PHILIPPINE REPORTS

VOL. 657

FEBRUARY 8, 2011 TO FEBRUARY 9, 2011

VOLUME 657

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

FEBRUARY 8, 2011 TO FEBRUARY 9, 2011

SUPREME COURT
MANILA
2014

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2014

EDNA BILOG-CAMBA
DEPUTY CLERK OF COURT & REPORTER

MA. VIRGINIA OLIVIA VILLARUZ-DUEÑAS
COURT ATTORNEY VI & CHIEF, RECORDS DIVISION

FE CRESCENCIA QUIMSON-BABOR
COURT ATTORNEY VI

MA. VICTORIA JAVIER-IGNACIO
COURT ATTORNEY V

FLOYD JONATHAN LIGOT TELAN
COURT ATTORNEY V & CHIEF, EDITORIAL DIVISION

JOSE ANTONIO CANCINO BELLO
COURT ATTORNEY V

LEUWELYN TECSON-LAT
COURT ATTORNEY IV

FLORDELIZA DELA CRUZ-EVANGELISTA
COURT ATTORNEY IV

ROSALYN ORDINARIO GUMANGAN
COURT ATTORNEY IV

FREDERICK INTE ANCIANO
COURT ATTORNEY III

MA. CHRISTINA GUZMAN CASTILLO
COURT ATTORNEY II

MARIA CORAZON RACELA MILLARES
COURT ATTORNEY II

SUPREME COURT OF THE PHILIPPINES

HON. RENATO C. CORONA Chief Justice
HON. ANTONIO T. CARPIO, Associate Justice
HON. CONCHITA CARPIO MORALES, Associate Justice
HON. PRESBITERO J. VELASCO, JR., Associate Justice
HON. ANTONIO EDUARDO B. NACHURA, Associate Justice
HON. TERESITA J. LEONARDO-DE CASTRO, Associate Justice
HON. ARTURO D. BRION, Associate Justice
HON. DIOSDADO M. PERALTA, Associate Justice
HON. LUCAS P. BERSAMIN, Associate Justice
HON. MARIANO C. DEL CASTILLO, Associate Justice
HON. ROBERTO A. ABAD, Associate Justice
HON. MARTIN S. VILLARAMA, JR., Associate Justice
HON. JOSE P. PEREZ, Associate Justice
HON. JOSE C. MENDOZA, Associate Justice
HON. MA. LOURDES P.A. SERENO, Associate Justice

ATTY. ENRIQUETA E.VIDAL, Clerk of Court En Banc
ATTY. FELIPA B. ANAMA, Deputy Clerk of Court En Banc

FIRST DIVISION

Chairperson

Hon. Renato C. Corona

Members

Hon. Presbitero J. Velasco, Jr.
Hon. Teresita J. Leonardo-De Castro
Hon. Mariano C. Del Castillo
Hon. Jose P. Perez

Division Clerk of Court

Atty. Edgar O. Aricheta

SECOND DIVISION

Chairperson

Hon. Antonio T. Carpio

Members

Hon. Antonio Eduardo B. Nachura
Hon. Diosdado M. Peralta
Hon. Roberto A. Abad
Hon. Jose C. Mendoza

Division Clerk of Court

Atty. Ludichi Y. Nunag

THIRD DIVISION

Chairperson

Hon. Conchita Carpio Morales

Members

Hon. Arturo D. Brion
Hon. Lucas P. Bersamin
Hon. Martin S. Villarama, Jr.
Hon. Maria Lourdes P.A. Sereno

Division Clerk of Court

Atty. Lucita A. Soriano

PHILIPPINE REPORTS
CONTENTS

PHILIPPINE REPORTS

Page

Page

REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. P-10-2810. February 8, 2011]
(Formerly A.M. OCA IPI No. 08-2862-P)

MANUEL P. CALAUNAN, *complainant, vs.* **REYNALDO B. MADOLARIA, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH 217, QUEZON CITY,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; AS OFFICERS OF THE COURT AND AGENTS OF THE LAW, THEY ARE BOUND TO USE PRUDENCE, DUE CARE AND DILIGENCE IN THE DISCHARGE OF THEIR OFFICIAL DUTIES; PROCEDURE IN THE IMPLEMENTATION OF THE WRIT OF EXECUTION, NOT COMPLIED WITH IN CASE AT BAR.— Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by the sheriffs' actions, they may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government. In the case at bar, respondent failed to comply with the procedure laid down in Section 10(c) of Rule 39 of the Rules of Court in the implementation of a writ of execution which requires that the sheriff must first give notice of such writ and a demand to the

judgment obligor to vacate the property within three days. Only after such period can the sheriff enforce the writ by the removal of defendant and his personal belongings. A sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39. Respondent's contention that he complied with the requirement by serving copies of the notice to vacate on November 27, 2007 upon the wife of the caretaker and the security guard of the subdivision for distribution to the homeowners of the subdivision, as shown in his Partial Return of December 20, 2007, does not lie. The requirement of a notice to vacate is based on the rudiments of justice and fair play. The aforementioned provision requires that a notice be served on the "*person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him.*" It bears noting that complainant was not a party to the case in the decision which was executed.

2. ID.; ID.; ID.; ID.; ID.; LESS GRAVE OFFENSES; SIMPLE NEGLECT OF DUTY; FAILURE TO OBSERVE THE REQUIREMENTS OF SECTION 10 (C), RULE 39 OF THE RULES OF COURT, A CASE OF; PENALTY IN CASE AT BAR.— Failure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty, which is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension. The OCA recommended that respondent be dismissed from the service as he had been previously found administratively guilty of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of the service, insubordination and loafing or frequent unauthorized absences for which he was suspended for one year without pay. Indeed, the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and shove away the undesirable ones. Absent a showing of malice and bad faith on respondent's part, however, but taking into account his above-stated previous infractions, the Court finds that respondent's suspension without pay for one year is in order.

R E S O L U T I O N

CARPIO MORALES, *J.*:

Buenavista Properties Inc. (Buenavista) entered into a contract with La Savoie Development Corporation (La Savoie) on January 15, 1997 for the development of its (Buenavista's) property in San Rafael, Bulacan into a housing subdivision and for the sale of the constructed houses thereon.

Manuel P. Calaunan (complainant) contracted to purchase a house and lot (the property) at the Buenavista Park Subdivision owned by Buenavista. Upon complainant's payment of the reservation and downpayment, he took possession of the property.

After complainant had fully paid the purchase price of the property, the Deed of Absolute Sale had not been delivered to him, as well as the title to the property. He thus filed a complaint before the Housing and Land Use Regulatory Board (HLURB) on March 18, 2005 against La Savoie and Buenavista.

The HLURB rendered judgment[1] in favor of complainant which was affirmed by the HLURB Board of Commissioners,[2] and eventually by the Office of the President,[3] the latter by Decision of May 29, 2008.

On account of a Decision of June 12, 2003[4] rendered by Branch 217 of the Quezon City Regional Trial Court (RTC) in favor of Buenavista which filed a complaint against La Savoie for termination of contract, the trial court issued a Writ of Execution on November 21, 2007. To enforce the Writ, a contingent composed of armed men in fatigue uniforms, *barangay* officials, a few civilians, a representative from Buenavista and Reynaldo B. Madaloria (respondent), Sheriff IV of Branch 217 of the

---

[1] *Rollo*, pp. 38-44.

[2] *Id*. at 46-49.

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

[4] *Id*. at 34.

RTC, repaired to the subdivision on December 5, 2007 at about 2:00 PM to evict the homeowners.

Complainant, who was not at home at that time, arrived at about 7:30 in the evening and was escorted to the subdivision clubhouse where respondent, by complainant's claim, did not identify himself as sheriff and rudely and arrogantly told him that he could not enter his house as it had been padlocked.

Still by complainant's claim, on his query, respondent, this time identifying himself as a sheriff, informed complainant that he was enforcing the writ of execution of the decision rendered by Branch 217 of the RTC in favor of Buenavista. Complainant thereupon advised respondent that he (complainant) was not a party to the case nor was he served a notice to vacate, hence, the writ of execution could not be enforced against him.

His protestations notwithstanding, complainant was not allowed to enter his house and was instead instructed to return on December 8, 2007 to retrieve his personal belongings.

In March 2008, complainant discovered that his house was already demolished, hence, spawned the present administrative case.

In compliance with the 1st Indorsement of June 20, 2008[5] of the Office of the Court Administrator (OCA), respondent submitted his Counter-Affidavit on August 8, 2008,[6] alleging that a notice to vacate was served upon the caretaker of the subdivision and its occupants after La Savoie ignored the writ of execution and failed to surrender the property. Respondent stressed that he did not cause the demolition of complainant's house.

Second Vice-Executive Judge Bernelito Fernandez (Judge Fernandez) of Branch 97, RTC of Quezon City who conducted the investigation of the complaint came up with the following findings in his Report and Recommendation dated August 12, 2009:

---

[5] *Id*. at 91.

[6] *Id*. at 64-66.

With the foregoing, it is clear that no Notice to Vacate was received by the complainant. The respondent should have more circumspect in insuring that all the parties and/or residents in the subject subdivision were properly notified of the implementation of the Writ of Execution as this will necessarily affect the lives and properties of the occupants therein. It appears that reasonable opportunity should have been given the complainant to seek remedial means to be able to peaceably vacate the premises and this includes properly serving the Notice to Vacate.

x x x x x x x x x

Clearly, nothing appears on record that respondent was responsible or even caused the alleged demolition of the house of the complainant. A close review of the records of Buenavista Properties Inc., plaintiff vs. La Savoie Development Corporation, defendant, (Civil Case No. Q-98-33682) before the Regional Trial Court, Quezon City, Br. 217, reveals nothing regarding the existence of any writ of demolition or demolition order. It can be safe to state that the respondent had no hand in the alleged demolition of the house of the complainant, if indeed there was any demolition at all.[7] (underscoring supplied)

Judge Fernandez's findings were echoed by the Quezon City Executive Judge, by Report of August 28, 2009,[8] absolving respondent from liability for the demolition of the property, but holding respondent administratively liable for his failure to serve the Notice to Vacate before evicting complainant.

The OCA, on the directive of the Court, has submitted its Report and Recommendation of April 30, 2010, the salients of which read:

x x x x x x x x x

It is clear from the foregoing provision that enforcement of a Writ of Execution that entails eviction from a contested property requires that the sheriff must first serve notice of such writ and demand of the person against whom the judgment was rendered, as well as of all other persons claiming rights under him, to vacate the subject property within three (3) days from such notice. It is only

[7] *Id*. at 219-211.

[8] *Id*. at 229-235.

when such persons resist after service of notice and demand to vacate that the sheriff can forcibly enforce the writ by bodily removing them from the premises.

Likewise evident is the requirement that, when the situation warrants, the sheriff must give notice to two (2) sets of people before eviction can be effected. First, demand to vacate must be made on ***"on the person against whom the judgment for the delivery or restitution of real property is rendered"***; and second, demand must likewise be made on ***"all persons claiming rights"*** under the person against whom the judgment is rendered.

It is apparent that complainant Calaunan belongs to the class of persons referred to in the pertinent Rule as a person claiming rights under LA SAVOIE, the judgment obligor. On the other hand, he can also be deemed as a person asserting his own rights of ownership by virtue of the judgments rendered by the proper administrative agencies uniformly declaring him the owner of the subject property. He had already paid in full for the subject property that he had been occupying for eleven (11) years, long before the Joint Venture Agreement between LA SAVOIE and BUENA VISTA was rescinded by the trial court. The only problem was that LA SAVOIE failed to issue a final deed of sale in favor of complainant Calaunan, which became the subject of a complaint the latter filed before the HLURB. Under the given circumstances, as a person who is claiming a right to the subject property, complainant Calaunan is entitled to the protection afforded by the Rules by requiring prior notice of the Writ of Execution and/or Notice to Vacate.

x x x x x x x x x

Respondent Sheriff Madolaria's unequivocal admission in his Affidavit is further bolstered by his Sheriff's Partial Return dated 20 December 2007, which states that the Notice to Vacate was served upon LA SAVOIE at San Rafael, Bulacan, through Emily Mendoza, the wife of the caretaker of the subdivision. It is also reflected therein that a copy of the Notice to Vacate was posted at the main entrance of the subdivision while other copies were distributed by the security guards posted by BUENA VISTA to the residents. It is patent, therefore, that respondent Sheriff Madolaria **did not personally serve** copies of the Notice to Vacate and Writ of Execution **upon complainant** Calaunan.

While it appears that the Notice to Vacate was received by security guards Carlos Baleno and Emily Mendoza, as evidenced by their signatures, there is no indication whatsoever that the individual residents of the subdivision indeed received copies of the Notice to Vacate. And as found by the Investigating Judge, there is no evidence to support respondent Sheriff Madolaria's assertion that the individual residents made arrangements with BUENA VISTA's representatives regarding the implementation of the Notice to Vacate.

x x x x x x x x x

Anent the allegation that respondent Sheriff Madolaria caused or was responsible for the demolition of complainant Calaunan's house, there is nothing on record that would establish to a reliable degree that respondent Sheriff Madolaria was indeed the person to blame therefore. The basic rule is that mere allegation is not evidence, and is not equivalent to proof. And in administrative proceedings, the complainant has the burden of proving with substantial evidence the allegations in the complaint. By substantial evidence is meant such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. No such substantial evidence exists in this case. Accordingly, Sheriff Madolaria cannot be held responsible for the demolition of complainant Calaunan's house. (emphasis and underscoring supplied)

The OCA thus recommends the dismissal of respondent from the service, after taking into account the previous occasions where he was administratively charged and accordingly penalized.[9] The OCA explains:

In imposing the proper penalty, the Court takes cognizance of the fact that this is not the first time that respondent Sheriff Madolaria has been charged administratively. In fact, as recently as 16 April 2008, he was meted a penalty of SUSPENSION for one (1) year in A.M. No. P-06-2142 for a string of infractions. In that case, respondent Sheriff Madolaria was found guilty of **inefficiency** and incompetence in the performance of official duties and **conduct prejudicial to the best interest of the service**, which are grave offenses, each of which carry the penalty of suspension from six (6) months and one (1) day to one (1) year even for the first offense. He was likewise found guilty of **loafing or frequent unauthorized absences** from

[9] *Id*. at 296-323.

duty during regular working hours, also a grave offense, which is punishable by suspension from office for six (6) months and one (1) day to one (1) year for the first offense. Finally, he was found guilty of **insubordination**, a less grave offense, which carries the penalty of suspension from one (1) month and one (1) day to six (6) months for the first offenses and dismissal for the second.

It bears mentioning that the Court issued a stern warning to respondent Sheriff Madolaria that the commission of the same or similar acts in the future will be dealt with more severely.[10] As concluded earlier, he is guilty of simple neglect of duty for failing to follow the procedure laid down in Section 10(c), Rule 39 of the 1997 Rules of Civil Procedure, which is a less grave offense. Considering that he was previously found guilty of insubordination, also a less grave offense which is similar and in the same classification as simple neglect of duty, this present conviction shall be treated as a second offense which is punishable by dismissal. (emphasis, underscoring and capitalization supplied)

The OCA's recommendation is well taken.

Sheriffs, as officers of the court and agents of the law, are bound to use prudence, due care, and diligence in the discharge of their official duties. Where rights of individuals are jeopardized by the sheriffs' actions, they may be properly fined, suspended, or dismissed from office by virtue of this Court's administrative supervision over the judicial branch of the government.[11]

In the case at bar, respondent failed to comply with the procedure laid down in Section 10(c) of Rule 39 of the Rules of Court in the implementation of a writ of execution[12] which requires that the sheriff must first give notice of such writ and

---

[10] *Grutas v. Madolaria*, A.M. No. P-06-2142, 551 SCRA 379 (2008).

[11] *Yaeso v. Enolpe, et al.*, A.M. No. P-08-2584 November 15, 2010 citing *Metro Manila Transit Corp. v. Santiago*, 489 Phil. 1, 10 (2005); *V.C. Ponce Co., Inc. v. Eduarte*, 397 Phil. 498, 514 (2000).

[12] "Sec. 10(C)Delivery or restitution of real property. – The officer shall demand of the person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him to peaceably vacate the property within three (3) working days, and restore possession thereof to the judgment obligee; otherwise, the officer shall oust all such persons therefrom with the assistance, if necessary, of appropriate peace

a demand to the judgment obligor to vacate the property within three days. Only after such period can the sheriff enforce the writ by the removal of defendant and his personal belongings.[13]

A sheriff who enforces the writ without the required notice or before the expiration of the three-day period runs afoul with Section 10(c) of Rule 39.[14] Respondent's contention that he complied with the requirement by serving copies of the notice to vacate on November 27, 2007 upon the wife of the caretaker and the security guard of the subdivision[15] for distribution to the homeowners of the subdivision, as shown in his Partial Return of December 20, 2007,[16] does not lie.

The requirement of a notice to vacate is based on the rudiments of justice and fair play. The aforementioned provision requires that a notice be served on the "*person against whom the judgment for the delivery or restitution of real property is rendered and all persons claiming rights under him.*"[17] It bears noting that complainant was not a party to the case in the decision which was executed.

Respecting complainant's allegation that respondent is responsible for the demolition of his house, there is indeed no proof thereof.

Failure to observe the requirements of Section 10(c), Rule 39 of the Rules of Court constitutes simple neglect of duty,[18] which

---

officers, and employing such means as may be reasonably necessary to retake possession, and place the judgment obligee in possession of such property. Any costs, damages, rents or profits awarded by the judgment shall be satisfied in the same manner as a judgment for money."

[13] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52 citing *Tan v. Dael*, 390 Phil. 841, 845.

[14] *Ibid*.

[15] Records, p. 71.

[16] *Id*. at 74-75.

[17] Sec. 10(c), Rule 39, RULES OF COURT.

[18] *Mendoza v. Doroni*, A.M. No. P-04-1872, January 31, 2006, 481 SCRA 41, 52.

is a less grave offense punishable by one (1) month and one (1) day to six (6) months suspension.[19]

The OCA recommended that respondent be dismissed from the service as he had been previously found administratively guilty[20] of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of the service, insubordination and loafing or frequent unauthorized absences[21] for which he was suspended for one year without pay.

Indeed, the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and shove away the undesirable ones. Absent a showing of malice and bad faith on respondent's part, however, but taking into account his above-stated previous infractions, the Court finds that respondent's suspension without pay for one year is in order.

WHEREFORE, respondent Sheriff Reynaldo B. Madolaria of Branch 217 of the Regional Trial Court of Quezon City is *SUSPENDED* for One Year without pay, and with a *WARNING* that a repetition of the same or similar offense shall be dealt with more severely.

SO ORDERED.

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

Carpio, J., no part. Former law firm counsel in related case.

---

[19] Section 52(b)(1), Revised Uniform Rules on Administrative Cases in the Civil Service.

[20] *Grutas v. Madolaria*, 551 SCRA 379, A.M. No. P-06-2142, April 16, 2008.

[21] **WHEREFORE**, Reynaldo B. Madolaria, Deputy Sheriff, Regional Trial Court, Branch 217, Quezon City, is found **GUILTY** of inefficiency and incompetence in the performance of official duties, conduct prejudicial to the best interest of service, insubordination, and loafing or frequent unauthorized absences from duty during regular working hours and is **SUSPENDED** for one (1) year without pay, with a **STERN WARNING** that the commission of the same or similar acts shall be dealt with more severely.

EN BANC

[A.M. No. 10-7-17-SC. February 8, 2011]

IN THE MATTER OF THE CHARGES OF PLAGIARISM, *ETC.*, AGAINST ASSOCIATE JUSTICE MARIANO C. DEL CASTILLO.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; DECISION-WRITING; PLAGIARISM; DEFINED.—** Plagiarism, a term not defined by statute, has a popular or common definition. To plagiarize, says Webster, is "to steal and pass off as one's own" the ideas or words of another. Stealing implies malicious taking. Black's Law Dictionary, the world's leading English law dictionary quoted by the Court in its decision, defines plagiarism as the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own." The presentation of another person's ideas as one's own must be deliberate or premeditated—a taking with ill intent.

