old when appellant, [her] own grandfather, raped her on June 21, 2002. Both the qualifying circumstances of the victim's minority (below 18 years of age) and her relationship with the offender had been alleged in the Information and duly proved during the hearings. Furthermore, following the ruling in ***People v. Cabalquinto, G.R. No. 167693, September 19, 2006***, the awarded civil indemnity and moral damages must each be increased from ₱50,000.00 to ₱75,000.00.
>
> IN VIEW OF ALL THE FOREGOING, the instant appeal is DISMISSED and the challenged decision AFFIRMED, with modification that the civil indemnity and moral damages granted must each be for the amount of ₱75,000.00. In all other aspects, the lower court's decision stands. Costs against appellant.[15]

Accused-appellant appealed to this Court, adopting the Brief it filed before the Court of Appeals with the following lone assignment of error:

> THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED DESPITE THE PATENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.[16]

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[14] *Rollo*, p. 6.

[15] *Id*. at 14-15.

[16] CA *rollo*, p. 48.

Accused-appellant claims that like the rest of the charges against him, the complaint under Criminal Case No. 3094-M-2002 should suffer the same fate. According to him, the discrepancy in AAA's testimony on March 31, 2003 and that on February 2, 2004 as to whether she was raped before June 21, 2002 goes into her credibility and candor.

We disagree. We have held that in our jurisprudence, *falsus in uno falsus in omnibus* is not an absolute rule of law and is in fact rarely applied in modern jurisprudence.[17] It deals only with the weight of evidence and is not a positive rule of law, and the same is not an inflexible one of universal application.[18] Thus, the modern trend of jurisprudence is that the testimony of a witness may be believed in part and disbelieved in part, depending upon the corroborative evidence and the probabilities and improbabilities of the case.[19] In the case at bar, the trial court, which found some portions of AAA's testimony unconvincing, was nevertheless impressed by the following portion of the testimony of AAA concerning the events of June 21, 2002:

FISCAL DE GUZMAN:

Q: Now, on June 21, 2002 at about 12:00 o'clock midnight, do you remember [your] whereabouts?

A: I was in my bed, Ma'am.

Q: What were you doing at that time?

A: I was sleeping, Ma'am.

Q: Who were with you, if any, at that time while you were then sleeping?

A: None, Ma'am.

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[17] *People v. Paredes*, 332 Phil. 633, 638-639 (1996); *People v. Jalosjos*, 421 Phil. 43, 68 (2001).

[18] *People v. Julian*, 337 Phil. 411, 426-427 (1997); *People v. Masapol*, 463 Phil. 25, 33 (2003).

[19] *Id*.

Q: And, you were then sleeping in your resident located at Bgy. Peri, Sta. Lucia, Angat, Bulacan, is that correct?

A: Yes, Ma'am.

Q: This house where you were then sleeping, how many rooms [does] it have?

A: There is no room, Ma'am.

Q: And it is only a one (1) room house?

A: Yes, Ma'am.

Q: There is no division whatsoever in the house?

A: There is a division, Ma'am.

Q: What was that division for in your house?

A: It is a place where my siblings is (sic) sleeping, Ma'am.

Q: That is a division from your place where you were sleeping and the siblings where they were sleeping?

A: Yes, Ma'am.

Q: And, what was that division made of?

A: It is made of wood, Ma'am.

Q: The place where you were then sleeping, it has no door?

A: None, Ma'am.

Q: And also that place where your siblings were sleeping?

A: Yes, Ma'am.

Q: So, you mentioned that there was an unusual incident, what was that unusual incident?

COURT:

What date?

FISCAL DE GUZMAN:

June 21, 2002, Your Honor.

COURT:

Okay, answer.

WITNESS:

A: *Ginapang po ako ng lolo ko*.

FISCAL DE GUZMAN:

Q: Who is this *lolo* you are referring to?

A: Lolo Jose, Ma'am.

Q: Is he also residing in that same house with you?

A: Yes, Ma'am.

Q: And, how is he related to your Lola, BBB.

A: *Mag-balae po*.

Q: When you say "*Balae*", what do you mean by *Balae*?

A: My father is the son of BBB and my mother is the daughter of Jose.

Q: So, for clarification, Madame Witness, you are living in the same house with the accused in this case, with your lola BBB and your siblings?

A: Yes, Ma'am.

xxx xxx xxx

Q: Now, you mentioned that "*Ginapang ka ni lolo Jose*," after that what happened?

A: He inserted his penis to my vagina, Ma'am.

Q: What did you feel when he inserted his penis on your vagina?

A: It hurts, Ma'am.

Q: What did you do?

A: I was pushing him, Ma'am.

Q: What happened while you were pushing him?

A: He was fight (sic) back, Ma'am.

Q: How was he fighting back?

A: He was threatening me with a knife, Ma'am.

Q: Was he telling you anything?

A: Not to tell anyone, Ma'am.

Q: How was he holding that knife?

A: Like this, Ma'am.

INTERPRETER:

Witness is demonstrating through her right hand.

FISCAL DE GUZMAN:

Q: On what part of the body was the knife poked?

A: On my side, Ma'am.

Q: While he was inserting his penis on (sic) your vagina, where was that knife?

A: He was holding the knife, Ma'am.

Q: What else happen (sic) after he inserted his penis on your vagina and you try (sic) to struggle?

A: He touched me, Ma'am.

Q; On what part of your body?

A; My breast, Ma'am.

Q: What else happen (sic) after that?

A: No more, Ma'am.

Q: How about your lolo, what did you do after touching your breast?

A: None, Ma'am.

Q: Did he leave you in the house?

A: Yes, Ma'am.

Q: He went out of the house that night?

A: Yes, Ma'am.

Q: Did you report that incident [to] anyone?

A: Yes, to our pastor, Ma'am.

Q: When did you report that incident?

A: June, Ma'am.

Q: Could you still remember how many days after that incident happened?

A: I cannot remember, Ma'am.

Q: Where did you report that incident to your *pastora*?

A: At our church, Ma'am.

Q: During a service?

A: Yes, Ma'am.

Q: Why did you report that incident to your *pastora*?

A: Because I cannot bear it anymore, Ma'am.

Q: Was it the first time the incident happened to you?

A: Yes, Ma'am.

Q: I am referring to the raping incident, was that the first time that the accused Jose Galvez raped you?

A: Yes, Ma'am.

Q: What did the *pastora* do when you reported the incident to her?

A: We went to the police station, Ma'am.

Q: What did you do at the police station?

A: We gave our statement, Ma'am.

Q: I am showing to you a *Sinumpaang Salaysay*, is this statement you are referring to?

A: Yes, Ma'am.[20]

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[20] TSN, March 31, 2003, pp. 4-10.

The trial court, which had the opportunity to observe both AAA and accused-appellant directly and to test their credibility by their demeanor on the witness stand, was completely persuaded by the above testimony of AAA as regards the events of June 21, 2002. Other than the fact that we give great weight to the findings of fact of the trial court, an independent reading of said testimony compels us to conclude that AAA's version is indeed worthy of credence especially when compared to the bare denial of accused-appellant who did not even offer an alibi. As observed by the Court of Appeals, AAA's testimony is "unflinching and resolute" and "passes the test of credibility nary any indication whatsoever of a concocted testimony."[21] Furthermore, it is almost cliché to add that "[c]ourts usually give credence to the testimony of a girl who is a victim of sexual assault, particularly if it constitutes incestuous rape because, normally, no person would be willing to undergo the humiliation of a public trial and to testify on the details of her ordeal were it not to condemn an injustice."[22]

Accused-appellant likewise attacks AAA's credibility on the ground that the physical evidence presented yielded no proof of external signs of physical injuries, implying that this negates the contention that AAA was raped. We disagree. The shallow healed laceration at 9:00 o'clock position on complainant's hymen, presented in the testimony of Dr. Viray, is in fact convincing physical evidence of the rape, especially considering the age of AAA and the fact that accused-appellant used a knife to threaten her. Thus, in *People v. Cuadro*,[23] we held:

> Further, the medical findings of Dr. Obedoza are indicative of rape. It is not indispensable that marks of external bodily injuries should appear on the victim of rape. Considering that in the commission of the first, second and third rapes, appellant threatened the victim with a knife, it is logical that no external injuries would appear on her body. What is more telling is that the victim, at her

[21] CA *rollo*, p. 104.

[22] *People v. Lusa*, 351 Phil. 537, 545 (1998).

[23] 405 Phil. 173 (2001).

young age, sustained lacerations in her genitalia. We have ruled that lacerations, whether healed or fresh, are the best physical evidence of forcible defloration.[24]

More importantly, even if we assume for the sake of argument that AAA did not put up a struggle against accused-appellant, we have consistently held that actual force or intimidation need not be employed in incestuous rape of a minor.[25] Thus, in the case at bar, we find that the moral and physical dominion of the ascendant is sufficient to take the place of actual force or intimidation.

We therefore affirm the conviction of accused-appellant. Consistent with prevailing jurisprudence on qualified rape, we also affirm the modification made by the Court of Appeals to the trial court's Decision as regards the civil indemnity and moral damages that should be granted to AAA in the amount of Seventy-Five Thousand Pesos (₱75,000.00) each. Established jurisprudence, however, further warrant that we increase the award of exemplary damages from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00).[26]

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02275 dated July 13, 2007 is hereby *AFFIRMED* with further *MODIFICATIONS* that:

(1) The exemplary damages to be paid by accused-appellant Jose Galvez *y* Blanca is increased from Twenty-Five Thousand Pesos (₱25,000.00) to Thirty Thousand Pesos (₱30,000.00); and

(2) Accused-appellant Jose Galvez *y* Blanca is further ordered to pay the private offended party interest on all damages

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[24] *Id.* at 185.

[25] *People v. Orillosa*, G.R. Nos. 148716-18, July 7, 2004, 433 SCRA 689, 698.

[26] *People v. Sarcia*, G.R. No. 169641, September 10, 2009, 599 SCRA 20, 46.

awarded at the legal rate of Six Percent (6%) per annum from date of finality of this judgment.

No pronouncement as to costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 183719. February 2, 2011]

MARGARITA F. CASTRO, *petitioner, vs.* **NAPOLEON A. MONSOD,** *respondent.*

SYLLABUS

1. CIVIL LAW; PROPERTY; OWNERSHIP; LIMITATIONS ON THE RIGHT OF THE OWNER OF A LAND.— Article 437 of the Civil Code provides that the owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works, or make any plantations and excavations which he may deem proper. However, such right of the owner is not absolute and is subject to the following limitations: (1) servitudes or easements, (2) special laws, (3) ordinances, (4) reasonable requirements of aerial navigation, and (5) rights of third persons.

2. ID.; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; ADVERSE CLAIM; ANNOTATION; PURPOSE.— Respondent's assertion that he has an adverse claim over the 65 sq.m. property of petitioner is misplaced since he does not have a claim over the ownership of the land. The annotation of an adverse claim over registered land under Section 70 of Presidential Decree 1529 requires a claim on the title of the

disputed land. Annotation is done to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.

3. ID.; PROPERTY; EASEMENTS; DEFINED; TWO KINDS.— An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. There are two kinds of easements according to source. An easement is established either by law or by will of the owners. The courts cannot impose or constitute any servitude where none existed. They can only declare its existence if in reality it exists by law or by the will of the owners. There are therefore no judicial easements.

4. ID.; ID.; ID.; LEGAL EASEMENT; LATERAL AND SUBJACENT SUPPORT; RIGHT OF AN OWNER TO MAKE EXCAVATIONS ON HIS LAND IS SUBJECT TO THE LIMITATION THAT HE SHALL NOT DEPRIVE ANY ADJACENT LAND OR BUILDING OF SUFFICIENT LATERAL OR SUBJACENT SUPPORT; CASE AT BAR.— Article 684 of the Civil Code provides that no proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support. An owner, by virtue of his surface right, may make excavations on his land, but his right is subject to the limitation that he shall not deprive any adjacent land or building of sufficient lateral or subjacent support. Between two adjacent landowners, each has an absolute property right to have his land laterally supported by the soil of his neighbor, and if either, in excavating on his own premises, he so disturbs the lateral support of his neighbor's land as to cause it, or, in its natural state, by the pressure of its own weight, to fall away or slide from its position, the one so excavating is liable. In the instant case, an easement of subjacent and lateral support exists in favor of respondent. It was established that the properties of petitioner and respondent adjoin each other. The residential house and lot of respondent is located on an elevated plateau of fifteen (15) feet above the level of petitioner's property. The embankment and the riprapped stones have been in existence even before petitioner became the owner of the property. It was proven

that petitioner has been making excavations and diggings on the subject embankment and, unless restrained, the continued excavation of the embankment could cause the foundation of the rear portion of the house of respondent to collapse, resulting in the destruction of a huge part of the family dwelling.

5. ID.; ID.; ID.; ID.; ID.; ANNOTATION OF THE EXISTENCE THEREOF IS NOT NECESSARY; JUDICIAL RECOGNITION OF THE EXISTENCE THEREOF BINDS THE PROPERTY AND ITS OWNER.— We sustain the CA in declaring that a permanent injunction on the part of petitioner from making injurious excavations is necessary in order to protect the interest of respondent. However, an annotation of the existence of the subjacent and lateral support is no longer necessary. It exists whether or not it is annotated or registered in the registry of property. A judicial recognition of the same already binds the property and the owner of the same, including her successors-in-interest. Otherwise, every adjoining landowner would come to court or have the easement of subjacent and lateral support registered in order for it to be recognized and respected.

APPEARANCES OF COUNSEL

Nelson A. Loyola for petitioner.

Napoleon A. Monsod and *Manuel J. Laserna, Jr.* for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated May 25, 2007 and the Resolution[2] dated July 14, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 83973.

The antecedents of the case are as follows:

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Jose C. Reyes, Jr. and Mariflor P. Punzalan Castillo, concurring; *rollo*, pp. 68-79.

[2] *Id*. at 81-83.

Petitioner is the registered owner of a parcel of land located on Garnet Street, Manuela Homes, Pamplona, Las Piñas City, and covered by Transfer Certificate of Title (TCT) No. T-36071, with an area of one hundred thirty (130) square meters (sq.m.). Respondent, on the other hand, is the owner of the property adjoining the lot of petitioner, located on Lyra Street, Moonwalk Village, Phase 2, Las Piñas City. There is a concrete fence, more or less two (2) meters high, dividing Manuela Homes from Moonwalk Village.[3]

On February 29, 2000, respondent caused the annotation of an adverse claim against sixty-five (65) sq.m. of the property of petitioner covered by TCT No. T-36071. The adverse claim was filed without any claim of ownership over the property. Respondent was merely asserting the existing legal easement of lateral and subjacent support at the rear portion of his estate to prevent the property from collapsing, since his property is located at an elevated plateau of fifteen (15) feet, more or less, above the level of petitioner's property.[4] Respondent also filed a complaint for malicious mischief and malicious destruction before the office of the *barangay* chairman.[5]

In defiance, petitioner filed a complaint for damages with temporary restraining order/writ of preliminary injunction before the Regional Trial Court (RTC) of Las Piñas City. Petitioner also prayed that the Register of Deeds of Las Piñas City be ordered to cancel the annotation of the adverse claim on TCT No. T-36071.[6]

Prior to the filing of the case before the RTC, there were deposits of soil and rocks about two (2) meters away from the front door of the house of petitioner. As such, petitioner was not able to park her vehicle at the dead-end portion of Garnet Street. When petitioner noticed a leak that caused the front portion of her house to be slippery, she hired construction workers

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[3] *Id.* at 69.

[4] *Id.* at 125.

[5] *Id.*

[6] *Id.*

to see where the leak was coming from. The workers had already started digging when police officers sent by respondent came and stopped the workers from finishing their job.[7]

Petitioner averred that when she bought the property from Manuela Homes in 1994, there was no annotation or existence of any easement over the property. Respondent neither asked permission nor talked to her with regard to the use of 65 sq.m. of her property as easement. Upon learning of the adverse claim, she felt disturbed and experienced sleepless nights for fear that she would not be able to sell her property. Petitioner admitted that TCT No. 36071 does not cover the open space at the dead-end portion of Garnet Street.[8]

For his part, respondent claimed that he and his family had been residing in Moonwalk Village since June 1984. Adjacent to his property is the land of petitioner in Manuela Homes. When he bought the property in 1983, the land elevation of Moonwalk Village was almost on the same level as Manuela Homes. However, sometime in 1985 and 1986, Pilar Development Corporation, the developer of Manuela Homes, bulldozed, excavated, and transferred portions of the elevated land to the lower portions of Manuela Homes. Thus, Manuela Homes became lower than Moonwalk Village.[9]

Before the said excavation, respondent personally complained to Pilar Development Corporation and was assured that, as provided by the National Building Code, an embankment will be retained at the boundary of Manuela Homes and Moonwalk Village, which is more or less fifteen (15) feet higher than Manuela Homes.[10]

Manuela Homes retained the embankment consisting of soil and rocks. Respondent had the open space riprapped with stones

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[7] *Id*. at 127-128.

[8] *Id*. at 127, 134.

[9] *Id*. at 127-128.

[10] *Id*. at 128.

as reinforcement against any potential soil erosion, earthquake, and possible digging by any person.

Respondent asserted that the affidavit of adverse claim was for the annotation of the lateral and subjacent easement of his property over the property of petitioner, in view of the latter's manifest determination to remove the embankment left by the developer of Manuela Homes.

On October 11, 2004, the RTC rendered a decision,[11] the dispositive portion of which reads:

> WHEREFORE, premises considered, this court hereby renders judgment: (1) ordering the cancellation of [respondent's] adverse claim at the back of Transfer Certificate of Title No. T-36071 at the expense of [respondent] Napoleon Monsod; (2) ordering the said [respondent] to pay the herein [petitioner] the amount of Php50,000.00 as moral damages; and (3) dismissing [petitioner's] claim for actual damages, attorney's fees, litigation costs and costs of suit and [respondent's] compulsory counterclaim for lack of merit.
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> SO ORDERED.[12]

The trial court ratiocinated that the adverse claim of respondent was non-registrable considering that the basis of his claim was an easement and not an interest adverse to the registered owner, and neither did he contest the title of petitioner. Furthermore, the adverse claim of respondent failed to comply with the requisites provided under Section 70 of Presidential Decree No. 1529.[13]

On appeal, the CA reversed the decision of the trial court in a Decision[14] dated May 25, 2007, the *fallo* of which reads:

> WHEREFORE, **premises considered**, the instant appeal is **GRANTED**. The Decision of the Regional Trial Court, Branch 198, Las Piñas City dated October 11, 2004 is **REVERSED and SET ASIDE**. The Court hereby orders the retention of the annotation at

[11] Penned by Judge Erlinda Nicolas-Alvaro, Regional Trial Court, Branch 198, Las Piñas City; *id*. at 125-134.

[12] *Id*. at 134.

[13] *Id*. at 131.

[14] *Supra* note 1.

the back of Transfer Certificate of Title No. T-36071, not as an adverse claim, but a recognition of the existence of a legal easement of subjacent and lateral support constituted on the lengthwise or horizontal land support/embankment area of sixty-five (65) square meters, more or less, of the property of [petitioner] Margarita Castro. The writ of preliminary injunction issued by this Court on April 18, 2006 is hereby made permanent. [Petitioner's] claim for damages is likewise **DISMISSED**.

SO ORDERED.[15]

The CA ruled that while respondent's adverse claim could not be sanctioned because it did not fall under the requisites for registering an adverse claim, the same might be duly annotated in the title as recognition of the existence of a legal easement of subjacent and lateral support. The purpose of the annotation was to prevent petitioner from making injurious excavations on the subject embankment as to deprive the residential house and lot of respondent of its natural support and cause it to collapse. Respondent only asked that petitioner respect the legal easement already existing thereon.[16]

On June 15, 2007, petitioner filed a motion for reconsideration. However, the CA denied the same in a Resolution[17] dated July 14, 2008.

Hence, this petition.

The issue in this case is whether the easement of lateral and subjacent support exists on the subject adjacent properties and, if it does, whether the same may be annotated at the back of the title of the servient estate.

Article 437 of the Civil Code provides that the owner of a parcel of land is the owner of its surface and of everything under it, and he can construct thereon any works, or make any plantations and excavations which he may deem proper. However,

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[15] *Id.* at 78-79.

[16] *Id.* at 75-76.

[17] *Supra* note 2.

such right of the owner is not absolute and is subject to the following limitations: (1) servitudes or easements,[18] (2) special laws,[19] (3) ordinances,[20] (4) reasonable requirements of aerial navigation,[21] and (5) rights of third persons.[22]

Respondent filed before the RTC an affidavit of adverse claim, the pertinent portions of which read:

> 5. That our adverse claim consists of rights of legal or compulsory easement of lateral and subjacent support (under the Civil Code) over a portion of the above-described property of owner Margarita F. Castro, that is, covering the lengthwise or horizontal land support/ embankment area of sixty-five (65) square meters, more or less.
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> 6. That said registered owner has attempted to destroy and/or remove portions of the existing lateral/subjacent land and cement supports adjoining the said two properties. In fact, a portion of the easement was already destroyed/removed, to the continuing prejudice of herein adverse claimant, and that a formal complaint against said registered owner was filed by the herein adverse claimant before the Office of the Barangay Chairman of Talon V, Las Piñas City and the same proved futile.[23]

Respondent's assertion that he has an adverse claim over the 65 sq.m. property of petitioner is misplaced since he does not have a claim over the ownership of the land. The annotation of an adverse claim over registered land under Section 70 of Presidential Decree 1529[24] requires a claim on the title of the

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[18] CIVIL CODE, Art. 437.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] CIVIL CODE, Art. 431.

[23] *Rollo*, p. 131.

[24] Section 70 of Presidential Decree 1529 provides:

> Section 70. *Adverse claim.* Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Decree for registering the same, make a statement in writing setting forth

disputed land. Annotation is done to apprise third persons that there is a controversy over the ownership of the land and to preserve and protect the right of the adverse claimant during the pendency of the controversy. It is a notice to third persons that any transaction regarding the disputed land is subject to the outcome of the dispute.[25]

In reality, what respondent is claiming is a judicial recognition of the existence of the easement of subjacent and lateral support over the 65 sq. m. portion of petitioner's property covering the land support/embankment area. His reason for the annotation is only to prevent petitioner from removing the embankment or from digging on the property for fear of soil erosion that might weaken the foundation of the rear portion of his property which is adjacent to the property of petitioner.

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fully his alleged right or interest, and how or under whom acquired, a reference to the number of the certificate of title of the registered owner, the name of the registered owner, and a description of the land in which the right or interest is claimed.

The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim on the certificate of title. The adverse claim shall be effective for a period of thirty days from the date of registration. After the lapse of said period, the annotation of adverse claim may be canceled upon filing of a verified petition therefor by the party in interest: Provided, however, that after cancellation, no second adverse claim based on the same ground shall be registered by the same claimant.

Before the lapse of thirty days aforesaid, any party in interest may file a petition in the Court of First Instance where the land is situated for the cancellation of the adverse claim, and the court shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall render judgment as may be just and equitable. If the adverse claim is adjudged to be invalid, the registration thereof shall be ordered canceled. If, in any case, the court, after notice and hearing, shall find that the adverse claim thus registered was frivolous, it may fine the claimant in an amount not less than one thousand pesos nor more than five thousand pesos, in its discretion. Before the lapse of thirty days, the claimant may withdraw his adverse claim by filing with the Register of Deeds a sworn petition to that effect.

[25] *Arrazola v. Bernas*, 175 Phil. 452, 456-457 (1978).

An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner.[26] There are two kinds of easements according to source. An easement is established either by law or by will of the owners.[27] The courts cannot impose or constitute any servitude where none existed. They can only declare its existence if in reality it exists by law or by the will of the owners. There are therefore no judicial easements.[28]

Article 684 of the Civil Code provides that no proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support. An owner, by virtue of his surface right, may make excavations on his land, but his right is subject to the limitation that he shall not deprive any adjacent land or building of sufficient lateral or subjacent support. Between two adjacent landowners, each has an absolute property right to have his land laterally supported by the soil of his neighbor, and if either, in excavating on his own premises, he so disturbs the lateral support of his neighbor's land as to cause it, or, in its natural state, by the pressure of its own weight, to fall away or slide from its position, the one so excavating is liable.[29]

In the instant case, an easement of subjacent and lateral support exists in favor of respondent. It was established that the properties of petitioner and respondent adjoin each other. The residential house and lot of respondent is located on an elevated plateau of fifteen (15) feet above the level of petitioner's property. The embankment and the riprapped stones have been in existence even before petitioner became the owner of the property. It was proven that petitioner has been making excavations and diggings on the subject embankment and, unless restrained, the continued excavation of the embankment could cause the

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[26] CIVIL CODE, Art. 613.

[27] CIVIL CODE, Art. 619.

[28] De Leon, Hector S., *COMMENTS AND CASES ON PROPERTY* (5th ed.), p. 476.

[29] *Id.* at 544.

foundation of the rear portion of the house of respondent to collapse, resulting in the destruction of a huge part of the family dwelling.[30]

We sustain the CA in declaring that a permanent injunction on the part of petitioner from making injurious excavations is necessary in order to protect the interest of respondent. However, an annotation of the existence of the subjacent and lateral support is no longer necessary. It exists whether or not it is annotated or registered in the registry of property. A judicial recognition of the same already binds the property and the owner of the same, including her successors-in-interest. Otherwise, every adjoining landowner would come to court or have the easement of subjacent and lateral support registered in order for it to be recognized and respected.