2. **POLITICAL LAW; EDUCATIONAL INSTITUTIONS; ORIGINAL SCHOLARSHIP; PLAGIARISM; APPLICATION; NORMS ASSUMED BY EDUCATIONAL INSTITUTIONS; ILLUSTRATED.—** Certain educational institutions of course assume different norms in its application. For instance, the Loyola Schools Code of Academic Integrity ordains that "plagiarism is identified not through intent but through the act itself. The objective act of falsely attributing to one's self what is not one's work, whether intentional or out of neglect, is sufficient to conclude that plagiarism has occurred. Students who plead ignorance or appeal to lack of malice are not excused." x x x But the policy adopted by schools of disregarding the element of malicious intent found in dictionaries is evidently more in the nature of establishing what evidence is sufficient to prove the commission of such dishonest conduct than in rewriting the meaning of plagiarism. Since it would be easy enough for a student to plead ignorance or lack of malice even as he has copied the work of others, certain schools have adopted the policy of treating the mere

presence of such copied work in his paper sufficient objective evidence of plagiarism. Surely, however, if on its face the student's work shows as a whole that he has but committed an obvious mistake or a clerical error in one of hundreds of citations in his thesis, the school will not be so unreasonable as to cancel his diploma.

3. REMEDIAL LAW; COURTS; JUDGMENTS; JUSTICE, NOT ORIGINALITY, FORM, AND STYLE, IS THE OBJECT OF EVERY DECISION OF A COURT OF LAW.— [D]ecisions of courts are not written to earn merit, accolade, or prize as an original piece of work or art. Deciding disputes is a service rendered by the government for the public good. Judges issue decisions to resolve everyday conflicts involving people of flesh and blood who ache for speedy justice or juridical beings which have rights and obligations in law that need to be protected. The interest of society in written decisions is not that they are originally crafted but that they are fair and correct in the context of the particular disputes involved. Justice, not originality, form, and style, is the object of every decision of a court of law. There is a basic reason for individual judges of whatever level of courts, including the Supreme Court, not to use original or unique language when reinstating the laws involved in the cases they decide. Their duty is to apply the laws as these are written.

4. ID.; ID.; ID.; *STARE DECISIS*; ELUCIDATED.— [U]nder the doctrine of *stare decisis*, judicial interpretations of such laws as are applied to specific situations. Under this doctrine, Courts are "to stand by precedent and not to disturb settled point." Once the Court has "laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties or property are the same."

5. JUDICIAL ETHICS; JUDGES; DISHONESTY; USE OF LEGAL WRITINGS REGARDED AS BELONGING TO THE PUBLIC DOMAIN FOR THEORIES OR SOLUTIONS IN CASES, NOT A CASE OF.— And because judicial precedents are not always clearly delineated, they are quite often entangled in apparent inconsistencies or even in contradictions, prompting experts in the law to build up regarding such matters a large

body of commentaries or annotations that, in themselves, often become part of legal writings upon which lawyers and judges draw materials for their theories or solutions in particular cases. And, because of the need to be precise and correct, judges and practitioners alike, by practice and tradition, usually lift passages from such precedents and writings, at times omitting, without malicious intent, attributions to the originators. Is this dishonest? No. Duncan Webb, writing for the International Bar Association puts it succinctly. When practicing lawyers (which include judges) write about the law, they effectively place their ideas, their language, and their work in the public domain, to be affirmed, adopted, criticized, or rejected. Being in the public domain, other lawyers can thus freely use these without fear of committing some wrong or incurring some liability. x x x The implicit right of judges to use legal materials regarded as belonging to the public domain is not unique to the Philippines. As Joyce C. George, whom Justice Maria Lourdes Sereno cites in her dissenting opinion, observed in her Judicial Opinion Writing Handbook: **A judge writing to resolve a dispute, whether trial or appellate, is exempted from a charge of plagiarism even if ideas, words or phrases from a law review article, novel thoughts published in a legal periodical or language from a party's brief are used without giving attribution. Thus judges are free to use whatever sources they deem appropriate to resolve the matter before them, without fear of reprisal. This exemption applies to judicial writings intended to decide cases for two reasons: the judge is not writing a literary work and, more importantly, the purpose of the writing is to resolve a dispute. As a result, judges adjudicating cases are not subject to a claim of legal plagiarism.**

6. ID.; ID.; ID.; PLAGIARISM; NOT COMMITTED IN CASE AT BAR.— In *Vinuya*, Justice Del Castillo examined and summarized the facts as seen by the opposing sides in a way that no one has ever done. He identified and formulated the core of the issues that the parties raised. And when he had done this, he discussed the state of the law relevant to their resolution. It was here that he drew materials from various sources, including the three foreign authors cited in the charges against him. He compared the divergent views these present as they developed in history. He then explained why the Court

must reject some views in light of the peculiar facts of the case and applied those that suit such facts. Finally, he drew from his discussions of the facts and the law the right solution to the dispute in the case. On the whole, his work was original. He had but done an honest work. The Court will not, therefore, consistent with established practice in the Philippines and elsewhere, dare permit the filing of actions to annul the decisions promulgated by its judges or expose them to charges of plagiarism for honest work done.

BRION, *J., separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; MEMBERS OF THE SUPREME COURT MAY BE REMOVED FROM OFFICE THROUGH IMPEACHMENT; GROUNDS.— A given in the discipline of Members of the Supreme Court is that they can only be "removed from office" through impeachment, as provided under Article XI of the Constitution, on the specified grounds of *culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of the public trust*. The purpose of impeachment and the constitutional interest sought is to protect the people and the State from official delinquencies and other malfeasances.

2. ID.; ID.; ID.; ID.; NOT INTENDED BY THE CONSTITUTION TO BE THE TOTALITY OF THE ADMINISTRATIVE ACTIONS OR REMEDIES THAT THE PUBLIC OR THE COURT MAY TAKE AGAINST AN ERRING JUSTICE OF THE COURT; DISCUSSED.— The Constitution, however, is not a single-purpose document that focuses on one interest alone to the exclusion of related interests; impeachment was never intended by the Constitution to be the totality of the administrative actions or remedies that the public or the Court may take against an erring Justice of the Court. Other related constitutional interests exist touching on other facets of the Judiciary and public accountability. They are, by themselves, equally compelling and demanding of recognition. Among the compelling interests that the Constitution zealously guards is judicial independence because it is basic to the meaning and purposes of the Judiciary. This interest permeates the provisions of Article VIII of the Constitution. Another interest to consider

is the need for judicial integrity – a term not expressly mentioned in the Article on the Judiciary (Article VIII), but is a basic concept found in Article XI (on Accountability of Public Officers) of the Constitution. It is important as this constitutional interest underlies the independent and responsible Judiciary that Article VIII establishes and protects. To be exact, it complements judicial independence as integrity and independence affect and support one another; only a Judiciary with integrity can be a truly independent Judiciary. Judicial integrity, too, directly relates to public trust and accountability that the Constitution seeks in the strongest terms. The same Article XI contains the impeachment provisions that provide for the removal of Justices of the Supreme Court. Notably, a common thread that runs through all the grounds for impeachment is the lack of integrity of the official impeached on these grounds. Still another unavoidable consideration on impeachment and its limited grounds is that it cannot, by itself, suffice to protect the people and foster the public accountability that the Constitution speaks of. While it is a powerful weapon in the arsenal of public accountability and integrity, it is not a complete weapon that can address and fully achieve its protective purposes.

3. ID.; ID.; JUDICIAL DEPARTMENT; PROTECTION OF JUDICIAL INTEGRITY; POWERS OF THE SUPREME COURT IN RELATION THERETO.— To ensure the maintenance and enhancement of judicial integrity, the Constitution has given the Judiciary, mainly through the Supreme Court, a variety of powers. These powers necessarily begin with the power to admit and to discipline members of the bar who are officers of the courts and who have the broadest frontline interaction with the courts and with the public. Courts in general have the power to cite for contempt that proceeds, not only from the need to maintain orderly procedures, but also from the need to protect judicial integrity in the course of the courts' exercise of judicial power. The Supreme Court has the power to discipline and remove judges of lower courts. In this role, the Court hears administrative disciplinary cases against lower court judges for purposes of redress against erring judges and, more importantly, **to "[preserve] the integrity of the judicial system and public confidence in the system** and x x x [to safeguard] the bench and the public from those who are unfit." As concrete legal basis, the Supreme Court is

expressly granted the general power of administrative supervision over *all courts and the personnel thereof.* By its plain terms, the power extends not only to the authority to supervise and discipline lower court judges but to exercise the same powers over the Members of the Court itself. This is the unavoidable meaning of this grant of authority if its main rationale – *i.e.*, to preserve judicial integrity – is to be given full effect. The Supreme Court must ensure that the integrity of the whole Judiciary, *its own Members included,* is maintained as any taint on any part of the Judiciary necessarily taints the whole.

4. ID.; ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; IMPEACHMENT; GROUNDS THEREOF ARE LIMITED; MISCONDUCT AND MISDEMEANORS OF LESSER GRAVITY THAN THE DEFINED IMPEACHABLE OFFENSES ARE NOT INCLUDED.— That an impeachment partakes of the nature of an administrative disciplinary proceeding confined to the defined and limited grounds of "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust" cannot be disputed. However, it cannot likewise be disputed that these grounds, as defined, refer only to those serious "offenses that strike at the very heart of the life of the nation." Thus, for "betrayal of public trust" to be a ground for impeachment, the "manner of commission must be of the same severity as 'treason' and 'bribery.'" With respect to members of the High Court, impeachment is considered "as a response to **serious** misuse of judicial power" no less equivalent to treason or bribery. Directly implied from these established impeachment principles is that "removal from office (the imposable penalty upon impeachment and conviction) is not the price exacted for every incident of judicial misconduct." Otherwise stated, that impeachment administratively addresses only serious offenses committed by impeachable officers cannot imply that the Constitution condones misdemeanors and misconduct that are not of equal gravity. For, side by side with the constitutional provision on impeachment is the constitutional policy that "public office is a public trust" and that "public officers and employees must, at all times, be accountable to the people." Even impeachable officials, despite the nature and level of their positions, must be administratively

accountable for misconduct and misdemeanors that are of lesser gravity than the defined impeachable offenses. Only this approach and reconciled reading with the provision on impeachment can give full effect to the constitutional policy of accountability. If this were not the case, then the public would be left with no effective administrative recourse against Supreme Court Justices committing less than grave misconduct.

5. ID.; ID.; ID.; ID.; ADVERSE EFFECTS OF EXPANSIVE VIEW OF IMPEACHMENT GROUNDS.— It needs no elaborate demonstration to show that the threat of impeachment for every perceived misconduct or misdemeanor would open Justices of the Court to harrassment. A naughty effect – if administrative redress can only be secured from Congress to the exclusion of this Court under an expanded definition of impeachment grounds – is to encourage every litigant with a perceived grievance against a Justice of this Court to run to his congressman for the filing of an impeachment complaint. Undoubtedly, this kind of scenario will be a continuing threat to judges and justices, with consequential adverse effects on the Judiciary, on inter-branch relationship, and on the respect the public may give the Judiciary, the Legislature, and even of the government itself. Worse, this kind of scenario may ultimately trivialize the impeachment process and is thus best avoided. An expansive interpretation of the grounds for impeachment must also affect Congress which acts on impeachment complaints but whose main task under our structure of government is to legislate, not to police the Supreme Court and other impeachable officers. To say the least, a deluge of impeachment complaints may prove to be impractical for Congress because impeachment is both an arduous and a time consumming process that will surely divert congressional time and other resources from the principal function of lawmaking.

6. ID.; ID.; ID.; ID.; THE SOLE MEANS OF REMOVAL BUT NOT THE SOLE MEANS OF DISCIPLINING MEMBERS OF THE SUPREME COURT; AUTHORITY OF THE COURT TO HEAR THE PRESENT ADMINISTRATIVE DISCIPLINARY CASE, UPHELD.— What the impeachment provisions of the Constitution guarantee is simply the **right to be removed from office only through the process of impeachment and not by any other means; it does not**

preclude the imposition of disciplinary sanctions short of removal on the impeachable official. Impeachment is the sole means of removal, but it is certainly not the sole means of disciplining Members of the Supreme Court or, for that matter, public officials removable by impeachment. Accordingly, I believe that the Court has the authority to hear the present administrative disciplinary case against Associate Justice Mariano del Castillo; in case of a finding of misconduct, it can impose penalties that are not the functional equivalent of removal or dismissal from service. If, in the exercise of its prerogative as interpreter of the Constitution, it determines that an act complained of falls within the defined grounds for impeachment, then the Court should say so and forthwith forward its recommendations to Congress as the body constitutionally mandated to act in impeachment cases.

7. JUDICIAL ETHICS; JUDGES; JUDICIAL DECISION-WRITING; PLAGIARISM; MALICIOUS INTENT AS A NECESSARY ELEMENT FOR JUDICIAL PLAGIARISM, EXPLAINED.— Why we deemed malicious intent as a necessary element for judicial plagiarism can be explained by our repeated pronouncement that: not every error or mistake committed by judges in the performance of their official duties renders them administratively liable. **In the absence of fraud, dishonesty or deliberate intent to do an injustice, acts done in their official capacity, even though erroneous, do not always constitute misconduct.** Only errors that are tainted with fraud, corruption or malice may be the subject of disciplinary action. For administrative liability to attach, respondent must be shown to have been moved by bad faith, dishonesty, hatred or some other motive. Indeed, judges may not be held administratively liable for any of their official acts, no matter how erroneous, as long as they acted in good faith.

8. ID.; ID.; ID.; ID.; DISTINGUISHED FROM COPYRIGHT INFRINGEMENT.— The term plagiarism does not have a precise statutory definition as it is not a matter covered by present Philippine statutes. What the Intellectual Property Code (Republic Act 8283) defines and punishes is "copyright infringement." However, these terms are not legally interchangeable. Laurie Stearns, copyright lawyer and author of the article "Copy Wrong: Plagiarism, Process, Property,

and the Law" aptly observes the distinctions between the two in this wise: Plagiarism is not necessarily copyright infringement, nor is copyright infringement necessarily plagiarism. The two concepts diverge with respect to three main aspects of the offense: **copying, attribution and intent**. In some ways the concept of plagiarism broader than infringement, in that it can include the copying of ideas or of expression not protected by copyright, that would not constitute infringement and it can include copying of small amounts of material that would be disregarded under copyright law. In other ways the concept of infringement is broader, in that it can include both properly attributed copying and unintentional copying that would be excused from being called plagiarism. The divergence between plagiarism's popular definition and copyright's statutory framework suggests an essential contradiction between what is at stake in plagiarism – the creative process – and what is at stake in copyright infringement – the creative result.

9. ID.; ID.; ID.; ID.; COURT'S INTERPRETATION THEREOF IS LIMITED TO ITS CONCEPT AS AN ETHICAL VIOLATION OF MEMBERS OF THE JUDICIARY, NOT A COPYRIGHT VIOLATION UNDER THE INTELLECTUAL PROPERY CODE.— [T]he matter before the Court is Justice del Castillo's alleged plagiarism or failure to make attributions as an ethical violation, not a copyright violation under the Intellectual Property Code. Given these distinctions, I see no reason to quibble over the definition of plagiarism – a term that, in the absence of any statutory limitation, the Court can define and interpret for purposes of its administrative authority over all courts and the personnel thereof. From the point of view of ethical rules, what are important are the intent in undertaking an act and the concepts of integrity, propriety, honesty and impartiality for purposes of dispensing justice by an independent Judiciary. It is in this sense, and in light of the nature of the present case as an administrative disciplinary charge against a Member of this Court, that the pronouncement of this Court on plagiarism and on the merits of the ethical charge should be understood.

ABAD, *J., separate concurring opinion:*

1. JUDICIAL ETHICS; JUDGES; DISCIPLINE OF JUDGES; THE SUPREME COURT HAS THE ADMINISTRATIVE AUTHORITY TO INVESTIGATE AND DISCIPLINE ITS MEMBERS FOR OFFICIAL INFRACTIONS THAT DO NOT CONSTITUTE IMPEACHABLE OFFENSES.— [T]he Supreme Court has the administrative authority to investigate and discipline its members for official infractions that do not constitute impeachable offenses. This is a consequence of the Court's Constitutional power of "administrative supervision over all courts and the personnel thereof." When the Court decided earlier the plagiarism charge filed against Justice Mariano Del Castillo by the petitioners in *Vinuya*, it was under a belief that "plagiarism," which is not even a statutory offense, is an administrative infraction. The petitioners in that case did not themselves object to the proceedings conducted by the Court's Ethics Committee.

2. ID.; ID.; JUDICIAL DECISION-WRITING; IN DECIDING FAIRLY AND HONESTLY THE DISPUTES BEFORE THEM, COURTS USE PRECEDENTS AND LEGAL LITERATURE THAT BELONG TO THE PUBLIC DOMAIN.— Justice Sereno castigates the majority in the Court for lowering the standards for judicial scholarship, negating the educative and moral directional value in the writing and publishing of decisions, bending over backwards to deny the objective existence of gross plagiarism, and condoning dishonesty in the exercise of a function central to the role of the courts. But our courts are in the business, not of "judicial scholarship," but of deciding fairly and honestly the disputes before them, using precedents and legal literature that, according to American scholars, belong to the public domain. If this is not honest work for a judge, I do not know what is.

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; CONGRESS IS THE SOLE DISCIPLINING AUTHORITY OF ALL IMPEACHABLE OFFICERS, INCLUDING JUSTICES OF THE SUPREME COURT.— Under the Constitution, the ***sole*** disciplining

authority of all impeachable officers, including Justices of this Court, is Congress. Section 3(1), Article XI of the Constitution provides that, "The House of Representatives shall have the **exclusive power** to initiate all cases of impeachment." Likewise, Section 3(6) of the same Article provides that, "The Senate shall have the **sole power** to try and decide cases of impeachment." These provisions constitute Congress as the **exclusive authority to discipline all impeachable officers** for any impeachable offense, including "betrayal of public trust," a "catchall phrase" to cover any misconduct involving breach of public trust by an impeachable officer.

2. ID.; ID.; ID.; ID.; IMPEACHMENT BY CONGRESS TAKES THE PLACE OF ADMINISTRATIVE DISCIPLINARY PROCEEDINGS AGAINST IMPEACHABLE OFFICERS AS THERE IS NO OTHER AUTHORITY THAT CAN ADMINISTRATIVELY DISCIPLINE IMPEACHABLE OFFICERS.— While impeachment is often described as a political process, it also functions as the ***equivalent*** of administrative disciplinary proceedings against impeachable officers. Impeachable officers are not subject to administrative disciplinary proceedings either by the Executive or Judicial branch, in the same manner that non-impeachable officers are subject. Thus, **impeachment by Congress takes the place of administrative disciplinary proceedings against impeachable officers *as there is no other authority that can administratively discipline impeachable officers***. Removal from office and disqualification to hold public office, which is the penalty for an impeachable offense, is also the most severe penalty that can be imposed in administrative disciplinary proceedings.

3. ID.; ID.; ID.; IMPEACHMENT; NOT A CRIMINAL PROCEEDING; ELUCIDATED.— Impeachment is not a criminal proceeding because conviction in an impeachment complaint is not a bar to criminal prosecution for the same act. An impeachable offense, like betrayal of public trust, may not even constitute a criminal act. Like in an administrative proceeding, proof beyond reasonable doubt is not required for conviction in impeachment. If an impeachable officer is charged of a **crime**, as distinguished from an administrative charge, the proper court has jurisdiction to try such impeachable officer

because the proceeding is criminal, not administrative. However, neither the conviction nor acquittal of such impeachable officer in the criminal case constitutes a bar to his subsequent impeachment by Congress. There is no double jeopardy because impeachment is not a criminal proceeding.

4. ID.; ID.; ID.; ID.; PLAGIARISM IS A BETRAYAL OF PUBLIC TRUST; IN WRITING JUDICIAL DECISIONS A JUDGE IS LIABLE FOR PLAGIARISM ONLY IF THE COPYING VIOLATES THE MORAL RIGHTS OF THE AUTHOR UNDER THE LAW ON COPYRIGHT.— Only Congress, as the **exclusive disciplining authority** of all impeachable officers, can decide in a non-criminal, non-civil proceeding whether a sitting Justice of this Court has committed plagiarism. Plagiarism is a betrayal of public trust because, as the majority puts it, to plagiarize is "'to steal and pass off as one's own' the ideas of another." However, ***in writing judicial decisions*** a judge is liable for plagiarism only if the copying violates the moral rights of the author under the Law on Copyright.

5. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE COMPLAINT AGAINST A SITTING JUSTICE; THE SUPREME COURT MAY CONDUCT AN INVESTIGATION THEREON BUT HAS NO POWER TO DECIDE ON THE GUILT OR INNOCENCE OF THE SITTING JUSTICE; REASON.— This Court may conduct an investigation of an administrative complaint against a sitting Justice to determine if there is basis in ***recommending*** to the House of Representatives the initiation of an impeachment complaint against the sitting Justice. This Court may also conduct an investigation of an administrative complaint against a sitting Justice to determine if the complaint constitutes contempt of this Court. **However, this Court has no power to decide on the guilt or innocence of a sitting Justice in the administrative complaint because such act is a usurpation of the exclusive disciplinary power of Congress over impeachable officers under the Constitution**. Any decision by this Court in an administrative case clearing a sitting Justice of an impeachable offense is void for want of jurisdiction and for violation of an express provision of the Constitution. Such a decision will put this Court on a collision course with Congress if subsequently

an impeachment complaint for plagiarism is filed with Congress against the sitting Justice.

6. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; DISCIPLINARY AUTHORITY OF THE SUPREME COURT OVER COURTS AND THE PERSONNEL THEREOF DOES NOT INCLUDE SUPREME COURT JUSTICES; THE SUPREME COURT *EN BANC* HAS NO POWER TO DISCIPLINE ITS OWN MEMBERS.— [T]he **disciplinary authority** of the Supreme Court **over judges** is expressly governed by another provision, that is, Section 11, Article VIII of the Constitution. Section 11 provides: Section 11. xxx The Supreme Court *en banc* shall have the **power to discipline judges of lower courts**, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon. Clearly, the disciplinary authority of the Supreme Court over judges is found in Section 11 of Article VIII. However, this disciplinary authority is expressly limited to lower court judges, and does not incude Supreme Court Justices, precisely because the Constitution expressly vests exclusively on Congress the power to discipline Supreme Court Justices. By excluding Supreme Court Justices, Section 11 **withholds** from the Supreme Court *en banc* the power to discipline its own members.

7. JUDICIAL ETHICS; JUDGES; JUDICIAL DECISION-WRITING; COPYING FROM WORKS OF THE GOVERNMENT; A JUDGE SHOULD MAKE THE PROPER ATTRIBUTION IN COPYING PASSAGES FROM ANY JUDICIAL DECISION, STATUTE, REGULATION OR OTHER WORKS OF THE GOVERNMENT.— In writing judicial decisions, a judge should make the proper attribution in copying passages from any **judicial decision, statute, regulation, or other Works of the Government**. The ***Manual of Judicial Writing*** adopted by this Court provides how such attribution should be made.

8. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES); LAW ON COPYRIGHT; WORKS OF THE GOVERNMENT; NOT SUBJECT TO COPYRIGHT; FAILURE TO MAKE THE PROPER ATTRIBUTION

OF A WORK OF THE GOVERNMENT IS NOT ACTIONABLE.— The law expressly provides that Works of the Government are not subject to copyright. This means that there is neither a legal right by anyone to demand attribution, nor any legal obligation from anyone to make an attribution, when Works of the Government are copied. The failure to make the proper attribution of a Work of the Government is not actionable but is merely a case of sloppy writing. Clearly, there is no **legal** obligation, by a judge or by any person, to make an attribution when copying Works of the Government.

9. JUDICIAL ETHICS; JUDGES; CODE OF JUDICIAL CONDUCT; MANDATES JUDGES TO PERFORM OFFICIAL DUTIES HONESTLY; MISQUOTING OR TWISTING, WITH OR WITHOUT ATTRIBUTION, WORKS OF THE GOVERNMENT IS ACTIONABLE.— [M]isquoting or twisting, with or without attribution, any judicial decision, statute, regulation or other Works of the Government in judicial writing, **if done to mislead the parties or the public**, is actionable. Under Canon 3 of the Code of Judicial Conduct, a judge "**should perform official duties honestly**." Rule 3.01 and Rule 3.02 of the Code provide that a judge must be faithful to the law, maintain professional competence, and strive diligently to ascertain the facts and the applicable law. The foregoing applies to any non-copyrightable work, and any work in the public domain, whether local or foreign.

10. ID.; ID.; JUDICIAL DECISION-WRITING; COPYING FROM PLEADINGS OF PARTIES; A JUDGE MAY COPY PASSAGES FROM THE PLEADINGS OF THE PARTIES WITH PROPER ATTRIBUTION TO THE AUTHOR THEREOF; FAILURE TO MAKE THE PROPER ATTRIBUTION IS NOT ACTIONABLE.— In writing judicial decisions, the judge may copy passages from the pleadings of the parties with proper attribution to the author of the pleading. However, the failure to make the proper attribution is not actionable. Pleadings are submitted to the court precisely so that the ***pleas***, or the arguments written on the pleadings, are accepted by the judge. **There is an implied offer by the pleader that the judge may make any use of the pleadings in resolving the case**. If the judge accepts the pleader's arguments, he may copy such arguments to expedite the resolution of the case. In writing

his decision, the judge does not claim as his own the arguments he adopts from the pleadings of the parties. Besides, the legal arguments in the pleadings are in most cases merely reiterations of judicial precedents, which are Works of the Government.

11. ID.; ID.; CODE OF JUDICIAL CONDUCT; MANDATES JUDGES TO PERFORM OFFICIAL DUTIES HONESTLY; MISQUOTING OR TWISTING, WITH OR WITHOUT ATTRIBUTION, ANY PASSAGE FROM THE PLEADINGS OF THE PARTIES, IF DONE TO MISLEAD THE PARTIES OR THE PUBLIC, IS ACTIONABLE.— [M]isquoting or twisting, with or without attribution, any passage from the pleadings of the parties, **if done to mislead the parties or the public**, is actionable. Under Canon 3 of the Code of Judicial Conduct, a judge "should perform official duties honestly." Rule 3.01 and Rule 3.02 of the Code provide that a judge must be faithful to the law, maintain professional competence, and strive diligently to ascertain the facts and the applicable law.

12. ID.; ID.; JUDICIAL DECISION-WRITING; COPYING FROM TEXTBOOKS, JOURNALS AND THE OTHER NON-GOVERNMENT WORKS; THE JUDGE MAY COPY PASSAGES FROM TEXTBOOKS, JOURNAL AND OTHER NON-GOVERNMENT WORKS WITH PROPER ATTRIBUTION; WHETHER THE FAILURE TO MAKE THE PROPER ATTRIBUTION IS ACTIONABLE OR NOT DEPENDS ON THE NATURE OF THE PASSAGES COPIED.— In writing judicial decisions, the judge may copy passages from textbooks, journals and other non-government works with proper attribution. However, whether the failure to make the proper attribution is actionable or not depends on the nature of the passages copied. If the work copied without proper attribution is copyrighted, the failure to make such attribution violates Section 193 of the Intellectual Property Code x x x. Section 193 requires anyone, including a judge writing a judicial decision, to make the proper attribution to show respect for the moral rights of the author. Thus, while the author has no right to demand economic compensation from the judge or the government for the unlimited and public use of his work in a judicial decision, the law requires that "**the authorship of the works be attributed to him x x x in connection with the public use of his work**." In short, the

judge is legally obligated to make the proper attribution because Section 193 protects the moral rights of the author. The moral rights under Section 193 of the Intellectual Property Code arise only if the work of an author is copyrighted. If the work is not copyrighted, then there are no moral rights to the work. If the passages in a textbook, journal article, or other non-work of the government are merely quotations from Works of the Government, like sentences or paragraphs taken from judicial decisions, then such passages if copied by a judge do not require attribution because such passages, **by themselves**, are Works of the Government. The same is true for works in the public domain. However, the arrangement or presentation of passages copied from Works of the Government may be subject to copyright, and a judge copying such arrangement or presentation, together with the passages, may have to make the proper attribution. If the passages are those of the author himself, and not copied from Works of the Government or from works in the public domain, then clearly there is a legal obligation on the part of the judge to make the proper attribution. Failure by the judge to make such attribution violates not only Section 193 of the Intellectual Property Code, but also Canon 3 of the Code of Judicial Conduct.

13. MERCANTILE LAW; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES); LAW ON COPYRIGHT; MORAL RIGHTS OF AN AUTHOR; TWO ESSENTIAL ELEMENTS; DEFINED.— Two essential elements of an author's moral rights are the right to attribution and the right to integrity. The right to attribution or paternity is the right of the author to be recognized as the originator or father of his work, a right expressly recognized in Section 193.1 of the Intellectual Property Code. The right to integrity is the right of the author to prevent any distortion or misrepresentation of his work, a right expressly recognized in Section 193.3 of the Code.

14. JUDICIAL ETHICS; JUDGES; JUDICIAL DECISION-WRITING; MOST IMPORTANT OFFICIAL DUTY OF A JUDGE; WHEN A JUDGE RESPECTS THE RIGHT TO ATTRIBUTION AND INTEGRITY OF AN AUTHOR, THEN THE JUDGE OBSERVES INTELLECTUAL HONESTY IN WRITING HIS DECISION.— When a judge respects the right

to attribution and integrity of an author, then the judge observes intellectual honesty in writing his decisions. Writing decisions is the most important official duty of a judge, more so of appellate court judges. Conversely, if a judge fails to respect an author's right to attribution and integrity, then the judge fails to observe intellectual honesty in the performance of his official duties, a violation of Canon 3 of the Code of Judicial Conduct.

15. ID.; ID.; ID.; DIFFERENCE FROM ACADEMIC WRITING; THE ACADEME REQUIRES THAT PASSAGES COPIED FROM WORKS OF THE GOVERNMENT, WORKS IN THE PUBLIC DOMAIN, AND NON-COPYRIGHTED WORKS SHOULD BE PROPERLY ATTRIBUTED IN THE SAME WAY AS COPYRIGHTED WORKS; RATIONALE.— Academic writing, such as writing dissertations or articles in academic journals, is governed by standards different from judicial decision writing. The failure to make the proper attribution for passages copied from Works of the Government is not actionable against a judge when writing a judicial decision. However, the same failure by a student or a faculty member may be deemed plagiarism in the academe, meriting a severe **administrative** penalty. Nevertheless, the Judiciary and the academe should have the same rule when it comes to copyrighted works. **In every case, there is a legal duty to make the proper attribution when copying passages from copyrighted works because the law expressly requires such attribution without exception**. The academe requires that passages copied from Works of the Government, works in the public domain, and non-copyrighted works should be properly attributed in the same way as copyrighted works. The rationale is to separate the original work of the writer from the works of other authors in order to determine the original contribution of the writer to the development of a particular art or science. This rationale does not apply to the Judiciary, where adherence to jurisprudential precedence is the rule. However, if a judge writes an article for a law journal, he is bound by the same rules governing academic writing.

CARPIO MORALES, *J.*, *separate dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; MEMBERS OF THE SUPREME

COURT MAY BE REMOVED ONLY BY IMPEACHMENT; WHEN MAY THE SUPREME COURT WIELD ITS ADMINISTRATIVE POWERS AGAINST ITS INCUMBENT MEMBERS.— I submit that the Court may wield its administrative power against its incumbent members on grounds ***other than*** culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust, **AND *provided*** the offense or misbehavior does not carry with it a penalty, the service of which would amount to removal from office either on a permanent or temporary basis such as suspension. The President, the Vice President, the members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

2. ID.; ID.; ID.; ID.; INSTITUTION OF CERTAIN ACTIONS AGAINST AN IMPEACHABLE OFFICER CANNOT BE MADE DURING HIS OR HER INCUMBENCY; REMOVAL FROM OFFICE VIA THE CONSTITUTIONAL ROUTE OF IMPEACHMENT IS NECESSARY BEFORE THE LIABILITY, CRIMINAL OR ADMINISTRATIVE, MAY BE DETERMINED AND ENFORCED.— In the subsequent case of *In Re Raul M. Gonzales*, this principle of constitutional law was succinctly formulated in the following terms which lay down a bar to the institution of certain actions against an impeachable officer during his or her incumbency. x x x A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offense which carries with it the penalty of removal from office, or **any penalty service of which would amount to removal from office**. The Court clarified, however, that it is not saying that its members are entitled to immunity from liability for possible criminal

acts or for alleged violations of the canons of judicial ethics or codes of judicial conduct. It stressed that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced. x x x A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.

3. ID.; ID.; JUDICIAL DEPARTMENT; SUPREME COURT; POWER OF THE SUPREME COURT TO TAKE COGNIZANCE OF COMPLAINTS AGAINST ITS INCUMBENT MEMBERS IS CIRCUMSCRIBED BY THE PRINCIPLE OF CONSTITUTIONAL LAW ON IMPEACHABLE OFFICERS IN TERMS OF GROUNDS AND PENALTIES.— That the Supreme Court has overall administrative power over its members and over all members of the judiciary has been recognized. Moreover, the Internal Rules of the Supreme Court (2010) expressly included, for the first time, "cases involving the discipline of a Member of the Court" as among those *en banc* matters and cases. x x x The Court acknowledged its power to take cognizance of complaints against its incumbent Members. It is circumscribed, however, by the abovementioned principle of constitutional law in terms of grounds and penalties.

4. ID.; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE COMPLAINT AGAINST A SITTING JUSTICE; THE SUPREME COURT CANNOT PROCEED WITH THE ADMINISTRATIVE COMPLAINT AGAINST JUSTICE DEL CASTILLO; REASONS.— In view of the impeachment complaint filed with the House of Representatives involving the same subject matter of the case, which denotes that a co-equal branch of government found the same act or omission grievous as to present a ground for impeachment and opted to exercise its constitutional function, I submit that the Court cannot proceed with the administrative complaint against Justice Del Castillo for it will either (i) take

cognizance of an impeachable offense which it has no jurisdiction to determine, or (ii) downplay the questioned conduct and preempt the impeachment proceedings. I thus join the call of Justice Carpio to recall the Court's October 15, 2010 Resolution, but only insofar as Justice Del Castillo is concerned. All related administrative concerns and issues involving non-impeachable officers therein should still be considered effectual.

5. ID.; ATTORNEYS; SIMPLE NEGLECT OF DUTY; DEFINED; A CASE OF.— Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference. I submit that the legal researcher was remiss in her duties of re-studying the sources or authorities invoked in the *Vinuya* Decision and checking the therein citations or, at the very least, those whose authors' rights to attribution and integrity are protected under Intellectual Property Law. While it is incumbent upon her to devise ways and means of legal research, her admitted method or process as shown in the *Vinuya* case reflects a disregard of a duty resulting from carelessness or indifference. She failed to exercise the required degree of care to a task expected of a lawyer-employee of the Supreme Court.

SERENO, *J., dissenting opinion:*

1. JUDICIAL ETHICS; JUDGES; DILIGENCE AND HONESTY, REQUIRED OF JUDGES IN WRITING JUDICIAL OPINIONS; THE WORK OF A DILIGENT AND HONEST JUDGE WILL NEVER DISPLAY THE SEVERE PLAGIARISM EVIDENT IN THE *VINUYA* DECISION.— Judges need not strain themselves to meet inapplicable standards of research and attribution of sources in their judicial opinions, nor seek to achieve the scholarly rigidity or thoroughness observed in academic work. They need to answer to only two standards – diligence and honesty. By honesty here is meant that good faith attempt to attribute to the author his original words and analysis. Even if a judge has to rely in large part on the drafts of his legal researchers, the work of a diligent and honest judge will never display the severe plagiarism evident in the *Vinuya* Decision published under the name of Justice Mariano C. del Castillo. A judge will only find himself in the same predicament as Justice del Castillo if two situations

coincide: (1) the judge wittingly or unwittingly entrusts a legal researcher with the task of drafting his judicial opinion, and the legal researcher decides to commit severe plagiarism; and (2) the judge: (a) does not read and study the draft decision himself; (b) even if he does read and study the same, the "red flags" that are self-evident in the draft decision completely escape him; or (c) despite having seen the red flags, he ignores them.

2. ID.; ID.; ID.; ID.; THERE IS A DUTY OF CARE TO ATTRIBUTE TO FOREIGN AND INTERNATIONAL JUDICIAL DECISIONS PROPERLY AND THAT ONE SHOULD NEVER PRESENT THESE MATERIALS AS IF THEY ARE ONE'S OWN.— [I]ncorporated into *Vinuya* were excerpts from a decision of an international tribunal without any signal given to the reader that the words were not those of Justice del Castillo of the Philippine Supreme Court but the words of another tribunal. While there are views that a judge cannot be guilty of plagiarism for failure to recognize foreign decisions as source materials in one's judicial writing – as when Justice Antonio C. Carpio opines that a judge cannot be guilty on this score alone – it is beyond debate that there is a duty of care to attribute to these foreign and international judicial decisions properly, and that one should never present these materials as if they are one's own.

3. ID.; ID.; JUDICIAL DECISION-WRITING; PLAGIARISM; THE EXTENT OF UNATTRIBUTED COPYING BELIES INADVERTENCE.— On its face, the sheer volume of portions copied, added to the frequency with which citations to the plagiarized works were omitted while care was taken to retain citations to the sources cited by the plagiarized works, reveal that the plagiarism committed cannot logically be anything other than deliberate.

4. ID.; ID.; ID.; ID.; SYSTEMATIC COMMISSION OF PLAGIARISM DEMONSTRATES DELIBERATENESS.— In pages twelve (12) to thirteen (13) of *Vinuya*, sentences from the body of Ladino's article were interspersed with Ladino's footnotes, without a single attribution to Ladino (*please refer to Table G)*. Sentences from Ladino's article were copied into footnote 32 of Vinuya, while the immediately succeeding sentence was again copied to form part of the body

of Vinuya. The cutting of sentences from Ladino's work and the patching together of these pieces to form a mishmash of sentences negate the defense of inadvertence, and give the reader the impression that the freshly crafted argument was an original creation. The work of Criddle and Fox-Decent was subjected to a similar process.

5. ID.; ID.; ID.; ID.; FREQUENCY OF INSTANCES OF MISSING CITATIONS AND ACTIONS REQUIRED FOR DELETION BETRAYS DELIBERATENESS.— To purposefully input citations would require many key strokes and movements of the computer's "mouse." If the attributions had indeed been made already, then the deletions of such attributions would not simply happen without a specific sequence of key strokes and mouse movements. The researcher testified that the necessary attributions were made in the earlier drafts, but that in the process of cutting and pasting the various paragraphs, they were accidentally dropped. She makes it sound as if something like a long reference citation can just easily fall by the wayside. Not so. xxx The researcher in *Vinuya* explained that footnotes were deleted along with headings of certain portions, and with the deletion of the note reference mark in the body of the text, the citations in the document's footers disappeared also. xxx Note that in the case wherein the note reference mark was not highlighted by a mouse movement, the "delete" or "backspace" key must have been pressed *twice*, as pressing it only once will merely highlight the note reference mark without deleting the same. Hence, even accommodating the explanation given by the researcher, at least four movements must have been accomplished to delete one footnote or reference. Multiply this with the number of references that were "dropped" or "missing," and you have a situation wherein the researcher accomplished no less than two hundred thirty-six (236) deliberate steps to be able to drop the fifty-nine (59) citations that are missing in *Vinuya*. If by some chance the cursor happened to be at the precise location of the citations, and the citations were subsequently deleted by an accidental click of the mouse, this would still have necessitated a total of one hundred seventy seven (177) clicks. It is understandable if a researcher accidentally deleted one, two or even five footnotes. That a total of 59 footnotes were erased by mere accident is inconceivable.

6. ID.; ID.; STANDARD OF SUPERVISION OVER ONE'S LAW CLERK REQUIRED OF AN INCUMBENT JUDGE, NOT MET IN CASE AT BAR.— Proof of deliberate action is found in the *Vinuya* Decision itself – the care with which the researcher included citations of the sources to which the authors of the copied works referred, while conveniently neglecting attribution to the copied works themselves. It is therefore impossible to conclude that such gross plagiarism, consisting of failure to attribute to nine (9) copyrighted works, could have been the result of anything other than failure to observe the requirements of the standard of conduct demanded of a legal researcher. There is also no basis to conclude that there was no failure on the part of Justice del Castillo to meet the standard of supervision over his law clerk required of incumbent judges.

7. ID.; ID.; JUDICIAL DECISION-WRITING; DISTINCTION BETWEEN THE EFFECT OF APPROPRIATING COPYRIGHTED WORKS AND WORKS IN THE PUBLIC DOMAIN; CASE AT BAR IS AN ADMINISTRATIVE MATTER DEALING WITH PLAGIARISM, NOT INFRINGEMENT OF COPYRIGHT.— The infringement of copyright necessitates a framework for characterizing the expression of ideas as *property.* It thus turns on a question of whether there exists resultant harm in a form which is economically quantifiable. Plagiarism, on the other hand, covers a much wider range of acts. In defining copyright infringement, Laurie Stearns points out how it is an offense independent from plagiarism, so that an action for violation of copyright – which may take on either a criminal and a civil aspect, or even both – *does not sufficiently remedy the broader injury inherent in plagiarism.* Plagiarism is not necessarily copyright infringement, nor is copyright infringement necessarily plagiarism…In some ways the concept of plagiarism is broader than infringement, in that it can include the copying of ideas, or of expression not protected by copyright, that would not constitute infringement, and it can include the copying of small amounts of material that copyright law would disregard. Plagiarism, with its lack of attribution, severs the connection between the original author's name and the work. A plagiarist, by falsely claiming authorship of someone else's material, directly assaults the author's interest in receiving credit. In contrast, attribution is largely irrelevant to a claim of copyright

infringement…infringement can occur even when a work is properly attributed if the copying is not authorized–for example, a pirated edition of a book produced by someone who does not own the publication rights. The recognition of plagiarism as an offense that can stand independently of copyright infringement allows a recognition that acts of plagiarism are subject to reproof irrespective of whether the work is copyrighted or not. In any case, the scenario presented before the Court is an administrative matter and deals with plagiarism, not infringement of copyright.

8. ID.; ID.; ID.; JUDICIAL PLAGIARISM AND SANCTIONS THEREFOR; THE ABSENCE OF A DEFINITE ANSWER TO THE QUESTION OF LIABILITY DOES NOT GRANT JUDGES CARTE BLANCHE TO USE THE WORK OF OTHERS WITHOUT ATTRIBUTION IN THEIR JUDICIAL OPINIONS.— The use of the excerpt [from the Judicial Opinion Writing Handbook written by Joyce George] to justify the wholesale lifting of others' words without attribution as an "implicit right" is a serious misinterpretation of the discussion from which the excerpt was taken. George wrote the above-quoted passage in the context of a nuanced analysis of possible *sanctions* for judicial plagiarism, not in the context of the *existence* of plagiarism in judicial opinions. (I had candidly disclosed the existence of this liberal view even in my 12 October 2010 Dissent.) The sections preceding the text from which this passage was taken are, in fact, discussions of the following: ethical issues involving plagiarism in judicial writing, with regard to both the act of copying the work of another and the implications of plagiarism on the act of adjudication; types of judicial plagiarism, the means by which they may be committed, and the venues in and through which they can occur; and recent cases of judicial plagiarism. **In no wise does George imply that the judicial function confers upon judges the implicit right to use the writing of others without attribution. Neither does George conflate the possible lack of sanctions for plagiarism with the issue of whether a determination of judicial plagiarism can be made.** Rather, George is careful to make the distinction between the issue of whether judicial plagiarism was committed and the issue of whether a sanction can be imposed for an act of judicial plagiarism. xxx Indeed, my previous Dissent stated that

inasmuch as sanctions for judicial plagiarism are concerned, "there is no strictly prevailing consensus regarding the need or obligation to impose sanctions on judges who have committed judicial plagiarism." Yet the absence of a definite answer to the question of liability does not grant judges carte blanche to use the work of others without attribution, willy-nilly, in their judicial opinions. As George puts it, "the judge is ethically bound to give proper credit to law review articles, novel thoughts published in legal periodicals, newly handed down decisions, or even a persuasive case from another jurisdiction." Plainly, George is of the opinion that though a judge may not be held liable for an act of judicial plagiarism, he should still attribute.

9. POLITICAL LAW; JUDICIAL DEPARTMENT; ROLE OF THE JUDICIARY IN SOCIETY; SYMBOLIC OR EDUCATIVE FUNCTION; DEFINED.— On more than one occasion, this Court has referred to one of its functions as the symbolic or educative function, the competence to formulate guiding principles that may enlighten the bench and the bar, and the public in general.

10. JUDICIAL ETHICS; JUDGES; ETHICAL STANDARDS FOR JUDGES AND JUSTICES; THE NEED TO CEMENT ETHICAL STANDARDS IS INTERTWINED WITH THE DEMOCRATIC PROCESS; EXPLAINED.— The need to cement ethical standards for judges and justices is intertwined with the democratic process. As Lebovits explained: **The judiciary's power comes from its words alone–judges command no army and control no purse. In a democracy, judges have legitimacy only when their words deserve respect, and their words deserve respect only when those who utter them are ethical. Opinion writing is public writing of the highest order; people are affected not only by judicial opinions but also by how they are written. Therefore, judges and the opinions they write–opinions scrutinized by litigants, attorneys, other judges, and the public–are held, and must be held, to high ethical standards. Ethics must constrain every aspect of the judicial opinion.**

11. ID.; ID.; CODE OF JUDICIAL CONDUCT; PROVISIONS THEREOF CANNOT BE EVADED BY JUDGES; DISCUSSED.— Judges cannot evade the provisions in the Code of Judicial Conduct. A judge should participate in establishing,

maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The drafters of the *Model Code* were aware that to be effective, the judiciary must maintain legitimacy –and to maintain legitimacy, judges must live up to the *Model Code*'s moral standards when writing opinions. If the public is able to witness or infer from judges' writing that judges resolve disputes morally, the public will likewise be confident of judges' ability to resolve disputes fairly and justly. Canon 1 of the Code of Judicial Conduct states that a judge should uphold the integrity and independence of the judiciary. Rule 1.01 in particular states that a judge should be the embodiment of competence, integrity, and independence. Canon 3 then focuses on the duty of honesty in the performance of official duties, as well as on the supervision of court personnel.

12. ID.; ID.; JUDGES AND JUSTICES ARE SUBJECT TO HIGHER STANDARDS BY VIRTUE OF THEIR OFFICE; DISCUSSED.— That judges and justices alike are subject to higher standards by virtue of their office has been repeatedly pronounced by the Supreme Court: Concerned with safeguarding the integrity of the judiciary, this Court has come down hard and wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct. This is because a judge is the visible representation of the law and of justice. He must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties but also as to his behavior outside his sala and as a private individual. His character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system. Thus, 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. A judge should personify integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of his official duties and in private life should be above suspicion. Concerned with safeguarding the integrity of the judiciary, this Court has come down hard on erring judges and imposed the concomitant punishment.

13. ID.; ID.; ID.; CLEAREST MANIFESTATION OF ADHERENCE THERETO IS THROUGH A JUSTICE'S WRITTEN OPINIONS; PLAGIARISM IN JUDICIAL OPINIONS DETRACTS DIRECTLY FROM THE LEGITIMACY OF THE JUDGE'S RULING AND INDIRECTLY FROM THE JUDICIARY'S LEGITIMACY.— The clearest manifestation of adherence to these standards is through a Justice's written opinions. In the democratic framework, it is the only way by which the public can check the performance of such public officer's obligations. Plagiarism in judicial opinions detracts directly from the legitimacy of the judge's ruling and indirectly from the judiciary's legitimacy. It is objectionable not only because of its inherent capacity to harm, but the overarching damage it wreaks on the dignity of the Court as a whole.

14. POLITICAL LAW; JUDICIAL DEPARTMENT; ROLE OF THE JUDICIARY IN SOCIETY; EDUCATIVE FUNCTION; THE JUDICIARY PLAYS A MORE CREATIVE ROLE THAN JUST TRADITIONAL SCHOLARSHIP.— The Court's first Decision in this case hinged on the difference between the academic publishing model on the one hand, and the judicial system on the other. It proceeded to conclude that courts are encouraged to cite "historical legal data, precedents, and related studies" in their decisions, so that "the judge is not expected to produce original scholarship in every respect." This argument presents a narrower view of the role of the courts than what this country's history consistently reveals: the judiciary plays a more creative role than just traditional scholarship. No matter how hesitantly it assumes this duty and burden, the courts have become moral guideposts in the eyes of the public. Easily the most daunting task which confronts a newly appointed judge is how to write decisions. It is truly a formidable challenge considering the impact of a court's judgment reverberates throughout the community in which it is rendered, affecting issues of life, liberty, and property in ways that are more pervasive and penetrating than what usually appears on the surface – or under it. The impact of judicial decisions has even been codified in paragraph 2 of the Canon of Judicial Ethics: "Every judge should at all times be alert in his rulings and in the conduct of the business of his court, so far as he can, to make it useful to litigants and to the community."

15. ID.; ID.; ID.; ID.; ID.; CONSISTENT RESORT TO *STARE DECISIS* FAILS TO TAKE INTO ACCOUNT THAT IN THE EXERCISE OF THE COURT'S SELF-PROCLAIMED SYMBOLIC FUNCTION, ITS FIRST ACCOUNTABILITY IS TO ITS AUDIENCE: THE PUBLIC.— The error in the contention of the majority that judicial writing does not put a premium on originality is evident. In the words of Daniel Farber, *stare decisis* has become an oft-repeated catchphrase to justify an unfounded predisposition to repeating maxims and doctrines devoid of renewed evaluation. xxx The consistent resort to *stare decisis* fails to take into account that in the exercise of the Court's self-proclaimed symbolic function, its first accountability is to its audience: the public. Its duty of guiding the bench and the bar comes a close second. xxx Thus, the value of ethical judicial writing *vis-à-vis* the role that courts are called upon to play cannot be underestimated.

R E S O L U T I O N

***PER CURIAM*:**

Petitioners Isabelita C. Vinuya, *et al.*, all members of the Malaya Lolas Organization, seek reconsideration of the decision of the Court dated October 12, 2010 that dismissed their charges of plagiarism, twisting of cited materials, and gross neglect against Justice Mariano Del Castillo in connection with the decision he wrote for the Court in G.R. No. 162230, entitled *Vinuya v. Romulo*.[1]

Mainly, petitioners claim that the Court has by its decision legalized or approved of the commission of plagiarism in the Philippines. This claim is absurd. The Court, like everyone else, condemns plagiarism as the world in general understands and uses the term.

Plagiarism, a term not defined by statute, has a popular or common definition. To plagiarize, says Webster, is "to steal and pass off as one's own" the ideas or words of another. Stealing implies malicious taking. Black's Law Dictionary, the

[1] April 28, 2010.

world's leading English law dictionary quoted by the Court in its decision, defines plagiarism as the "deliberate and knowing presentation of another person's original ideas or creative expressions as one's own."[2] The presentation of another person's ideas as one's own must be deliberate or premeditated—a taking with ill intent.

There is no commonly-used dictionary in the world that embraces in the meaning of plagiarism errors in attribution by mere accident or in good faith.

Certain educational institutions of course assume different norms in its application. For instance, the Loyola Schools Code of Academic Integrity ordains that "plagiarism is identified not through intent but through the act itself. The objective act of falsely attributing to one's self what is not one's work, whether intentional or out of neglect, is sufficient to conclude that plagiarism has occurred. Students who plead ignorance or appeal to lack of malice are not excused."[3]

But the Court's decision in the present case does not set aside such norm. The decision makes this clear, thus:

To paraphrase Bast and Samuels, while the academic publishing model is based on the originality of the writer's thesis, the judicial system is based on the doctrine of *stare decisis,* which encourages courts to cite historical legal data, precedents, and related studies in their decisions. The judge is not expected to produce original scholarship in every respect. The strength of a decision lies in the soundness and general acceptance of the precedents and long held legal opinions it draws from.[4]

Original scholarship is highly valued in the academe and rightly so. A college thesis, for instance, should contain dissertations embodying results of original research, substantiating a specific

---

[2] *Black's Law Dictionary* (8th Edition, 2004).

[3] Available at http://www.admu.edu.ph/index.php?p=120&type=2&sec=25&aid=9149.

[4] *In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo*, A.M. No. 10-7-17-SC, October 12, 2010.

view.[5] This must be so since the writing is intended to earn for the student an academic degree, honor, or distinction. He earns no credit nor deserves it who takes the research of others, copies their dissertations, and proclaims these as his own. There should be no question that a cheat deserves neither reward nor sympathy.

But the policy adopted by schools of disregarding the element of malicious intent found in dictionaries is evidently more in the nature of establishing what evidence is sufficient to prove the commission of such dishonest conduct than in rewriting the meaning of plagiarism. Since it would be easy enough for a student to plead ignorance or lack of malice even as he has copied the work of others, certain schools have adopted the policy of treating the mere presence of such copied work in his paper sufficient objective evidence of plagiarism. Surely, however, if on its face the student's work shows as a whole that he has but committed an obvious mistake or a clerical error in one of hundreds of citations in his thesis, the school will not be so unreasonable as to cancel his diploma.

In contrast, decisions of courts are not written to earn merit, accolade, or prize as an original piece of work or art. Deciding disputes is a service rendered by the government for the public good. Judges issue decisions to resolve everyday conflicts involving people of flesh and blood who ache for speedy justice or juridical beings which have rights and obligations in law that need to be protected. The interest of society in written decisions is not that they are originally crafted but that they are fair and correct in the context of the particular disputes involved. Justice, not originality, form, and style, is the object of every decision of a court of law.

There is a basic reason for individual judges of whatever level of courts, including the Supreme Court, not to use original or unique language when reinstating the laws involved in the cases they decide. Their duty is to apply the laws as these are written. But laws include, under the doctrine of *stare decisis*, judicial interpretations of such laws as are applied to specific

---

[5] *Webster's Third New International Dictionary,* p. 2374.

situations. Under this doctrine, Courts are "to stand by precedent and not to disturb settled point." Once the Court has "laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties or property are the same."[6]

And because judicial precedents are not always clearly delineated, they are quite often entangled in apparent inconsistencies or even in contradictions, prompting experts in the law to build up regarding such matters a large body of commentaries or annotations that, in themselves, often become part of legal writings upon which lawyers and judges draw materials for their theories or solutions in particular cases. And, because of the need to be precise and correct, judges and practitioners alike, by practice and tradition, usually lift passages from such precedents and writings, at times omitting, without malicious intent, attributions to the originators.

Is this dishonest? No. Duncan Webb, writing for the International Bar Association puts it succinctly. When practicing lawyers (which include judges) write about the law, they effectively place their ideas, their language, and their work in the public domain, to be affirmed, adopted, criticized, or rejected. Being in the public domain, other lawyers can thus freely use these without fear of committing some wrong or incurring some liability. Thus:

The tendency to copy in law is readily explicable. In law accuracy of words is everything. Legal disputes often centre round the way in which obligations have been expressed in legal documents and how the facts of the real world fit the meaning of the words in which the obligation is contained. This, in conjunction with the risk-aversion of lawyers means that refuge will often be sought in articulations that have been tried and tested. In a sense therefore the community of lawyers have together contributed to this body of knowledge, language, and

---

[6] *Black's Law Dictionary* (6th Edition, 1990), p. 1406.

expression which is common property and may be utilized, developed and bettered by anyone.[7]

The implicit right of judges to use legal materials regarded as belonging to the public domain is not unique to the Philippines. As Joyce C. George, whom Justice Maria Lourdes Sereno cites in her dissenting opinion, observed in her Judicial Opinion Writing Handbook:

A judge writing to resolve a dispute, whether trial or appellate, is exempted from a charge of plagiarism even if ideas, words or phrases from a law review article, novel thoughts published in a legal periodical or language from a party's brief are used without giving attribution. Thus judges are free to use whatever sources they deem appropriate to resolve the matter before them, without fear of reprisal. This exemption applies to judicial writings intended to decide cases for two reasons: the judge is not writing a literary work and, more importantly, the purpose of the writing is to resolve a dispute. As a result, judges adjudicating cases are not subject to a claim of legal plagiarism.[8]

If the Court were to inquire into the issue of plagiarism respecting its past decisions from the time of Chief Justice Cayetano S. Arellano to the present, it is likely to discover that it has not on occasion acknowledged the originators of passages and views found in its decisions. These omissions are true for many of the decisions that have been penned and are being penned daily by magistrates from the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Courts nationwide and with them, the municipal trial courts and other first level courts. Never in the judiciary's more than 100 years of history has the lack of attribution been regarded and demeaned as plagiarism.

---

[7] Duncan Webb, Plagiarism: A Threat to Lawyers' Integrity? Published by the International Bar Association, available online at http://www.ibanet.org/Article/Detail.aspx?ArticleUid=bc2ef7cd-3207-43d6-9e87-16c3bc2be595.

[8] Joyce C. George, *Judicial Opinion Writing Handbook* (2007), p. 725, cited by Justice Maria Lourdes Sereno in her dissenting opinion.

This is not to say that the magistrates of our courts are mere copycats. They are not. Their decisions analyze the often conflicting facts of each case and sort out the relevant from the irrelevant. They identify and formulate the issue or issues that need to be resolved and evaluate each of the laws, rulings, principles, or authorities that the parties to the case invoke. The decisions then draw their apt conclusions regarding whether or not such laws, rulings, principles, or authorities apply to the particular cases before the Court. These efforts, reduced in writing, are the product of the judges' creativity. It is here—actually the substance of their decisions—that their genius, originality, and honest labor can be found, of which they should be proud.

In *Vinuya*, Justice Del Castillo examined and summarized the facts as seen by the opposing sides in a way that no one has ever done. He identified and formulated the core of the issues that the parties raised. And when he had done this, he discussed the state of the law relevant to their resolution. It was here that he drew materials from various sources, including the three foreign authors cited in the charges against him. He compared the divergent views these present as they developed in history. He then explained why the Court must reject some views in light of the peculiar facts of the case and applied those that suit such facts. Finally, he drew from his discussions of the facts and the law the right solution to the dispute in the case. On the whole, his work was original. He had but done an honest work.

The Court will not, therefore, consistent with established practice in the Philippines and elsewhere, dare permit the filing of actions to annul the decisions promulgated by its judges or expose them to charges of plagiarism for honest work done.

This rule should apply to practicing lawyers as well. Counsels for the petitioners, like all lawyers handling cases before courts and administrative tribunals, cannot object to this. Although as a rule they receive compensation for every pleading or paper they file in court or for every opinion they render to clients, lawyers also need to strive for technical accuracy in their writings. They should not be exposed to charges of plagiarism

in what they write so long as they do not depart, as officers of the court, from the objective of assisting the Court in the administration of justice.

As Duncan Webb said:

> **In presenting legal argument most lawyers will have recourse to either previous decisions of the courts, frequently lifting whole sections of a judge's words to lend weight to a particular point either with or without attribution. The words of scholars are also sometimes given weight, depending on reputation. Some encyclopaedic works are given particular authority. In England this place is given to Halsbury's Laws of England which is widely considered authoritative. A lawyer can do little better than to frame an argument or claim to fit with the articulation of the law in Halsbury's. While in many cases the very purpose of the citation is to claim the authority of the author, this is not always the case. Frequently commentary or dicta of lesser standing will be adopted by legal authors, largely without attribution.**
>
> **x x x x x x x x x**
>
> **The converse point is that originality in the law is viewed with skepticism. It is only the arrogant fool or the truly gifted who will depart entirely from the established template and reformulate an existing idea in the belief that in doing so they will improve it. While over time incremental changes occur, the wholesale abandonment of established expression is generally considered foolhardy.**[9]

The Court probably should not have entertained at all the charges of plagiarism against Justice Del Castillo, coming from the losing party. But it is a case of first impression and petitioners, joined by some faculty members of the University of the Philippines school of law, have unfairly maligned him with the charges of plagiarism, twisting of cited materials, and gross neglect for failing to attribute lifted passages from three foreign authors. These charges as already stated are false, applying the meaning of plagiarism as the world in general knows it.

---

[9] *Supra* note 7.

True, Justice Del Castillo failed to attribute to the foreign authors materials that he lifted from their works and used in writing the decision for the Court in the *Vinuya* case. But, as the Court said, the evidence as found by its Ethics Committee shows that the attribution to these authors appeared in the beginning drafts of the decision. Unfortunately, as testified to by a highly qualified and experienced court-employed researcher, she accidentally deleted the same at the time she was cleaning up the final draft. The Court believed her since, among other reasons, she had no motive for omitting the attribution. The foreign authors concerned, like the dozens of other sources she cited in her research, had high reputations in international law.

Notably, those foreign authors expressly attributed the controversial passages found in their works to earlier writings by others. The authors concerned were not themselves the originators. As it happened, although the *ponencia* of Justice Del Castillo accidentally deleted the attribution to them, there remained in the final draft of the decision attributions of the same passages to the earlier writings from which those authors borrowed their ideas in the first place. In short, with the remaining attributions after the erroneous clean-up, the passages as it finally appeared in the *Vinuya* decision still showed on their face that the lifted ideas did not belong to Justice Del Castillo but to others. He did not pass them off as his own.

With our ruling, the Court need not dwell long on petitioners' allegations that Justice Del Castillo had also committed plagiarism in writing for the Court his decision in another case, *Ang Ladlad v. Commission on Elections*.[10] Petitioners are nit-picking. Upon close examination and as Justice Del Castillo amply demonstrated in his comment to the motion for reconsideration, he in fact made attributions to passages in such decision that he borrowed from his sources although they at times suffered in formatting lapses.