WHEREFORE, in view of the foregoing, the Decision dated May 25, 2007 and the Resolution dated July 14, 2008 of the Court of Appeals in CA-G.R. CV No. 83973 are hereby *AFFIRMED WITH MODIFICATION* that the annotation at the back of Transfer Certificate of Title No. T-36071, recognizing the existence of the legal easement of subjacent and lateral support constituted on the lengthwise or horizontal land support/ embankment area of sixty-five (65) square meters, more or less, of the property of petitioner Margarita F. Castro, is hereby ordered removed.

SO ORDERED.

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

[30] *Rollo,* pp. 76-77.

FIRST DIVISION

[G.R. No. 184170. February 2, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERWIN QUINTAL *y* BEO, VICENTE BONGAT *y* TARIMAN, FELIPE QUINTAL *y* ABARQUEZ and LARRY PANTI *y* JIMENEZ,** *accused.* **VICENTE BONGAT *Y* FARIMAN,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; ELEMENTS.— The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent. Hence, the elements necessary to sustain a conviction in the crime of rape are:(1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.

2. ID.; ID.; ID.; GUIDELINE IN SCRUTINIZING THE TESTIMONY OF A RAPE VICTIM.— There is a plethora of cases which tend to disfavor the accused in a rape case by holding that when a woman declares that she has been raped, she says in effect all that is necessary to show that rape has been committed and where her testimony passes the test of credibility the accused can be convicted on the basis thereof. A dangerous precedent as it may seem, there is however a guideline provided also by jurisprudence in scrutinizing the testimony of the victim, namely: (a) while an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) 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 (c) 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 of the defense.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES FINDINGS OF THE TRIAL COURT

RELATIVE TO THE CREDIBILITY OF THE RAPE VICTIM ARE NORMALLY RESPECTED AND NOT DISTURBED ON APPEAL; EXCEPTIONS; ESTABLISHED IN CASE AT BAR.— The credibility of the testimonies of the prosecution witnesses, as well as the inconclusive medical finding, tends to create doubt if AAA was indeed raped. The RTC and the Court of Appeals relied largely on the testimony of AAA that she was raped. This Court is well aware of the rule that findings of trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if they are affirmed by the appellate court. It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case. And one of these exceptions obtains in this case. This Court cannot disregard this nagging doubt with respect to the credibility of AAA's testimony, the inconsistencies in the testimonies of the *barangay tanod* and *barangay kagawad*, the purported confession put into writing and signed by all the accused; and the subsequent incidents relating to the case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] of the Court of Appeals dated 31 January 2008 in CA-G.R. CR-H.C. No. 02610 affirming the Decision[2] of the Regional Trial Court (RTC), Fifth Judicial Region,

[1] Penned by Associate Justice Myrna Dimaranan Vidal with Associate Justices Jose Catral Mendoza (now Supreme Court Associate Justice) and Associate Justice Jose C. Reyes, Jr. concurring. *Rollo,* pp. 2-21.

[2] Presided by Judge Genie G. Gapas-Agbada. CA *rollo,* pp. 19-33.

Branch 42, Virac, Catanduanes in Criminal Case Nos. 3097, 3098, 3099 and 3100 finding appellant Vicente Bongat *y* Tariman (Vicente) guilty beyond reasonable doubt of the crime of rape.

On 2 May 2001, appellant Vicente, together with 15-year old Jerwin Quintal *y* Beo (Jerwin), 16-year old Felipe Quintal *y* Abarquez (Felipe) and Larry Panti *y* Jimenez (Larry) were charged in an Information for Rape allegedly committed as follows:

> That on or about August 29, 2002, at around 9:30 o'clock in the evening, in *barangay* [XXX],[3] municipality of Virac, province of Catanduanes, Philippines, jurisdiction of the Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another for a common purpose, with force and intimidation, did then and there willfully, unlawfully, and feloniously lie and succeeded in having carnal knowledge of [AAA],[4] a minor 16 years of age, against her will and without her consent.
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> That the crime of rape was committed with an aggravating circumstance of minority, the fact that [AAA] is a minor 16 years of age when she was raped by the herein-named four (4) accused.[5]

Appellant Vicente, Jerwin and Felipe were arrested while Larry remained at large. Upon arraignment, the accused pleaded not guilty. Trial then proceeded.

The alleged rape victim, AAA, her mother, BBB,[6] the medico-legal officer, Dr. Elmer Tatad (Dr. Tatad), *Barangay Kagawad* Fernando Tajan (Fernando) and *Barangay Tanod* Eddie Tajan (Eddie) testified for the prosecution.

AAA narrated that on 29 August 2002 at around 9:45 p.m., she attended a wake in *Barangay* YYY,[7] Virac, Catanduanes.

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[3] The place of commission is withheld to preserve confidentiality of the identity of the victim. See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 425-426.

[4] Likewise, the victim's real name, as well as her members of her immediate family is withheld to protect her privacy, also pursuant to *People v. Cabalquinto*.

[5] Records, p. 7.

[6] *Supra* note 4.

[7] *Supra* note 3.

Upon leaving the wake to go to her grandmother's house in *Barangay* XXX, she noticed that Jerwin was following her. AAA recognized Jerwin because they go to the same school. When she was about to enter the house of her grandmother, Jerwin and Felipe, who were with a certain Maria, approached AAA and invited her to attend a birthday party. AAA acceded and went with the trio towards *Barangay* ZZZ.[8] They went inside a dark *nipa* hut near a rice field and AAA saw Vicente and Larry thereat. AAA was then made to sit on a bench by Felipe and the four accused went to converse with each other outside the *nipa* hut. When the accused came back, they covered her mouth with a handkerchief, and tied her hands and feet to the posts with a nylon string. The accused watched in delight while each of them took turns in raping her. Jerwin ravished her twice while the rest of the accused raped her once. After they finished with AAA, Jerwin untied her hands and feet. Vicente and Larry went home while Jerwin and Felipe accompanied AAA to her grandmother's house.[9]

Two days later, AAA told BBB about the incident only after the latter noticed and asked her why she could not walk properly. They went to Fernando, who is a *Barangay Kagawad* and later to Eddie, a *Barangay Tanod* to report the incident. Fernando summoned the accused and they were made to sign a document containing their statement regarding the incident.[10]

Eddie testified that on 1 September 2002, Jerwin's parents came to him and expressed their intention for their son, Jerwin to marry AAA. Appellant Vicente, Jerwin, Larry, Fernando, and BBB were also present at the meeting. Eddie saw Fernando prepare a one and a half sheet of yellow paper containing the admissions made by the accused that they raped AAA.[11]

BBB fetched Fernando and brought him to the house of Eddie to talk about a marriage proposal by Jerwin. BBB asked Fernando

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[8] *Id*.

[9] TSN, 11 November 2005, pp. 3-13.

[10] TSN, 22 February 2006, pp. 5-7.

[11] TSN, 26 April 2006, pp. 6-10.

to put into writing all the conversations that transpired inside the house. He did so while BBB was dictating to him what to write. He stated that the accused admitted the crime.[12]

AAA and BBB then proceeded to the police station to report the incident. On 2 September 2002, they went to the medico-legal and AAA was examined by Dr. Tatad, who later issued a medico-legal certificate stating his findings as follow:

Abrasion *Labia Minora*

Round the Clock.[13]

For its part, the defense presented the testimonies of Jerwin, Felipe, appellant Vicente, Maria Talan (Maria), Ricardo Rin (Ricardo), and Federico Rey (Federico) to prove that there was no crime committed.

Jerwin, Felipe and Maria attended the wake of Federico's nephew in *Barangay* YYY on 29 August 2002 at around 7:00 p.m. While they were playing cards, AAA approached their table and sat beside Jerwin.[14] Federico saw AAA play with Jerwin's group on the table.[15] They stayed at the wake until 11:00 p.m. As Maria's group was about to leave, AAA asked Jerwin if she could go with him. Jerwin then introduced AAA to Maria as his girlfriend. While on their way home, Jerwin and AAA were trailing behind Maria and Felipe. At that juncture, both Maria and Felipe saw Jerwin place his arm around the shoulders of AAA, while AAA's arm was wrapped around the waist of Jerwin. Thereafter, AAA invited Maria to go to the dance with her and Jerwin in another *barangay*. Maria turned down the invitation and went home. While Felipe was about to enter his house, Jerwin called him and asked if he likes to go to the dance, but

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[12] *Id.* at 20-32.

[13] Records, p. 4.

[14] TSN, 6 June 2006, pp. 4-5; TSN, 13 July 2006, pp. 4-5, TSN, 14 July 2006, p. 6.

[15] TSN, 9 June 2006, p. 7.

Felipe declined because he needed to drive his pedicab on the following morning.[16]

Jerwin claimed that AAA was his girlfriend; that they had been together since 31 December 2001; and that they had sexual intercourse for three (3) or four (4) times to date. He admitted that coming from the dance, it was around 1 a.m. when they proceeded to a *nipa* hut in *Barangay* ZZZ where they had sexual intercourse. Thereafter, they went to sleep. When Jerwin woke up the following morning, AAA had already left.[17]

On 30 August 2002, Jerwin saw AAA crying at the house of Maria. AAA told her that she was scolded by her mother and grandmother when she arrived home in the morning. Jerwin suggested that he would talk to BBB and let her know that he wants to marry AAA.[18]

Ricardo, who lives just a few meters away from the *nipa* hut where the alleged rape was committed, stated that he did not notice any untoward incident that transpired in the *nipa* hut. He however admitted that he went to sleep at around 10:30 p.m.[19]

Jerwin and Felipe went to the house of Eddie on 1 September 2002 when they were summoned by the latter. Felipe saw the mother of Jerwin and AAA talking about marriage, but BBB did not consent to the wedding. His co-accused were also present at Eddie's house. Felipe denied raping AAA when he was asked. Jerwin also denied raping AAA and replied that AAA was his girlfriend.[20] After a while, they all went home. In 2004, Jerwin and Felipe were arrested for the crime of rape.[21] While Jerwin was detained, AAA visited her several times.

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[16] TSN, 6 June 2006, pp. 7-10; TSN, 13 July 2006, pp. 6-8; TSN, 14 July 2006, p. 17.

[17] TSN, 14 July 2006, pp. 7-21.

[18] *Id.* at 21-22.

[19] TSN, 11 July 2006, pp. 3-7.

[20] TSN, 14 July 2006, p. 25.

[21] TSN, 13 July 2006, pp. 8-9.

Appellant Vicente came to know AAA when she was introduced to him by Jerwin as his girlfriend sometime in January 2002. On 29 August 2002, appellant was harvesting rice at the back of Catanduanes National High School from 7:00 a.m. until 4:45 p.m. He got home at 4:50 p.m. and slept at 8:00 p.m. He woke up the following day at 6:30 a.m. On 30 August 2002, he was summoned to go to the house of Eddie. Upon reaching the house, he saw the parents of Jerwin and AAA conversing about the wedding of Jerwin and AAA. He was asked by Fernando if she raped AAA, but Vicente answered in the negative. He was made to sign his name on a blank sheet of yellow paper by Fernando.[22] While in detention, Vicente saw AAA visiting the jail house once.[23]

The defense also presented the entries in the Bureau of Jail Management and Penology (BJMP) logbook, certified by Jail Officer Bernardo Azansa to show that AAA visited Jerwin six (6) times in jail.[24]

On 16 November 2006, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crime of rape. The dispositive portion of the Decision reads:

> WHEREFORE, the Court finds VICENTE T. BONGAT, JERWIN B. QUINTAL AND FELIPE A. QUINTAL guilty beyond reasonable doubt of the crime of RAPE in Criminal Case Nos. 3097, 3098, 3099, 3100 and hereby sentences them as follows:
>
> 1) Vicente T. Bongat is sentenced to suffer the penalty of *reclusion perpetua* for each crime.
>
> 2) Appreciating the mitigating circumstance of minority, Jerwin B. Quintal is sentenced to suffer the penalty of 12 years of *prision mayor*, as minimum, to 14 years, 4 months and 1 day of *reclusion temporal*, as maximum, for each crime.
>
> 3) Appreciating the mitigating circumstance of minority, Felipe A. Quintal is sentenced to suffer the penalty of 12 years of *prision*

[22] TSN, 6 September 2006, pp. 7-15.

[23] *Id.* at 16.

[24] Records, p. 135.

mayor, as minimum, to 14 years, 4 months and 1 day of *reclusion temporal*, as maximum, for each crime.

Vicente T. Bongat, Jerwin B. Quintal and Felipe A. Quintal are ordered to individually pay the private complainant [AAA] the amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages for each crime.

Pursuant to R.A. No. 9344, the judgment of conviction against Jerwin Quintal and Felipe Quintal is suspended. The parents or guardians of Jerwin Quintal and Felipe Quintal; the Social Worker of this Court, Nonita Manlangit; the Municipal Social Welfare Officer of Virac, Catanduanes Josefina T. Ramirez, the Provincial Social Welfare Officer of Catanduanes Priscilla T. Navar, the Director of Region V of the Department of Social Welfare and Development (DSWD) or his duly authorized representative; and the Head of the Social Services and Counseling Division of DSWD or his duly authorized representative are enjoined to attend the disposition conference on November 28, 2006 at 1:30 o'clock in the afternoon.[25]

Jerwin and Felipe were both confined at the Home for Boys in Naga City for rehabilitation pursuant to the ruling of the RTC.

The RTC found AAA's testimony as credible and rejected the "sweetheart theory" and *alibi* of the defense. On appeal, the Court of Appeals affirmed the RTC decision.

Appellant filed a notice of appeal. On 29 September 2008, this Court required the parties to simultaneously submit their respective supplemental briefs. Appellant manifested that he would merely adopt their appellant's brief before the Court of Appeals.[26] The Office of the Solicitor General (OSG) filed a Manifestation stating that it would no longer file any supplemental briefs and instead adopt its appellee's brief filed on 31 August 2007.[27]

On 27 November 2009, the RTC ordered the dismissal of the cases against Jerwin and Felipe. The dispositive portion reads:

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[25] CA *rollo*, pp. 76-77.

[26] *Rollo*, pp. 34-35.

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

WHEREFORE, in view of the foregoing and upon the recommendation of the DSWD, the cases against JICL Jerwin B. Quintal and JICL Felipe A. Quintal, whose sentence have been suspended, are hereby DISMISSED.

Finding that the objective of the disposition measures has been fulfilled, the Court orders the final discharge of the said JICL. Let a copy of this Order be furnished the Regional Office of the Department of Social Welfare and Development, Baraguis, Legaspi City and Office of the Regional Director of the Department of Social Welfare and Development, Home for Boys, Naga City, for them to cause the discharge of JICL Jerwin B. Quintal and JICL Felipe A. Quintal and their return to their respective families.

The Municipal Social Welfare Officer of Virac, Catanduanes is ordered to submit a periodic report on both JICL within one (1) year after their discharge.[28]

In the main, appellant assails the credibility of AAA's testimony. He insists that it was impossible for AAA to have clearly and positively identified him as one of the perpetrators considering that AAA claimed that it was very dark inside the *nipa* hut where she was supposedly raped. Appellant assails the testimony of AAA that she went with Jerwin to a place unknown to her, despite not personally knowing him. Appellant claims this incredibility in her testimony created serious doubt as to the reliability of her allegations. Appellant argues that contrary to AAA's allegations, there was no clear intent on her part to resist the alleged sexual acts. AAA failed to shout for help. Neither did she present any proof of body injuries to clearly prove that she resisted the alleged rape. Moreover, AAA told her mother about the incident only because the latter noticed her to have been walking in an unusual manner. Appellant asserts that he should have been convicted only of simple seduction as conspiracy was not proven among the accused.[29]

The OSG maintains that AAA positively identified appellant as one of the four rapists. It counters that the visibility inside

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

[29] CA *rollo*, pp. 51-61.

the *nipa* hut was not that poor as to render AAA incapable of seeing her rapists' faces. AAA had a good view of appellant's face because the moonlight illuminated the surroundings. It contends that there is nothing unusual when AAA voluntarily went with Jerwin and Felipe before she was raped. According to the OSG, AAA had a false sense of security because the two accused were minors like her and were even accompanied by another girl. The OSG avers that force and intimidation were employed against AAA because her hands and feet were tied to the *nipa* hut's posts during her ordeal. There is likewise no basis for the claim that AAA did not immediately report the incident. When AAA saw her mother, she informed her at the earliest possible opportunity. Finally, the OSG asserts that there is conspiracy among the accused in committing rape considering their actions before, during and after raping AAA.

The gravamen of the offense of rape is sexual intercourse with a woman against her will or without her consent.[30] Hence, the elements necessary to sustain a conviction in the crime of rape are: (1) that the accused had carnal knowledge of the victim; and (2) that said act was accomplished (a) through the use of force or intimidation, or (b) when the victim is deprived of reason or otherwise unconscious, or (c) when the victim is under 12 years of age or is demented.[31]

The prosecution, with whom the burden of proof rests, seeks to establish these elements through the testimonies of its witnesses, particularly that of the victim's.

There is a plethora of cases which tend to disfavor the accused in a rape case by holding that when a woman declares that she has been raped, she says in effect all that is necessary to show that rape has been committed and where her testimony passes the test of credibility the accused can be convicted on the basis

[30] *People v. Coja*, G.R. No. 179277, 18 June 2008, 555 SCRA 176, 185.

[31] *People v. Baldo*, G.R. No. 175238, 24 February 2009, 580 SCRA 225 citing *Revised Penal Code*, Art. 266-A as amended by Republic Act No. 8353; *People v. Barangan*, G.R. No. 175480, 2 October 2007, 534 SCRA 570, 591-592.

thereof.[32] A dangerous precedent as it may seem, there is however a guideline provided also by jurisprudence in scrutinizing the testimony of the victim, namely: (a) while an accusation for rape can be made with facility, it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (b) 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 (c) 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 of the defense.[33]

Guided by these principles and upon a careful scrutiny of the records of this case, this Court is not convinced beyond reasonable doubt that appellant, as well as the other accused, committed the crime of rape against AAA.

The credibility of the testimonies of the prosecution witnesses, as well as the inconclusive medical finding, tends to create doubt if AAA was indeed raped. The RTC and the Court of Appeals relied largely on the testimony of AAA that she was raped. This Court is well aware of the rule that findings of trial court relative to the credibility of the rape victim are normally respected and not disturbed on appeal, more so, if they are affirmed by the appellate court. It is only in exceptional circumstances that this rule is brushed aside, such as when the court's evaluation was reached arbitrarily, or when the trial court overlooked, misunderstood or misapplied certain facts or circumstances of weight and substance which could affect the result of the case.[34] And one of these exceptions obtains in this case.

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[32] *People v. Paculba*, G.R. No. 183453, 9 March 2010; *People v. Arevalo, Jr.*, 466 Phil. 419, 441 (2004); *People v. Caliso*, 439 Phil. 492, 503-504 (2002).

[33] *People v. Bidoc*, G.R. No. 169430, 31 October 2006, 506 SCRA 481, 495; *People v. Orense*, G.R. No. 152969, 7 July 2004, 433 SCRA 729, 736.

[34] *People v. Layco, Sr.*, G.R. No. 182191, 8 May 2009, 587 SCRA 803, 808 citing *People v. Coja, supra* note 30 at 186.

This Court cannot disregard this nagging doubt with respect to the credibility of AAA's testimony, the inconsistencies in the testimonies of the *barangay tanod* and *barangay kagawad*, the purported confession put into writing and signed by all the accused; and the subsequent incidents relating to the case.

First, AAA testified that she does not personally know Jerwin and Felipe. However, when the two allegedly invited her to go with them to a party, she readily accepted the invitation and in fact, went with them. Moreover, AAA was seen playing cards with Jerwin and his group in the wake, as testified by Maria, Felipe, Jerwin and Federico.

Second, AAA recounted that the *nipa* hut where she was brought by the accused was very dark. And yet, AAA readily identified Vicente and Larry inside the hut, as two of those who raped her. Incidentally, it was unclear how AAA was able to identify Vicente and Larry because she was never asked, not by the prosecution nor the defense, on how she came to know the two accused.

Third, the medical certificate only contained one finding, that there was a "round-the-clock abrasion in the *labia minora.*" This is not at all conclusive nor corroborative to support the charge of rape. At most, this indicates that AAA had sexual intercourse. We find the medical finding lacking in relation to the testimony of AAA on how she was ravished by four men. Although a medical examination is not an indispensable element in a prosecution of rape, it could have corroborated an otherwise vague and dubious testimony of the victim. In fact, Dr. Tatad admitted that he only examined AAA's private parts based on her statement that she was raped, thus:

Q: Do you remember Doctor, the date when the examination was conducted?

A: 9/2/02, sir.

Q: That was on September 2, 2002?

A: Yes, sir.

Q: Now, when the person of [AAA] came to you, what did you do?

A: She consulted me and told me that she was raped, sir.

Q: And after informing that she was raped, what did you do?

A: I told her to lie down as if she was to deliver a child and I examined the vagina. There was abrasion in the labia minora round the clock, sir.

Q: How about laceration?

A: There was an abrasion, sir.

Q: What might have caused that abrasion round the clock?

A: It could be that something was inserted, sir.

Q: What kind of object might have been inserted?

A: According to the patient, penis was inserted in her vagina.

Q: Did she tell you as to the number of penis which were inserted in her vagina?

A: According to the patient the penis inserted to her was pushed and pulled, sir.[35]

Furthermore, in her sworn statement before the police, AAA related that her mouth was injured.[36] She also testified in court that her hands and feet were tied to a post by a nylon string.[37] Naturally, AAA would have sustained injuries in her hands and feet. But all these injuries were never examined by the medico-legal officer nor did AAA allege the existence of those injuries.

Fourth, AAA's belated reporting of the rape incident has relevance in this case, especially when it appears that she really had no intention at all to inform her mother, not until the latter actually asked her why she was walking in an unusual manner. AAA stated:

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[35] TSN, 9 November 2005, pp. 5-6

[36] Records, p. 2.

[37] TSN, 11 November 2005, p. 9.

Q: You said a while ago that your mother discovered your unusual movement in the morning of the following day of August 29, 2002, is that correct?

A: It was after two days when my mother noticed my unusual movement during the birthday of my brother, sir.

Q: Did you not go out of the house of your grandmother on August 30, 2002?

A: No, sir.

Q: When your mother noticed your movement, what did she do?

A: She asked me, sir.

Q: After she asked you, what did she do?

A: She asked me why I was walking that way and I told her that I was raped, sir.[38]

Fifth, BBB allegedly went to the *Barangay Kagawad* and the *Tanod,* who happens to be her cousin, to report the rape incidents. However, when Fernando and Eddie testified, they claimed that they were initially informed by BBB about a marriage proposal by Jerwin's parents. It was only during the meeting that they learned about the alleged rape.

Sixth, to fuel further suspicion as to whether a rape incident actually transpired, BBB never bothered to ask AAA about the whole incident.[39] She accepted AAA's testimony hook, line and sinker. In the same breadth, it can be recalled that Eddie, the *Barangay Tanod*, testified that BBB dictated to him what was written in the yellow paper which contained the supposed admissions of rape by the accused. Eddie did not appear to have asked or interrogated the accused about the incident. Likewise, Dr. Tatad merely examined AAA's private parts on the basis of her claim that she was raped.

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[38] *Id*. at 33.

[39] TSN, 22 February 2006, pp. 5-6.

Seventh, in an unusual twist, records show that AAA was seen visiting Jerwin in jail for at least six (6) times. These incidents are documented in a logbook presented in court by the defense and which was not refuted by the prosecution.

The combination of all these circumstances are more than sufficient to create a reasonable doubt as to whether first, rape was actually committed and second, whether the accused were the perpetrators.

It is thus unnecessary to belabor the issues raised by the defense for it must be reiterated that conviction always rests on the strength of the prosecution's evidence and not on the weakness of the defense.

For the reasons cited above, we are constrained to entertain reasonable doubt. Hence, we acquit.

WHEREFORE, appellant Vicente Bongat *y* TARIMAN is *ACQUITTED* based on reasonable doubt. He is ordered *RELEASED* unless he is being detained for some other lawful cause.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 185493. February 2, 2011]

LTC. ROBERTO K. GUILLERGAN (Ret.), *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AN ACCUSED MAY BE CONVICTED FOR AN OFFENSE OTHER THAN THAT CHARGED IN THE INFORMATION AS LONG AS THE ESSENTIAL ELEMENTS OF THE OFFENSE OF WHICH HE WAS CONVICTED ARE ALSO ELEMENTS OF THE OFFENSE CHARGED IN THE INFORMATION.— The *Information* alleged that Guillergan committed falsification by making it appear in several public documents that ₱1,519,000.00 in AFP funds intended for the CIAs' payroll were paid for that purpose when in truth these were just given to Rio, resulting in damage and prejudice to the government. Although the charge was estafa in relation to Article 171 of the RPC, the facts alleged in the information sufficiently made out a case for violation of Article 172 of which Guillergan was convicted. What is important is that the *Information* described the latter offense intelligibly and with reasonable certainty, enabling Guillergan to understand the charge against him and suitably prepare his defense.

2. CRIMINAL LAW; CRIMES AGAINST PUBLIC INTEREST; FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE OR NOTARY OR ECCLESIASTIC MINISTER; ELEMENTS.— What is punished in falsification of a public document is the violation of the public faith and the destruction of the truth as solemnly proclaimed in it. Generally, the elements of Article 171 are: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) that he falsifies a document by committing any of the ways it is done.