---

[10] G.R. No. 190582, April 8, 2010.

Considering its above ruling, the Court sees no point in further passing upon the motion of the Integrated Bar of the Philippines for leave to file and admit motion for reconsideration-in-intervention dated January 5, 2011 and Dr. Peter Payoyo's claim of other instances of alleged plagiarism in the Vinuya decision.

ACCORDINGLY, the Court *DENIES* petitioners' motion for reconsideration for lack of merit.

SO ORDERED.

Corona, C.J., Velasco, Jr., Nachura, and *Villarama, Jr., JJ.,* concur.

Leonardo-de Castro and *Perez, JJ.,* join the separate concurring opinion of Justice Brion and Justice Abad.

Brion and *Abad, JJ.,* see separate concurring opinion.

Peralta, Bersamin, and *Mendoza, JJ.,* join the separate concurring opinion of Justice Brion.

Carpio and *Sereno, JJ.,* see dissenting opinion.

Carpio Morales, J., see separate dissenting opinion.

Del Castillo, J., no part.

SEPARATE CONCURRING OPINION

BRION, *J.*:

Background Facts

The present administrative disciplinary case against Supreme Court Associate Justice Mariano C. del Castillo stemmed from the decision he penned for the Court in G.R. No. 162230, entitled *Isabelita C. Vinuya, et al. v. Executive Secretary*. The *Vinuya* Decision was promulgated on April 28, 2010 with 13 justices of this Court concurring with the ruling to dismiss the case.

On July 19, 2010, Attys. Harry Roque and Rommel Bagares, counsels for petitioners Vinuya, *et al.*, filed a Supplemental Motion for Reconsideration raising, among others, the plagiarism allegedly committed by Justice del Castillo for using the works of three foreign legal authors in his *ponencia*. They alleged that the use was without proper attribution and that Justice del Castillo twisted the foreign authors' works to support the Decision. They considered it "highly improper for x x x the Court x x x to wholly lift, without proper attribution, from at least three sources – an article published in 2009 in the Yale Law Journal of International Law,[1] a book published by the Cambridge University Press in 2005,[2] and an article published in the Case Western Reserve Journal of International Law[3] – and to make it appear that these sources support the assailed Judgment's arguments for dismissing [their] petition[,] when in truth, the plagiarized sources even make a strong case for the Petition's claims[.]"[4]

In reply to the accusation, Justice del Castillo wrote and circulated a letter dated July 22, 2010 to the members of this Court. **On July 27, 2010, the Court decided to refer the letter to the Ethics and Ethical Standards Committee** (the "*Ethics Committee*" or "*committee*") **which docketed it as an administrative matter.** The committee required Attys. Roque and Bagares to comment on Justice del Castillo's letter, after which it heard the parties. After the parties' memoranda, the committee submitted its findings and recommendations to the Court.

---

[1] *A Fiduciary Theory of Jus Cogens* by Evan J. Criddle and Evan Fox-Decent.

[2] *Enforcing Erga Omnes Obligations in International Law* by Christian J. Tams.

[3] *Breaking the Silence: On Rape as an International Crime* by Mark Ellis.

[4] Petitioners *Vinuya, et al.*'s Supplemental Motion for Reconsideration dated July 18, 2010, p. 2.

The Court's Decision on the Plagiarism Charge against Justice del Castillo

In a Decision dated October 12, 2010, the Court resolved to dismiss the plagiarism charges against Justice del Castillo. It recognized that indeed certain passages of the foreign legal article were lifted and used in the *Vinuya* Decision and that "no attributions were made to the x x x authors in [its] footnotes."[5] However, the Court concluded that the failure to attribute did not amount to plagiarism because no malicious intent attended the failure; the attributions (present in Justice del Castillo's original drafts) were simply accidentally deleted in the course of the drafting process. Malicious intent was deemed an essential element, as "plagiarism is essentially a form of fraud where intent to deceive is inherent." Citing *Black's Law Dictionary's* definition of plagiarism – the deliberate and knowing presentation of another person's original ideas or creative expressions as one's own – the Court declared that "plagiarism presupposes intent and a deliberate, conscious effort to steal another's work and pass it off as one's own." In fact, the Court found that by citing the foreign author's original sources, Justice del Castillo never created the impression that he was the original author of the passages claimed to have been lifted from the foreign law articles:

> The Court also adopts the Committee's finding that the omission of attributions to Criddle-Descent and Ellis did not bring about an impression that Justice Del Castillo himself created the passages that he lifted from their published articles. That he merely got those passages from others remains self-evident, despite the accidental deletion. The fact is that he still imputed the passages to the sources from which Criddle-Descent and Ellis borrowed them in the first place.

As to the charge that Justice del Castillo twisted the meaning of the works of the foreign authors, the Court ruled that it was impossible for him to have done so because:

---

[5] Specifically, the Court referred to the article *A Fiduciary Theory of Jus Cogens* written by Criddle-Decent and Fox.

first, since the attributions to Criddle-Descent and Ellis were accidentally deleted, it is impossible for any person reading the decision to connect the same to the works of those authors as to conclude that in writing the decision Justice Del Castillo "twisted" their intended messages. And, second, the lifted passages provided mere background facts that established the state of international law at various stages of its development. These are neutral data that could support conflicting theories regarding whether or not the judiciary has the power today to order the Executive Department to sue another country or whether the duty to prosecute violators of international crimes has attained the status of *jus cogens*.

The Court, thus, declared that "only errors [of judges] tainted with fraud, corruption, or malice are subject of disciplinary action" and these were not present in Justice del Castillo's case; the failure was not attended by any malicious intent not to attribute the lifted passages to the foreign authors.

Justice Maria Lourdes P. A. Sereno dissented from the Court's October 12, 2010 Decision based mainly on her disagreement with the majority's declaration that malicious intent is required for a charge of plagiarism to prosper.

On November 15, 2010, Attys. Roque and Bagares filed a motion for reconsideration of the Court's October 12, 2010 Decision. This motion was the subject of the Report/Resolution submitted to the Court for consideration. Incidentally, **the same counsels filed an impeachment complaint for betrayal of public trust against Justice del Castillo with the House of Representatives on December 14, 2010**.

The Court's Action on the Motion for Reconsideration

The Court referred the motion for reconsideration to the Ethics Committee and its Report recommended the dismissal of the motion for reconsideration. The Report differentiated academic writing from judicial writing, declaring that originality of ideas is not required of a judge writing decisions and resolving conflicts because he is bound by the doctrine of *stare decisis* – the legal principle of determining points in litigation according to precedents.

The Report likewise declared that the foreign authors, whose works were claimed to have been plagiarized, were not themselves the originators of the ideas cited in the *Vinuya* Decision. While the *Vinuya* Decision did not mention their names, it did attribute the passages to the original authors from whom these foreign authors borrowed the ideas. There was, thus, no intent on the part of Justice del Castillo to appropriate the ideas or to claim that these ideas originated from him; in short, he did not pass them off as his own.

Justice Antonio T. Carpio dissented from the Report, based on two grounds:

a. the Court has no jurisdiction over the administrative case as it involves a sitting Supreme Court Justice, for alleged misconduct committed in office; and
b. the judge, when writing judicial decisions, must comply with the law on copyright and respect the moral right of the author to have the work copied attributed to him.

My Position

I fully support the conclusions of the Ethics Committee. I likewise take exception to Justice Carpio's Dissenting Opinion, specifically on his position that the Court has no jurisdiction to discipline its Members as the only means to discipline them is through impeachment proceedings that the Congress has the sole prerogative to undertake. Impeachment, he declares, functions as the equivalent of administrative disciplinary proceedings. Since the Congress is given the exclusive power to initiate,[6] try, and decide[7] all cases of impeachment, Justice Carpio posits that the Congress serves as the exclusive disciplining authority over all impeachable officers. He warns that for the Supreme Court to hear the present administrative disciplinary case would be to usurp this exclusive power of Congress.

---

[6] CONSTITUTION, Article XI, Section 3(1). The House of Representatives shall have the exclusive power to initiate all cases of impeachment.

[7] *Id.*, Section 3(6). The Senate shall have the sole power to try and decide all cases of impeachment.

Jurisdiction of the Supreme Court to Discipline its Members

A given in the discipline of Members of the Supreme Court is that they can only be "removed from office" through impeachment, as provided under Article XI of the Constitution, on the specified grounds of *culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of the public trust*. The purpose of impeachment and the constitutional interest sought is to protect the people and the State from official delinquencies and other malfeasances.[8] The Constitution, however, is not a single-purpose document that focuses on one interest alone to the exclusion of related interests; impeachment was never intended by the Constitution to be the totality of the administrative actions or remedies that the public or the Court may take against an erring Justice of the Court. Other related constitutional interests exist touching on other facets of the Judiciary and public accountability. They are, by themselves, equally compelling and demanding of recognition.

Among the compelling interests that the Constitution zealously guards is judicial independence because it is basic to the meaning and purposes of the Judiciary. This interest permeates the provisions of Article VIII of the Constitution.[9]

Another interest to consider is the need for judicial integrity – a term not expressly mentioned in the Article on the Judiciary (Article VIII), but is a basic concept found in Article XI (on Accountability of Public Officers) of the Constitution. It is important as this constitutional interest underlies the independent and responsible Judiciary that Article VIII establishes and protects. To be exact, it complements judicial independence

---

[8] See De Leon, *Philippine Constitutional Law*, Vol. II, 2004 Ed., p. 831.

[9] See, among others, security of tenure at Section 1; fiscal autonomy under Section 2; defined jurisdiction that Congress cannot touch without concurrence from the Supreme Court; administrative supervision over all courts under Section 6; a Judicial and Bar Council that renders recourse to the Commission on Appointments unnecessary; and the guarantee of strict focus on judicial duties under Section 12.

as integrity and independence affect and support one another; only a Judiciary with integrity can be a truly independent Judiciary. Judicial integrity, too, directly relates to public trust and accountability that the Constitution seeks in the strongest terms. The same Article XI contains the impeachment provisions that provide for the removal of Justices of the Supreme Court. Notably, a common thread that runs through all the grounds for impeachment is the lack of integrity of the official impeached on these grounds.

Still another unavoidable consideration on impeachment and its limited grounds is that it cannot, by itself, suffice to protect the people and foster the public accountability that the Constitution speaks of. While it is a powerful weapon in the arsenal of public accountability and integrity, it is not a complete weapon that can address and fully achieve its protective purposes. As discussed more fully below, not all complaints and grievances can be subsumed under the defined constitutional grounds for impeachment. Members of the Court can commit other offenses not covered by the impeachable offenses, for which other offenses they should equally be held accountable. These other offenses must of course be administratively addressed elsewhere if they cannot be similarly addressed through impeachment; the people will not accept an interpretation that these are offenses that fell through the constitutional cracks and can no longer be administratively addressed.

These considerations, taken together, dictate against the position of Justice Carpio that the Congress alone, through impeachment and to the exclusion of this Court, can proceed against the Members of the Court.

Protection of Judicial Integrity

For the purpose of preserving judicial integrity, the Supreme Court has as much (and in fact, should have more) interest as the public or as any other branch of the government in overseeing the conduct of members of the Judiciary, including its own Members. This is precisely the reason for the Judiciary's Code of Judicial Conduct and the lawyers' Code of Professional Responsibility. Judicial integrity is not only a necessary element

in the orderly and efficient administration of justice; it is almost literally the lifeblood of the Judiciary. A Judiciary, dissociated from integrity and the public trust that integrity brings, loses its rightful place in the constitutional democratic scheme that puts a premium on a reliable and respected third branch of government that would balance the powers of the other two branches.

To ensure the maintenance and enhancement of judicial integrity, the Constitution has given the Judiciary, mainly through the Supreme Court, a variety of powers. These powers necessarily begin with the power to admit and to discipline members of the bar[10] who are officers of the courts and who have the broadest frontline interaction with the courts and with the public. Courts in general have the power to cite for contempt[11] that proceeds, not only from the need to maintain orderly procedures, but also from the need to protect judicial integrity in the course of the courts' exercise of judicial power. The Supreme Court has the power to discipline and remove judges of lower courts.[12] In this role, the Court hears administrative disciplinary cases against lower court judges for purposes of redress against erring judges and, more importantly, **to "[preserve] the integrity of the judicial system and public confidence in the system** and x x x [to safeguard] the bench and the public from those who are unfit."[13]

---

[10] CONSTITUTION, Article VIII, Section 5(5); RULES OF COURT, Rules 138 and 139-B.

[11] RULES OF COURT, Rule 71.

[12] CONSTITUTION, Article VIII, Section 11; RULES OF COURT, Rule 140.

[13] Cynthia Gray, *A Study of State Judicial Discipline Sanctions*, American Judicature Society (2002), at <www.ajs.org/ethics/pdfs/Sanctions.pdf>, last visited February 9, 2011. The article also cites other reasons: impressing upon the judge the severity and significance of the misconduct; deterring similar conduct by the judge and others; reassuring the public that judicial misconduct is not tolerated or condoned; and fostering public confidence in the self-policing system.

As concrete legal basis, the Supreme Court is expressly granted the general power of administrative supervision over ***all courts and the personnel thereof.***[14] By its plain terms, the power extends not only to the authority to supervise and discipline lower court judges but to exercise the same powers over the Members of the Court itself. This is the unavoidable meaning of this grant of authority if its main rationale – *i.e.*, to preserve judicial integrity – is to be given full effect. The Supreme Court must ensure that the integrity of the whole Judiciary, *its own Members included,* is maintained as any taint on any part of the Judiciary necessarily taints the whole. To state the obvious, a taint in or misconduct by any Member of the Supreme Court – *even if only whispered about for lack of concrete evidence and patriotic whistleblowers* – carries greater adverse impact than a similar event elsewhere in the Judiciary.

Independent of the grant of supervisory authority and at a more basic level, the Supreme Court cannot be expected to play its role in the constitutional democratic scheme solely on the basis of the Constitution's express grant of powers. Implied in these grants are the inherent powers that every entity endowed with life (even artificial life) and burdened with responsibilities can and must exercise if it is to survive. The Court cannot but have the *right to defend itself* to ensure that its integrity and that of the Judiciary it oversees are kept intact. *This is particularly true when its integrity is attacked or placed at risk by its very own Members – a situation that is not unknown in the history of the Court.* To be sure, judicial integrity cannot be achieved if the Court can police the ranks of the lower court judges but not its own ranks. From this perspective view, it is unthinkable that the Supreme Court can only watch helplessly – for the reason that the power to act is granted only to Congress under the terms of the Constitution – as its own Members prostitute its integrity as an institution.

---

[14] See Joaquin G. Bernas, S.J., *The 1987 Constitution of the Republic of the Philippines: A Commentary* (2009 ed.), p. 1012, and Hector S. De Leon, *Philippine Constitutional Law: Principles and Cases*, Volume 2 (2004 ed.), p. 595.

Impeachment Grounds are Limited

That an impeachment partakes of the nature of an administrative disciplinary proceeding confined to the defined and limited grounds of "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust"[15] cannot be disputed. However, it cannot likewise be disputed that these grounds, as defined, refer only to those serious "offenses that strike at the very heart of the life of the nation."[16] Thus, for "betrayal of public trust" to be a ground for impeachment, the "manner of commission must be of the same severity as 'treason' and 'bribery.'"[17] With respect to members of the High Court, impeachment is considered "as a response to **serious** misuse of judicial power"[18] no less equivalent to treason or bribery.

Directly implied from these established impeachment principles is that "removal from office (the imposable penalty upon impeachment and conviction) is not the price exacted for every incident of judicial misconduct."[19] Otherwise stated, that impeachment administratively addresses only serious offenses committed by impeachable officers cannot imply that the Constitution condones misdemeanors and misconduct that are not of equal gravity.

For, side by side with the constitutional provision on impeachment is the constitutional policy that "public office is a public trust" and that "public officers and employees must, at

---

[15] CONSTITUTION, Article XI, Section 2.

[16] See Bernas, *supra*, note 14, p. 1113.

[17] *Ibid.*

[18] Robert W. Kastenmeier, *Report of the National Commission on Judicial Discipline and Removal* (March 1994), 152 F.R.D. 265, at <judicial-discipline-reform.org/judicial-complaints/1993-Report-Removal.pdf>, last visited on February 9, 2011.

[19] Cynthia Gray, *supra* note 13, citing *In re Lowery*, 999 S.W.2d 639, 661 (Special Court of Review Appointed by Texas Supreme Court, 1998).

all times, be accountable to the people."[20] Even impeachable officials, despite the nature and level of their positions, must be administratively accountable for misconduct and misdemeanors that are of lesser gravity than the defined impeachable offenses. Only this approach and reconciled reading with the provision on impeachment can give full effect to the constitutional policy of accountability. If this were not the case, then the public would be left with no effective administrative recourse against Supreme Court Justices committing less than grave misconduct. One American writer, Brent D. Ward, writes on this point that:

> **It would be a serious weakness in our system to place systematic judicial misconduct beyond the reach of any remedy save impeachment. There are limits beyond which no person – even a federal judge – should be allowed to go with impunity.** The courts themselves have the power and the duty to curtail the effect of repeated contrary and erratic actions of a judge that occur too frequently to permit effective appellate supervision in the run of cases.
>
> x x x x x x x x x
>
> [The] Constitution does x x x shield [judges] from corrective action by other judges designed to ensure that the law is effectively administered. The appellate courts have the power to prevent action so obviously improper as to place it beyond established rules of law.[21]

Adverse Effects of Expansive View of Impeachment Grounds

If impeachment were to be the only administrative proceeding to hold Justices of this Court accountable, then the grounds for impeachment may arguably carry a definition beyond the traditionally grave or serious character these offenses have always carried. An expanded definition, however, is no different

---

[20] CONSTITUTION, Article XI, Section 1.

[21] Brent D. Ward, *Can the Federal Courts Keep Order in Their Own House? Appellate Supervision through Mandamus and Orders of Judicial Councils*, 233 Bringham Young University Law Review 233, 237 and 253 (1980), at <heinonline.org/HOL/LandingPage?collection=journals&handle=hein.journals/byulr1980&div=177ID=&page=>, last visited on February 9, 2011.

from the remedy of burning a house to kill a rat. While such definition in the long run may kill more rats or assuredly do away with a particularly obnoxious rat, it will at the same time threaten and adversely affect a more valuable constitutional interest – the independence of the Judiciary that allows magistrates to conscientiously undertake their duties, guided only by the dictates of the Constitution and the rule of law.

It needs no elaborate demonstration to show that the threat of impeachment for every perceived misconduct or misdemeanor would open Justices of the Court to harrassment. A naughty effect – if administrative redress can only be secured from Congress to the exclusion of this Court under an expanded definition of impeachment grounds – is to encourage every litigant with a perceived grievance against a Justice of this Court to run to his congressman for the filing of an impeachment complaint.

Undoubtedly, this kind of scenario will be a continuing threat to judges and justices, with consequential adverse effects on the Judiciary, on inter-branch relationship, and on the respect the public may give the Judiciary, the Legislature, and even of the government itself. Worse, this kind of scenario may ultimately trivialize the impeachment process and is thus best avoided.

An expansive interpretation of the grounds for impeachment must also affect Congress which acts on impeachment complaints but whose main task under our structure of government is to legislate, not to police the Supreme Court and other impeachable officers. To say the least, a deluge of impeachment complaints may prove to be impractical for Congress because impeachment is both an arduous and a time consumming process that will surely divert congressional time and other resources from the principal function of lawmaking.

The US Practice

In the United States (*US*) federal courts, "the impeachment process has not been the only check on federal judges [who are removable through impeachment] who may have abused their

independence, or the only assurance of their accountability."[22] The US National Commission on Judicial Discipline and Removal has posited that there must be "a power in the judiciary to deal with certain kinds of misconduct [as this will further] both the smooth functioning of the judicial branch and the broad goal judicial independence."

Along this line, the US Congress created a system enforcing an internal judicial self-discipline through the **judicial councils** under their *Judicial Councils Reform and Judicial Conduct and Disability Act of 1980* (the *US 1980 Act*). The judicial council (composed of the federal judges within a specific judicial circuit) is considered as a "formal and credible supplement to the impeachment process for resolving complaint of misconduct or disability against federal judges."[23] The judicial council of a federal circuit, through the chief judge, is authorized to receive and to act on complaints about the conduct of judges who are removable only through impeachment. If there is merit to a complaint, the judicial council can "take appropriate action, which may include censure, reprimand, temporary suspension, and transfer of cases, *but not removal from office*. If the judicial council believes that it has uncovered grounds for impeachment, the council is empowered to report its findings to the Judicial Conference of the United States, which after an investigation, may report its findings to the House of Representatives."[24]

Arguably, the existence of a judicial council as an additional or supplemental check on US federal judges is statutory and no equivalent statute has been enacted in our jurisdiction specifically establishing in our Supreme Court a system of internal judicial self-discipline. This argument, however, loses sight of the constitutional authority of our Supreme Court to govern the conduct of its members under its power of general administrative supervision over *all courts* – a power that the Philippine

---

[22] Robert W. Kastenmeier, *supra* note 18.

[23] *Ibid*.

[24] Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Texas Law Review 1, 73-74 (November 1989).

Constitution expressly grants to our Supreme Court to the exclusion of remedies outside of the Judiciary except only for impeachment. Interestingly, even in the US, the view has been taken that the enactment of a statute conferring disciplinary power to the Court over its own members may be unnecessary as the Supreme Court itself may assume this power. This is implied from the following recommendation of the US National Commission on Judicial Discipline and Removal which states:

> [I]t may be in the [US Supreme] Court's best interest, as contributing to the public's perception of accountability, to devise and adopt some type of formal procedure for the receipt and disposition of conduct and disability complaints.
>
> The Commission recommends that the Supreme Court may wish to consider the adoption of policies and procedures for the filing and disposition fo (sic) complaints alleging misconduct against Justices of the Supreme Court.[25]

Note should be taken in these regards that the Philippine Supreme Court has already put in place various Codes governing ethical rules for the bar and for the Judiciary. The Code of Judicial Conduct applies to all members of the Judiciary, including the Members of the Supreme Court. The Code of Professional Responsibility applies to all lawyers, thus, necessarily to Members of the Court for whom membership in the bar is an essential qualification. The Court as well has codified the Internal Rules of the Supreme Court. A Rule on Whistleblowing is presently under consideration by the Court *en banc*.

What is crucial in the establishment of the judicial council system in the US is the implication that **no inherent incompatibility exists between the existence of Congress' power to impeach and the Supreme Court's power to discipline its own members**; the two powers can co-exist and, in fact, even supplement each other. The constitutionality of recognizing disciplinary power in the courts over their own impeachable members (as provided in the US 1980 Act), *vis-à-vis* the Congress' power to remove the same officials by

---

[25] Robert W. Kastenmeier, *supra* note 18.

impeachment, has been addressed before the US Court of Appeals in the case of *McBryde v. Commission to Review Circuit Council Conduct and Disability Orders of the Judicial Conference of the US*:[26]

> Judge McBryde frames his separation of powers claim as whether the Constitution "allocates the power to discipline federal judges and, if so, to which branches of government." Finding that it allocates the power to Congress in the form of impeachment, he concludes that it excludes all other forms of discipline. But Judge McBryde's attempt to fudge the distinction between impeachment and discipline doesn't work. **The Constitution limits judgments for impeachment to removal from office and disqualification to hold office. It makes no mention of discipline generally.** The Supreme Court recently observed that it accepted the proposition that **"[w]hen a statute limits a thing to be done in a particular mode, it includes a negative of any other mode." But application of the maxim depends on the "thing to be done." Here the thing to be done by impeachment is removal and disqualification, not "discipline" of any sort.**

Thus, when the conduct of a member of the Supreme Court is improper but is not of such gravity to be considered as an impeachable offense, the Court – to protect its integrity – may address the misconduct through an administrative disciplinary case against the erring member.

Conclusion: Court can hear the case against Justice del Castillo as an Administrative Matter

What the impeachment provisions of the Constitution guarantee is simply the **right to be removed from office only through the process of impeachment and not by any other means; it does not preclude the imposition of disciplinary sanctions short of removal on the impeachable official. Impeachment is the sole means of removal, but it is certainly not the sole means of disciplining Members of the Supreme Court or, for that matter, public officials removable by impeachment.**

[26] 264 F.3d 52 (2001).

Accordingly, I believe that the Court has the authority to hear the present administrative disciplinary case against Associate Justice Mariano del Castillo; in case of a finding of misconduct, it can impose penalties that are not the functional equivalent of removal or dismissal from service. If, in the exercise of its prerogative as interpreter of the Constitution, it determines that an act complained of falls within the defined grounds for impeachment, then the Court should say so and forthwith forward its recommendations to Congress as the body constitutionally mandated to act in impeachment cases.

Court's Interpretation of Plagiarism - limited to its Concept as an Ethical violation of Members of the Judiciary.

The dissatisfaction with the Court's October 12, 2010 Decision (resolving the plagiarism charge against Justice del Castillo or the "*plagiarism Decision*") primarily lies with the Court's declaration that **malicious intent is a necessary element in committing plagiarism.** In the plagiarism Decision, the Court said:

> [P]lagiarism presupposes intent and a deliberate, conscious effort to steal another's work and pass it off as one's own.

Why we deemed malicious intent as a necessary element for judicial plagiarism can be explained by our repeated pronouncement that:

> not every error or mistake committed by judges in the performance of their official duties renders them administratively liable. **In the absence of fraud, dishonesty or deliberate intent to do an injustice, acts done in their official capacity, even though erroneous, do not always constitute misconduct.**
>
> Only errors that are tainted with fraud, corruption or malice may be the subject of disciplinary action. For administrative liability to attach, respondent must be shown to have been moved by bad faith, dishonesty, hatred or some other motive. Indeed, judges may not be

held administratively liable for any of their official acts, no matter how erroneous, as long as they acted in good faith.[27]

The term plagiarism does not have a precise statutory definition as it is not a matter covered by present Philippine statutes.[28] What the Intellectual Property Code (Republic Act 8283)[29] defines and punishes is "copyright infringement." However, these terms are not legally interchangeable. Laurie Stearns, copyright lawyer and author of the article "Copy Wrong: Plagiarism, Process, Property, and the Law" aptly observes the distinctions between the two in this wise:

> Plagiarism is not necessarily copyright infringement, nor is copyright infringement necessarily plagiarism. The two concepts diverge with respect to three main aspects of the offense: **copying, attribution and intent**. In some ways the concept of plagiarism broader than infringement, in that it can include the copying of ideas or of expression not protected by copyright, that would not constitute infringement and it can include copying of small amounts of material that would be disregarded under copyright law. In other ways the concept of infringement is broader, in that it can include both properly attributed copying and unintentional copying that would be excused from being called plagiarism.
>
> The divergence between plagiarism's popular definition and copyright's statutory framework suggests an essential contradiction between what is at stake in plagiarism – the creative process – and what is at stake in copyright infringement – the creative result.[30]

---

[27] *Cruz v. Iturralde*, A.M. RTJ No. 03-1775, April 30, 2003, 402 SCRA 65.

[28] George, Joyce J. "*Judicial Opinion Writing Handbook*." 5th edition. William S. Hein & Co., Inc., 2007, page 715, defines plagiarism as "the *intentional* representation of another person's words, thoughts or ideas as one's own without giving attribution."

[29] AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES

[30] Stearns, Laurie. "*Copy Wrong: Plagiarism, Process, Property and the Law*." *Perspectives on Plagiarism and Intellectual Property in a Postmodern World*. Ed. Lise Buranen and Alice M. Roy. Albany, New York State University of New York Press. 1999. 5-6.

Separately from these distinctions, the matter before the Court is Justice del Castillo's alleged plagiarism or failure to make attributions as an ethical violation, not a copyright violation under the Intellectual Property Code. Given these distinctions, I see no reason to quibble over the definition of plagiarism – a term that, in the absence of any statutory limitation, the Court can define and interpret for purposes of its administrative authority over all courts and the personnel thereof.

From the point of view of ethical rules, what are important are the intent in undertaking an act and the concepts of integrity, propriety, honesty and impartiality for purposes of dispensing justice by an independent Judiciary. It is in this sense, and in light of the nature of the present case as an administrative disciplinary charge against a Member of this Court, that the pronouncement of this Court on plagiarism and on the merits of the ethical charge should be understood.

In this light, I find it misplaced for Justice Sereno to describe the Court's Decision as:

> [creating] unimaginable problems for Philippine academia, which will from now on have to find a disciplinary response to plagiarism committed by students and researchers on the justification of the majority Decision.
>
> It has also undermined the protection of copyrighted work by making available to plagiarists "lack of malicious intent" as a defense to a charge of violation of copy or economic rights of the copyright owner committed through lack of attribution.
>
> x x x x x x x x x
>
> Because the majority Decision has excused the lack of attribution to the complaining authors in the Vinuya decision to editorial errors and lack of malicious intent to appropriate — and that therefore there was no plagiarism — lack of intent to infringe copyright in the case of lack of attribution may now also become a defense, rendering the above legal provision meaningless.[31]

---

[31] Dissenting Opinion of Justice Sereno in the Plagiarism decision.

When the Supreme Court acts on complaints against judges under its supervision and control, it acts as an administrator imposing discipline and not as a court passing upon justiciable controversies.[32] It is precisely for this reason that disciplinary cases are docketed as "Administrative Matters" or "A.M."[33] Hence, any interpretation by the Court of "plagiarism" is limited to this context and cannot be held to bind the academe in undertaking its educational functions, particularly its own power to define plagiarism in the educational context. It likewise cannot bind Congress in its role as the sole authority to determine what constitutes an impeachable offense, subject to what I stated above on the established scope of impeachable offenses and the power of the Court to act in grave abuse of discretion situations under the Constitution. Specifically, a finding by this Court that plagiarism was or was not committed cannot preclude Congress from determining whether the failure or omission to make an attribution, intentionally or unintentionally, amounts to a "betrayal of public trust."

For these reasons, I support the conclusion of the Ethics and Ethical Standards Committee that Justice Mariano C. del Castillo's attribution lapses did not involve any ethical violation. I vote for the approval of the Committee's Report and for the denial of the petitioners' Motion for Reconsideration.

---

[32] *Icasiano v. Sandiganbayan*, G.R. No. 95642, May 28, 1992, 209 SCRA 377.

[33] See: Rule 4, Internal Rules of the Supreme Court, in relation with Section 4, Rule 6 on Docket Number and Entry in Logbook. Administrative cases are not listed as G.R. (General Register) cases as they are not acted upon in the exercise of the Court's judicial function.

SEPARATE CONCURRING OPINION

ABAD, *J.*:

I fully concur in the majority opinion and would like to react to the separate dissenting opinions of Justices Antonio T. Carpio and Maria Lourdes P.A. Sereno.

Justice Carpio has again graced the Court's rulings in this case with his typically incisive dissenting opinion. Still, I cannot agree with his views. He asserts that the sole disciplining authority of all impeachable officers, including the Justices of this Court, lies in Congress. This is quite true but only with respect to impeachable offenses that consist in "culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust,"[1] all offenses that warrant the removal of such officers and disqualification for holding any office in the government.[2] The Supreme Court has no intention of exercising the power of impeachment that belongs to Congress alone.

Certainly, however, the Supreme Court has the administrative authority to investigate and discipline its members for official infractions that do not constitute impeachable offenses. This is a consequence of the Court's Constitutional power of "administrative supervision over all courts and the personnel thereof."[3] When the Court decided earlier the plagiarism charge filed against Justice Mariano Del Castillo by the petitioners in *Vinuya*, it was under a belief that "plagiarism," which is not even a statutory offense, is an administrative infraction. The petitioners in that case did not themselves object to the proceedings conducted by the Court's Ethics Committee.

Subsequently, a complaint for impeachment was filed against Justice Del Castillo before the House of Representatives based

---

[1] Section 2, Article XI, 1987 Constitution of the Philippines.

[2] Section 3 (7), *id*.

[3] Section 6, Article VIII, 1987 Constitution of the Philippines.

on the same charge of plagiarism. The Court cannot do anything about that but it is not the Court, denying the motion for reconsideration filed in the present case, which will provoke a constitutional crisis; if ever, it is the House of Representatives that will do so, seeing that the Court has already acted on such a charge under an honest belief that plagiarism is an administrative rather than an impeachable offense.

Whether plagiarism is an administrative or an impeachable offense need not be decided by the Court in this case since no actual dispute has arisen between Congress and the Court regarding it.

As for the alleged violation of the copyright law in this case, it should be sufficient to point out that no such charge has been lodged against Justice Del Castillo. What is more, the Court has no original jurisdiction over copyright law violations. I reserve in the appropriate case my view on whether or not lifting from copyrighted articles, without attribution, solely for the purpose of rendering a decision, constitutes violation of the copyright law.

Justice Sereno castigates the majority in the Court for lowering the standards for judicial scholarship, negating the educative and moral directional value in the writing and publishing of decisions, bending over backwards to deny the objective existence of gross plagiarism, and condoning dishonesty in the exercise of a function central to the role of the courts.

But our courts are in the business, not of "judicial scholarship," but of deciding fairly and honestly the disputes before them, using precedents and legal literature that, according to American scholars, belong to the public domain. If this is not honest work for a judge, I do not know what is.

And Justice Sereno has no right to preach at the expense of the majority about "educative and moral directional value" in writing published articles. For one thing, her standards are obviously for work done in the academe, not for the judge plodding at his desk to perform government work. For another,

I note that on occasions she has breached those very standards, lifting from works of others without proper attribution.

Take Justice Sereno's article, *Toward the Formulation of a Philippine Position in Resolving Trade and Investment Disputes in APEC*."[4] Under the section subtitled "The WTO Dispute Settlement Mechanism," she said in the footnote that "[t]his section is drawn from Articles XX and XXIII of the GATT 1994, Understanding on Dispute Settlement, and Working Procedures." To me, this means that in writing the section, she drew ideas from these four GATT issuances.

I am reproducing below the beginning portions of Justice Sereno's work that are relevant to this discussion. I underline what she copied verbatim from Annex 2 of the *General Agreement on Tariffs and Trade* (GATT) *1994*, entitled "*Understanding on Rules and Procedures Governing the Settlement of Disputes*," *or* "*Understanding on Dispute Settlement*" for short.

The WTO Dispute Settlement Mechanism

Dispute settlement under the WTO mechanism is the prompt settlement of situations in which a member considers that any benefit accruing to it directly or indirectly under the WTO Agreement is being impaired by measures taken by another member. A dispute settlement mechanism aims to secure a positive solution to a dispute. Thus, a solution mutually acceptable to the parties to a dispute is preferred. However, in the absence of a mutually agreed solution, the first objective is usually to secure the withdrawal of measures concerned. A measure is any internal act, whether a law, an administrative action, or a judicial decision of a member.

The DSB is the WTO organ that is mandated to administer the rules and procedures that govern the settlement of disputes. It is made up of the representatives of all the members of the WTO. Each member is entitled to one vote.

---

[4] Sereno, *Toward the Formulation of a Philippine Position in Resolving Trade and Investment Disputes in APEC,* Philippine APEC Study Center Network (PASCN) Discussion Paper No. 2001-15 (2001). [available online at http://pascn.pids.gov.ph/DiscList/d01/s01-15.pdf]

The DSB has the following powers and functions: (a) to establish panels, (b) to adopt or reject panel and Appellate Body reports, (c) to maintain surveillance of the implementation of rulings and recommendations, and (d) to authorize the suspension of concessions and other obligations. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be viewed as contentious acts. Members engage in this procedure to resolve disputes. [copied]

If a measure adopted by a country (A) within its territory impinges on, for example, the exports of another country (B), the first step in dispute settlement is the filing of a request for consultation by the complainant. In this case, B is the complainant.

If B requests consultation with A, then A must consider the complaint of B. A must reply to the request within 10 days after its receipt and enter into consultations with B in good faith within a period of 30 days from the date of the request, with a view to reaching a mutually satisfactory solution. If A does not respond within 10 days, does not enter into consultations within a period of 30 days from the filing of the request, and if the consultation fails to settle a dispute within 60 days after the request for consultation, then B may proceed to request the establishment of a panel.

Good offices, conciliation, and mediation may be requested at any time by any party to a dispute. They may begin and be terminated at any time. Once they are terminated, the complaining party can then request the establishment of a panel.

If the complaining party so requests, a panel may be established by the DSB. The function of the panel is to assist the DSB in discharging its responsibilities. Accordingly, a panel should make an objective assessment of the matter before it, including the facts of the case and the applicability and conformity of the measure with the relevant agreements. It should also make other findings that will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements, besides consulting regularly with the parties to the dispute and giving them adequate opportunity to develop a mutually satisfactory solution. [Copied]

The request for the establishment of a panel should be made in writing, indicate whether consultations were held, identify the specific measures at issue, and provide a brief summary of the legal basis of the complaint. [Copied]

x x x **x x x** **x x x**

Notably, Justice Sereno began her above discussion with ideas presumably from her four sources, which she put together and fashioned into her own sentences and paragraphs. The ideas were from GATT but the presentation was original Sereno. Down the line, however, without introduction or preamble, she copied verbatim into her work portions from *Understanding on Dispute Settlement*, without citing this specific source. More, she did not use quotation marks to identify the copied portions. She thus made ordinary readers like me believe that she also crafted those portions. To borrow a word from the civil code, she "co-mingled" the work of others with hers, erasing the identity of the lifted work.

Justice Sereno's explanation is that, since she was drawing from the rules embodied in GATT's *Understanding on Dispute Settlement*, she did not have to make attributions to those rules at each turn of her writing. She may be correct if she in fact properly cited those rules the first time she copied from it and, further, indicated a clear intent to do further copying down the line. But she did not. Properly, she could have written:

x x x x x x x x x

The DSB has the following powers and functions: (a) to establish panels, (b) to adopt or reject panel and Appellate Body reports, (c) to maintain surveillance of the implementation of rulings and recommendations, and (d) to authorize the suspension of concessions and other obligations. **GATT's Understanding on Dispute Settlement has a lot to say about the subject and some are mentioned here. For one it says,** "It is understood that requests for conciliation and the use of the dispute settlement procedures should not be … as contentious acts. Members engage in … procedure to resolve disputes."

x x x x x x x x x

Further, she did not identify the portions she copied verbatim in order to set them apart from her own writing. Under the rule that she foists on Justice Del Castillo, quotation marks must be used whenever verbatim quotes are made.[5] This requirement is all the more important since, unlike domestic rules, the rules of GATT are unfamiliar terrain to most readers. Thus, at the next turn, she could have at least enclosed in quotation marks the other portions she copied verbatim from her source like this:

> If the complaining party so requests, a panel may be established by the DSB. **"The function of the panel is to assist the DSB in discharging its responsibilities. Accordingly, a panel should make an objective assessment of the matter before it, including the facts of the case and the applicability and conformity of the measure with the relevant agreements. It should also make other findings that will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements … consul … regularly with the parties to the dispute and giving them adequate opportunity to develop a mutually satisfactory solution."**
>
> **"The request for the establishment of a panel should be made in writing, indicate whether consultations were held, identify the specific measures at issue, and provide a brief summary of the legal basis of the complaint."**

What is more, learned lawyers would always set apart the laws or rules that they cite or invoke in their work since these are expressions of a higher grade than their comments or opinions. A lawyer's opinion can persuade but a rule or a law is binding. I have yet to see a Supreme Court decision that copies verbatim a specific rule or law, which it invokes to support such decision, without distinctly calling it what it is or citing its source.

Below is the rest of the verbatim copying that she made from Understanding on Dispute Settlement in the section she wrote without attribution or quotation marks.

---

[5] Harvey writes that "[w]ords you use verbatim from a source must be put in quotation marks, even if you use only two or three words; it's not enough simply to cite." Harvey, *Writing with Sources: A Guide for Harvard Students 10* (2008).

Sereno, *J.*	Original work - GATT Annex 2, Understanding on Dispute Settlement
After receipt of comments from the parties, the panel shall issue an interim report to them, including both the descriptive sections and the panel's findings and conclusions. The parties may submit written requests for the panel to review precise aspects of the interim report for which the panel shall meet with the parties. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the members. (page 7)	Following the expiration of the set period of time for receipt of comments from the parties to the dispute, **the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions**. Within a period of time set by the panel, **a party may submit a written request for the panel to review precise aspects of the interim report** prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. **If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.** *[Article 15.2, GATT Annex 2]*
When a panel or the AB concludes that a measure is inconsistent with a covered agreement, it shall recommend that the member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or AB may suggest ways by which the member concerned could implement the recommendations. (page 8)	**Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned bring the measure into conformity with that agreement. In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.** *[Article 19.1, GATT Annex 2]*

The DSB shall adopt the report within 60 days of the issuance of a panel report to the members, unless one of the parties to the dispute formally notifies the DSB of its decision to appeal, or the DSB decides by consensus not to adopt the report. If the panel report is on appeal, the panel report shall not be considered for adoption by the DSB until the completion of the appeal. (page 7-8)	**Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal.** *[Article 16.4, GATT Annex 2]*
It may uphold, modify, or reverse the legal findings and conclusions of the panel. (page 8)	The Appellate Body **may uphold, modify or reverse the legal findings and conclusions of the panel.** *[Article 17.13, GATT Annex 2]*
Note that the AB reviews only issues of law covered in the panel report and legal interpretation developed by the panel. (page 8)	An appeal shall be **limited to issues of law covered in the panel report and legal interpretations developed by the panel.** *[Article 17.6, GATT Annex 2]*
The DSB shall keep under surveillance the implementation of adopted recommendation or rulings. Any member may raise the issue of implementation of the recommendations or rulings at the DSB anytime following their adoption. (page 8)	**The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption.** *[Article 21.6, GATT Annex 2]*

Going to another item in the same article, Justice Sereno copies significant lines from Oppenheim's Treatise without making an attribution to that work.