3. ID.; ID.; FALSIFICATION BY PRIVATE INDIVIDUAL AND USE OF FALSIFIED DOCUMENTS; ELEMENTS; PRESENT IN CASE AT BAR.— [T]he elements of falsification of documents under paragraph 1, Article 172 are: 1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; 2) the offender committed any of the acts of falsification enumerated in Article 171; and 3) the falsification was committed in a public or official or commercial document. All of the foregoing elements of Article 172 are present in this case.

4. REMEDIAL LAW; EVIDENCE; AS A RULE, FACTUAL FINDINGS OF THE SANDIGANBAYAN ARE ACCORDED RESPECT AND WEIGHT BY THE SUPREME COURT; EXCEPTIONS, NO APPLICATION IN CASE AT BAR.— As a rule, the Court regards as conclusive on it the factual findings of the Sandiganbayan unless these fall under certain established exceptions. Since none of those exceptions can be identified in this case, the Court must accord respect and weight to the Sandiganbayan's findings. It had the better opportunity to examine and evaluate the evidence presented before it.

APPEARANCES OF COUNSEL

Britanico Lisaca & Associates Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the conviction of an accused for an offense other than that charged in the *Information* based on a claim that the essential elements of the offense of which he was convicted are also elements of the offense charged in the *Information*.

The Facts and the Case

On June 20, 1995 the Office of the Ombudsman indicted petitioner Roberto K. Guillergan (Guillergan) for *estafa* through falsification of public documents before the Sandiganbayan in Criminal Case 22904.[1]

The evidence shows that sometime in 1987, petitioner Guillergan, a Lieutenant Colonel in the Armed Forces of the Philippines (AFP), directed Master Sergeant Edna Seclon (Seclon), Chief Clerk of the Comptroller's Office, to cause the preparation of the payrolls of their civilian intelligence agents (CIAs) with

[1] *Rollo*, pp. 33-36.

supporting time record and book. The agents' names were copied and, based on their appointment papers, certified as correct by Guillergan and then approved by Brigadier General Domingo T. Rio (Rio).[2]

Each time the processing unit returned the payrolls for lack of signatures of the payees, Guillergan would direct Technical Sergeant Nemesio H. Butcon (Butcon), the Budget and Fiscal Non-Commissioned Officer, to affix his initial on the "*Remarks/ Sig*" column of the payrolls to complete the requirements and facilitate the processing of the time record, book, and payrolls.[3]

Also on Guillergan's instruction, the CIAs' payrolls in Region 6 for 1987, totaling ₱732,000.00, were covered by cash advances payable to Captain Roland V. Maclang, Jr. (Maclang, Jr.), which advances were issued upon his request as disbursing officer for that purpose. When ready, Guillergan received the corresponding cash or checks then turned them over to Rio.[4]

At the end of 1987, Rio further received ₱787,000.00 in "administrative funds" to be paid out to contractors for repairs in the men's barracks, the firing range, the guesthouse and others. But Rio requested that this "administrative funds" be re-aligned to "intelligence funds" in order to facilitate clearing.[5]

On April 14, 1989 the AFP Anti-Graft Board filed a complaint[6] against Rio, Butcon, Maclang, Jr., Seclon, and Guillergan for violating Articles of War 94 in relation to Article 217 of the Revised Penal Code (RPC).

After preliminary investigation, the Office of the Ombudsman-Visayas issued a resolution[7] dated May 24, 1991, recommending the dismissal of the case for lack of merit. On April 21, 1992,

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[2] Affidavit of Edna Seclon, *id*. at 175.

[3] Affidavit of Nemesio H. Butcon, *id*. at 176.

[4] *Id*. at 75.

[5] *Id*. at 150.

[6] *Id*. at 71-73.

[7] *Id*. at 158-162.

however, the ombudsman investigator issued a memorandum, recommending the filing of charges of illegal use of public funds against Rio and the exoneration of the other respondents. In a memorandum[8] dated February 11, 1993, the review panel in the Office of the Special Prosecutor affirmed the recommendation.

On June 20, 1995, however, the Office of the Special Prosecutor recommended the filing of charges against all the accused before the Sandiganbayan. Consequently, an *Information* was filed against them for estafa under Article 315, par. 2(a),[9] in relation to Article 171[10] of the RPC.

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[8] *Id.* at 150-153.

[9] Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

[10] Art. 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

1. Counterfeiting or imitating any handwriting, signature or rubric;

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

4. Making untruthful statements in a narration of facts;

5. Altering true dates;

6. Making any alteration or intercalation in a genuine document which changes its meaning;

7. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

While the case was pending, Rio died, prompting the Sandiganbayan to dismiss the case against him.[11]

On January 20, 2006, the parties submitted a stipulation of facts with motion for judgment[12] based on such stipulations. On June 30, 2008, the Sandiganbayan Second Division rendered judgment,[13] finding Guillergan guilty of falsification penalized under Article 172[14] of the RPC and sentenced him to suffer the penalty of imprisonment for 2 years and 4 months as minimum to 4 years, 9 months and 10 days as maximum. The court acquitted the other accused on the ground of lack of proof of their guilt beyond reasonable doubt.

The Issues Presented

The issues presented in this case are:

1. Whether or not the Sandiganbayan can convict Guillergan of violation of Article 172 of the RPC under an *Information*

The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

[11] Records, Volume 2, p. 768.

[12] *Rollo*, pp. 52-70.

[13] *Id*. at 37-51.

[14] Art. 172. *Falsification by private individual and use of falsified documents*. — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

that charged him with estafa in relation to Article 171 of the code; and

2. Whether or not petitioner is guilty beyond reasonable doubt of the crime of falsification of public documents.

The Court's Rulings

The *Information* alleged that Guillergan committed falsification by making it appear in several public documents that ₱1,519,000.00 in AFP funds intended for the CIAs' payroll were paid for that purpose when in truth these were just given to Rio, resulting in damage and prejudice to the government. Although the charge was estafa in relation to Article 171 of the RPC, the facts alleged in the information sufficiently made out a case for violation of Article 172 of which Guillergan was convicted. What is important is that the *Information* described the latter offense intelligibly and with reasonable certainty, enabling Guillergan to understand the charge against him and suitably prepare his defense.[15]

What is punished in falsification of a public document is the violation of the public faith and the destruction of the truth as solemnly proclaimed in it.[16] Generally, the elements of Article 171 are: 1) the offender is a public officer, employee, or notary public; 2) he takes advantage of his official position; and 3) that he falsifies a document by committing any of the ways it is done.[17]

On the other hand, the elements of falsification of documents under paragraph 1, Article 172 are: 1) the offender is a private individual or a public officer or employee who did not take advantage of his official position; 2) the offender committed

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[15] *Flores v. Layosa*, 479 Phil. 1020, 1035 (2004).

[16] *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 345, citing *Lumancas v. Intas*, 400 Phil. 785, 798 (2000), further citing *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

[17] *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 263.

any of the acts of falsification enumerated in Article 171;[18] and 3) the falsification was committed in a public or official or commercial document.[19] All of the foregoing elements of Article 172 are present in this case.

First. Guillergan was a public officer when he committed the offense charged. He was the comptroller to the PC/INP Command in Region 6. While the *Information* said that he took advantage of his position in committing the crime, the Sandiganbayan found that his work as comptroller did not include the preparation of the appointments and payrolls of CIAs. Nor did he have official custody of the pertinent documents.[20] His official function was limited to keeping the records of the resources that the command received from Camp Crame.[21] Still, he took the liberty of intervening in the preparation of the time record, book, and payrolls in question.

Second. The *Information* alleged that Guillergan committed the offense charged by "causing it to appear that persons participated in an act or a proceeding when they did not in fact so participate."[22] In *People v. Yanson-Dumancas*,[23] the Court held that a person may induce another to commit a crime in two ways: 1) by giving a price or offering a reward or promise; and 2) by using words of command. In this case, the Sandiganbayan found that Guillergan ordered Butcon to sign the "receive" portion of the payrolls as payee to make it appear that persons whose names appeared on the same had signed the document when they in fact did not.[24]

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[18] *Supra* note 10.

[19] *Daan v. Sandiganbayan*, G.R. Nos. 163972-77, March 28, 2008, 550 SCRA 233, 247, citing Reyes, Luis B., *The Revised Penal Code* (1981); see also *Adaza v. Sandiganbayan*, 502 Phil. 702 (2005).

[20] *Rollo*, p. 72.

[21] Affidavit of Guillergan, *id*. at 174.

[22] REVISED PENAL CODE, Book Two, Title Four, Art. 171, par. 2.

[23] *People v. Yanson-Dumancas*, 378 Phil. 341, 359 (1999).

[24] *Bernardino v. People*, G.R. Nos. 170453 and 170518, October 30, 2006, 506 SCRA 237, 247-248.

Third. There is no dispute that the falsification was committed on the time record, book, and payrolls which were public documents.

What is more, given that some of the essential elements of Article 171 constitute the lesser offense of falsification of public documents under Article 172, then the allegations in the *Information* were sufficient to hold Guillergan liable under Article 172.

As a rule, the Court regards as conclusive on it the factual findings of the Sandiganbayan unless these fall under certain established exceptions.[25] Since none of those exceptions can be identified in this case, the Court must accord respect and weight to the Sandiganbayan's findings. It had the better opportunity to examine and evaluate the evidence presented before it.[26] As aptly pointed out by the Sandiganbayan, to wit:

There are tell-tales (sic) signs that the agents listed on the payrolls did not receive their salaries. First, x x x Guillergan declared that he personally turned over the entire amount of [₱1,519,000.00] to Gen. Rio. Second, Butcon's narration that he was instructed by Guillergan, to [affix his] initial at the receive portion of the payrolls. Lastly, according to the records of the case, the office of Guillergan had no business in processing the payroll of these personnel. x x x

Additionally, the appointment papers from which these payrolls were based do not reveal any information about the acceptance of the appointments by the agents. In a letter dated April 14, 1989 of the Anti-Graft Board of the Armed forces of

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[25] The exceptions are: 1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; 2) the inference made is manifestly an error or founded on a mistake; 3) there is grave abuse of discretion; 4) the judgment is based on misapprehension of facts; 5) the findings of fact are premised on a want of evidence and are contradicted by evidence on record; and 6) said findings of fact are conclusions without citation of specific evidence on which they are based. (*Cadiao-Palacios v. People*, G.R. No. 168544, March 31, 2009, 582 SCRA 713, 724-725.)

[26] *Regidor, Jr. v. People*, *supra* note 17, at 269, citing *Pactolin v. Sandiganbayan (Fourth Division)*, G.R. No. 161455, May 20, 2008, 554 SCRA 136, 145-146.

the Philippines x x x [to Ombudsman Vasquez], it was stated that the appointment papers of the agents "must" be accompanied by the acceptance of the agents. These papers "should ordinarily" be attached to the payrolls for proper clearing purposes. Since there were no acceptance papers presented, it only suggests that the lists on the payrolls are names of ghost agents. Even more, the board made a comment that x x x Guillergan denies knowledge of the persons appointed even if he certified to the correctness of the payrolls.

The only conclusion x x x is the deliberate falsification of the payrolls; causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.[27]

The Court finds no error in the decision of the Sandiganbayan that found Guillergan guilty beyond reasonable doubt of Falsification of Public Documents under Article 172 of the RPC.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the Sandiganbayan's decision dated June 30, 2008 and Resolution dated January 7, 2004 which found petitioner Roberto K. Guillergan guilty of violation of Article 172 of the Revised Penal Code in Criminal Case 22904.

SO ORDERED.

Carpio (Chairperson), Nachura, Leonardo-de Castro,[*] and *Mendoza, JJ.,* concur.

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[27] *Rollo,* pp. 47-48.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated January 31, 2011.

SECOND DIVISION

[G.R. No. 186045. February 2, 2011]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **HEIRS of ESTANISLAO MIÑOZA, namely: The HEIRS of FILOMENO T. MIÑOZA, represented by LAUREANO M. MIÑOZA; The HEIRS of PEDRO T. MIÑOZA; and The HEIRS of FLORENCIA T. MIÑOZA, represented by ANTONIO M. URBIZTONDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; REQUIREMENTS OF THE RULES THEREON, SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.— [T]he initial lack of the complaint-in-intervention of the requisite verification and certification on non-forum shopping was cured when the intervenors, in their motion for reconsideration of the order denying the motion to intervene, appended a complaint-in-intervention containing the required verification and certificate of non-forum shopping. In the case of *Altres v. Empleo,* this Court clarified, among other things, that as to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. Further, a verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct. Moreover, as to the certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rules on the ground of "substantial compliance" or presence of "special circumstances or

compelling reasons." Also, the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule. Thus, considering that the intervenors in their motion for reconsideration, appended a complaint-in-intervention with the required verification and certificate of non-forum shopping, the requirement of the Rule was substantially complied with.

2. ID.; ID.; INTERVENTION; ELUCIDATED.— Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings. It is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto for the protection of some right of interest alleged by him to be affected by such proceedings.

3. ID.; ID.; ID.; WHEN MAY BE ALLOWED.— Under [Section 1, Rule 19 of the Rules of Court] intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof. Moreover, the court must take into consideration whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's right or interest can be adequately pursued and protected in a separate proceeding.

4. ID.; ID.; ID.; INTEREST IN THE MATTER IN LITIGATION MUST BE ACTUAL, SUBSTANTIAL, MATERIAL, DIRECT

AND IMMEDIATE.— [T]his Court has ruled that the interest contemplated by law must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. It must be of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.

5. ID.; ID.; ID.; WHEN NOT ALLOWED; AN INDEPENDENT CONTROVERSY CANNOT BE INJECTED INTO A SUIT BY INTERVENTION.— Verily, the allegation of fraud and deceit is an independent controversy between the original parties and the intervenors. In general, an independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies. It is not proper where there are certain facts giving the intervenor's case an aspect peculiar to himself and differentiating it clearly from that of the original parties; the proper course is for the would-be intervenor to litigate his claim in a separate suit. Intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action.

6. ID.; ID.; ID.; ALLOWANCE OR DISALLOWANCE OF A MOTION FOR INTERVENTION RESTS ON THE SOUND DISCRETION OF THE COURT; RIGHT TO INTERVENE IS NOT ABSOLUTE.— [T]he allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances. It is not an absolute right. The statutory rules or conditions for the right of intervention must be shown. The procedure to secure the right to intervene is to a great extent fixed by the statute or rule, and intervention can, as a rule, be secured only in accordance with the terms of the applicable provision.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Giduquio & Giduquio Law Firm for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] dated March 25, 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 70429, and the Resolution[2] dated January 8, 2009 denying petitioner's motion for reconsideration.

The procedural and factual antecedents, as found by the CA, are as follows:

On July 6, 1998, a Complaint[3] for Reconveyance, Cancellation of Defendant's Title, Issuance of New Title to Plaintiffs and Damages was filed by Leila M. Hermosisima (Leila) for herself and on behalf of the other heirs of the late Estanislao Miñoza. The complaint alleged that Leila's late great grandfather, Estanislao Miñoza, was the registered owner of Cadastral Lot Nos. 986 and 991-A, located at Banilad Estate, Cebu City, per TCT Nos. RT-6101 (T-10534) and RT-6102 (T10026). It was, likewise, alleged that the late Estanislao Miñoza had three children, namely, Adriana, Patricio, and Santiago, all surnamed Miñoza. In the late 1940s, the National Airports Corporation (NAC) embarked in an expansion project of the Lahug Airport. For said purpose, the NAC acquired several properties which surrounded the airport either through negotiated sale or through expropriation. Among the properties that were acquired by the NAC through a negotiated sale were Lot Nos. 986 and 991-A.[4]

Leila claimed that their predecessors-in-interest, specifically, Adriana, Patricio, and Santiago executed a Deed of Sale on February 15, 1950 conveying the subject lots to the NAC on the assurance made by the latter that they (Leila's predecessors-

[1] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Franchito N. Diamante and Florito S. Macalino, concurring; *rollo*, pp. 56- 65.

[2] *Id*. at 67-68.

[3] *Id.* at 69-76.

[4] *Id*. at 57.

in-interest) can buy the properties back if the lots are no longer needed. Consequently, they sold Lot No. 986 to the NAC for only ₱157.20 and Lot No. 991-A for ₱105.40. However, the expansion project did not push through. More than forty years after the sale, plaintiffs informed the NAC's successor-in-interest, the Mactan-Cebu International Airport Authority (MCIAA), that they were exercising the buy-back option of the agreement, but the MCIAA refused to allow the repurchase on the ground that the sale was in fact unconditional.

The MCIAA, through the Office of the Solicitor General (OSG), filed an Answer with Counterclaim.

After the parties filed their respective pleadings, trial ensued.

On November 16, 1999, before the MCIAA could present evidence in support of its case, a Motion for Intervention,[5] with an attached Complainant-in-Intervention, was filed before the Regional Trial Court (RTC) of Cebu City, Branch 22, by the heirs of Filomeno T. Miñoza, represented by Laureano M. Miñoza; the heirs of Pedro T, Miñoza, represented by Leoncio J. Miñoza; and the Heirs of Florencia T. Miñoza, represented by Antonio M. Urbiztondo (Intervenors), who claimed to be the true, legal, and legitimate heirs of the late Estanislao Miñoza. The intervenors alleged in their complaint (1) that the plaintiffs in the main case are not related to the late spouses Estanislao Miñoza and Inocencia Togono whose true and legitimate children were: Filomeno, Pedro, and Florencia, all surnamed Miñoza; (2) that, on January 21, 1958, Adriana, Patricio, and Santiago, executed, in fraud of the intervenors, an Extrajudicial Settlement of the Estate of the late spouses Estanislao Miñoza and Inocencia Togono and adjudicated unto themselves the estate of the deceased spouses; and (3) that, on February 15, 1958, the same Adriana, Patricio, and Santiago, fraudulently, deceitfully, and in bad faith, sold Lot Nos. 986 and 991-A to the NAC. The intervenors thus prayed for the following reliefs:

a. Declaring herein intervenors as the true, legal and legitimate heirs of the late spouses Estanislao Miñoza and Inocencia Togono;

[5] *Id*. at 112-115.

b. Declaring herein intervenors as the true, rightful and registered owners of Lots 986 and 991-A of the Banilad Friar Lands Estate;

c. Declaring the Extrajudicial Settlement executed on January 21, 1958 by the late Adriana Miñoza and the late Patricio Miñoza and the late Santiago Miñoza that they are the only heirs of the late spouses Estanislao Miñoza and Inocencia Togono, who died intestate and without any debts or obligations and adjudicating among themselves the estate of the deceased x x x as void *ab initio*;

d. Declaring the sale of Lots 986 and 991-A of the Banilad Friar Lands Estate executed by the late Adriana Miñoza, the late Patricio Miñoza and the late Santiago Miñoza in favor of the National Airport Corporation on February 15, 1958 x x x as void *ab initio*;

e. Ordering the cancellation of Transfer Certificate of Title Nos. 120370 and 120372 for Lots 986 and 991-A in the name of the Mactan-Cebu International Airport Authority and restoring Transfer Certificate of Title Nos. RT-6101 (T-10534) and RT-6102 (T-10026) to be the true and valid torrens titles to Lots 986 and 991-[A].

f. Condemning plaintiffs Leila M. Hermosisima and Constancio Miñoza to pay intervenors, who are the true, lawful and legitimate heirs of the late Spouses Estanislao Miñoza and Inocencia Togono, the amounts of ₱300,000.00 and ₱100,000.00 as moral and exemplary damages respectively;

g. Condemning plaintiffs to pay the cost of suit.[6]

On February 18, 2000, the RTC of Cebu City, Branch 22, issued an Order[7] denying the Motion for Intervention.

In denying the motion, the trial court opined that the ownership of the subject lots was merely a collateral issue in the action. The principal issue to be resolved was whether or not the heirs of the late Estanislao Miñoza – whoever they may be – have a right to repurchase the said lots from the MCIAA. Consequently, the rights being claimed by the intervenors should be asserted in and would be fully protected by a separate proceeding. Moreover, if the motion was granted, it would unduly delay the proceedings in the instant case. Finally, the complaint-in-

[6] *Id.* at 125.

[7] *Id.* at 130-131.

intervention was flawed, considering that it was not verified and does not contain the requisite certification of non-forum shopping.

The intervenors filed a Motion for Reconsideration,[8] to which was attached a Complaint-in-Intervention with the required Verification and Certificate of Non-Forum Shopping.[9] However, the RTC denied the motion in its Order dated July 25, 2000.

Aggrieved, the intervenors sought recourse before the CA, docketed as CA-G.R. CV No. 70429, on the following assignment of errors:

I.

THE *COURT A QUO* IN ITS ORDER DATED FEBRUARY 18, 2000 GRAVELY ERRED IN DISMISSING THE ABOVE CAPTIONED COMPLAINT BASED ON THE GROUND THAT: 1). THE RIGHTS CLAIMED BY MOVANTS-INTERVERNORS (NOW INTERVENORS-APPELLANTS) WOULD MORE APPROPRIATELY BE ASSERTED IN, AND WOULD BE FULLY PROTECTED BY, A SEPARATE PROCEEDING; 2). IT (THE COMPLAINT-IN-INTERVENTION) WILL DELAY THE PROCEEDINGS OF THE INSTANT CASE; AND 3). THAT THE COMPLAINT-IN-INTERVENTION IS NOT VERIFIED AND DOES NOT CONTAIN THE REQUISITE CERTIFICATION OF NON-FORUM SHOPPING.

II.

THE *COURT A QUO* IN ITS ORDER DATED JULY 25, 2000 GRAVELY ERRED WHEN IT DENIED MOVANTS-INTERVENORS' (NOW INTERVENORS-APPELLANTS) MOTION FOR RECONSIDERATION DATED MARCH 20, 2000, AGAIN ON THE GROUND THAT TO ALLOW THE INTERVENORS TO INTERVENE IN THIS CASE WHICH IS ALREADY SUBMITTED FOR DECISION WOULD ONLY DELAY THE DISPOSAL OF THIS CASE AND THAT ANYWAY, THE INTERVERNORS HAVE NOTHING TO FEAR BECAUSE THEIR CLAIMS, IF THERE IS ANY, CAN BE WELL THRESHED OUT IN ANOTHER PROCEEDING.[10]

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[8] *Id.* at 132-136.

[9] *Id.* at 116-129.

[10] *Id.* at 143-144.

On March 25, 2008, the CA rendered the assailed Decision, the decretal portion of which provides:

> WHEREFORE, the appealed Orders dated February 18, 2000 and July 25, 2000 of the RTC of Cebu City, in Civil Case No. 22290, are **REVERSED** and **SET ASIDE**. The RTC of Cebu City is directed to resolve with deliberate dispatch Civil Case No. 22290 and to admit the complaint-in-intervention filed by the intervenors-appellants.
>
> SO ORDERED.[11]

In ruling for the intervenors, the CA ratiocinated that contrary to the findings of the trial court, the determination of the true heirs of the late Estanislao Miñoza is not only a collateral, but the focal issue of the case, for if the intervenors can prove that they are indeed the true heirs of Estanislao Miñoza, there would be no more need to determine whether the right to buy back the subject lots exists or not as the MCIAA would not have acquired rights to the subject lots in the first place. In addition, to grant the motion for intervention would avoid multiplicity of suits. As to the lack of verification and certification on non-forum shopping, the CA opined that the filing of the motion for reconsideration with an appended complaint-in-intervention containing the required verification and certificate of non-forum shopping amounted to substantial compliance of the Rules.

Petitioner then filed a motion for reconsideration, but it was denied in the Resolution dated January 8, 2009.

Hence, the petition assigning the lone error that:

> THE COURT OF APPEALS (CEBU CITY) GRAVELY ERRED IN ALLOWING RESPONDENTS TO INTERVENE IN CIVIL CASE NO. CEB-22290.[12]

Petitioner argues that to allow the intervenors to intervene in the proceedings before the trial court would not only unduly prolong and delay the resolution of the case, it would make the proceedings unnecessarily complicated and change the nature

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[11] *Id.* at 64-65.

[12] *Id.* at 39.

of the proceedings. Furthermore, contrary to the requirements for the allowance of a motion for intervention, their legal interest in the subject properties appear to be merely contingent or expectant and not of direct or immediate character. Petitioner also posits that the intervenors' rights can be better protected in another proceeding.

Anent the lack of verification and certification on non-forum shopping, petitioner maintains that the trial court was correct in denying the motion on this ground. In addition, even if the complaint-in-intervention with the required verification and certificate of non-forum shopping was appended to the intervenors' motion for reconsideration, the complaint-in-intervention was not verified by all the interested parties or all the heirs of Filomeno Miñoza, which still warrants its dismissal.

The petition is meritorious.

At the outset, on the procedural aspect, contrary to petitioner's contention, the initial lack of the complaint-in-intervention of the requisite verification and certification on non-forum shopping was cured when the intervenors, in their motion for reconsideration of the order denying the motion to intervene, appended a complaint-in-intervention containing the required verification and certificate of non-forum shopping.

In the case of *Altres v. Empleo*,[13] this Court clarified, among other things, that as to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby. Further, a verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.[14]

[13] G.R. No. 180986, December 10, 2008, 573 SCRA 583.

[14] *Id.* at 598-597.