Sereno, *J.*	**Original work – Oppenheim's Treatise**
In mediation, the third party facilitates the negotiations between the parties concerned. It involves direct conduct of negotiations between the parties at issue on the basis of proposals made by the mediator. On the other hand, good offices are a friendly offer by a third party, which tries to induce disputants to negotiate among themselves. Such efforts may consist of various kinds of actions tending to call negotiations between conflicting states into existence. (page 11)	The difference between [good offices and mediation] is that, whereas good offices consist in **various kinds of action tending to call negotiations between the conflicting States into existence**, mediation consists in **a direct conduct of negotiations between the differing parties on the basis of proposals made by the mediator**. *[Oppenheim, International Law, A Treatise volume 2 page 11 (1920)]*

Justice Sereno explains that "trite, common, standard statement[s]" like the ones she copied from Oppenheim has "nothing original at all about [them]" and need no citation or quotation marks. This is true. Indeed, the Court acknowledged in its October 12, 2010 decision that no plagiarism could be committed respecting "common definitions and terms, abridged history of certain principles of law, and similar frequently repeated phrases that, in the world of legal literature, already belong to the public realm." But I cite the above because Justice Sereno would not grant to Justice Del Castillo the liberty to use common definitions and terms in his *ponencia* without the correct attribution.

In the original draft of this concurring opinion that I circulated among the members of the Court, I mentioned an article published in 2007 that Justice Sereno wrote with two others entitled *Justice and the Cost of Doing Business*.[6] I found that a portion of this

[6] Ma Lourdes A. Sereno, Emmanuel S. De Dios, and Joseph J. Capuno, *Justice and the Cost of Doing Business: The Philippines* (2007) published by the Philippine Institute for Development Studies. online at http://www.econ.upd.ude.ph/respub/dp/pdf/DP2007-11.pdf or http://publications.pids.gov.ph/details.phtml?pid=4180

article appeared to have been reproduced without attribution from a 2005 publication, the *Asian Development Bank Country Governance Assessment (Philippines) 2005*.[7] Justice Sereno has since explained to my satisfaction that such portion came from the three co-authors' earlier 2001 report submitted to the World Bank (WB). I am dropping it as a case of omission of attribution.

Parenthetically, however, in the academic model, "dual and overlapping submissions" is a thesis writer's sin. It simply means that the same academic work is submitted to gain credit for more than one academic course.[8] In the publishing world, while not prohibited across the board, law journals and reviews frown upon authors who submit manuscripts which have been previously published elsewhere, since the purpose of publication is the circulation and distribution of original scholarship and the practice would permit the author to be credited twice for the same work.

Notably, from the papers she furnished the members of the Court, it would seem that the WB Danish Trust Fund commissioned and paid for the 2001 study that Justice Sereno and her co-authors undertook. Indeed, the cover page of the WB paper she also provided shows that it was part of the "Document of the World Bank." I would assume, however, that Justice Sereno obtained WB authorization for the subsequent publication of the report in 2007.

---

[7] At p. 103.

[8] The Harvard Plagiarism Policy states:

It is the expectation of every course that all work submitted to it will have been done solely for that course. If the same or similar work is to be submitted to any other course, the prior written permission of the instructor must be obtained. If the same or similar work is to be submitted to more than one course during the same term, the prior written permission of all instructors involved must be obtained. A student submits the same or similar work to more than one course without such prior permission is subject to disciplinary action, and ordinarily will be required to withdraw from the College. (available online at *http://isites.harvard.edu/icb/icb.do?keyword=k70847&pageid=icb.page355322*)

Next, in her memorandum for petitioners-intervenors Franklin M. Drilon and Adel A. Tamano in *Province of North Cotabato, et al. v. Government of the Republic of the Philippines Peace and Panel on Ancestral Domain, et al.*,[9] Justice Sereno lifted a famous phrase from the United States' case of *Baker v. Carr*, 169 U.S. 180, without making attribution to her source.

J. Sereno	**Original Work – Baker v. Carr**
Second, there is no lack of a judicially discoverable and manageable standard for resolving the question, nor impossibility of deciding the question without an initial policy determination of a kind clearly for non-judicial discretion.	Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a **lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion** x x x *[Baker v. Carr, 169 U.S. 186]*

Justice Sereno explains that, since she earlier cited *Baker v. Carr* in her memorandum, it would be utterly pointless to require her to repeat her citation as often as excerpts from the case appear down the line. It is not quite pointless because one who copies from the work of another has an obligation, she insists in her dissent, to make an attribution to his source. Otherwise, a writer can simply say at the start of his article that he is copying from a list of named cases and it would be up to the reader to guess where the copied portions are located in that article. An explanation like this from an academician is disheartening.

In another article, *Uncertainties Beyond The Horizon: The Metamorphosis of the WTO Investment Framework In The Philippine Setting*,[10] Justice Sereno also copied from the World

[9] G.R. Nos. 183591, 183752, 183893, 183951, September 18, 2008.

[10] Sereno, *Uncertainties Beyond The Horizon: The Metamorphosis Of The WTO Investment Framework In The Philippine Setting*, 52 UST LAW REVIEW 259 (2007-2008). Available online at http:// ustlawreview.com/pdf/ vol.LII/Uncertainties_ Beyond_the_Horizon.pdf

Trade Organization fact sheet on line (prepared by the United States Department of Agriculture) without using quotation marks, and made the material appear to be her own original analysis. Thus:

J. Sereno	**Original Work – WTO Factsheet**
The World Trade Organization (WTO) was established on January 1, 1995. It is a multilateral institution charged with administering rules for trade among member countries. The WTO functions as the principal international body concerned with multilateral negotiations on the reduction of trade barriers and other measures that distort competition. The WTO also serves as a platform for countries to raise their concerns regarding the trade policies of their trading partners. The basic aim of the WTO is to liberalize world trade and place it on a secure basis, thereby contributing to economic growth and development.	**The World Trade Organization (WTO), established on January 1, 1995, is a multilateral institution charged with administering rules for trade among member countries. x x x The WTO functions as the principal international body concerned with multilateral negotiations on the reduction of trade barriers and other measures that distort competition. The WTO also serves as a platform for countries to raise their concerns regarding the trade policies of their trading partners. The basic aim of the WTO is to liberalize world trade and place it on a secure basis, thereby contributing to economic growth and development.** [*WTO FACTSHEET http://www.fas.usda. gov/info/factsheets/wto.html (last accessed February 13, 2008)]*

Here again, Justice Sereno ignores her unbendable rule that one commits plagiarism by his "[f]ailure to use quotation marks to indicate that the entire paragraph in the body of the decision…was not the *ponente's* original paragraph, but was lifted verbatim from [another's] work."

In his book entitled *Economic Analysis of Law* (2nd edition, 1977), Judge Richard A. Posner wrote:

xxx Hence, settlement negotiations will fail, and litigation ensue, only if the minimum price that the plaintiff is willing to accept in

compromise of his claim is greater than the maximum price the defendant is willing to pay in satisfaction of that claim. (At p. 435)

Justice Sereno copied the above verbatim in her article entitled *Lawyers' Behavior and Judicial Decision-Making*[11] published in the Philippine Law Journal, without quotation marks or attribution to Judge Posner. Thus, she wrote:

xxx **[S]ettlement negotiations will fail and litigation will ensue if the minimum price that plaintiff is willing to accept in compromise of his claim is greater than the maximum price that the defendant is willing to pay in satisfaction of that claim.** (At page 483)

In other sections of the same article that Justice Sereno wrote, she either copied verbatim from Judge Posner or mimicked his ideas without attributing these to him. Thus:

Judge Posner wrote —

A somewhat more plausible case can be made that judges might slant their decisions in favour of powerful interest groups in order to increase the prospects of promotion to higher office, judicial or otherwise. xxx (At p. 416)

Justice Sereno mimicked —

The third is that the judge maximizes the prospects of his promotion to a higher office by slanting his decisions in favor of powerful interest groups. (page 489)

Judge Posner wrote —

Presumably judges, like the rest of us, seek to maximize a utility function that includes both monetary and non-monetary elements xxx. (At p. 415)

---

[11] Sereno, *Lawyer's Behavior and Judicial Decision-Making*, 70 Phil. L. J. 472-492 (vol 4, June 1996) [available online at http://law.upd.edu.ph/plj/images/files/PLJ%20volume%2070/PLJ%20 volume%2070%20number%204%20-02-%20Ma.%20Lourdes%20A.%20Sereno%20%20Lawyers%20Behavior.pdf]

Justice Sereno mimicked —

In understanding judicial behaviour we have to assume that judges like all economic actors maximize a utility function. This function in all probability includes material as well as non-material factors. xxx (At page 489)

Judge Posner wrote —

[T]he rules of the judicial process have been carefully designed both to prevent the judge from receiving a monetary payoff from deciding a particular case one way or the other and to minimize the influence of politically effective interest groups in his decisions. *[At p. 415]*

Justice Sereno mimicked —

The first is that the American judicial system have rules designed to minimize the possibilities of a judge maximizing his financial interest by receiving a bribe from a litigant or from acceding to a politically powerful interest group by making the rules work in such a manner as to create disincentives for the judge ruling in such a manner (page 489)

Judge Posner wrote —

It is often argued, for example, that the judge who owns land will decide in favor of landowners, the judge who walks to work will be in favour of pedestrians. *Posner, 415]*

Justice Sereno mimicked —

The second proceeding from the first is that the judge maximizes the interest of the group to which he belongs. If he belongs to the landowning class he will generally favor landowners and if he walks to work, he will generally favor pedestrians. (page 489)

Judge Posner wrote —

[J]udges seek to impose their preferences, tastes, values, *etc*. on society. *[Posner, 416]*

Justice Sereno mimicked—

The last is that judges maximize their influence on society by imposing their values, tastes and preferences thereon. (page 489)

Using the severe standards she sets for Justice Del Castillo in *Vinuya*, *i.e.*, "objective existence of plagiarism," I am afraid that any explanation of good faith or lack of malicious intent on Justice Sereno's part in copying without proper attribution from the work of Judge Posner would not be acceptable.

Still I can concede that Justice Sereno may not have intended to plagiarize the work of others even if she copied verbatim from them without proper attribution or quotation marks. Her above articles were, taken as whole, essentially hers. I regret, however, that since she wrote them as an academician bound by the high standards that she and the University of the Philippines where she taught espouse, she may have failed, borrowing her own phrase, to set the correct "educative and moral directional value" for the young.

Justice Del Castillo, who did not write as an academician but as a judge, is at least entitled to the liberties granted judges in writing decisions.

I vote to *DENY* the motion for reconsideration filed in this case.

DISSENTING OPINION

CARPIO, *J.*:

I dissent on two grounds. *First*, this Court has no jurisdiction to decide in an **administrative case** whether a sitting Justice of this Court has committed misconduct in office as this power belongs exclusively to Congress. *Second*, in writing judicial decisions a judge must comply with the Law on Copyright[1] as the judge has no power to exempt himself from the mandatory requirements of the law.

I. Disciplining Authority of Impeachable Officers

Under the Constitution, the ***sole*** disciplining authority of all impeachable officers, including Justices of this Court, is Congress. Section 3(1), Article XI of the Constitution provides that, "The House of Representatives shall have the **exclusive power** to initiate all cases of impeachment." Likewise, Section 3(6) of the same Article provides that, "The Senate shall have the **sole power** to try and decide cases of impeachment." These provisions constitute Congress as the **exclusive authority to discipline all impeachable officers** for any impeachable offense, including "betrayal of public trust," a "catchall phrase"[2]

---

[1] Part IV, Intellectual Property Decree (Republic Act No. 8293).

[2] Volume II, Records of the Constitutional Commission, p. 272. The following exchange took place during the deliberations of the Constitutional Commission:

MR. REGALADO: Thank you, Madam President.

x x x x x x x x x

First, this is with respect to Section 2, on the grounds for impeachment, and I quote:

. . . culpable violation of the Constitution, treason, bribery, other high crimes, graft and corruption or betrayal of public trust.

Just for the record, what would the Committee envision as a betrayal of the public trust which is not otherwise covered by the other terms antecedent thereto?

MR. ROMULO: I think, if I may speak for the Committee and subject to further comments of Commissioner de los Reyes, the concept is that this is a catchall phrase. Really, it refers to his oath of office, in the end that the

to cover any misconduct involving breach of public trust by an impeachable officer.

While impeachment is often described as a political process, it also functions as the ***equivalent*** of administrative disciplinary proceedings against impeachable officers. Impeachable officers are not subject to administrative disciplinary proceedings either by the Executive or Judicial branch, in the same manner that non-impeachable officers are subject. Thus, **impeachment by Congress takes the place of administrative disciplinary proceedings against impeachable officers *as there is no other authority that can administratively discipline impeachable officers***.[3] Removal from office and disqualification to hold public

---

idea of a public trust is connected with the oath of office of the officer, and if he violates that oath of office, then he has betrayed that trust.

MR. REGALADO: Thank you.

MR. MONSOD: Madam President, may I ask Commissioner de los Reyes to perhaps add to those remarks.

THE PRESIDENT: Commissioner de los Reyes is recognized.

MR. DE LOS REYES: The reason I proposed this amendment is that during the Regular Batasang Pambansa when there was a move to impeach then President Marcos, there were arguments to the effect that there is no ground for impeachment because there is no proof that President Marcos committed criminal acts which are punishable, or considered penal offenses**. And so the term "betrayal of public trust," as explained by Commissioner Romulo, is a catchall phrase to include all acts which are not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance cronyism, favoritism, *etc.* to the prejudice of public interest and which tend to bring the office into disrepute**. That is the purpose, Madam President. Thank you.

MR. ROMULO: If I may add another example, because Commissioner Regalado asked a very good question. This concept would include, I think, obstruction of justice since in his oath he swears to do justice to every man; so if he does anything that obstructs justice, it could be construed as a betrayal of the public trust. Thank you. (Emphasis supplied)

[3] The 1993 *Report of the National Commission on Judicial Discipline & Removal* of the United States (http://judicial-discipline-reform.org/judicial complaints/1993_Report_Removal.pdf, pp. 17-18) concluded that **impeachment is the exclusive mode of removing federal judges from office**, thus:

office,[4] which is the penalty for an impeachable offense,[5] is also the most severe penalty that can be imposed in administrative disciplinary proceedings.

Impeachment is not a criminal proceeding because conviction in an impeachment complaint is not a bar to criminal prosecution for the same act.[6] An impeachable offense, like betrayal of public trust, may not even constitute a criminal act. Like in an administrative proceeding, proof beyond reasonable doubt is not required for conviction in impeachment. If an impeachable officer is charged of a **crime**, as distinguished from an administrative charge, the proper court has jurisdiction to try such impeachable officer because the proceeding is criminal, not administrative. However, neither the conviction nor acquittal

---

Nevertheless, the Commission concludes that Congress may not provide for removal as a criminal penalty. If removal may lawfully follow on conviction for a federal judge, then it may do so for the Vice President of the United States or perhaps even the President. But if the constitutional grant of a term of office to the Vice President and President prevails against any provision for removal in the criminal law, the same should be true of the tenure the Constitution grants to judges. The Constitution quite explicitly separates impeachment and removal from the ordinary criminal process. The Commission does not believe that Congress's power to punish crimes is an exception to judicial life tenure, or alternatively a way in which good behavior may be inquired into, in the way that the impeachment process clearly is.

x x x x x x x x x

The Commission concludes that a statute providing for the removal from office of judges who serve on good behavior under Article III **by means other than impeachment and conviction would be unconstitutional**. (Emphasis supplied; citations omitted)

[4] Section 3(7), Article XI of the Constitution provides: "Judgment in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment according to law."

[5] There are those who, with good reason, believe that removal from office is the maximum penalty in impeachment and thus there can be lesser penalties like censure. *See* Joseph Isenbergh, *Impeachment and Presidential Immunity from Judicial Process*, 18 Yale Law & Policy Review 53 (1999).

[6] See note 4.

of such impeachable officer in the criminal case constitutes a bar to his subsequent impeachment by Congress. There is no double jeopardy because impeachment is not a criminal proceeding.[7]

Only Congress, as the **exclusive disciplining authority** of all impeachable officers, can decide in a non-criminal, non-civil proceeding[8] whether a sitting Justice of this Court has committed plagiarism. Plagiarism is a betrayal of public trust because, as the majority puts it, to plagiarize is "'to steal and pass off as one's own' the ideas of another."[9] However, ***in writing judicial decisions*** a judge is liable for plagiarism only if the copying violates the moral rights of the author under the Law on Copyright.

This Court may conduct an investigation of an administrative complaint against a sitting Justice to determine if there is basis in ***recommending*** to the House of Representatives the initiation of an impeachment complaint against the sitting Justice. This

---

[7] Professor Laurence H. Tribe writes: "The independence of the process of impeachment and criminal prosecution is highlighted by the case of Judge Alcee Hastings, who was acquitted of bribery by a federal jury in 1983, but was subsequently impeached by the House and convicted by the Senate for the same offense – and for testifying falsely about it under oath at his federal criminal trial. Similarly, Judge Walter Nixon was impeached by the House and convicted by the Senate in 1989 for falsely testifying under oath before a federal grand jury investigating Judge Nixon's improper discussions with a state prosecutor in a case involving a business acquaintance's son, despite an earlier acquittal in a federal prosecution for bribery arising out of those very events. And, although this precise sequence is not addressed by Article I, Section 3, clause 7, it should also be possible for an official to be acquitted by the Senate in an impeachment trial but subsequently convicted of the same underlying acts in a federal court. The Senate's acquittal, after all, could well represent a determination merely that the charged offenses were not impeachable, or that the nation would be harmed more than protected by pronouncing the official guilty." *American Constitutional Law*, Volume 1 (3rd edition), pp. 159-160.

[8] An author whose moral rights under the Law on Copyright are infringed by a judge in his judicial decision may file a civil case in court against such judge. See discussion on *The Judge Must Follow the Law on Copyright, infra*.

[9] Quoting *Black's Law Dictionary*.

Court may also conduct an investigation of an administrative complaint against a sitting Justice to determine if the complaint constitutes contempt of this Court. **However, this Court has no power to decide on the guilt or innocence of a sitting Justice in the administrative complaint because such act is a usurpation of the exclusive disciplinary power of Congress over impeachable officers under the Constitution**. Any decision by this Court in an administrative case clearing a sitting Justice of an impeachable offense is void for want of jurisdiction and for violation of an express provision of the Constitution.

Such a decision will put this Court on a collision course with Congress if subsequently an impeachment complaint for plagiarism is filed with Congress against the sitting Justice. Incidentally, an impeachment complaint has already been filed in the House of Representatives involving the same complaint subject of this administrative case. If the House of Representatives decides to take cognizance of the complaint and initiates an impeachment based on the same administrative complaint that this Court had already dismissed as baseless, then this Court would have created a constitutional crisis that could only weaken the public's faith in the primacy of the Constitution.

The Supreme Court **cannot** assume jurisdiction over an administrative complaint against a sitting Justice of this Court by invoking Section 6, Article VIII of the Constitution. This provision states that the "Supreme Court shall have administrative supervision over all courts and the personnel thereof." This provision refers to the administrative supervision that the Department of Justice used to exercise over the courts and their personnel, as shown by the folowing exchange during the deliberations of the Constitutional Commission:

MR. GUINGONA: xxx.

The second question has reference to Section 9, about the administrative supervision over all courts to be retained in the Supreme Court. I was wondering if the Committee had taken into consideration the proposed resolution for the transfer of the administrative supervision from the Supreme Court to the Ministry

of Justice. But as far as I know, none of the proponents had been invited to explain or defend the proposed resolution.