Moreover, as to the certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rules on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." Also, the certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.[15]

Thus, considering that the intervenors in their motion for reconsideration, appended a complaint-in-intervention with the required verification and certificate of non-forum shopping, the requirement of the Rule was substantially complied with.

Notwithstanding the intervenors' compliance with the procedural requirements, their attempt to intervene is doomed to fail.

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings.[16] It is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party to pending legal proceedings, by which such person becomes a party thereto

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[15] *Id.* at 597.

[16] *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*, G.R. Nos. 169914 and 174166, March 24, 2008, 549 SCRA 44, 49.

for the protection of some right of interest alleged by him to be affected by such proceedings.[17]

Section 1, Rule 19 of the Rules of Court states:

SECTION 1. *Who may intervene*. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding.

Under this Rule, intervention shall be allowed when a person has (1) a legal interest in the matter in litigation; (2) or in the success of any of the parties; (3) or an interest against the parties; (4) or when he is so situated as to be adversely affected by a distribution or disposition of property in the custody of the court or an officer thereof.[18] Moreover, the court must take into consideration whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's right or interest can be adequately pursued and protected in a separate proceeding.

In the case at bar, the intervenors are claiming that they are the legitimate heirs of Estanislao Miñoza and Inocencia Togono and not the original plaintiffs represented by Leila Hermosisima. True, if their allegations were later proven to be valid claims, the intervenors would surely have a legal interest in the matter in litigation. Nonetheless, this Court has ruled that the interest contemplated by law must be actual, substantial, material, direct and immediate, and not simply contingent or expectant. It must be of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[19] Otherwise, if persons not parties to the action

[17] *Metropolitan Bank and Trust Co. v. Presiding Judge, RTC Manila, Br. 39*, G.R. No. 89909, September 21, 1990, 189 SCRA 820, 824.

[18] *Alfelor v. Halasan*, G.R. No. 165987, March 31, 2006, 486 SCRA 451, 460.

[19] *Id*. at 461. (Citation omitted.)

were allowed to intervene, proceedings would become unnecessarily complicated, expensive and interminable.[20]

Moreover, the intervenors' contentions that Leila's predecessors-in-interest executed, in fraud of the intervenors, an extrajudicial settlement of the estate of the late spouses Estanislao Miñoza and Inocencia Togono and adjudicated unto themselves the estate of the deceased spouses, and that subsequently, her predecessors-in-interest fraudulently and deceitfully sold the subject lots to the NAC, would unnecessarily complicate and change the nature of the proceedings.

In addition to resolving who the true and legitimate heirs of Estanislao Miñoza and Inocencia Togono are, the parties would also present additional evidence in support of this new allegation of fraud, deceit, and bad faith and resolve issues of conflicting claims of ownership, authenticity of certificates of titles, and regularity in their acquisition. Verily, this would definitely cause unjust delay in the adjudication of the rights claimed by the original parties, which primarily hinges only on the issue of whether or not the heirs represented by Leila have a right to repurchase the subject properties from the MCIAA.

Verily, the allegation of fraud and deceit is an independent controversy between the original parties and the intervenors. In general, an independent controversy cannot be injected into a suit by intervention, hence, such intervention will not be allowed where it would enlarge the issues in the action and expand the scope of the remedies. It is not proper where there are certain facts giving the intervenor's case an aspect peculiar to himself and differentiating it clearly from that of the original parties; the proper course is for the would-be intervenor to litigate his claim in a separate suit.[21] Intervention is not intended to change the nature and character of the action itself, or to stop or delay the placid operation of the machinery of the trial. The remedy

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[20] *Nordic Asia Limited v. Court of Appeals,* 451 Phil. 482, 493 (2003).

[21] *Big Country Ranch Corporation v. Court of Appeals*, G.R. No. 102927, October 12, 1993, 227 SCRA 161, 167.

of intervention is not proper where it will have the effect of retarding the principal suit or delaying the trial of the action.[22]

To be sure, not only will the intervenors' rights be fully protected in a separate proceeding, it would best determine the rights of the parties in relation to the subject properties and the issue of who the legitimate heirs of Estanislao Miñoza and Inocencia Togono, would be laid to rest.

Furthermore, the allowance or disallowance of a motion for intervention rests on the sound discretion of the court after consideration of the appropriate circumstances.[23] It is not an absolute right. The statutory rules or conditions for the right of intervention must be shown. The procedure to secure the right to intervene is to a great extent fixed by the statute or rule, and intervention can, as a rule, be secured only in accordance with the terms of the applicable provision.[24]

Consequently, the denial of the motion to intervene by the RTC was but just and proper. The conclusion of the RTC is not bereft of rational bases. It denied the motion to intervene in the exercise of its sound discretion and after taking into consideration the particular circumstances of the case.

WHEREFORE, subject to the above disquisition, the petition is *GRANTED*. The Decision dated March 25, 2008 and the Resolution dated January 8, 2009, of the Court of Appeals in CA-G.R. CV No. 70429, are *REVERSED* and *SET ASIDE*. The Orders of the Regional Trial Court of Cebu City, Branch 22, dated February 18, 2000 and July 25, 2000, are *REINSTATED*.

SO ORDERED.

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

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

[23] *Quinto v. Commission on Elections*, G.R. No. 189698, February 22, 2010, 613 SCRA 385, 402.

[24] *Supra* note 19, at 165.

THIRD DIVISION

[G.R. No. 189476. February 2, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **JULIAN EDWARD EMERSON COSETENG-MAGPAYO (*A.K.A.* JULIAN EDWARD EMERSON MARQUEZ-LIM COSETENG),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; CHANGE OF NAME; GROUNDS; CHANGE AFFECTING ONE'S LEGAL STATUS IN RELATION TO HIS PARENTS, NOT A PROPER GROUND.— A person can effect a change of name under Rule 103 (CHANGE OF NAME) using valid and meritorious grounds including (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence such as legitimation; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change of name would prejudice public interest. Respondent's reason for changing his name cannot be considered as one of, or analogous to, recognized grounds, however. x x x The change being sought in respondent's petition goes so far as to affect his *legal status in relation to his parents*. It seeks to change his legitimacy to that of illegitimacy. Rule 103 then would not suffice to grant respondent's supplication. *Labayo-Rowe v. Republic* categorically holds that "changes which may affect the civil status from legitimate to illegitimate . . . are substantial and controversial alterations which can only be allowed after appropriate adversary proceedings . . ."

2. ID.; ID.; CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY; IN CHANGE AFFECTING ONE'S CIVIL STATUS FROM LEGITIMATE TO

ILLEGITIMATE, RULE 108 OF THE RULES OF COURT APPLIES; REQUIREMENT OF PARTIES TO IMPLEAD, NOT SUFFICIENTLY COMPLIED WITH IN CASE AT BAR.— Since respondent's desired change affects his civil status from legitimate to illegitimate, Rule 108 applies. x x x Rule 108 clearly directs that a petition which concerns one's civil status should be filed in the civil registry in which the entry is sought to be cancelled or corrected – that of Makati in the present case, and "all persons who have or claim any interest which would be affected thereby" should be made parties to the proceeding. As earlier stated, however, the petition of respondent was filed not in Makati where his birth certificate was registered but in Quezon City. And as the above-mentioned title of the petition filed by respondent before the RTC shows, neither the civil registrar of Makati nor his father and mother were made parties thereto. x x x Even assuming *arguendo* that respondent had simultaneously availed of these two statutory remedies, respondent cannot be said to have *sufficiently* complied with Rule 108. **For, as reflected above, aside from improper venue, he failed to implead the civil registrar of Makati and all affected parties as respondents in the case**.

3. ID.; ID.; ID.; TWO SETS OF NOTICES TO DIFFERENT POTENTIAL OPPOSITORS, MANDATED BY RULE 108 OF THE RULES OF COURT.— As for the requirement of notice and publication, Rule 108 provides: SEC. 4. Notice and publication.—Upon the filing of the petition, **the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be *given* to the persons named in the petition**. The court shall also cause the order to be ***published*** once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. SEC. 5. Opposition.—**The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition**, or **from the last date of publication of such notice,** file his opposition thereto. A reading of these related provisions readily shows that Rule 108 clearly mandates two sets of notices to different "potential oppositors." The *first* notice is that given to the "persons named in the petition" and the *second* (which is through

publication) is that given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties, such as creditors. That two sets of notices are mandated under the above-quoted Section 4 is validated by the subsequent Section 5, also above-quoted, which provides for two periods (for the two types of "potential oppositors") within which to file an opposition (15 days from notice *or* from the last date of publication).

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Eufemio Law Offices for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Born in Makati on September 9, 1972, Julian Edward Emerson Coseteng Magpayo (respondent) is the son of Fulvio M. Magpayo Jr. and Anna Dominique Marquez-Lim Coseteng who, as respondent's certificate of live birth[1] shows, contracted marriage on March 26, 1972.

Claiming, however, that his parents were never legally married, respondent filed on July 22, 2008 at the Regional Trial Court (RTC) of Quezon City a Petition to **change his name** to Julian Edward Emerson Marquez Lim Coseteng. The petition, docketed as SPP No. Q-0863058, was entitled "IN RE PETITION FOR CHANGE OF NAME OF JULIAN EDWARD EMERSON COSETENG MAGPAYO TO JULIAN EDWARD EMERSON MARQUEZ-LIM COSETENG."

In support of his petition, respondent submitted a certification from the National Statistics Office stating that his mother Anna Dominique "does not appear in [its] National Indices of Marriage."[2] Respondent also submitted his academic records from elementary

[1] Records, p. 7.

[2] *Id.* at 8.

up to college[3] showing that he carried the surname "Coseteng," and the birth certificate of his child where "Coseteng" appears as his surname.[4] In the 1998, 2001 and 2004 Elections, respondent ran and was elected as Councilor of Quezon City's 3rd District using the name "JULIAN M.L. COSETENG."[5]

On order of Branch 77 of the Quezon City RTC,[6] respondent amended his petition by alleging therein compliance with the 3-year residency requirement under Section 2, Rule 103 of the Rules of Court.[7]

The notice setting the petition for hearing on November 20, 2008 was published in the newspaper *Broadside* in its issues of October 31-November 6, 2008, November 7-13, 2008, and November 14-20, 2008.[8] And a copy of the notice was furnished the Office of the Solicitor General (OSG).

No opposition to the petition having been filed, an order of general default was entered by the trial court which then allowed respondent to present evidence *ex parte*.[9]

By Decision of January 8, 2009,[10] the trial court granted respondent's petition and directed the Civil Registrar of Makati City to:

1. **Delete the entry "March 26, 1972" in Item 24 for "DATE AND PLACE OF MARRIAGE OF PARTIES**" [in herein respondent's Certificate of live Birth];

2. Correct the entry "MAGPAYO" in the space for the Last Name of the [respondent] to "COSETENG";

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[3] *Id*. at 9-16.

[4] *Id*. at 16.

[5] *Id*. at 17-22.

[6] Presided by Judge Vivencio S. Baclig.

[7] *Id*. at 23.

[8] *Id*. at 48-50.

[9] *Id*. at 45.

[10] *Id*. at 116-117.

3. **Delete the entry "COSETENG" in the space for Middle Name of the [respondent]**; and

4. **Delete the entry "Fulvio Miranda Magpayo, Jr." in the space for FATHER of the [respondent]**… (emphasis and underscoring supplied; capitalization in the original)

The Republic of the Philippines (Republic) filed a motion for reconsideration but it was denied by the trial court by Order of July 2, 2009,[11] hence, it, thru the OSG, lodged the present petition for review to the Court on pure question of law.

The Republic assails the decision in this wise:

I. . . . THE PETITION FOR CHANGE OF NAME…INVOLVES THE **CHANGE OF** [RESPONDENT'S] **CIVIL STATUS FROM LEGITIMATE TO ILLEGITIMATE** AND, THEREFORE, SHOULD BE MADE THROUGH APPROPRIATE ADVERSARIAL PROCEEDINGS…

II. THE TRIAL COURT **EXCEEDED ITS JURISDICTION** WHEN IT DIRECTED THE DELETION OF THE NAME OF RESPONDENT'S FATHER FROM HIS BIRTH CERTIFICATE.[12] (emphasis and underscoring supplied)

The Republic contends that the deletion of the entry on the date and place of marriage of respondent's parents from his birth certificate has the effect of changing his civil status from legitimate to illegitimate, hence, any change in civil status of a person must be effected through an *appropriate* adversary proceeding.[13]

The Republic adds that by ordering the *deletion* of respondent's parents' date of marriage and the name of respondent's father *from the entries in respondent's birth certificate*,[14] the trial court exceeded its jurisdiction, such order not being in accord with respondent's prayer reading:

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[11] *Id.* at 135-136.

[12] *Rollo*, pp. 16-17.

[13] *Id.* at 17-18.

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

WHEREFORE, premises considered, it is most respectfully prayed that the Honorable Court issue an order allowing the change of name of petitioner from JULIAN EDWARD EMERSON COSETENG MAGPAYO to JULIAN EDWARD EMERSON MARQUEZ-LIM COSETENG, and that the Honorable Court order the Local Civil Registrar and all other relevant government agencies to reflect the said change of name in their records.

Petitioner prays for other reliefs deemed proper under the premises.[15] (underscoring supplied)

Respondent counters that the proceeding before the trial court was adversarial in nature. He cites the serving of copies of the petition and its annexes upon the Civil Registrar of Makati, the Civil Registrar General, and the OSG; the posting of copies of the notice of hearing in at least four public places at least ten days before the hearing; the delegation to the OSG by the City Prosecutor of Quezon City to appear on behalf of the Republic; the publication of the notice of hearing in a newspaper of general circulation for three consecutive weeks; and the fact that no oppositors appeared on the scheduled hearing.[16]

The petition is impressed with merit.

A person can effect a change of name under Rule 103 (CHANGE OF NAME) using valid and meritorious grounds including (a) when the name is ridiculous, dishonorable or extremely difficult to write or pronounce; (b) when the change results as a legal consequence such as legitimation; (c) when the change will avoid confusion; (d) when one has continuously used and been known since childhood by a Filipino name, and was unaware of alien parentage; (e) a sincere desire to adopt a Filipino name to erase signs of former alienage, all in good faith and without prejudicing anybody; and (f) when the surname causes embarrassment and there is no showing that the desired change of name was for a fraudulent purpose or that the change

[15] *Rollo*, p. 18.

[16] *Id*. at 53-56.

of name would prejudice public interest.[17] Respondent's reason for changing his name cannot be considered as one of, or analogous to, recognized grounds, however.

The present petition must be differentiated from *Alfon v. Republic of the Philippines.*[18] In *Alfon*, the Court allowed the therein petitioner, Estrella Alfon, to use the name that she had been known since childhood in order to avoid confusion. Alfon did not deny her legitimacy, however. She merely sought to use the surname of her mother which she had been using since childhood. Ruling in her favor, the Court held that she was lawfully entitled to use her mother's surname, adding that the avoidance of confusion was justification enough to allow her to do so. In the present case, however, respondent denies his legitimacy.

The change being sought in respondent's petition goes so far as to affect his *legal status in relation to his parents.* It seeks to change his legitimacy to that of illegitimacy. Rule 103 then would not suffice to grant respondent's supplication.

Labayo-Rowe v. Republic[19] categorically holds that "changes which may affect the civil status from legitimate to illegitimate . . . are substantial and controversial alterations which can only be allowed after appropriate adversary proceedings . . ."

Since respondent's desired change affects his civil status from legitimate to illegitimate, Rule 108 applies. It reads:

> SECTION 1. Who may file petition.—Any person interested in any act, event, order or decree concerning the **civil status** of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto**, with the [RTC] of the province where the corresponding civil registry is located.**
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> xxx xxx xxx

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[17] *Vide* See *Republic v. Hernandez*, 323 Phil. 606, 637-638 (1996).

[18] 186 Phil. 600 (1980).

[19] G.R. No. 53417, December 8, 1988, 168 SCRA 294.

SEC. 3. *Parties*.—When cancellation or correction of an entry in the civil register is sought, **the civil registrar *and* all persons who have or claim any interest which would be affected thereby *shall* be made parties to the proceeding**.

SEC. 4. *Notice and publication.* –Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and **cause reasonable notice thereof to be given to the persons named in the petition**. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. (emphasis, italics and underscoring supplied)

Rule 108 clearly directs that a petition which concerns one's civil status should be filed in the civil registry in which the entry is sought to be cancelled or corrected – that of Makati in the present case, and "all persons who have or claim any interest which would be affected thereby" should be made parties to the proceeding.

As earlier stated, however, the petition of respondent was filed not in Makati where his birth certificate was registered but in Quezon City. And as the above-mentioned title of the petition filed by respondent before the RTC shows, neither the civil registrar of Makati nor his father and mother were made parties thereto.

Respondent nevertheless cites *Republic v. Capote*[20] in support of his claim that his change of name was effected through an appropriate adversary proceeding.

Republic v. Belmonte,[21] illuminates, however:

The procedure recited in Rule 103 regarding change of name and in Rule 108 concerning the cancellation or correction of entries in the civil registry are separate and distinct**. They may not be substituted one for the other for the sole purpose of expediency**. To hold otherwise would render nugatory the provisions of the Rules of Court allowing the change of one's name or the correction of

[20] G.R. No. 157043, February 2, 2007, 514 SCRA 76.

[21] 241 Phil. 966 (1988).

entries in the civil registry only upon meritorious grounds. . . . (emphasis, capitalization and underscoring supplied)

Even assuming *arguendo* that respondent had simultaneously availed of these two statutory remedies, respondent cannot be said to have *sufficiently* complied with Rule 108. **For, as reflected above, aside from improper venue, he failed to implead the civil registrar of Makati and all affected parties as respondents in the case**.

Republic v. Labrador[22] mandates that "a petition for a **substantial** correction or change of entries in the civil registry should have as respondents the civil registrar, as well as *all other persons who have or claim to have any interest that would be affected thereby*." It cannot be gainsaid that change of **status of a child in relation to his parents** is a substantial correction or change of entry in the civil registry.

Labayo-Rowe[23] highlights the necessity of impleading indispensable parties in a petition which involves substantial and controversial alterations. In that case, the therein petitioner Emperatriz Labayo-Rowe (Emperatriz) filed a petition for the correction of entries in the birth certificates of her children, Vicente Miclat, Jr. and Victoria Miclat, in the Civil Registry of San Fernando, Pampanga. Emperatriz alleged that her name appearing in the birth certificates is Beatriz, which is her nickname, but her full name is Emperatriz; and her civil status appearing in the birth certificate of her daughter Victoria as "married" on "1953 Bulan" are erroneous because she was not married to Vicente Miclat who was the one who furnished the data in said birth certificate.

The trial court found merit in Emperatriz's petition and accordingly directed the local civil registrar to change her name appearing in her children's birth certificates from Beatriz to Emperatriz; and to correct her civil status in Victoria's birth

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[22] G.R. No. 132980, 305 SCRA 438 (1999).

[23] *Supra*, note 19.

certificate from "married" to "single" and the date and place of marriage to "no marriage."

On petition before this Court after the Court of Appeals found that the order of the trial court involved a question of law, the Court nullified the trial court's order directing the change of Emperatriz' civil status and the filiation of her child Victoria in light of the following observations:

> x x x Aside from the Office of the Solicitor General, **all other indispensable parties should have been made respondents**. **They include not only the declared father of the child** but the child as well, together with the paternal grandparents, if any, as their hereditary rights would be adversely affected thereby. All other persons who may be affected by the change should be notified or represented. The truth is best ascertained under an adversary system of justice.
>
> The right of the child Victoria to inherit from her parents would be substantially impaired if her status would be changed from "legitimate" to "illegitimate." Moreover, she would be exposed to humiliation and embarrassment resulting from the stigma of an illegitimate filiation that she will bear thereafter. The fact that the notice of hearing of the petition was published in a newspaper of general circulation and notice thereof was served upon the State will *not* change the nature of the proceedings taken. Rule 108, like all the other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Section 13, Article VIII of the 1973 Constitution, which directs that such rules "shall not diminish, increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning **citizenship, legitimacy of paternity** or **filiation,** or **legitimacy of marriage**, without observing the proper proceedings as earlier mentioned, said rule would thereby become an **unconstitutional** exercise which would **tend to increase or modify substantive rights.** This situation is not contemplated under Article 412 of the Civil Code.[24] (emphasis, italics and underscoring supplied)

As for the requirement of notice and publication, Rule 108 provides:

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[24] *Id*. at p. 301.

SEC. 4. Notice and publication.—Upon the filing of the petition, **the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be *given* to the persons named in the petition**. The court shall also cause the order to be ***published*** once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

SEC. 5. Opposition.—**The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition**, or **from the last date of publication of such notice,** file his opposition thereto. (emphasis and underscoring supplied)

A reading of these related provisions readily shows that Rule 108 clearly mandates two sets of notices to different "potential oppositors." The *first* notice is that given to the "persons named in the petition" and the *second* (which is through publication) is that given to other persons who are not named in the petition but nonetheless may be considered interested or affected parties, such as creditors. That two sets of notices are mandated under the above-quoted Section 4 is validated by the subsequent Section 5, also above-quoted, which provides for two periods (for the two types of "potential oppositors") within which to file an opposition (15 days from notice *or* from the last date of publication).

This is the overriding principle laid down in *Barco v. Court of Appeals*.[25] In that case, Nadina Maravilla (Nadina) filed a petition for correction of entries in the birth certificate of her daughter June from June Salvacion Maravilla to June Salvacion "Gustilo," Armando Gustilo being, according to Nadina, her daughter's real father. Gustilo in fact filed before the trial court a "*CONSTANCIA*" wherein he acknowledged June as his daughter. The trial court granted the petition.

After Gustilo died, his son Jose Vicente Gustilo filed with the Court of Appeals a petition for annulment of the Order of the trial court granting the change of June's family name to Gustilo.

[25] 465 Phil. 39 (2004).

Milagros Barco (Barco), natural guardian of her minor daughter Mary Joy Ann Gustilo, filed before the appellate court a motion for intervention, alleging that Mary Joy had a legal interest in the annulment of the trial court's Order as Mary Joy was, by Barco's claim, also fathered by Gustilo.

The appellate court dismissed the petition for annulment and complaint-in-intervention.

On appeal by Barco, this Court ruled that she should have been impleaded in Nadina's petition for correction of entries of the birth certificate of Mary Joy. But since a petitioner, like Nadina, is not expected to exhaustively identify all the affected parties, the subsequent publication of the notice cured the omission of Barco as a party to the case. Thus the Court explained:

> Undoubtedly, Barco is among the parties referred to in Section 3 of Rule 108. Her interest was affected by the petition for correction, as any judicial determination that June was the daughter of Armando would affect her ward's share in the estate of her father. *It cannot be established whether Nadina knew of Mary Joy's existence at the time she filed the petition for correction.* **Indeed, doubt may always be cast as to whether a petitioner under Rule 108 would know of all the parties whose interests may be affected by the granting of a petition. For example, a petitioner cannot be presumed to be aware of all the legitimate or illegitimate offsprings of his/her spouse or paramour**. x x x.
>
> xxx xxx xxx
>
> The purpose precisely of Section 4, Rule 108 is to bind the whole world to the subsequent judgment on the petition. **The sweep of the decision would cover even parties who should have been impleaded under Section 3, Rule 108 but were inadvertently left out**. x x x.[26] (emphasis, italics and underscoring supplied)

Meanwhile, in *Republic v. Kho*,[27] Carlito Kho (Carlito) and his siblings named the civil registrar as the sole respondent in

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[26] *Id.* at 55-56.

[27] G.R. No. 170340, June 29, 2007, 526 SCRA 177.

the petition they filed for the correction of entries in their respective birth certificates in the civil registry of Butuan City, and correction of entries in the birth certificates of Carlito's minor children. Carlito and his siblings requested the correction in their birth certificates of the citizenship of their mother Epifania to "Filipino," instead of "Chinese," and the deletion of the word "married" opposite the phrase "Date of marriage of parents" because their parents — Juan and Epifania — were not married. And Carlito requested the correction in the birth certificates of their children of his and his wife's date of marriage to reflect the actual date of their marriage as appearing in their marriage certificate. In the course of the hearing of the petition, Carlito also sought the correction of the name of his wife from Maribel to "Marivel."

The Khos' mother Epifania took the witness stand where she declared that she was not married to Juan who died before the filing of the Khos' petition.

The trial court granted the petition.

On the issue of whether the failure to implead Marivel and the Khos' parents rendered the trial of the petition short of the required adversary proceedings and the trial court's judgment void, this Court held that when all the procedural requirements under Rule 108 are followed, the publication of the notice of hearing cures the failure to implead an indispensable party. In so ruling, the Court noted that the affected parties were already notified of the proceedings in the case since the petitioner-siblings Khos were the ones who initiated the petition respecting their prayer for correction of their citizenship, and Carlito respecting the actual date of his marriage to his wife; and, with respect to the Khos' petition for change of their civil status from legitimate to illegitimate, their mother Epifania herself took the witness stand declaring that she was not married to their father.

What is clear then in *Barco* and *Kho* is the mandatory directive under Section 3 of Rule 108 to implead the civil registrar *and* the parties who would naturally and legally be affected by the

grant of a petition for correction or cancellation of entries. Non-impleading, however, as party-respondent of one who is inadvertently left out or is not established to be known by the petitioner to be affected by the grant of the petition or actually participates in the proceeding is notified through publication.

IN FINE, when a petition for cancellation or correction of an entry in the civil register involves *substantial* and *controversial* alterations including those on citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, a strict compliance with the requirements of Rule 108 of the Rules of Court is mandated.

WHEREFORE, the petition is, in light of the foregoing discussions, *GRANTED*. The January 8, 2009 Decision of Branch 77 of the Regional Trial Court of Quezon City in SP Proc. No. Q-0863058 is *NULLIFIED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno JJ.,* concur.

SECOND DIVISION

[G.R. No. 192500. February 2, 2011]

SPOUSES AMADO O. IBAÑEZ and ESTHER A. RAFAEL-IBAÑEZ, *petitioners, vs.* **REGISTER OF DEEDS OF MANILA AND CAVITE and PHILIPPINE VETERANS BANK (PVB),** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AS A RULE, FAILURE TO FILE APPELLANTS' BRIEF WITHIN THE PERIOD GRANTED BY THE APPELLATE COURT

RESULTS TO ABANDONMENT OF THE APPEAL; EXCEPTION; DISMISSAL OF PETITIONER'S APPEAL, NOT PROPER.— It appears from the records that the CA overlooked material and substantial facts which warrant the reversal of its assailed resolutions. x x x As claimed by petitioners and as admitted by PVB, the Notice addressed to petitioners was wrongly sent to PVB's counsel's address at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. This latter fact was further shown by the Certification issued by the Makati Central Post Office. It is obvious from the resolutions of the CA that the above address is that of PVB's counsel and not that of petitioners'. Accordingly, both petitioners and their counsel were not served a copy of the Notice to file brief. Thus, the 45-day period within which to file appellants' brief had not commenced to run. Indeed, the failure to file appellants' brief within the period granted by the appellate court results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration. However, since it was duly proven that neither petitioners nor their counsel actually received the Notice to file brief sent by the CA, there was no abandonment of the appeal. The CA has, therefore, erred in dismissing petitioners' appeal.

APPEARANCES OF COUNSEL

Ibañez and Zerrudo Law Office for petitioners.
Christian Ron C. Esponilla for Philippine Veterans Bank.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Resolutions dated July 23, 2009[1] and December 15, 2009[2] in CA-G.R. CV No. 92007.

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[1] *Rollo*, p. 6.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr., concurring; *id*. at 16-17.

The case originated from a petition for Injunction and Damages with Prayer for Preliminary Injunction and/or Temporary Restraining Order filed by petitioners, Spouses Amado O. Ibañez and Esther A. Rafael-Ibañez, against respondent Philippine Veterans Bank (PVB), before the Regional Trial Court (RTC), Branch 20, Imus, Cavite. The case was docketed as R.T.C. No. 2563-02. The RTC decided against petitioners, who eventually elevated the case to the CA *via* a Notice of Appeal. The appeal was docketed as CA-G.R. CV No. 92007.

In a Notice[3] of the CA dated February 23, 2009, petitioners and their counsel were required to file their appellants' brief within 45 days from receipt of the Notice.

On May 8, 2009, the CA issued a Resolution[4] which states that:

> The returned copy of this Court's Notice to File Brief dated February 23, 2009 addressed to Ibañez & Zerrudo Law Office was returned to this Court with the postal notation "NOBODY TO RECEIVE." The Judicial Records Division is ORDERED to resend copy of the said Notice of Resolution to the aforementioned law office within five (5) days from receipt hereof.

Thereafter, the appellate court issued another Resolution[5] dated July 23, 2009, the pertinent portions of which read:

1. The copy of the Resolution dated February 23, 2009 addressed to plaintiffs-appellants' counsel Ibañez Zerrudo Law Office returned to this Court on 08 May 2009 with postal notation "Nobody to Receive" is NOTED.

2. Plaintiffs-appellants' Urgent Motion for Issuance of Writ of Preliminary Injunction and or Temporary Restraining Order against the issuance of a writ of possession is DENIED considering that an order for a writ of possession issues as a matter of course, pursuant to R.A. 3135, as amended.

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[3] *Id.* at 54.

[4] *Id.* at 121.

[5] *Supra* note 1.

> **3. Per Judicial Records Division's (JRD) report dated 10 June 2009 NO APPELLANTS' BRIEF has been filed as per docket book entry despite receipt by defendants-appellants themselves on 12 March 2009 of the Notice to File Brief, the instant appeal is considered ABANDONED and accordingly DISMISSED pursuant to Sec. 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.**[6]

Aggrieved, petitioners filed an Urgent Motion for Reconsideration and Motion to Admit Appellants' Brief.[7] They explained that they and their counsel could not have received a copy of the Notice sent by the court because their counsel, together with his secretary, was then on official business in Iloilo City, and that their law office in Malate, Manila was under renovation.

In a Resolution[8] dated December 15, 2009, the appellate court denied petitioners' motion. The CA reiterated that petitioners received the Notice to file appellants' brief on March 12, 2009. It also explained that though the Notice was given to petitioners themselves, it was a sufficient notice to counsel since petitioner Amado Ibañez is one of the members of the law firm representing petitioners. Lastly, the court held that the fact that petitioners' counsel and his secretary were out of town and that their law office was under renovation at the time could not justify their failure to file the appellants' brief.

Petitioners now come before this Court insisting on the admission of their appellants' brief, though belatedly filed, considering that they did not receive the Notice to file the same. They point out that it was impossible for them to receive the Notice since it was sent not to the residential address of petitioners but to PVB's counsel at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. In this connection, they impute fraud on the part of PVB for receiving the Notice addressed to petitioners and for making it appear that it was so received by

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[6] Emphasis supplied.

[7] *Rollo*, pp. 7-12.

[8] *Supra* note 2.

signing the registry return card. They also accuse the staff of the CA, especially those of the Judicial Records Division (JRD), of taking part in the commission of fraud by deliberately sending the Notice to the wrong address.[9]

In its Comment,[10] PVB confirms that the Notice to File Appellants' Brief contained the following addresses:

> Ibañez and Zerrudo Law Office
> 2370 Singalong Street
> Cor. Dagonoy, Malate
> 1000 Manila (reg. w/ ret. card)
>
> Sps. Amado O. Ibañez and
> Esther A. Rafael-Ibañez
> 101 Herrera cor. Dela Rosa Sts.
> Legaspi Village
> 1200 Makati City (reg. w/ ret. card)[11]

PVB contends that the Notice was sent to petitioners' counsel's address, only that, there was nobody to receive the same. As to the wrong address of petitioners where the CA Notice was sent, PVB blames petitioners for using different addresses in their various pleadings filed in court. Thus, PVB insists that there was no justification for the belated filing of the appellants' brief.

We grant the petition.

The sole issue for resolution is the propriety of the dismissal of petitioners' appeal for their failure to file the appellants' brief within the reglementary period.

It is noteworthy that the dismissal of petitioners' appeal was based on the JRD's report that no appellants' brief has been filed despite receipt by petitioners themselves of the Notice sent by the appellate court. The CA thus considered the appeal

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[9] *Id.* at 31-38.

[10] *Id.* at 110-119.

[11] *Id.* at 115.

abandoned, and accordingly dismissed the same. Upon receipt of the Resolution dismissing their appeal, petitioners moved for reconsideration and explained that no appellants' brief was filed as they had not received the CA Notice to file their brief. The CA, however, sustained its earlier Resolution on the mistaken belief that the Notice addressed to petitioners was received by the addressees in the ordinary course of mail as shown by the registry return card.

It appears from the records that the CA overlooked material and substantial facts which warrant the reversal of its assailed resolutions. First, it is undisputed that a Notice to file brief was sent by the CA to petitioners' counsel of record. However, that Notice was returned to the court with the notation "Nobody to Receive." This is the reason why the CA directed the JRD to resend the same to the law firm. Yet, no notice was resent to the counsel. Second, instead of sending the Notice to the counsel in the law firm's address, the JRD sent it to petitioners themselves, but to a wrong address. Not only was the Notice sent to an address which was not petitioners', but it was sent to the address of PVB's counsel. In its December 15, 2009 Resolution, the CA ratified such act of the JRD, ratiocinating that Amado Ibañez is a member of the law firm representing petitioners and, thus, notice to him was already notice to counsel. Lastly, relying on the JRD's report that petitioners themselves received the Notice and that they failed to file the required appellants' brief within 45 days from receipt of the Notice, the CA dismissed the appeal. As claimed by petitioners and as admitted by PVB, the Notice addressed to petitioners was wrongly sent to PVB's counsel's address at 101 Herrera corner Dela Rosa Streets, Legaspi Village, 1229 Makati City. This latter fact was further shown by the Certification[12] issued by the Makati Central Post Office. It is obvious from the resolutions of the CA that the above address is that of PVB's counsel and not that of petitioners'. Accordingly, both petitioners and their counsel were not served a copy of the Notice to file brief. Thus, the 45-day period within which to file appellants' brief had not commenced to run.

[12] *Id*. at 90.

Indeed, the failure to file appellants' brief within the period granted by the appellate court results in the abandonment of the appeal which can lead to its dismissal upon failure to move for its reconsideration.[13] However, since it was duly proven that neither petitioners nor their counsel actually received the Notice to file brief sent by the CA, there was no abandonment of the appeal. The CA has, therefore, erred in dismissing petitioners' appeal.

One final note. We cannot help but be disturbed by the carelessness exhibited by the CA, particularly the JRD, in the sending of notices to parties. We call the attention of the CA to take to heart what this Court said in *Heirs of Juan Valdez v. Court of Appeals*:[14]

> Had the CA exercised due care and attention in the performance of [its] duties, the present petition would have been avoided. Truly, as public officers, we are bound by our oath to bring to the discharge of our duties the prudence, caution, and attention which careful men usually exercise in the management of their affairs. To do less affects not only the substance of our actions, but the all important perception of the public we serve of the kind of justice we dispense. The image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the people manning the courts – from the justices, judges, the clerks of court, to the lowest-ranked personnel. It is the duty of each one of us to maintain the judiciary's good name and standing as a true temple of justice.[15]

We also deplore and must express our disappointment at the total lack of candor of the counsel for PVB. By not informing the CA that its office had received the Notice intended for petitioners because of the erroneous address, counsel for PVB had displayed conduct bordering on bad faith – and had contributed to the undue delay in the disposition of this case.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The Court of Appeals Resolutions dated July 23,

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[13] *Tamayo v. Court of Appeals*, 467 Phil. 603, 608 (2004).

[14] G.R. No. 163208, August 13, 2008, 562 SCRA 89.

[15] *Id*. at 101-102.

2009 and December 15, 2009 in CA-G.R. CV No. 92007 are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for proper proceedings.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. RTJ-10-2220. February 7, 2011]
(Formerly OCA I.P.I. No. 08-3053-RTJ)

PIO ANGELIA, *complainant, vs.* **JUDGE JESUS L. GRAGEDA, Regional Trial Court, Branch 4, Panabo City,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS INEFFICIENCY; FAILURE TO DECIDE CASES AND OTHER MATTERS WITHIN THE REGLEMENTARY PERIOD, A CASE OF.— This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Such delay is clearly violative of the above-cited rules. Delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency. As a trial judge, Judge Grageda was a frontline official of the judiciary and should have at all times acted with efficiency and with probity. Judge Grageda himself admitted his fault in the delay of the resolution of the December 28, 2007 Motion for

Reconsideration filed by Angelia which was only resolved after he received the 1st Indorsement from this Court, more than a year later. In an order dated January 28, 2009, said motion was granted.The Court, however, finds no merit in Judge Grageda's explanation that the reason for the delay in resolving the motion was the pressure from equally urgent matters in connection with the 800 pending cases before his sala. Firstly, he is duty-bound to comply with the above-cited rules under the Canons in the Code of Judicial Conduct, and the administrative guidelines laid down by this Court. Secondly, as this Court is not unmindful of the circumstances that may delay the speedy disposition of cases assigned to judges, respondent Judge Grageda should have seasonably filed a request for an extension to resolve the subject motion. For failing to do so, he cannot evade administrative liability.

2. ID.; ID.; LESS SERIOUS OFFENSES; UNDUE DELAY IN RENDERING A DECISION OR ORDER; PENALTY IN CASE AT BAR.— Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11 of the same rule, such offense is punishable by: 1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or 2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00. As earlier stated, the OCA recommended a fine of ₱5,000.00. Considering the volume of his work, the Court deems the recommendation to be well-taken.

R E S O L U T I O N

MENDOZA, *J.*:

Before this Court is a verified Complaint filed on November 7, 2008, by complainant Pio Angelia *(Angelia)* against respondent Judge Jesus L. Grageda *(Judge Grageda)* of the Regional Trial Court, Branch 4, Panabo City, *(RTC)*, for the delay in the resolution of motions relative to Civil Case No. 54-2001, entitled *Pio Angelia v. Arnold Oghayan.*

Angelia averred that Civil Case No. 54-2001 was filed way back on August 8, 2001. After numerous postponements, pre-

trial was finally set on December 6, 2007. On December 20, 2007, counsel for complainant received an order dated December 6, 2007 dismissing the case for failure to prosecute. On December 28, 2007, Angelia filed a motion for reconsideration reasoning out that the failure to prosecute could not be attributed to him. On July 28, 2008, he filed his Urgent Motion for the Early Resolution of said December 2007 Motion for Reconsideration. He claimed that despite the lapse of a considerably long period of time, no action was taken by Judge Grageda.

In his Comment dated February 12, 2009, Judge Grageda attributed the delay in the resolution of the case to numerous resettings and repeated absences of the parties. He also stated that immediately upon receipt of the 1st Indorsement dated December 16, 2008, from the Office of the Court Administrator *(OCA)*, he lost no time in resolving the Motion for Reconsideration. He further averred that he performed his duties and functions devotedly despite having to act on 800 cases in his sala, which was further exacerbated by the inflow of new cases every month.

Judge Grageda also admitted that while there was an apparent failure on his part to resolve the motion earlier, such delay was not intentional but simply brought about by the sheer volume of work in his sala, as there were many times that he was the only acting RTC Judge within his district, comprising of 2 cities and 3 municipalities in Davao del Norte. He offered his sincere apology to Angelia and to this Court for the delay, and pleaded humanity and compassion, with a promise to work harder and better for the remainder of his service.

Judge Grageda compulsorily retired from the service on November 25, 2009.

OCA recommended that Judge Grageda be fined in the amount of ₱5,000.00.

The findings and recommendations of the OCA are well-taken.

In consonance with the Constitutional mandate that all lower courts decide or resolve cases or matters within three (3) months

from their date of submission, the Code of Judicial Conduct in Rule 1.02 of Canon 1 and Rule 3.05 of Canon 3, provide:

> Rule 1.02 – A judge should administer justice impartially and without delay.
>
> Rule 3.05 – A judge should dispose of the court's business promptly and decide cases within the required periods.

In line with the foregoing, this Court has laid down administrative guidelines to ensure that the mandates on the prompt disposition of judicial business are complied with. Thus, SC Administrative Circular No. 13-87 provides in part:

> 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so.
>
> xxx xxx xxx

Furthermore, SC Administrative Circular No. 1-88 dated January 26, 1988 states:

> 6.1 All Presiding Judges must endeavor to act promptly on all motions and interlocutory matters pending before their courts. x x x

This Court has consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency and warrants the imposition of administrative sanction against the erring magistrate. Such delay is clearly violative of the above-cited rules. Delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency.[1] As a trial judge, Judge Grageda was a frontline official of the judiciary and should have at all times acted with efficiency and with probity.

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[1] *Prosecutor Visbal v. Judge Buban*, 443 Phil. 705, 708 (2003).

Judge Grageda himself admitted his fault in the delay of the resolution of the December 28, 2007 Motion for Reconsideration filed by Angelia which was only resolved after he received the 1st Indorsement from this Court, more than a year later. In an order dated January 28, 2009, said motion was granted.

The Court, however, finds no merit in Judge Grageda's explanation that the reason for the delay in resolving the motion was the pressure from equally urgent matters in connection with the 800 pending cases before his sala. Firstly, he is duty-bound to comply with the above-cited rules under the Canons in the Code of Judicial Conduct, and the administrative guidelines laid down by this Court. Secondly, as this Court is not unmindful of the circumstances that may delay the speedy disposition of cases assigned to judges, respondent Judge Grageda should have seasonably filed a request for an extension to resolve the subject motion. For failing to do so, he cannot evade administrative liability.

Judges must decide cases and resolve matters with dispatch because any delay in the administration of justice deprives litigants of their right to a speedy disposition of their case and undermines the people's faith in the judiciary. Indeed, justice delayed is justice denied.

Under Section 9, Rule 140 of the Revised Rules of Court, undue delay in rendering a decision or order is considered a less serious offense. Pursuant to Section 11 of the same rule, such offense is punishable by:

1. Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
2. A fine of more than ₱10,000.00 but not exceeding ₱20,000.00.

As earlier stated, the OCA recommended a fine of ₱5,000.00. Considering the volume of his work, the Court deems the recommendation to be well-taken.

WHEREFORE, retired Judge Jesus L. Grageda is hereby found *GUILTY* of undue delay in resolving a motion in violation of Rule 1.02, Canon 1 and Rule 3.05, Canon 3 of the Code of Judicial Conduct. He is hereby ordered to pay a FINE in the amount of FIVE THOUSAND (₱5,000.00) PESOS, to be deducted from his retirement benefits. Let a copy of this resolution be forwarded to the Office of the Court Administrator.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 167004. February 7, 2011]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **BEN P. MEDRANO and PRIVATIZATION MANAGEMENT OFFICE [PMO],** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; CONTRACT OF SALE; WHEN PERFECTED; NO PERFECTED CONTRACT OF SALE IN CASE AT BAR.— As a rule, a contract is perfected upon the meeting of the minds of the two parties. Under Article 1475 of the Civil Code, a contract of sale is perfected the moment there is a meeting of the minds on the thing which is the object of the contract and on the price. xxx In the present case, Medrano's offer to sell the shares of the minority stockholders at the price of 65% of the par value was *not* absolutely and unconditionally accepted by DBP. DBP imposed several conditions to its acceptance and it is clear that Medrano indeed tried in good faith to comply with the conditions given

by DBP but unfortunately failed to do so. Hence, there was no birth of a perfected contract of sale between the parties.

2. ID.; ID.; ID.; ARTICLE 1545 OF THE CIVIL CODE; APPLICATION THEREOF PRESUPPOSES A PERFECTED CONTRACT OF SALE; NOT APPLICABLE TO CASE AT BAR.— The petitioner is also correct that Paragraph 1, Article 1545 of the Civil Code speaks of a perfected contract of sale. Paragraph 1, Article 1545 of the Civil Code provides: ART. 1545. Where the obligation of either *party to a contract of sale* is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty. x x x It is clear from a plain reading of this article that it speaks of a party to a contract of sale who fails in the performance of his/her obligation. The application of this article presupposes that there is a perfected contract between the parties and that one of them fails in the performance of an obligation under the contract. The present case does not fall under this article because there is no perfected contract of sale to speak of. Medrano's failure to comply with the conditions set forth by DBP prevented the perfection of the contract of sale. Hence, Medrano and DBP remained as prospective-seller and prospective-buyer and not parties to a contract of sale.

3. ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; ACT OF KEEPING SHARES WITHOUT PAYING FOR THEM, A CASE OF.— In civil law, DBP's act of keeping the shares delivered by Medrano without paying for them constitutes unjust enrichment. As we held in *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation, …* "[t]here is unjust enrichment when a person **unjustly** retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust

enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. It was not proper for DBP to hold on to Medrano's shares of stock after it became obvious that he will not be able to comply with the conditions for the contract of sale. From that point onwards, the prudent and fair thing to do for DBP was to return Medrano's shares because DBP had no just or legal ground to retain them. We find that equitable considerations militate against DBP's claimed right over the subject shares. xxx In fine, there is no reason whatsoever for DBP to continue in the possession of the shares of stock against Medrano. For nearly 30 years, Medrano was deprived of his shares without any compensation at all from DBP. To this Court, such situation is tantamount to the loss of respondent's shares of stock, by reason of DBP's unjustified retention.

4. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, PROPER IN CASE AT BAR.—As to the issue of attorney's fees, it is well settled that the law allows the courts discretion as to the determination of whether or not attorney's fees are appropriate. The surrounding circumstances of each case are to be considered in order to determine if such fees are to be awarded. In the case of *Servicewide Specialists, Incorporated v. Court of Appeals,* the Court ruled: Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought…. In the present case, it is clear that Medrano was constrained to use legal means to recover his shares of stock. Records showed that indeed respondent Medrano followed up the payment of his shares of stock that were transferred to DBP. After some time, he became convinced that DBP will not pay for the shares of stock for reasons unknown to him. That was when he decided to bring the matter to court.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for petitioner.
Francisco Bassig & Diaz for Ben P. Medrano.
Juan G. Ranola, Jr. for Privatization Management Office.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* assails the Decision[1] dated December 14, 2004 and Resolution[2] dated February 8, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 65436. The CA affirmed *in toto* the Decision[3] dated January 26, 1999 of the Regional Trial Court (RTC) of Pasig City, Branch 158, ordering petitioner Development Bank of the Philippines (DBP) to pay respondent Ben Medrano the following: (1) the amount of ₱2,449,265.00 representing the value of the purchase price of Medrano's 37,681 shares in Paragon Paper Industries, Inc. plus legal interest from date of first demand; (2) attorney's fees in the amount of ₱100,000.00; and (3) the cost of suit.

The facts, as culled from the records, are as follows.

Respondent Ben Medrano was the President and General Manager of Paragon Paper Industries, Inc. (Paragon) wherein he owned 37,681 shares. Sometime in 1980, petitioner DBP sought to consolidate its ownership in Paragon. In one of the meetings of the Paragon Executive Committee, the Chairman Jose B. de Ocampo, instructed Medrano, as President and General Manager of Paragon, to contact or sound off the minority stockholders and to convince them to sell their shares to DBP at ₱65.00 per share, or 65% of the stock's par value of ₱100.00. Medrano followed the instructions and began to contact each member of the minority stockholders. He was able to contact all except one who was in Singapore. Medrano testified that all, including himself, agreed to sell, and all took steps to have their shares surrendered to DBP for payment.[4] They made

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[1] *Rollo*, pp. 51-56. Penned by Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Godardo A. Jacinto and Edgardo P. Cruz concurring.

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

[3] *Id.* at 101-106.

[4] TSN, June 16, 1983, pp. 10-13, 30.

proposals to DBP and the Board of Directors of DBP approved the sale under DBP Resolution No. 4270 subject to the following terms and conditions: (1) that prior to the implementation of the approval, 57,596 shares of Paragon's stock issued to the stockholders concerned shall first be surrendered to the DBP; (2) that all the parties concerned shall give their written conformity to the arrangement; and (3) that the transaction shall be implemented within forty-five (45) days from the date of approval (December 24, 1980); otherwise, the same shall be deemed canceled. Medrano then indorsed and delivered to DBP all his 37,681 shares which had a value of ₱2,449,265.00. DBP accepted said shares and took over Paragon.

DBP, through Jose de Ocampo, who was also a member of its Board of Governors, also offered Medrano a commission of ₱185,010.00 if the latter could persuade all the other Paragon minority stockholders to sell their shares. Medrano was able to convince only two stockholders, Alberto Wong and Gerardo Ledonio III, to sell their respective shares. Thus, his commission was reduced to ₱155,455.00.

Thereafter, Medrano demanded that DBP pay the value of his shares, which he had already turned over, and his ₱155,455.00 commission. When DBP did not heed his demand, Medrano filed a complaint for specific performance and damages against DBP on September 2, 1981.

DBP filed an Answer arguing that there was no perfected contract of sale as the three conditions in DBP Resolution No. 4270 were not fulfilled. Likewise, certain minority stockholders owning 17,635 shares refused to sell their shares. Hence, DBP exercised its right to cancel the sale under Resolution No. 4270.

Later, during the pendency of the case, DBP conveyed the shares to the Asset Privatization Trust (APT) in a Deed of Transfer when the APT took over certain assets, and assumed the liabilities, of government financial institutions including DBP. As the transferee of the shares, the APT was impleaded as party-defendant. DBP thereafter filed a cross-claim against the APT which was later on substituted by the Privatization

Management Office (PMO). Medrano adopted his evidence against DBP as his evidence against the APT while the APT adopted DBP's evidence and defenses against Medrano. On the cross-claim, the APT raised the defense that the liabilities assumed by the National Government and referred to in the Deed of Transfer are liabilities to local and foreign intermediaries and guarantees and not to individual persons like Medrano.

On January 26, 1999, the RTC ruled in Medrano's favor and dismissed DBP's cross-claim against the APT, to wit:

> WHEREFORE, in view of the foregoing, judgment is rendered in favor of the plaintiff and against defendant Development Bank of the Philippines ordering the latter to pay the former the following: (1) the amount of ₱2,449,265.00 representing the value of the purchase price of plaintiff's 37,681 shares in Paragon plus legal rate of interest from date of first demand; (2) attorney's fees in the amount of ₱100,000.00; and (3) the cost of suit.
>
> The cross-claim of defendant DBP against the other defendant Asset Privatization Trust is dismissed because defendant Development Bank of the Philippines' accountability to the plaintiff [is] based on act[s] solely imputable to it.
>
> SO ORDERED.[5]

Dissatisfied, DBP elevated the case to the CA. DBP prayed that the trial court's decision be reversed and that DBP be absolved from any and all liabilities to Medrano.

Medrano, for his part, prayed in his appellee's brief that DBP be ordered to pay his commission of ₱155,445.00.[6]

On December 14, 2004, the CA issued the challenged Decision[7] and affirmed the decision of the trial court. The CA, however, refused to grant Medrano's prayer for the payment of commission because Medrano did not appeal the trial court's decision but instead prayed for the payment of his commission only in his appellee's brief.

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[5] *Rollo*, pp. 105-106.

[6] CA *rollo*, p. 100.

[7] *Supra* note 1.

The CA held that there existed between DBP and Medrano a contract of sale and the conditions imposed by Resolution No. 4270 were merely conditions imposed on the performance of an obligation. Hence, while under Article 1545[8] of the Civil Code, DBP had the right not to proceed with the agreement upon Medrano's failure to comply with the conditions, DBP was deemed to have waived the performance of the conditions when it chose to retain Medrano's shares and later transfer them to the APT. The CA noted that the retention of the shares was contrary to DBP's claim of rescission because if indeed DBP rescinded the sale, then it should have returned to Medrano his shares together with their fruits and the price with interests, as provided by Article 1385[9] of the Civil Code.

DBP filed a motion for reconsideration, but the same was denied by the CA in a Resolution[10] dated February 8, 2005. Hence, this appeal.

DBP alleges that the CA erred

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[8] ART. 1545. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the things has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing.

[9] ART. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss.

[10] *Supra* note 2.

I

… WHEN IT REACHED A CONCLUSION WHICH IS NOT A LOGICAL CONSEQUENCE OF ITS FINDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN DBP AND MEDRANO AND PROCEEDED TO MAKE A CONTRACT FOR THE PARTIES IN THE INSTANT CASE.

II

… WHEN IT APPLIED ARTICLE 1545 OF THE CIVIL CODE OF THE PHILIPPINES NOTWITHSTANDING ITS FINDING THAT THERE WAS NO PERFECTED CONTRACT OF SALE BETWEEN MEDRANO AND DBP.

III

… WHEN IT FAILED TO EXERCISE ITS AUTHORITY TO RULE ON MATTERS WHICH ARE THE NATURAL AND LOGICAL CONSEQUENCE OF ITS FINDINGS OF FACTS OR THAT ARE INDISPENSABLE AND NECESSARY TO THE JUST RESOLUTION OF THE PLEADED ISSUES, EVEN IF NOT RAISED AS ISSUES IN THE APPEAL.

IV

… WHEN IT FAILED TO CONSIDER THE ESTABLISHED FACT THAT THE ASSETS OF PARAGON PAPER INDUSTRIES, INC., INCLUDING THE SUBJECT CERTIFICATE OF STOCKS, WERE TRANSFERRED TO THE ASSET PRIVATIZATION TRUST, NOW THE PRIVATIZATION MANAGEMENT OFFICE, HEREIN CO-DEFENDANT. HENCE, THE PMO SHOULD BE THE PARTY THAT SHOULD BE MADE TO RETURN THE SUBJECT CERTIFICATES OF STOCKS OR PAY THE SAID SHARES OF STOCKS.

V

… WHEN IT AFFIRMED THE AWARD OF ATTORNEY'S FEES, DAMAGES AND COST OF SUIT IN FAVOR OF RESPONDENT MEDRANO CONTRARY TO LAW AND THE PERTINENT DECISIONS OF THIS HONORABLE SUPREME COURT.[11]

Essentially, the issue in this case is whether the CA erred in applying Article 1545 of the Civil Code and holding that DBP

[11] *Id*. at 34.

exercised the second option under the said article to justify the order against DBP to pay the value of Medrano's shares of stock. As a side issue, DBP also questions the award of attorney's fees in Medrano's favor.

In fine, DBP contends that the trial court and the CA both ruled that there was no perfected contract of sale in this case and that accordingly, it was erroneous for them to order DBP to pay Medrano the value or price of the object of the sale. DBP insists that the proper order was to direct DBP or the PMO, which now has possession of the shares, *to return* the shares of stock. By ordering DBP to pay the purchase price of the stocks, DBP argues that the CA in effect created a new contract of sale between the parties.[12]

DBP adds that the CA erred in applying Article 1545 of the Civil Code. According to DBP, Article 1545 of the Civil Code only applies to a perfected contract of sale and since there is no such perfected contract in this case because of Medrano's failure to meet all the conditions agreed upon, the application of this article by the CA is misplaced.

Lastly, DBP questions the award of attorney's fees to Medrano. DBP maintains that there was no unjustified refusal to pay for the shares of stock transferred to DBP as there was no perfected contract of sale.

Medrano, for his part, argues that by retaining the shares of stock transferred to it and later even appropriating and transferring them to the APT, DBP is deemed to have exercised the second option under Article 1545 of the Civil Code, that is, it waived performance of the conditions imposed by Resolution No. 4270. The original conditional sale was thus converted into, and correctly treated by the courts *a quo*, as an absolute, unconditional sale where compliance with the obligation of the buyer to pay the purchase price may be demanded.

As regards the award of attorney's fees, Medrano maintains that he was constrained to acquire the services of a lawyer and

[12] *Id*. at 36-37.

use legal means to enforce his rights over the shares in question. He argues that since DBP refused to pay for or return the shares that he transferred to it, he was left with no other option but to go to court. Hence, the award of attorney's fees is legally justified.

We sustain the CA.

As a rule, a contract is perfected upon the meeting of the minds of the two parties. Under Article 1475[13] of the Civil Code, a contract of sale is perfected the moment there is a meeting of the minds on the thing which is the object of the contract and on the price.

In the case of *Traders Royal Bank v. Cuison Lumber Co., Inc.*,[14] the Court ruled:

> Under the law, a contract is perfected by mere consent, that is, from the moment that there is a meeting of the offer and the acceptance upon the thing and the cause that constitute the contract. The law requires that the offer must be certain and *the acceptance absolute and unqualified*. An acceptance of an offer may be express and implied; a qualified offer constitutes a counter-offer. Case law holds that an offer, to be considered certain, must be definite, while *an acceptance is considered absolute and unqualified when it is identical in all respects with that of the offer so as to produce consent or a meeting of the minds*. We have also previously held that the ascertainment of whether there is a meeting of minds on the offer and acceptance depends on the circumstances surrounding the case.
>
> … the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the *acceptance of this offer - express or implied - must be unmistakable, unqualified, and identical in all respects to the offer*. The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a

[13] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[14] G.R. No. 174286, June 5, 2009, 588 SCRA 690, 701, 703.

binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document. (Italics supplied.)

Also, in *Manila Metal Container Corporation v. Philippine National Bank*,[15] the Court ruled,

A qualified acceptance or one that involves a new proposal constitutes a counter-offer and a rejection of the original offer. A counter-offer is considered in law, a rejection of the original offer and an attempt to end the negotiation between the parties on a different basis. Consequently, *when something is desired which is not exactly what is proposed in the offer, such acceptance is not sufficient to guarantee consent because any modification or variation from the terms of the offer annuls the offer*. The acceptance must be identical in all respects with that of the offer so as to produce consent or meeting of the minds. (Italics supplied.)

In the present case, Medrano's offer to sell the shares of the minority stockholders at the price of 65% of the par value was *not* absolutely and unconditionally accepted by DBP. DBP imposed several conditions to its acceptance and it is clear that Medrano indeed tried in good faith to comply with the conditions given by DBP but unfortunately failed to do so. Hence, there was no birth of a perfected contract of sale between the parties.

The petitioner is also correct that Paragraph 1, Article 1545 of the Civil Code speaks of a perfected contract of sale. Paragraph 1, Article 1545 of the Civil Code provides:

ART. 1545. Where the obligation of either *party to a contract of sale* is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

xxx xxx xxx (Italics supplied.)

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[15] G.R. No. 166862, December 20, 2006, 511 SCRA 444, 465-466, citing *Logan v. Philippine Acetylene Co.*, 33 Phil. 177, 183-184 (1916) and *ABS-CBN Broadcasting Corporation v. Court of Appeals*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 592-593.

It is clear from a plain reading of this article that it speaks of a party to a contract of sale who fails in the performance of his/her obligation. The application of this article presupposes that there is a perfected contract between the parties and that one of them fails in the performance of an obligation under the contract.

The present case does not fall under this article because there is no perfected contract of sale to speak of. Medrano's failure to comply with the conditions set forth by DBP prevented the perfection of the contract of sale. Hence, Medrano and DBP remained as prospective-seller and prospective-buyer and not parties to a contract of sale.

This notwithstanding, however, we cannot simply agree with DBP's argument that since there is no perfected contract of sale, DBP should not be ordered to pay Medrano any amount.

The factual scenario of this case took place in 1980 or over thirty (30) years ago. Medrano had turned over and delivered his own shares of stock to DBP in his attempt to comply with the conditions given by DBP. DBP then accepted the shares of stock as partial fulfillment of the conditions that it imposed on Medrano. However, after the lapse of some time and after it became clear that Medrano would not be able to comply with the conditions, DBP decided to retain Medrano's shares of stock without paying Medrano. After the realization that DBP would in fact not pay him for his shares of stock, Medrano was constrained to file a suit to enforce his rights.[16]

In civil law, DBP's act of keeping the shares delivered by Medrano without paying for them constitutes unjust enrichment. As we held in *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*,[17]

. . . "[t]here is unjust enrichment when a person **unjustly** retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice,

[16] TSN, June 16, 1983, pp. 22-25.

[17] G.R. No. 138088, January 23, 2006, 479 SCRA 404, 412, citing *Reyes v. Lim*, G.R. No. 134241, August 11, 2003, 408 SCRA 560 and 1 J. Vitug, *CIVIL LAW* 30 (2003).

equity and good conscience." Article 22 of the Civil Code provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him." The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage.

It was not proper for DBP to hold on to Medrano's shares of stock after it became obvious that he will not be able to comply with the conditions for the contract of sale. From that point onwards, the prudent and fair thing to do for DBP was to return Medrano's shares because DBP had no just or legal ground to retain them.

We find that equitable considerations militate against DBP's claimed right over the subject shares. First, it is clear that DBP did not buy the shares from Medrano as it even asserts there was no perfected contract of sale because of the failure of the latter to comply with DBP's conditions. Second, it cannot be said that Medrano voluntarily donated his shares of stock as he is in fact still trying to recover them 30 years later. Third, it cannot be said that DBP was merely holding the shares of stock for safekeeping as DBP even claims that the shares were transferred to the APT (now PMO). In fine, there is no reason whatsoever for DBP to continue in the possession of the shares of stock against Medrano. For nearly 30 years, Medrano was deprived of his shares without any compensation at all from DBP. To this Court, such situation is tantamount to the loss of respondent's shares of stock, by reason of DBP's unjustified retention.

As to the issue of attorney's fees, it is well settled that the law allows the courts discretion as to the determination of whether or not attorney's fees are appropriate. The surrounding circumstances of each case are to be considered in order to determine if such fees are to be awarded. In the case of *Servicewide Specialists, Incorporated v. Court of Appeals*,[18] the Court ruled:

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[18] G.R. No. 110597, May 8, 1996, 256 SCRA 649, 655, citing *Gonzales v. National Housing Corporation*, No. 50092, December 18, 1979, 94 SCRA 786.

Article 2208 of the Civil Code allows attorney's fees to be awarded by a court when its claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission on the part of the party from whom it is sought….

In the present case, it is clear that Medrano was constrained to use legal means to recover his shares of stock. Records showed that indeed respondent Medrano followed up[19] the payment of his shares of stock that were transferred to DBP. After some time, he became convinced that DBP will not pay for the shares of stock for reasons unknown to him. That was when he decided to bring the matter to court.

DBP's unjustified refusal to pay for the shares or even offer an explanation to Medrano why payment was being withheld indicates bad faith on its part. Besides having no legal or just reason to hold on to Medrano's shares of stock, DBP also refused to enlighten Medrano of the reason why he was being denied payment. Further, Medrano's failure to comply with the conditions of the acceptance should have prompted DBP either to return the shares of Medrano or accept the shares of Medrano as a sale and pay a fair price or at least communicate to Medrano why his shares were being withheld. Instead, DBP did nothing but to hold on to the shares. Because of this, Medrano was left with no other option but to seek redress from the courts.

WHEREFORE, the Decision dated December 14, 2004 and Resolution dated February 8, 2005 of the Court of Appeals in CA-G.R. CV No. 65436 are hereby *AFFIRMED.*

No pronouncement as to costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Sereno, JJ.*, concur.

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[19] TSN, June 16, 1983, p. 24.

SECOND DIVISION

[G.R. No. 167332. February 7, 2011]

FILIPINAS PALMOIL PROCESSING, INC. and DENNIS T. VILLAREAL, *petitioners, vs.* **JOEL P. DEJAPA, represented by his Attorney-in-Fact MYRNA MANZANO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; IMMUTABILITY OF JUDGMENT; FINAL AND EXECUTORY JUDGMENTS ARE IMMUTABLE AND UNALTERABLE; EXCEPTIONS.— As a general rule, final and executory judgments are immutable and unalterable, except under these recognized exceptions, to wit: (a) clerical errors; (b) *nunc pro tunc* entries which cause no prejudice to any party; and (c) void judgments. What the CA rendered on December 10, 2004 was a *nunc pro tunc* order clarifying the decretal portion of the August 29, 2002 Decision.

2. ID.; ID.; ID.; ID.; ID.; *NUNC PRO TUNC* JUDGMENTS; DEFINED.— In *Briones-Vazquez v. Court of Appeals*, *nunc pro tunc* judgments have been defined and characterized as follows: The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.

3. ID.; ID.; ID.; ID.; RULE THEREON, DISCUSSED.— In *Navarro v. Metropolitan Bank and Trust Company*, We discussed the rule on immutability of judgment and said: No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction

> of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Office for petitioners.

Free Labor Associates for Reforms and Empowerment (*FLARE)* for respondent.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Resolutions dated December 10, 2004[1] and February 17, 2005[2] issued by the Court of Appeals (CA) in CA-G.R. SP No. 60562.

The antecedent facts are as follows:

On May 27, 1997, respondent Joey Dejapa filed a Complaint for illegal dismissal and money claims against petitioner Asian Plantation Phils., Inc. (formerly Veg. Oil Phils. Inc.), now Filipinas Palmoil Processing, Inc., Dennis T. Villareal and Tom Madula.

On July 14, 1999, the Labor Arbiter (LA) dismissed respondent's complaint for lack of merit.

Respondent filed his appeal with the National Labor Relations Commission (NLRC) which, in a Decision dated December 29,

[1] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine, concurring; *rollo*, pp. 205-216.

[2] *Id.* at 227-228.

1999, affirmed the LA decision. Respondent's motion for reconsideration was denied in a Resolution dated April 28, 2000.

Aggrieved, respondent filed with the CA a petition for *certiorari*. Petitioners filed their Comment thereto.

On August 29, 2002, the CA reversed and set aside the NLRC decision and resolution. The decretal portion of the decision states:

> WHEREFORE, premises considered, the assailed Decision dated December 29, 1999, as well as the Resolution dated April 28, 2000 in NLRC NCR CASE No. 0005-03748-97 (NLRC NCR CA No. 016505-98) are hereby REVERSED and SET ASIDE.
>
> Petitioner (herein respondent) is ordered REINSTATED without loss of seniority rights with payment of backwages, including his salary differentials, overtime pay, 13th month pay, service incentive leave pay and other benefits from the time his salary was withheld, or from December 1, 1997 until actual reinstatement. However, if reinstatement is no longer feasible, private respondent company is ordered to pay separation pay equivalent to one (1) month for every year of service where a fraction of six (6) months shall be considered as one whole year. Private respondent company is likewise ordered to pay ₱10,000.00 as moral damages and ₱10,000.00 as exemplary damages. In addition, private respondent company is ordered to pay attorney's fees in the amount equivalent to 10% of the total monetary award.
>
> SO ORDERED.[3]

The CA found that petitioner company was respondent's employer and that Tom Madula was not really an independent contractor, but petitioner company's Operations Manager. It ruled that respondent was illegally dismissed by petitioner company. We quote the pertinent portions of the Decision, thus:

> It must be borne in mind that private respondent company's claim is principally anchored on the assertion that petitioner was not its employee but that of private respondent Madula who is allegedly an independent contractor.[4]

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

[4] *Id.* at 112.

xxx xxx xxx

In this petition, there is no showing that private respondent Madula is an independent contractor. We reiterate that private respondent company failed to show any evidence to support such claim.

Hence, it is fair to conclude that private respondent Madula is an employee of private respondent company. He is the operations manager of private respondent company. This fact was not refuted by either private respondent Madula or private respondent company."[5]

xxx xxx xxx

In fine, it is evident that private respondent Madula is indeed an employee of private respondent company. As its operations manager, he is deemed an agent of private respondent company.[6]

Petitioners' motion for reconsideration was denied in a Resolution[7] dated July 14, 2003.

Petitioners filed with Us a petition for review on *certiorari*, docketed as G.R. No. 159142, which We denied in a Resolution[8] dated October 1, 2003 for petitioners' failure to take the appeal within the reglementary period. Petitioners' motion for reconsideration was denied in a Resolution[9] dated January 21, 2004; thus, the decision became final and executory on February 27, 2004, and an entry of judgment was subsequently made.

Respondent, through his representative, filed with the LA a Motion for Execution and Computation of the Award. The LA issued a Writ of Execution[10] dated July 12, 2004 for the implementation of the CA Decision dated August 29, 2002. Pursuant to the said writ of execution, petitioners' deposit in

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[5] *Id.* at 114.

[6] *Id.* at 118.

[7] *Id.* at 135.

[8] *Id.* at 186.

[9] *Id.* at 185.

[10] Per Labor Arbiter Lilia S. Savari; *id.* at 187-190.

the United Coconut Planters Bank (UCPB) in the amount of ₱736,910.10 was garnished.

On July 21, 2004, petitioners filed a Motion to Quash Writ of Execution[11] on the ground that it can be held liable only insofar as the reinstatement aspect and/or the monetary award were concerned, pursuant to the CA Decision dated August 29, 2002, but not to backwages. Respondent filed his Comment/ Opposition thereto.

On August 6, 2004, respondent filed an *Ex-Parte* Motion for Order of Release praying for the immediate release of the garnished amount in the UCPB.

On September 14, 2004, the LA issued its Order[12] partially granting petitioners' Motion to Quash Writ of Execution, the decretal portion of which reads:

> WHEREFORE, the Motion to Quash Writ of Execution filed by Asian Plantation is partially granted in so far as the liability for backwages and reinstatement is concerned such that the same is adjudged against respondent Tom Madula. The respondents are solidarily liable to the rest of the award, except damages, which are for the sole account of respondent company. The garnished account of Filipinas Palm Oil Processing, Inc. with United Coconut Planters Bank is hereby ordered released to the extent of TWO HUNDRED SIXTY-SIX THOUSAND SEVEN HUNDRED FIFTY-SEVEN & 85/ 100 PESOS (₱266,757.85).
>
> SO ORDERED.[13]

Dissatisfied, both parties filed their respective appeals with the NLRC.

On October 19, 2004, respondent then filed before the CA a Very Urgent Motion for Clarification of Judgment, praying that the CA Decision dated August 29, 2002 be clarified to the effect that petitioner be made solely liable to the judgment award

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[11] *Id.* at 191-194.

[12] *Id.* at 195-197.

[13] *Id.* at 196-197.

and, as a consequence thereof, to order the NLRC and the LA to implement the same and to direct the UCPB to release the garnished amount of ₱736,910.10 to the NLRC Sheriff and for the latter to deposit the same to the NLRC cashier for further disposition.

On December 10, 2004, the CA rendered the assailed Resolution granting respondent's motion for clarificatory judgment, the pertinent portion of which provides:

> Obviously, the confusion was brought about by the September 14, 2004 Order of Labor Arbiter Savari. It is immediately apparent that the order is devoid of any legal basis since the ground relied upon by private respondent Filipinas Palmoil (Asian Plantation) is not among those grounds upon which a writ of execution may be quashed. As jurisprudentially settled, quashal of the writ of execution was held to be proper in the following instances: (a) when it was improvidently issued, (b) when it is defective in substance, (c) when it is issued against the wrong party, (d) where the judgment was already satisfied, (e) when it was issued without authority, (f) when a change in the situation of the parties renders execution inequitable, and (g) when the controversy was never validly submitted to the court, The ground invoked by private respondent Filipinas Palmoil (Asian Plantation) to quash the writ of execution is patently improper as it actually sought to vary the final judgment of this Court. Despite this, Labor Arbiter Savari "partially granted" the motion to quash. Worst, Labor Arbiter Savari even went to the extent of making her own findings of fact and ruling on the merits, and came out with an entirely new disposition different from that decreed by this Court in the August 29, 2002 decision. Such action on the part of Labor Arbiter Savari betrays sheer ignorance of settled precepts, and amounts to a clear encroachment and interference on the final judgment of this Court.
>
> Ordinarily, the recourse against such an order of the Labor Arbiter is to challenge the same on appeal or via the extraordinary remedies of *certiorari*, prohibition or *mandamus*. However, requiring petitioner to undergo such litigious process once again would not be in keeping with the protection to labor mandate of the Constitution. Thus, in order to write *finis* to this controversy, which has tarried for some time now, and in order to forestall the offshoot of another prolonged litigation, this Court, in the exercise of equity jurisdiction,

hereby grants petitioner's motion for clarification. It is, of course, stressed that the Court is not amending its August 29, 2002 decision or rectifying a perceived error therein. With this clarification, this Court only states the obvious by explicitly articulating what should have been necessarily implied by the application of basic principles under our labor law.[14]

Thus, the dispositive portion of the assailed CA Resolution reads:

WHEREFORE, in view of the foregoing, in accordance with petitioner's supplications, this Court renders, *nunc pro tunc*, the following clarification to the decretal portion of this Court's August 29, 2002 decision.

> WHEREFORE, premises considered, the assailed Decision dated December 29, 1999 as well as the Resolution dated April 28, 2000 in NLRC NCR CASE NO. 0005-03748-97 (NLRC NCR CA NO. 016505-98) are hereby REVERSED and SET ASIDE.
>
> Private respondent Filipinas Palmoil Processing Inc. (Asian Plantation Phils., Inc.) is hereby ordered to REINSTATE petitioner Joey Dejapa without loss of seniority rights and to pay him his backwages including his salary differentials, overtime pay, 13th month pay, service incentive leave pay and other benefits from the time his salary was withheld or from December 1, 1997 until actual reinstatement. If reinstatement is no longer feasible, private respondent Filipinas Palmoil Processing, Inc. (Asian Plantation Phils., Inc.) is likewise ordered to pay separation pay in addition to the payment of backwages and other benefits equivalent to one (1) month pay for every year of service, where a fraction of six (6) months shall be considered as one whole year.
>
> Private respondent Filipinas Palmoil Processing Inc. (Asian Plantation Phils., Inc.) is likewise ordered to pay petitioner ₱10,000.00 as moral damages, ₱10,000.00 as exemplary damages, and attorney's fees in the amount equivalent to 10% of the total monetary award.
>
> Private respondent Tom Madula is hereby relieved from any liability under the judgment.

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

> Labor Arbiter Lilia S. Savari is hereby directed to implement the final judgment of this Court strictly in accordance with the foregoing, and to order the UCPB to release the garnished amount of ₱736,910.10 to the NLRC Sheriff for further disposition.[15]

Petitioners' motion for reconsideration was denied in a Resolution dated February 17, 2005.

Hence this Petition for review on *certiorari* raising the following grounds:

> THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE CONTRARY TO LAW AND SETTLED RULINGS OF THE SUPREME COURT WHEN IT ORDERED THE COMPANY TO REINSTATE THE RESPONDENT AND PAY HIM BACKWAGES, SALARY DIFFERENTIALS, OVERTIME PAY, 13TH MONTH PAY, SERVICE INCENTIVE LEAVE PAY AND OTHER BENEFITS, AND IF REINSTATEMENT IS NOT POSSIBLE, TO PAY RESPONDENT SEPARATION PAY IN ADDITION TO BACKWAGES AND OTHER BENEFITS, PLUS DAMAGES AND ATTORNEY'S FEES CONSIDERING THAT:
>
> A. RESPONDENT WAS NEVER DISMISSED AND WAS NEVER UNDER THE EMPLOY OF THE COMPANY, [AND]
>
> B. QUASHAL OF THE WRIT OF EXECUTION IS PROPER UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE.[16]

Petitioners insist that: (1) it engaged the services of Tom Madula to provide it with manning services and delivery of liquid cargo; (2) Madula assigned respondent to work as barge patron in the company's Butuan depot; (3) the terms of the contract between Madula and petitioner were clear and categorical, which negate the existence of an employment relationship between respondent and petitioner; and (4) Madula's obligation to provide the services contracted and which were performed by respondent were among the functions expressly allowed by law to be contractible. Petitioners claim that the CA Decision dated

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[15] *Id.* at 214-215.

[16] *Id.* at 15.

August 29, 2002 did not even provide for the circumstances surrounding the alleged dismissal and how the same was effected; that even respondent's narration of facts in his position paper filed before the LA negated the existence of the fact of dismissal. Considering that petitioner company was not, at any time, the employer of respondent and that since there was no dismissal to speak of, it is but proper to order the quashal of the writ of execution.

In his Comment, respondent claims that (1) petitioner seeks to reverse or set aside the CA Decision dated August 29, 2002, which had already attained finality and an entry of judgment had already been made; (2) the issues which petitioners raised have already been passed upon by the CA in its 2002 decision; and (3) the CA Resolution which is being assailed in this petition was merely a clarification of the final and executory CA Decision dated August 29, 2002, where the CA did not modify its earlier decision but only interpreted the same, which was well within its authority to do so. Respondent informs Us that the amount of ₱736,910.10 in the UCPB had already been released to the NLRC Sheriff and was deposited to the Cashier, who in turn had released the said amount to respondent through his attorney-in-fact.

In their Reply, petitioners contend that it is not precluded from assailing the Resolutions issued by the CA via a petition for review under Rule 45 of the Rules of Court and reiterated the arguments raised in the petition.

We find the petition unmeritorious.

In the Decision dated August 29, 2002, the CA found petitioner as the employer of respondent; that Tom Madula was not really an independent contractor, but was only an employee of petitioner company being its operations manager; and that respondent was illegally dismissed by petitioner company. The CA Decision became final and executory on February 27, 2004 after we denied petitioners' petition for review on *certiorari,* and an entry of judgment was subsequently made.

The instant petition for review filed with Us by petitioners assails the CA Resolutions dated December 10, 2004 and February 17, 2005, which the CA issued upon respondent's filing of a Very Urgent Motion for Clarificatory Judgment praying that the CA clarify its Decision dated August 29, 2002 declaring petitioner company solely liable to the judgment award and, as a consequence thereof, to order the NLRC and the LA to implement the same and for the UCPB to release the garnished amount of ₱736,910.10 to the Sheriff for further disposition. Notably, the CA Resolutions sought to be annulled in this petition were only issued to clarify the CA Decision dated August 29, 2002, which had already become final and executory in 2004.

As a general rule, final and executory judgments are immutable and unalterable, except under these recognized exceptions, to wit: (a) clerical errors; (b) *nunc pro tunc* entries which cause no prejudice to any party; and (c) void judgments.[17] What the CA rendered on December 10, 2004 was a *nunc pro tunc* order clarifying the decretal portion of the August 29, 2002 Decision.

In *Briones-Vazquez v. Court of Appeals*,[18] *nunc pro tunc* judgments have been defined and characterized as follows:

> The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been.[19]

By filing the instant petition for review with Us, petitioners would like to appeal anew the merits of the illegal dismissal case filed by respondent against petitioners raising the same arguments which had long been passed upon and decided in the

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[17] *Briones-Vazquez v. Court of Appeals*, 491 Phil. 81, 92 (2005).

[18] *Id*.

[19] *Id*. (Citation omitted).

August 29, 2002 CA Decision which had already attained finality. As the CA said in denying petitioners' motion for reconsideration of the assailed December 10, 2004 Resolution, to wit:

> It is basic that once a decision becomes final and executory, it is immutable and unalterable. Private respondents' (herein petitioners) motion for reconsideration seeks a modification or reversal of this Court's August 29, 2002 decision, which has long become final and executory, as in fact, it is already in its execution stage. It may no longer be modified by this Court or even by the Highest Court of the land.
>
> It should be sufficiently clear to private respondents (herein petitioners) that the December 10, 2004 Resolution was issued merely to clarify a seeming ambiguity in the decision but as stressed therein, it is neither an amendment nor a rectification of a perceived error therein. The instant motion for reconsideration has, therefore, no merit at all.[20]

We find that petitioners' action is merely a subterfuge to alter or modify the final and executory Decision of the CA which we cannot countenance without violating procedural rules and jurisprudence.

In *Navarro v. Metropolitan Bank and Trust Company*,[21] We discussed the rule on immutability of judgment and said:

> No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void. The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As the Court declared in *Yau v. Silverio*,

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[20] Resolution dated February 17, 2005, p. 2; *id*. at 228.

[21] G.R. Nos. 165697 and 166481, August 4, 2009, 595 SCRA 149.

> Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.

Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down. Thus, in *Heirs of Wenceslao Samper v. Reciproco-Noble*, we had occasion to emphasize the significance of this rule, to wit:

> It is an important fundamental principle in our Judicial system that every litigation must come to an end x x x. Access to the courts is guaranteed. But there must be a limit thereto. Once a litigant's rights have been adjudicated in a valid final judgment of a competent court, he should not be granted an unbridled license to come back for another try. The prevailing party should not be harassed by subsequent suits. For, if endless litigations were to be encouraged, then unscrupulous litigants will multiply in number to the detriment of the administration of justice.[22]

WHEREFORE, the petition is *DENIED*. The Resolutions of the Court of Appeals, dated December 10, 2004 and February 17, 2005, in CA-G.R. SP No. 60562, are *AFFIRMED*.

SO ORDERED.

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

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[22] *Id.* at 159-160.

THIRD DIVISION

[G.R. No. 189724. February 7, 2011]

REPUBLIC OF THE PHILIPPINES, Represented by the Department of Environment and Natural Resources, Region IV-B, *petitioner, vs.* **SPOUSES FLORENCIO DE CASTRO and ROMELIA CALIBOSO DE CASTRO,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; REMEDY, WHEN AVAILABLE; RESORT THERETO, NOT PROPER IN CASE AT BAR.— Section 1, Rule 47 of the 1987 Rules of Civil Procedure provides that the remedy of annulment of judgments or final orders/ resolutions of a Regional Trial Court in civil actions **can only be availed of where "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner**." A petition for annulment of judgment under Rule 47 is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary or other appropriate remedies provided by law. Such action is never resorted to as a substitute for a party's own neglect in not promptly availing of the ordinary or other appropriate remedies. Upon notice of the writ of execution on, by respondents' own information, September 29, 2005, respondents – if indeed they were completely unaware of the trial court's decision – had available remedies to question it. They could have promptly filed a *motion to quash the writ of execution* or, in the alternative, a *petition for relief from judgment* under Rule 38 of the 1987 Rules of Civil Procedure. That they had ample opportunity to do so is gathered from the fact that the writ of execution of the decision was not immediately implemented by the sheriff as it was satisfied only on July 20, 2006. Having failed to avail of any of the aforesaid remedies **without any justification**, respondents are **barred** from resorting to the *action for annulment of judgment* under

Rule 47; otherwise, they would benefit from their own inaction or negligence.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Rodrigo C. Dimayacyac for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The Director of the Bureau of Lands, now Lands Management Bureau (LMB), Manila issued on July 13, 1955 Free Patent No. V-16555 under Free Patent Application No. V-33580 covering Lot No. 6742, Pls-296 (the lot) in the name of Marcelino Manipon (Manipon), with an area of 5.376 hectares, located at Naujan, Oriental Mindoro.

On the basis of the free patent, the Register of Deeds of Oriental Mindoro issued on March 5, 1957 Original Certificate of Title (OCT) No. P-2124 in the name of Manipon.

Manipon later sold the lot to Spouses Florencio and Romelia de Castro (respondents) who, after OCT No. P-2124 was cancelled, were issued Transfer Certificate of Title (TCT) No. T-33730.

An investigation conducted by the representatives of LMB, Manila on the issuance of Free Patent No. V-16555 showed that the lot is not an alienable and disposable land of the public domain since it is within the established reservation for the exclusive use of non-Christian tribes, now known as the *Paitan Mangyan* Reservation, proclaimed as such by the Governor-General of the Philippine Islands by virtue of Proclamation No. 809 dated June 4, 1935; and that Manipon – who began occupying the lot only in 1944 as indicated in his free patent application – and respondents had not established any right to possess and own the lot.

Since Proclamation No. 809 has not been amended nor repealed/revoked by any subsequent law or presidential issuance, the Republic of the Philippines (petitioner), through the Office of the Solicitor General,[1] filed in 1998 a Complaint[2] for "Cancellation of TCT No. T-33730 and Reversion" against Manipon and herein respondents, as well as the Register of Deeds of Calapan, Oriental Mindoro, docketed as Civil Case No. R-4694, which was raffled to Branch 40 of the Regional Trial Court of Calapan City. Manipon had, at the time of the filing of the complaint, been dead for ten years.[3]

Respondents failed to file their answer to the complaint despite receipt of summons, hence, they were declared in default.[4] Their "Motion To Lift Order Of Default And To Admit Hereto Attached Answer," which alleged that their failure to answer was due to "oversight and excusable neglect,"[5] was denied for lack of merit.

Following the *ex parte* presentation of evidence by petitioner, the trial court rendered a Decision[6] dated October 9, 2002 in its favor nullifying Manipon's Free Patent No. V-16555 and respondents' TCT No. T-33730; ordering the reversion of the lot to the State; and directing respondents to immediately vacate the lot and surrender their title to the Register of Deeds of Oriental Mindoro for immediate cancellation.

No motion for reconsideration of the trial court's decision, or appeal therefrom was filed by respondents, hence, the decision became final and executory.

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[1] Then headed by Solicitor General Ricardo P. Galvez.

[2] CA *rollo*, pp. 17-22.

[3] CA Decision dated June 26, 2009, *rollo*, pp. 32, 36.

[4] Annexes "E" (Summons dated December 28, 1998), "E-1" (Sheriff's Return dated May 24, 1999), "E-2" (Order dated September 8, 1999), *rollo*, pp. 71-73, and "F" (RTC Decision of October 9, 2002) of present Petition, p. 75.

[5] CA Decision, *supra* note 3 at 46.

[6] Penned by Judge Tomas C. Leynes, *rollo*, pp. 74-80.

On petitioner's motion, the trial court, by Order of April 29, 2004, issued a writ of execution on August 2, 2005.[7] The writ was served on respondents on March 29, 2005 and implemented on July 20, 2006.[8]

On March 15, 2007, respondents filed a petition for annulment of judgment of the trial court's decision of October 9, 2002 before the Court of Appeals (CA) on grounds that it did not acquire jurisdiction over the person of Manipon as he had been dead when petitioner's complaint was filed, hence, his title to the lot – as well as respondents' title which merely emanated from his – stays; and that the trial court's decision did not attain finality as they did not receive a copy of its decision, hence, the execution thereof was void.

By the now assailed Decision[9] of June 26, 2009, the appellate court denied respondents' petition for annulment of judgment. Finding, however, that respondents were not served with a copy of the trial court's decision of October 9, 2002 and, therefore, it had not yet become final and executory, the appellate court nullified the trial court's order of April 29, 2004 granting petitioner's motion for execution, the writ of execution of August 2, 2005, and all execution proceedings, and ordered the trial court to serve a copy of its October 9, 2002 decision to them "so that they can avail of the appropriate remedy under the Rules of Court."[10]

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[7] CA Decision, *id*. at 40.

[8] *Id*. at 48; see also Sheriff's affidavit, at 87.

[9] Penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Sesinando E. Villon; *id*. at 32-51.

[10] The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the Petition for Annulment of the Decision dated 09 October 2002 rendered by the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40 in Civil Case No. R-4694 is **DENIED**. However, the RTC is hereby **ORDERED** to immediately serve a copy of the said Decision to petitioners Sps. Romelia Caliboso de Castro and Florencio de Castro so they can avail of the appropriate remedy under the Rules of

Its motion for partial reconsideration of the appellate court's decision having been denied by Resolution[11] of September 30, 2009, petitioner filed the present petition for review on *certiorari*.

Respondents maintain that they did not receive a copy of the trial court's decision of October 9, 2002,[12] and that they came to know of it only on September 29, 2005 when the trial court's sheriff personally served upon them a copy of the writ of execution of the decision.[13]

Section 1, Rule 47 of the 1987 Rules of Civil Procedure provides that the remedy of annulment of judgments or final orders/resolutions of a Regional Trial Court in civil actions **can only be availed of where "the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner**."

A petition for annulment of judgment under Rule 47 is a remedy granted only under exceptional circumstances where a party, without fault on his part, has failed to avail of the ordinary or other appropriate remedies provided by law. Such action is never resorted to as a substitute for a party's own neglect in not promptly availing of the ordinary or other appropriate remedies.[14]

Upon notice of the writ of execution on, by respondents' own information, September 29, 2005, respondents – if indeed they were completely unaware of the trial court's decision – had available remedies to question it. They could have promptly filed a *motion to quash the writ of execution* or, in the alternative,

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Court. Further, the Order dated 29 April 2004, Writ of Execution dated 02 August 2005, and all proceedings/actions pursuant thereto are declared **VOID**.

SO ORDERED.

[11] *Rollo*, pp. 52-54.

[12] Comment, *id*. at 91-96.

[13] Petition for Annulment of Judgment, CA *rollo*, p. 3.

[14] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*, G.R. No. 139895, August 15, 2003, 409 SCRA 186, 192.

a *petition for relief from judgment* under Rule 38[15] of the 1987 Rules of Civil Procedure. That they had ample opportunity to do so is gathered from the fact that the writ of execution of the decision was not immediately implemented by the sheriff as it was satisfied only on July 20, 2006. Having failed to avail of any of the aforesaid remedies **without any justification**, respondents are **barred** from resorting to the *action for annulment of judgment* under Rule 47; otherwise, they would benefit from their own inaction or negligence. So *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.*[16] teaches:

> Let it be stressed at the outset that **before a party can avail of the reliefs provided for by Rule 47, *i.e.*, annulment of judgments,** final orders, and resolutions, **it is a condition *sine qua non* that one must have failed to** move for new trial in, or appeal from, or **file a petition for relief** against said issuances **or take other appropriate remedies thereon, through no fault attributable to him. If he failed to avail of those cited remedies without sufficient justification, he cannot resort to the action for annulment provided in Rule 47, for otherwise he would benefit from his own inaction or negligence** (*Republic v. Sandiganbayan*, G.R. No. 140615, Feb. 19, 2001, 352 SCRA 235, 250).

In the instant case, not only did petitioner fail to avail of the ordinary and appropriate remedies in assailing the questioned judgments of the trial court, but he also failed to show to the satisfaction of this Court that he could not have availed of the ordinary and appropriate remedies under the Rules. **According to petitioner, he allegedly learned of the cases filed against him by respondent bank only when the writs of execution were issued against him. At the very least then, he could have moved to quash the writs of execution. In the alternative, he could have filed a petition for relief from judgment under Rule 38.** Instead, petitioner merely alleged that he approached Atty. Gregorio Salazar, the bank's counsel,

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[15] Section 1 thereof provides: "*Petition for relief from judgment, order, or other proceedings.*– When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside."

[16] *Supra* note 14 at 191-192.

for clarification and assistance, which is not one of the ordinary and appropriate remedies contemplated by the Rules. **Petitioner's failure to explain why he failed to avail of said remedies, which were still available to him at that time,** in both Civil Case No. 7355-M and Civil Case No. 2856-V-88, **is fatal to his cause. To be sure, a petition for annulment of judgment under Rule 47 is not a substitute for one's own neglect in not availing of the ordinary and appropriate remedies, but a peculiar remedy granted under certain conditions to those who failed to avail of the ordinary remedies without their fault.** Thus, in our considered view, based on the cited reasons and circumstances, the Court of Appeals did not err when it denied the petition for annulment of judgment. (Emphasis and underscoring supplied)

WHEREFORE, the petition for review on certiorari is *GRANTED* and the assailed Court of Appeals Decision dated June 26, 2009 and Resolution dated September 30, 2009 are *REVERSED* and *SET ASIDE*, but only insofar as the Court of Appeals nullified 1) the Order dated April 29, 2004 of the Regional Trial Court, Br, 40 of Calapan City granting petitioner's motion for the issuance of a writ of execution, 2) the Writ of Execution dated August 2, 2005, and all execution proceedings/actions pursuant thereto, and 3) the trial court's order to immediately serve a copy of its Decision dated October 9, 2002 upon respondents.

The trial court's Order dated April 29, 2004, the Writ of Execution dated August 2, 2005 and all proceedings/actions pursuant to the implementation of its October 9, 2002 Decision, are declared in order and accordingly *REINSTATED*.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno JJ.,* concur.

THIRD DIVISION

[G.R. No. 190601. February 7, 2011]

SPOUSES LUIGI M. GUANIO and ANNA HERNANDEZ-GUANIO, *petitioners, vs.* **MAKATI SHANGRI-LA HOTEL and RESORT, INC., also doing business under the name of SHANGRI-LA HOTEL MANILA,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; DOCTRINE OF PROXIMATE CAUSE FINDS NO APPLICATION TO CASE AT BAR.— The Court finds that since petitioners' complaint arose from a contract, the doctrine of proximate cause finds no application to it: The doctrine of proximate cause is applicable only in **actions for quasi-delicts**, not in actions involving breach of contract. x x x The doctrine is a device for imputing liability to a person where there is no relation between him and another party. In such a case, the obligation is created by law itself. But, where there is a pre-existing contractual relation between the parties, it is the parties themselves who create the obligation, and the function of the law is merely to regulate the relation thus created.

2. ID.; ID.; ID.; BREACH OF CONTRACT; ARTICLE 1170 OF THE CIVIL CODE, APPLIES; ELUCIDATED.— What applies in the present case is Article 1170 of the Civil Code which reads: Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages. *RCPI v. Verchez, et al.* enlightens: In *culpa contractual* x x x the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the

promissee that may include his **"expectation interest,"** which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his **"reliance interest,"** which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his **"restitution interest,"** which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. The effect of every infraction is to create a new duty, that is, to make RECOMPENSE to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like **proof of his exercise of due diligence** x x x or of the **attendance of fortuitous event,** to excuse him from his ensuing liability.

3. ID.; ID.; ID.; ID.; DEFINED; NOT ESTABLISHED IN CASE AT BAR.— Breach of contract is defined as the failure without legal reason to comply with the terms of a contract. It is also defined as the [f]ailure, without legal excuse, to perform any promise which forms the whole or part of the contract. The appellate court, and even the trial court, observed that petitioners were remiss in their obligation to inform respondent of the change in the expected number of guests. The observation is reflected in the records of the case. Petitioners' failure to discharge such obligation thus excused, as the above-quoted paragraph 4.5 of the parties' contract provide, respondent from liability for "any damage or inconvenience" occasioned thereby.

4. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; STATEMENTS WHICH ARE NOT ESTOPPELS NOR JUDICIAL ADMISSIONS HAVE NO QUALITY OF CONCLUSIVENESS, AND AN OPPONENT WHOSE ADMISSIONS HAVE BEEN OFFERED AGAINST HIM MAY OFFER ANY EVIDENCE WHICH SERVES AS AN EXPLANATION FOR HIS FORMER ASSERTION OF WHAT HE NOW DENIES AS A FACT; APPLIED IN CASE AT BAR.— Respecting the letter of Svensson on which the trial court heavily relied as admission of respondent's liability but which the appellate court brushed aside, the Court finds the appellate court's stance in order. It is not uncommon in the hotel industry to receive

comments, criticisms or feedback on the service it delivers. It is also customary for hotel management to try to smooth ruffled feathers to preserve goodwill among its clientele. *Kalalo v. Luz* holds*:* Statements which are not estoppels nor judicial admissions have no quality of conclusiveness, and an opponent whose admissions have been offered against him may offer any evidence which serves as an explanation for his former assertion of what he now denies as a fact. x x x To the Court, the x x x explanation of the hotel's Banquet Director overcomes any presumption of admission of breach which Svensson's letter might have conveyed.

5. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; AWARD THEREOF, PROPER IN CASE AT BAR.— The exculpatory clause notwithstanding, the Court notes that respondent could have managed the "situation" better, it being held in high esteem in the hotel and service industry. Given respondent's vast experience, it is safe to presume that this is not its first encounter with booked events exceeding the guaranteed cover. It is not audacious to expect that certain measures have been placed in case this predicament crops up. That regardless of these measures, respondent still received complaints as in the present case, does not amuse. Respondent admitted that three hotel functions coincided with petitioners' reception. To the Court, the delay in service might have been avoided or minimized if respondent exercised prescience in scheduling events. No less than quality service should be delivered especially in events which possibility of repetition is close to nil. Petitioners are not expected to get married twice in their lifetimes. In the present petition, under considerations of equity, the Court deems it just to award the amount of ₱50,000.00 by way of nominal damages to petitioners, for the discomfiture that they were subjected to during to the event. The Court recognizes that every person is entitled to respect of his dignity, personality, privacy and peace of mind. Respondent's lack of prudence is an affront to this right.

APPEARANCES OF COUNSEL

Reyes Cabrera Rojas Golez & Associates for petitioners.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

For their wedding reception on July 28, 2001, spouses Luigi M. Guanio and Anna Hernandez-Guanio (petitioners) booked at the Shangri-la Hotel Makati (the hotel).

Prior to the event, Makati Shangri-La Hotel & Resort, Inc. (respondent) scheduled an initial food tasting. Petitioners claim that they requested the hotel to prepare for seven persons — the two of them, their respective parents, and the wedding coordinator. At the scheduled food tasting, however, respondent prepared for only six.

Petitioners initially chose a set menu which included black cod, king prawns and angel hair pasta with wild mushroom sauce for the main course which cost ₱1,000.00 per person. They were, however, given an option in which salmon, instead of king prawns, would be in the menu at ₱950.00 per person. They in fact partook of the salmon.

Three days before the event, a final food tasting took place. Petitioners aver that the salmon served was half the size of what they were served during the initial food tasting; and when queried about it, the hotel quoted a much higher price (₱1,200.00) for the size that was initially served to them. The parties eventually agreed on a final price — ₱1,150 per person.

A day before the event or on July 27, 2001, the parties finalized and forged their contract.[1]

Petitioners claim that during the reception, respondent's representatives, Catering Director Bea Marquez and Sales Manager Tessa Alvarez, did not show up despite their assurance that they would; their guests complained of the delay in the service of the dinner; certain items listed in the published menu

[1] The Banquet and Meeting Services Contract dated July 26, 2001 was faxed to petitioners, while the Banquet Event Order was signed on July 25, 2001. As per RTC Decision, the final price for the menu was only finalized on July 27, 2001.

were unavailable; the hotel's waiters were rude and unapologetic when confronted about the delay; and despite Alvarez's promise that there would be no charge for the extension of the reception beyond 12:00 midnight, they were billed and paid ₱8,000 per hour for the three-hour extension of the event up to 4:00 A.M. the next day.

Petitioners further claim that they brought wine and liquor in accordance with their open bar arrangement, but these were not served to the guests who were forced to pay for their drinks.

Petitioners thus sent a letter-complaint to the Makati Shangri-la Hotel and Resort, Inc. (respondent) and received an apologetic reply from Krister Svensson, the hotel's Executive Assistant Manager in charge of Food and Beverage. They nevertheless filed a complaint for breach of contract and damages before the Regional Trial Court (RTC) of Makati City.

In its Answer, respondent claimed that petitioners requested a combination of king prawns and salmon, hence, the price was increased to ₱1,200.00 per person, but discounted at ₱1,150.00; that contrary to petitioners' claim, Marquez and Alvarez were present during the event, albeit they were not permanently stationed thereat as there were three other hotel functions; that while there was a delay in the service of the meals, the same was occasioned by the sudden increase of guests to 470 from the guaranteed expected minimum number of guests of 350 to a maximum of 380, as stated in the Banquet Event Order (BEO);[2] and that Isaac Albacea, Banquet Service Director, in fact relayed the delay in the service of the meals to petitioner Luigi's father, Gil Guanio.

Respecting the belated service of meals to some guests, respondent attributed it to the insistence of petitioners' wedding coordinator that certain guests be served first.

On Svensson's letter, respondent, denying it as an admission of liability, claimed that it was meant to maintain goodwill to its customers.

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[2] *Rollo,* pp. 159-161.

By Decision of August 17, 2006, Branch 148 of the Makati RTC rendered judgment in favor of petitioners, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendant ordering the defendants to pay the plaintiff the following:
>
> 1) The amount of ₱350,000.00 by way of actual damages;
>
> 2) The amount of ₱250,000.00 for and as moral damages;
>
> 3) The amount of ₱100,000.00 as exemplary damages;
>
> 4) The amount of ₱100,000.00 for and as attorney's fees.
>
> With costs against the defendant.
>
> SO ORDERED.[3]

In finding for petitioners, the trial court relied heavily on the letter of Svensson which is partly quoted below:

> Upon receiving your comments on our service rendered during your reception here with us, we are in fact, very distressed. Right from minor issues pappadums served in the soup instead of the creutons, lack of valet parkers, hard rolls being too hard till a major one – slow service, rude and arrogant waiters, we have disappointed you in all means.
>
> Indeed, we feel as strongly as you do that the services you received were unacceptable and definitely not up to our standards. We understand that it is our job to provide excellent service and in this instance, we have fallen short of your expectations. We ask you please to accept our profound apologies for causing such discomfort and annoyance.[4] (underscoring supplied)

The trial court observed that from "the tenor of the letter . . . the defendant[-herein respondent] admits that the services the plaintiff[-herein petitioners] received were unacceptable and definitely not up to their standards."[5]

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[3] *Id.* at 407.

[4] *Id.* at 141.

[5] *Id.* at 405.

On appeal, the Court of Appeals, by Decision of July 27, 2009,[6] *reversed* the trial court's decision, it holding that the proximate cause of petitioners' injury was an unexpected increase in their guests:

> x x x Hence, the alleged damage or injury brought about by the confusion, inconvenience and disarray during the wedding reception may not be attributed to defendant-appellant Shangri-la.
>
> We find that the said proximate cause, which is entirely attributable to plaintiffs-appellants, set the chain of events which resulted in the alleged inconveniences, to the plaintiffs-appellants. Given the circumstances that obtained, only the Sps. Guanio may bear whatever consequential damages that they may have allegedly suffered.[7] (underscoring supplied)

Petitioners' motion for reconsideration having been denied by Resolution of November 18, 2009, the present petition for review was filed.

The Court finds that since petitioners' complaint arose from a contract, the doctrine of proximate cause finds no application to it:

> The doctrine of proximate cause is applicable only in **actions for quasi-delicts**, not in actions involving breach of contract. x x x The doctrine is a device for imputing liability to a person where there is no relation between him and another party. In such a case, the obligation is created by law itself. But, where there is a pre-existing contractual relation between the parties, it is the parties themselves who create the obligation, and the function of the law is merely to regulate the relation thus created.[8] (emphasis and underscoring supplied)

What applies in the present case is Article 1170 of the Civil Code which reads:

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[6] Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Andres B. Reyes, Jr. and Pampio A. Abarintos, *id*. at 8-26.

[7] *Id*. at 20-21.

[8] *Calalas v. Court of Appeals*, G.R. No. 122039, May 31, 2000, 332 SCRA 356, 357.

Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

RCPI v. Verchez, et al.[9] enlightens:

In *culpa contractual* x x x the mere proof of the existence of the contract and the failure of its compliance justify, *prima facie*, a corresponding right of relief. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his **"expectation interest,"** which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his **"reliance interest,"** which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his **"restitution interest,"** which is his interest in having restored to him any benefit that he has conferred on the other party. Indeed, agreements can accomplish little, either for their makers or for society, unless they are made the basis for action. The effect of every infraction is to create a new duty, that is, to make RECOMPENSE to the one who has been injured by the failure of another to observe his contractual obligation unless he can show extenuating circumstances, like **proof of his exercise of due diligence** x x x or of the **attendance of fortuitous event,** to excuse him from his ensuing liability. (emphasis and underscoring in the original; capitalization supplied)

The pertinent provisions of the Banquet and Meeting Services Contract between the parties read:

4.3 The ENGAGER shall be billed in accordance with the prescribed rate for the minimum guaranteed number of persons contracted for, regardless of under attendance or non-appearance of the expected number of guests, except where the ENGAGER cancels the Function in accordance with its Letter of Confirmation with the HOTEL. Should

[9] G.R. No. 164349, January 31, 2006, citing *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation,* 435 Phil. 333, 341-342 (2002).

the attendance exceed the minimum guaranteed attendance, the ENGAGER shall also be billed at the actual rate per cover in excess of the minimum guaranteed attendance.

xxx xxx xxx

4.5. The ENGAGER must inform the HOTEL at least forty eight (48) hours before the scheduled date and time of the Function of any change in the minimum guaranteed covers. In the absence of such notice, paragraph 4.3 shall apply in the event of under attendance. **In case the actual number of attendees exceed the minimum guaranteed number by ten percent (10%), the HOTEL shall *not* in any way be held liable for any *damage or inconvenience* which may be caused thereby. The ENGAGER shall also undertake to advise the guests of the situation and take positive steps to remedy the same.**[10] (emphasis, italics and underscoring supplied)

Breach of contract is defined as the failure without legal reason to comply with the terms of a contract. It is also defined as the [f]ailure, without legal excuse, to perform any promise which forms the whole or part of the contract.[11]

The appellate court, and even the trial court, observed that petitioners were remiss in their obligation to inform respondent of the change in the expected number of guests. The observation is reflected in the records of the case. Petitioners' failure to discharge such obligation thus excused, as the above-quoted paragraph 4.5 of the parties' contract provide, respondent from liability for "any damage or inconvenience" occasioned thereby.

As for petitioners' claim that respondent departed from its *verbal* agreement with petitioners, the same fails, given that the written contract which the parties entered into the day before the event, being the law between them.

Respecting the letter of Svensson on which the trial court heavily relied as admission of respondent's liability but which the appellate court brushed aside, the Court finds the appellate court's stance in order. It is not uncommon in the hotel industry

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[10] *Vide* Banquet and Meeting Services Contract, *rollo*, pp. 138-141, 140.

[11] *Cathay Pacific Airways Ltd. v. Spouses Vazquez*, G.R. No. 150843. March 14, 2003.

to receive comments, criticisms or feedback on the service it delivers. It is also customary for hotel management to try to smooth ruffled feathers to preserve goodwill among its clientele.

Kalalo v. Luz holds:[12]

> Statements which are not estoppels nor judicial admissions have no quality of conclusiveness, and an opponent whose admissions have been offered against him may offer any evidence which serves as an explanation for his former assertion of what he now denies as a fact.

Respondent's Catering Director, Bea Marquez, explained the hotel's procedure on receiving and processing complaints, *viz:*

ATTY. CALMA:

Q You mentioned that the letter indicates an acknowledgement of the concern and that there was-the first letter there was an acknowledgment of the concern and an apology, not necessarily indicating that such or admitting fault?

A Yes.

Q Is this the letter that you are referring to?

If I may, Your Honor, that was the letter dated August 4, 2001, previously marked as plaintiff's exhibits, Your Honor. What is the procedure of the hotel with respect to customer concern?

A Upon receipt of the concern from the guest or client, we acknowledge receipt of such concern, and as part of procedure in service industry particularly Makati Shangri-la we apologize for whatever inconvenience but at the same time saying, that of course, we would go through certain investigation and get back to them for the feedback with whatever concern they may have.

Q Your Honor, I just like at this point mark the exhibits, Your Honor, the letter dated August 4, 2001 identified by the witness, Your Honor, to be marked as Exhibit 14 and the signature of Mr. Krister Svensson be marked as Exhibit 14-A.[13]

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[12] L-27782, July 31, 1970, 34 SCRA 337, 348.

[13] TSN, March 16, 2005, pp. 21-23.

xxx xxx xxx

Q In your opinion, you just mentioned that there is a procedure that the hotel follows with respect to the complaint, in your opinion was this procedure followed in this particular concern?

A Yes, ma'am.

Q What makes you say that this procedure was followed?

A As I mentioned earlier, we proved that we did acknowledge the concern of the client in this case and we did emphatize from the client and apologized, and at the same time got back to them in whatever investigation we have.

Q You said that you apologized, what did you apologize for?

A Well, first of all it is a standard that we apologize, right? Being in the service industry, it is a practice that we apologize if there is any inconvenience, so the purpose for apologizing is mainly to show empathy and to ensure the client that we are hearing them out and that we will do a better investigation and it is not in any way that we are admitting any fault.[14] (underscoring supplied)

To the Court, the foregoing explanation of the hotel's Banquet Director overcomes any presumption of admission of breach which Svensson's letter might have conveyed.

The exculpatory clause notwithstanding, the Court notes that respondent could have managed the "situation" better, it being held in high esteem in the hotel and service industry. Given respondent's vast experience, it is safe to presume that this is not its first encounter with booked events exceeding the guaranteed cover. It is not audacious to expect that certain measures have been placed in case this predicament crops up. That regardless of these measures, respondent still received complaints as in the present case, does not amuse.

Respondent admitted that three hotel functions coincided with petitioners' reception. To the Court, the delay in service might

[14] TSN, March 16, 2005, pp. 24-26.

have been avoided or minimized if respondent exercised prescience in scheduling events. No less than quality service should be delivered especially in events which possibility of repetition is close to nil. Petitioners are not expected to get married twice in their lifetimes.

In the present petition, under considerations of equity, the Court deems it just to award the amount of ₱50,000.00 by way of nominal damages to petitioners, for the discomfiture that they were subjected to during to the event.[15] The Court recognizes that every person is entitled to respect of his dignity, personality, privacy and peace of mind.[16] Respondent's lack of prudence is an affront to this right.

WHEREFORE, the Court of Appeals Decision dated July 27, 2009 is *PARTIALLY REVERSED*. Respondent is, in light of the foregoing discussion, *ORDERED* to pay the amount of ₱50,000.00 to petitioners by way of nominal damages.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno JJ.,* concur.

SECOND DIVISION

[G.R. No. 193184. February 7, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL ANDRES *Y* TRINIDAD**, *accused-appellant.*

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[15] CIVIL CODE, Article 2222. The court may award nominal damages in every obligation arising from any source enumerated in Article 1157, or in every case where any property right has been invaded.

[16] *Id*. at Article 26.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURTS THEREON ARE ACCORDED RESPECT AS A RULE; REASON.— Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the CA.

2. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. In the case at bench, there is no doubt that the prosecution successfully established all the elements of illegal sale of drugs prohibited under Section 5, Article II of R.A. No. 9165. The records show that Andres was caught *in flagrante delicto* selling a dangerous drug, methamphetamine hydrochloride or *shabu*, to PO2 Talaue on March 25, 2003 in the vicinity of Poblacion, Valenzuela City.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY POLICE OFFICERS; UPHELD IN CASE AT BAR.— The Court gives full faith and credence to the testimonies of the police officers and upholds the presumption of regularity in the apprehending officers' performance of official duty. It is a settled rule that in cases involving violations

of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.

4. ID.; ID.; FRAME-UP; MUST BE PROVED WITH STRONG AND CONVINCING EVIDENCE TO PROSPER AS A DEFENSE.— Neither was Andres able to prove that he was a victim of a frame-up. The Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; NON-PRESENTATION OF THE CONFIDENTIAL INFORMANT IS NOT FATAL; REASON.— [T]he non-presentation of the confidential informant is not fatal to the prosecution's case. The presentation of an informant is not a requisite in the prosecution of drug cases. The failure to present the informant does not vitiate the prosecution's cause as his testimony is not indispensable to a successful prosecution for drug-pushing since it would be merely corroborative of, and cumulative with, that of the poseur-buyer who was presented in court and testified on the facts and circumstances of the sale and delivery of the prohibited drug.

6. ID.; ID.; PROCEDURAL REQUIREMENTS WITH RESPECT TO THE CUSTODY AND DISPOSITION OF THE CONFISCATED DRUGS, COMPLIED WITH IN CASE AT BAR.— Andres desperately argues that the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165 with respect to the custody and disposition of the confiscated drugs were not followed. Unfortunately, this argument has no leg to stand on. First, the Court agrees with the CA that Andres did not raise this as an issue in the trial court. Second, Andres only made a general statement in his appeal brief without specifically stating what procedural requirements were not complied with by the apprehending police officers. Third, the stipulations entered into by the parties during

the pre-trial conference disprove his claim that the procedural requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165 were not complied with by the police officers. The stipulations show that the chain of custody of the confiscated drugs was preserved.

APPEARANCES OF COUNSEL

*Office of the Solicitor Ge*neral for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the January 20, 2010 Decision[1] of the Court of Appeals (*CA*), which affirmed the December 3, 2007 Decision[2] of the Regional Trial Court, Branch 171, Valenzuela City (*RTC*), finding accused Michael Andres *y* Trinidad *(Andres)* guilty beyond reasonable doubt of having violated Section 5 and Section 11, Article II of Republic Act *(R.A.)* No. 9165, otherwise known as the "*Comprehensive Dangerous Drugs Act of 2002*," for the illegal sale of 0.53 gram of *shabu* and illegal possession of 0.43 gram of *shabu*. Two (2) separate informations for violation of Section 5 and Section 11, Article II of R.A. No. 9165 were filed against accused Andres. During the trial, the prosecution presented two (2) witnesses, namely: Senior Police Officer 2 Lucio Flores *(SPO2 Flores)* and Police Officer 2 Gaspar Talaue *(PO2 Talaue)*, while the defense presented Andres as its lone witness. The respective versions of the parties were summarized in the subject decision of the CA as follows:

[1] *Rollo*, pp. 2-16. Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justice Sesinando E. Villon and Associate Justice Jane Aurora C. Lantion.

[2] CA *rollo*, pp. 38-44.

In the trial that ensued, the **prosecution's evidence** showed that in the morning of 25 March 2003, PDEA's (Philippine Drug Enforcement Agency) confidential agent informed PSI Paterno C. Panaga [PSI PANAGA] that "a project he was working on was ready for entrapment operation." After which PSI Panaga called for a briefing and organized a team composed of SPO2 Alfredo Bernardo, SPO2 Lucio Flores, PO2 Adaviles, PO2 Tolivas, PO2 Talaue, and PO1 Rosales. Designating PO2 Gaspar Talaue [PO2 Talaue], as the poseur-buyer, PSI Panaga handed him the marked money. At around 11 o'clock in the morning, the team, together with the confidential agent, proceeded to Poblacion Street, Malinta, Valenzuela City. SPO2 Lucio Flores [SPO2 Flores], acting as back-up, positioned himself about five (5) to ten meters from the three while the other members of the team stood in front of the Valenzuela City Hall where they could still see the transaction.

When the appellant Michael Andres arrived, he approached PO2 Talaue and the informant. After a short conversation, accused-appellant asked the poseur-buyer how much he was going to purchase, to which PO2 Talaue replied, "*isang libo lang*." After the police officer showed accused-appellant the money, the latter took the *shabu* from his pocket and handed it to PO2 Talaue. Upon receiving one piece of transparent plastic sachet containing the suspected *shabu*, PO2 Talaue gave the pre-arranged signal and his back-up, SPO2 Flores, approached them and frisked accused-appellant. As a result of the buy-bust operation, SPO2 Flores recovered the buy-bust money consisting of two one hundred peso bills with Serial Nos. BT766967 and JF988321 and one plastic sachet of *shabu* which was marked by PO2 Talaue with GCT-03-25-03 "B." On the other hand, the *shabu*, object of the sale, was also marked by PO2 Talaue with his initials and date of the arrest with additional marking "A."

After his arrest, accused-appellant was brought to the office of the *Barangay* Chairperson to whom the alleged confiscated *shabu* was shown. When accused-appellant was brought to their headquarters, the necessary requests for dusting of ultra-violet, medical examination and drug-testing were made. As stipulated during the pre-trial conference, Forensic Chemist May Andrea A. Bonifacio conducted a qualitative examination of the seized items and, thereafter, noted the following findings:

"SPECIMEN SUBMITTED:

A (GCT-03-25-03 "A") = 0.53 gram

B (GCT-03-25-03 "B")

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Methylamphetamine hydrochloride, a dangerous drug. Xxx"

Accused-appellant, for his part, denied the charges of illegal possession and illegal sale of dangerous drugs and insisted that no buy-bust operation ever took place. He asserted that he was on his way to the terminal on board his tricycle when somebody on a vehicle motioned him to stop. When he did, four (4) male passengers in civilian clothes alighted and told him to get off his tricycle, one of whom accused him of selling illegal drugs which he denied. When about to be frisked, he asked the police officer to show him his hands but the latter retorted, "*putang ina wala akong ilalagay sa iyo*." Thus, while in handcuffs, accused-appellant and his tricycle were searched but the police officers did not find anything. Thereafter, he was dragged to the car and was forced to put two sachets in his own pocket. He was allegedly told to admit that these two sachets came from him, otherwise, he would be "salvaged" upon reaching the *barangay* outpost. He claimed that he had not been involved in any drug-related case and that he had no previous encounter with any of the four men who arrested him.

On December 3, 2007, the RTC handed down a joint decision finding Andres guilty beyond reasonable doubt of violating Section 5 and Section 11, Article II of R.A. No. 9165, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing, this Court hereby finds accused MICHAEL ANDRES *y* TRINIDAD GUILTY beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, for the illegal sale of 0.53 gram of *shabu* and illegal possession of 0.43 gram of *shabu* as charged in Criminal Case Nos. 341-V-03 and 342-V-03, respectively.

Consequently, for violating Sections 5, Article II of Republic Act No. 9165, the said accused is hereby sentenced to suffer the penalty of life imprisonment plus a fine in the amount of One Million Pesos (₱1,000,000.00).

For violating Section 11 of Article II of Republic Act No. 9165, accused Andres is further sentenced to suffer the penalty of imprisonment from twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and pay the fine in the amount of Three Hundred Thousand Pesos (₱300,000.00).

The penalties herein imposed on the accused shall be served by him successively and the period during which the said accused was placed under preventive imprisonment shall be credited in his favor.

Meanwhile, the Branch Clerk of Court of this Court is hereby directed to turn over to PDEA the evidence in these cases for proper disposition of the said office.

SO ORDERED.

The RTC gave full faith and credit to the testimonies of the arresting officers and gave no credence to the claim of Andres that he was framed-up for lack of corroborating evidence.

Aggrieved, Andres appealed the RTC decision to the CA praying for the reversal and setting aside of the judgment of conviction anchored on the following

ASSIGNMENT OF ERRORS:

I

THE TRIAL COURT ERRED IN FINDING THAT THE LAW ENFORCERS REGULARLY PERFORMED THEIR OFFICIAL DUTIES.

II

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S LACK OF EVIDENCE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

On January 20, 2010, the CA rendered the subject decision affirming *in toto* the decision of the RTC. It ruled, among others, that the testimonies of the arresting officers were convincing and the buy-bust operation was not a fabrication. The CA was of the view that the prosecution was able to prove all the elements of illegal sale and illegal possession of dangerous drugs. The

series of events unmistakably showed that the chain of custody of the subject drugs was established proving that the pieces of evidence were correctly preserved and identified. It further stated that the procedural lapses committed by the police officers were not sufficient to render void the seizure of, and custody over, the confiscated items.

Hence, this appeal.

ISSUE

WHETHER OR NOT THE COURT OF APPEALS WAS CORRECT IN RULING THAT THE ACCUSED MICHAEL ANDRES *Y* TRINIDAD IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATING SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

The Position of the Accused

Accused Andres argues that the presumption of regularity in the performance of duty by the police officers cannot apply in this case because the alleged sale of illegal drugs was not established and no buy-bust operation took place. The single testimony of PO2 Talaue proved nothing because it was not corroborated. Moreover, the confidential informant was not presented in court to corroborate his testimony. With respect to the custody and disposition of confiscated drugs, Andres claims that the procedural requirements of Section 21, paragraph 1, Article II of RA No. 9165 were not followed.

The Court's Ruling

The Court finds no merit in the appeal.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors, gross misapprehension of facts, and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during

the trial. The rule finds an even more stringent application where said findings are sustained by the CA.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[3]

In the case at bench, there is no doubt that the prosecution successfully established all the elements of illegal sale of drugs prohibited under Section 5, Article II of R.A. No. 9165.

The records show that Andres was caught *in flagrante delicto* selling a dangerous drug, methamphetamine hydrochloride or *shabu*, to PO2 Talaue on March 25, 2003 in the vicinity of Poblacion, Valenzuela City.

PO2 Talaue testified that, upon receiving a tip from a police informant about Andres' illegal drug activities, an entrapment team was immediately formed and he was assigned to act as poseur-buyer. The buy-bust team and the informant went to the target area and positioned themselves for the entrapment. Andres arrived shortly and approached PO2 Talaue for the sale of the illegal drug. After a brief conversation, the marked money held by PO2 Talaue and the small plastic sachet of crystalline substance brought by Andres exchanged hands. After the deal was made, PO2 Talaue gave the pre-arranged signal. The police back-up rushed to the scene and immediately arrested Andres. The authorities then brought Andres to the Barangay Hall of Malinta while the marked money was brought to the Philippine National Police *(PNP)* Crime Laboratory for ultra violet powder dusting.

While on the witness stand, PO2 Talaue positively identified Andres as the seller of the confiscated *shabu*. He also identified

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[3] *People v. Joseph Serrano and Anthony Serrano*, G.R. No. 179038, May 6, 2010.

the confiscated sachet which was marked, preserved as evidence and laboratory-tested to contain *shabu*.

SPO2 Flores corroborated the testimony of PO2 Talaue. He identified himself as a member of the back-up team during the entrapment operation. He narrated that immediately after the buy-bust operation, he was able to recover one small plastic sachet of crystalline substance from Andres which was marked CGT 3-25-03, and the marked money consisting of two (2) hundred peso bills with Serial Nos. BT766867 and JF988321. He corroborated the testimony of PO2 Talaue that after the arrest, Andres was brought to Camp Crame for investigation and then to the Crime Laboratory for ultraviolet powder dusting, physical/medical examination and drug testing.

The clear and positive testimony of PO2 Talaue, corroborated by that of SPO2 Flores, is more than sufficient to prove that an illegal transaction or sale of *shabu* took place. SPO2 Flores was only about five (5) meters away from PO2 Talaue and the informant. He was able to give a clear and consistent account of what transpired during the buy-bust operation especially the fact that illegal drugs were actually found in the possession of Andres after his arrest.

The Court gives full faith and credence to the testimonies of the police officers and upholds the presumption of regularity in the apprehending officers' performance of official duty. It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[4]

On the other hand, Andres failed to present clear and convincing evidence to overturn the presumption that the arresting officers regularly performed their duties. Except for his bare allegations, there is no solid proof whatsoever to support his claim that the police officers were impelled by improper motives to testify against him. Hence, the veracity of their testimonies is beyond question.

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[4] *People of the Philippines v. Elizabeth Marcelino y Reyes*, G.R. No. 189278, July 26, 2010.

Neither was Andres able to prove that he was a victim of a frame-up. The Court has invariably viewed with disfavor the defenses of denial and frame-up. Such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence.[5]

Meanwhile, the non-presentation of the confidential informant is not fatal to the prosecution's case. The presentation of an informant is not a requisite in the prosecution of drug cases. The failure to present the informant does not vitiate the prosecution's cause as his testimony is not indispensable to a successful prosecution for drug-pushing since it would be merely corroborative of, and cumulative with, that of the poseur-buyer who was presented in court and testified on the facts and circumstances of the sale and delivery of the prohibited drug.

At any rate, informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that, except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to falsely testify against the accused, or that the informant himself acted as the poseur-buyer and the only one who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness accounts.[6] In this case, the confidential informant's testimony was no longer necessary precisely because PO2 Talaue's detailed testimony was based on his personal knowledge of what actually happened during the buy-bust operation.

Aside from attacking the rule on the presumption of regularity in the performance of official duty, Andres desperately argues that the procedural requirements of Section 21, Paragraph 1 of

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[5] *People of the Philippines v. Marianito Gonzaga y Jomaya*, G.R. No. 184952, October 11, 2010.

[6] *People of the Philippines v. Marilyn Naquita y Cibulo*, G.R. No. 180511, July 28, 2008, 560 SCRA 430.

Article II of R.A. No. 9165[7] with respect to the custody and disposition of the confiscated drugs were not followed. Unfortunately, this argument has no leg to stand on.

First, the Court agrees with the CA that Andres did not raise this as an issue in the trial court.

Second, Andres only made a general statement in his appeal brief without specifically stating what procedural requirements were not complied with by the apprehending police officers.

Third, the stipulations[8] entered into by the parties during the pre-trial conference disprove his claim that the procedural

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[7] (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[8] a) The jurisdiction of the Court over the person of the accused and the offense;

b) The identity of the accused-*i.e.*, whenever any of the witnesses mention the name Michael Andres *y* Trinidad, they refer to the accused in these cases;

c) P/Sr. Insp. Paterno C. Panaga was the officer-on-case who received the evidence marked as Exhibits "B" and "C" from PO2 Gaspar C. Talaue, the poseur buyer and from SPO2 Lucio R. Flores;

d) That P/Sr. Insp. Panaga caused the preparation of letter-request for laboratory examination of the evidence, marked as Exhibit "A"; the letter-

requirements of Section 21, Paragraph 1 of Article II of R.A. No. 9165 were not complied with by the police officers. The stipulations show that the chain of custody of the confiscated drugs was preserved.

WHEREFORE, the January 20, 2010 Decision of the Court of Appeals, in C.A. G.R. CR–H.C. No. 03504, is hereby *AFFIRMED*.

SO ORDERED.

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

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request to conduct dusting of ultraviolet powder on two genuine ₱100.00 bills; letter-request to conduct test to determine presence of ultraviolet on the bills recovered; and the letter-request for drug dependency test, marked as Exhibit "I"; and letter-request to conduct physical/medical examination on accused, marked as Exhibit "J";

e) P/Sr. Insp. Panaga turned over the aforesaid letter-requests together with the evidence to PO2 Talaue for delivery to the PNP Crime Laboratory in Camp Crame, Quezon City;

f) PO2 Talaue delivered the letter-requests together with the evidence and the accused to PNP Crime Laboratory in Camp Crame, Quezon City;

g) P/Insp. May Andrea A. Bonifacio received the letter-requests and the evidence at the PNP Crime Laboratory in Camp Crame, Quezon City;

h) P/Insp. Bonifacio is a duly qualified Forensic Chemist assigned at the PNP Crime laboratory in Camp Crame, Quezon City;

i) After receiving the letter-request and the evidence, P/Insp. Bonifacio conducted the requested examination;

j) After examination, P/Insp. Bonifacio found out that the evidence turned over to her were positive for Methamphetamine Hydrochloride (*shabu*), a regulated drug;

k) P/Sr. Insp. Panaga and P/Insp. Bonifacio have no personal knowledge as to the source of evidence and the circumstances surrounding its confiscation custody and safekeeping; and

l) the existence of all the letter-request for examination.

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— May be in the form of (a) treaties that require legislative concurrence after executive ratification; or (b) executive agreements that are similar to treaties, except that they do not require legislative concurrence and are usually less formal and deal with a narrower range of subject matter than treaties. *(Id.)*

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— Interest in the matter in litigation must be actual, substantial, material, direct and immediate. *(Id.)*

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Nunc pro tunc judgment — Its object is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply non-action by the court, however erroneous the judgment may have been. (Filipinas Palmoil Processing, Inc. *vs.* Dejapa, G.R. No. 167332, Feb. 07, 2011) p. 589

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