Also, I wonder if the Committee also took into consideration the fact that the UP Law Constitution Project in its Volume I, entitled: Annotated Provision had, in fact, made this an alternative proposal, the transfer of administrative supervision from the Supreme Court to the Ministry of Justice.

Thank you.

MR. CONCEPCION: May I refer the question to Commissioner Regalado?

THE PRESIDING OFFICER (Mr. Sarmiento): Commissioner Regalado is recognized.

MR. REGALADO: Thank you, Mr. Presiding Officer.

We did invite Minister Neptali Gonzales, who was the proponent for the transfer of supervision of the lower courts to the Ministry of Justice. I even personally called up and sent a letter or a short note inviting him, but the good Minister unfortunately was enmeshed in a lot of official commitments. We wanted to hear him because the Solicitor General of his office, Sedfrey Ordoñez, appeared before us, and asked for the maintenance of the present arrangement wherein the supervision over lower courts is with the Supreme Court. But aside from that, although there were no resource persons, we did further studies on the feasibility of transferring the supervision over the lower courts to the Ministry of Justice. All those things were taken into consideration *motu proprio*.[10]

For sure, the **disciplinary authority** of the Supreme Court **over judges** is expressly governed by another provision, that is, Section 11, Article VIII of the Constitution. Section 11 provides:

Section 11. xxx The Supreme Court *en banc* shall have the **power to discipline judges of lower courts**, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon. (Emphasis supplied)

---

[10] Volume I, Records of the Constitutional Commission, pp. 456-457.

Clearly, the disciplinary authority of the Supreme Court over judges is found in Section 11 of Article VIII. However, this disciplinary authority is expressly limited to lower court judges, and does not incude Supreme Court Justices, precisely because the Constitution expressly vests exclusively on Congress the power to discipline Supreme Court Justices. By excluding Supreme Court Justices, Section 11 **withholds** from the Supreme Court *en banc* the power to discipline its own members.

The *Judicial Conduct and Disability Act of 1980* of the United States, which gives judicial councils **composed of federal judges** the power to discipline federal judges short of removal from office, does **not** apply to Justices of the United States Supreme Court who are subject to discipline only by the United States Congress. Morever, a similar law cannot be enacted in the Philippines because all lower court judges are subject to discipline by the Supreme Court *en banc* under Section 11, Article VIII of the Constitution. Thus, reference to the *Judicial Conduct and Disability Act of 1980* is inappropriate in this jurisdiction.

I submit that this Court recall the Resolution of 12 October 2010 subject of the present motion for reconsideration for lack of jurisdiction to decide the administrative complaint against Justice Mariano C. Del Castillo.

II. ***The Judge Must Follow the Law on Copyright***

a. Copying from Works of the Government

In writing judicial decisions, a judge should make the proper attribution in copying passages from any **judicial decision, statute, regulation, or other Works of the Government**. The ***Manual of Judicial Writing*** adopted[11] by this Court provides how such attribution should be made.

However, the failure to make such attribution does not violate the Law on Copyright.[12] The law expressly provides that Works

[11] Approved by the *En Banc* on 15 November 2005.

[12] Part IV of RA No. 8293, otherwise known as the "Intellectual Property Code of the Philippines."

of the Government are not subject to copyright.[13] This means that there is neither a legal right by anyone to demand attribution, nor any legal obligation from anyone to make an attribution, when Works of the Government are copied. The failure to make the proper attribution of a Work of the Government is not actionable but is merely a case of sloppy writing. Clearly, there is no **legal** obligation, by a judge or by any person, to make an attribution when copying Works of the Government.

However, misquoting or twisting, with or without attribution, any judicial decision, statute, regulation or other Works of the Government in judicial writing, **if done to mislead the parties or the public**, is actionable. Under Canon 3 of the Code of Judicial Conduct, a judge "**should perform official duties honestly**."[14] Rule 3.01[15] and Rule 3.02[16] of the Code provide that a judge must be faithful to the law, maintain professional competence, and strive diligently to ascertain the facts and the applicable law.

The foregoing applies to any non-copyrightable work, and any work in the public domain, whether local or foreign.

b. Copying from Pleadings of Parties

In writing judicial decisions, the judge may copy passages from the pleadings of the parties with proper attribution to the author of the pleading. However, the failure to make the proper attribution is not actionable.

---

[13] Section 176 of RA No. 8293 provides: "*Works of the Government*. No copyright shall subsist in any work of the Government of the Philippines. xxx."

[14] Canon 3 of the Code of Judicial Conduct provides: "A judge should perform official duties honestly, and with impartiality and diligence."

[15] Rule 3.01 of the Code of Judicial Conduct provides: "A judge shall be faithful to the law and maintain professional competence."

[16] Rule 3.02 of the Code of Judicial Conduct provides: "In every case, a judge shall endeavour diligently to ascertain the facts and the applicable law, unswayed by partisan interests, public opinion or fear of criticism."

Pleadings are submitted to the court precisely so that the ***pleas***, or the arguments written on the pleadings, are accepted by the judge. **There is an implied offer by the pleader that the judge may make any use of the pleadings in resolving the case**. If the judge accepts the pleader's arguments, he may copy such arguments to expedite the resolution of the case. In writing his decision, the judge does not claim as his own the arguments he adopts from the pleadings of the parties. Besides, the legal arguments in the pleadings are in most cases merely reiterations of judicial precedents, which are Works of the Government.

However, misquoting or twisting, with or without attribution, any passage from the pleadings of the parties, **if done to mislead the parties or the public**, is actionable. Under Canon 3 of the Code of Judicial Conduct, a judge "should perform official duties honestly." Rule 3.01 and Rule 3.02 of the Code provide that a judge must be faithful to the law, maintain professional competence, and strive diligently to ascertain the facts and the applicable law.

c. Copying from Textbooks, Journals and other Non-Government Works

In writing judicial decisions, the judge may copy passages from textbooks, journals and other non-government works with proper attribution. However, whether the failure to make the proper attribution is actionable or not depends on the nature of the passages copied.

If the work copied without proper attribution is copyrighted, the failure to make such attribution violates Section 193 of the Intellectual Property Code, which provides:

Section 193. ***Scope of Moral Rights***. The author of a work shall, independently of the economic rights in Section 177 or the grant of an assignment or license with respect to such right, have the right:

193.1. **To require that the authorship of the works be attributed to him**, in particular, the right that his name, as far as practicable, be indicated in a prominent way on the copies, and **in connection with the public use of his work**;

x x x x x x x x x

193.3. **To object to any distortion**, mutilation or other modification of, or other derogatory action in relation **to his work which would be prejudicial to his honor or reputation;**

x x x. (Emphasis supplied)

Section 184(k) of the Intellectual Property Code expressly allows, as a limitation on the copyright or economic rights of the author, "**any use made of a work for the purpose of any judicial proceedings** x x x."[17] Section 184(k) clearly authorizes a judge to copy copyrighted works for "**any use**" in judicial proceedings, which means the judge, in writing his decision, can copy passages beyond the quantitative limitations of "**fair-use**" under Section 184(b). This is the significance of Section 184(k), allowing the judge to copy lengthy passages of copyrighted work even beyond what is required by fair-use. Section 184(k) is silent on the obligation of the judge to make the proper attribution, unlike Section 184(b) on fair-use by the public which expressly requires a proper attribution.

However, Section 193 nevertheless requires anyone, including a judge writing a judicial decision, to make the proper attribution to show respect for the moral rights of the author. Thus, while the author has no right to demand economic compensation from the judge or the government for the unlimited and public use of his work in a judicial decision, the law requires that "**the authorship of the works be attributed to him x x x in connection with the public use of his work**." In short, the judge is legally obligated to make the proper attribution because Section 193 protects the moral rights of the author.

---

[17] Section 184 (k) of RA No. 8293 provides: "*Limitations on Copyright*. 184.1. Notwithstanding the provisions of Chapter V [on copyright and economic rights], the following acts shall not constitute infringement of copyright:

(a) x x x

x x x x x x x x x

(k) Any use made of a work for the purpose of any judicial proceedings or for the giving of professional advice by a legal practitioner."

The moral rights under Section 193 of the Intellectual Property Code arise only if the work of an author is copyrighted. If the work is not copyrighted, then there are no moral rights to the work. If the passages in a textbook, journal article, or other non-work of the government are merely quotations from Works of the Government, like sentences or paragraphs taken from judicial decisions, then such passages if copied by a judge do not require attribution because such passages, **by themselves**, are Works of the Government. The same is true for works in the public domain.

However, the arrangement or presentation of passages copied from Works of the Government may be subject to copyright,[18] and a judge copying such arrangement or presentation, together with the passages, may have to make the proper attribution. If the passages are those of the author himself, and not copied from Works of the Government or from works in the public domain, then clearly there is a legal obligation on the part of the judge to make the proper attribution. Failure by the judge to make such attribution violates not only Section 193 of the Intellectual Property Code, but also Canon 3 of the Code of Judicial Conduct.

The moral rights of an author are independent of the author's economic rights to his work in the sense that even if the author assigns his work, the moral rights to the work remain with him, being inalienable.[19] Any violation of an author's moral rights entitles him to the same remedies as a violation of the economic rights to the work,[20] whether such economic rights are still with him or have been assigned to another party. Thus, while called "moral rights," these rights are legally enforceable.

Two essential elements of an author's moral rights are the right to attribution and the right to integrity. The right to attribution

---

[18] Section173.1 (b), Intellectual Property Code.

[19] Section 198.1 of the Intellectual Property Code provides that the "[moral] rights of an author x x x shall not be assignable or subject to license."

[20] Section 119, Intellectual Property Code.

or paternity[21] is the right of the author to be recognized as the originator or father of his work, a right expressly recognized in Section 193.1 of the Intellectual Property Code. The right to integrity is the right of the author to prevent any distortion or misrepresentation of his work, a right expressly recognized in Section 193.3 of the Code. The Legislature incorporated the moral rights of an author in the Intellectual Property Code in compliance with the treaty obligations of the Philippines under the Berne Convention, which requires treaty states to enact legislation protecting the moral rights of authors.[22]

The rationale behind moral rights is explained in a local intellectual property textbook, citing American jurisprudence:

> The term moral rights has its origins in the civil law and is a translation of the French *le droit moral*, which is meant to capture those rights of a spiritual, non-economic and personal nature. The rights spring from a belief that an artist in the process of creation injects his spirit into the work and that the artist's personality, as well as the integrity of the work, should therefore be protected and preserved. Because they are personal to the artist, moral rights exist independently of an artist's copyright in his or her work. **While the rubric of moral rights encompasses many varieties of rights, two are protected in nearly every jurisdiction recognizing their existence: attribution and integrity. The right of attribution generally consists of the right of an artist to be recognized by name as the author of his work or to publish anonymously or pseudonymously, the right to prevent the author's work from being attributed to someone else, and to prevent the use of the author's name on works created by others, including distorted editions of the author's original work. The right of integrity allows the author to prevent any deforming or mutilating changes to his work, even after title of the work has been transferred.** In some jurisdictions, the integrity right also protects artwork from destruction. Whether or not a work of art is protected from destruction represents a fundamentally different perception of the purpose of

---

[21] Roger E. Schechter and John R. Thomas, *Intellectual Property* (2003), p. 19.

[22] Vicente B. Amador, *Copyright under the Intellectual Property Code* (1998), p. 570.

moral rights. If integrity is meant to stress the public interest in preserving a nation's culture, destruction is prohibited; if the right is meant to emphasize the author's personality, destruction is seen as less harmful than the continued display of deformed or mutilated work that misrepresents the artist and destruction may proceed.[23] (Emphasis supplied)

When a judge respects the right to attribution and integrity of an author, then the judge observes intellectual honesty in writing his decisions. Writing decisions is the most important official duty of a judge, more so of appellate court judges. Conversely, if a judge fails to respect an author's right to attribution and integrity, then the judge fails to observe intellectual honesty in the performance of his official duties, a violation of Canon 3 of the Code of Judicial Conduct.

The duty of a judge to respect the moral rights of an author is certainly not burdensome on the performance of his official duties. All the reference materials that a judge needs in writing judicial decisions are either Works of the Government or works in the public domain. **A judge must base his decision on the facts and the law,**[24] **and the facts and the law are all in the public domain**. **There is no need for a judge to refer to copyrighted works**. When a judge ventures to refer to copyrighted works by copying passages from such works, he immediately knows he is treading on protected works, and should readily respect the rights of the authors of those works. The judge, whose most important function is to write judicial decisions, must be the first to respect the rights of writers whose lives and passions are dedicated to writing for the education of humankind.

Besides, Section 184(k) of the Intellectual Property Code already generously allows the judge unlimited copying of copyrighted works in writing his judicial decisions. The Code,

---

[23] *Id*. p. 569, citing *John Carter, John Swing and John Veronis v. Helmsley-Spear, Inc. and Associates*, U.S. Court of Appeals for 2nd Circuit, 1 December 1995.

[24] Article 8 of the Civil Code provides: "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines."

however, does not exempt the judge from recognizing the moral rights of the author. The basic rule of human relations, as embodied in Article 19 of the Civil Code, requires that the judge should give to the author of the copyrighted work what is due him. Thus, Article 19 states: "Every person must, in the exercise of his rights and **in the performance of his duties**, act with justice, **give everyone his due**, **and observe honesty and good faith**."

d. Difference from the Academe

Academic writing, such as writing dissertations or articles in academic journals, is governed by standards different from judicial decision writing. The failure to make the proper attribution for passages copied from Works of the Government is not actionable against a judge when writing a judicial decision. However, the same failure by a student or a faculty member may be deemed plagiarism in the academe, meriting a severe **administrative** penalty. Nevertheless, the Judiciary and the academe should have the same rule when it comes to copyrighted works. **In every case, there is a legal duty to make the proper attribution when copying passages from copyrighted works because the law expressly requires such attribution without exception**.

The academe requires that passages copied from Works of the Government, works in the public domain, and non-copyrighted works should be properly attributed in the same way as copyrighted works. The rationale is to separate the original work of the writer from the works of other authors in order to determine the original contribution of the writer to the development of a particular art or science. This rationale does not apply to the Judiciary, where adherence to jurisprudential precedence is the rule. However, if a judge writes an article for a law journal, he is bound by the same rules governing academic writing.[25]

---

[25] *In the Matter of Hon. Thomas E. Brennan, Jr., Judge, 55th District, Mason, Michigan, 433 Mich. 1204, 447 N.W.2d 712 (6 November 1989).*

ACCORDINGLY, I vote to *RECALL* the Resolution of 12 October 2010 subject of the present motion for reconsideration as this Court's jurisdiction extends only to a determination whether the administrative complaint against Justice Mariano C. Del Castillo constitutes contempt of this Court.

In this case, Judge Brennan, Jr. submitted an article to a law review for publication. The article failed to acknowledge several passages copied from law journal articles of two other authors. The Michigan Judicial Tenure Commission recommended to the Supreme Court of Michigan that Judge Brennan, Jr. be publicly censured for misconduct. Interestingly, Judge Brennan, Jr. (a state judge) admitted his misconduct and made the following manifestation:

> Respondent Thomas E. Brennan, Jr., of the 55th District Court, Ingham County, Michigan, acknowledges notice and receipt of the Judicial Tenure Commission's Decision and Recommendation for Order of Discipline dated September 12, 1989, and stipulates to the Judicial Tenure Commission's findings as recited in paragraphs one (1) through six (6) thereof;
>
> **Respondent further affirmatively acknowledges the impropriety of his conduct as set forth in the Decision and Recommendation for Order of Discipline, and pursuant to MCR 9.221(C), consents to the Commission's recommendation that he be publicly censured**.
>
> Respondent further concurs in the request of the Judicial Tenure Commission that an order embodying the foregoing disciplinary action be entered immediately by the Michigan Supreme Court. (Emphasis supplied)

SEPARATE DISSENTING OPINION

CARPIO MORALES, *J.*:

I join Justice Antonio T. Carpio's thesis in his Dissenting Opinion on the commission of plagiarism or violation of intellectual property rights in the *Vinuya* decision. I join him too on his other thesis that this Court has no jurisdiction to decide an administrative case where a sitting Justice of this Court has committed misconduct in office, with qualification.

I submit that the Court may wield its administrative power against its incumbent members on grounds ***other than*** culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust, **AND *provided*** the offense or misbehavior does not carry with it a penalty, the service of which would amount to removal from office either on a permanent or temporary basis such as suspension.

> The President, the Vice President, the members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.[1] (underscoring supplied)

In 1988, the Court dismissed the complaint for disbarment against Justice Marcelo Fernan for lack of merit. Aside from finding the accusations totally baseless, the Court, by *per curiam* Resolution,[2] also stated that to grant a complaint for disbarment of a member of the Court during the member's incumbency would in effect be to circumvent and hence to run afoul of the constitutional mandate that members of the Court may be removed from office only by impeachment.

---

[1] CONSTITUTION, Art. XI, Sec. 2.

[2] *Cuenco v. Fernan*, Adm. Case No. 3135, February 17, 1988, 158 SCRA 29; *vide* also the Resolution of April 15, 1988 (160 SCRA 778) where the complainant was severely reprimanded and warned.

In the subsequent case of *In Re Raul M. Gonzales*,[3] this principle of constitutional law was succinctly formulated in the following terms which lay down a bar to the institution of certain actions against an impeachable officer during his or her incumbency.

> x x x A public officer who under the Constitution is required to be a Member of the Philippine Bar as a qualification for the office held by him and who may be removed from office only by impeachment, cannot be charged with disbarment during the incumbency of such public officer. Further, such public officer, during his incumbency, cannot be charged criminally before the *Sandiganbayan* or any other court with any offense which carries with it the penalty of removal from office, or **any penalty service of which would amount to removal from office**.[4] (emphasis and underscoring supplied; italics in the original)

The Court clarified, however, that it is not saying that its members are entitled to immunity from liability for possible criminal acts or for alleged violations of the canons of judicial ethics or codes of judicial conduct. It stressed that there is a fundamental procedural requirement that must be observed before such liability may be determined and enforced.

> x x x A Member of the Supreme Court must first be removed from office via the constitutional route of impeachment under Sections 2 and 3 of Article XI of the 1987 Constitution. Should the tenure of the Supreme Court Justice be thus terminated by impeachment, he may then be held to answer either criminally or administratively (by disbarment proceedings) for any wrong or misbehaviour that may be proven against him in appropriate proceedings.[5] (underscoring supplied)

The Court declared the same principle in *Jarque v. Desierto*[6] by Resolution of December 5, 1995.

---

[3] A.M. No. 88-4-5433, April 15, 1988, 160 SCRA 771.

[4] *Id.* at 774.

[5] *Id.* at 776-777.

[6] A.C. No. 4509, December 5, 1995, 250 SCRA xi.

The rule that an impeachable officer cannot be criminally prosecuted for the same offenses which constitute grounds for impeachment presupposes his continuance in office. Hence, the moment he is no longer in office because of his removal, resignation, or permanent disability, there can be no bar to his criminal prosecution in the courts.

Nor does retirement bar an administrative investigation from proceeding against the private respondent, given that, as pointed out by the petitioner, the former's retirement benefits have been placed on hold in view of the provisions of Sections 12 and 13 of the Anti-Graft and Corrupt Practices Act.[7] (underscoring supplied)

The immediately-quoted pronouncement implies that the *administrative* investigation must be initiated during the incumbency of the respondent.

That the Supreme Court has overall administrative power over its members and over all members of the judiciary has been recognized.[8] Moreover, the Internal Rules of the Supreme Court (2010)[9] expressly included, for the first time, "cases involving the discipline of a Member of the Court"[10] as among those *en banc* matters and cases. Elucidating on the procedure, Section 13, Rule 2 of the Court's Internal Rules provides:

SEC. 13. *Ethics Committee*. – In addition to the above, a permanent **Committee on Ethics and Ethical Standards** shall be established and chaired by the Chief Justice, with following membership:

a) a working Vice-Chair appointed by the Chief Justice;
b) three (3) members chosen among themselves by the *en banc* by secret vote; and

---

[7] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 146486, March 4, 2005, 452 SCRA 714, 734-735.

[8] In discussing the word "incapacitated," Bernas said that the power to determine incapacity is part of the overall administrative power which the Supreme Court has over its members and over all members of the judiciary [Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* (2003), p. 988].

[9] A.M. No. 10-4-20-SC (May 4, 2010).

[10] *Id.*, Rule 2, Sec. 3, par. (h).

c) a retired Supreme Court Justice chosen by the Chief Justice as a non-voting observer-consultant.

The Vice-Chair, the Members and the Retired Supreme Court Justice shall serve for a term of one (1) year, with the election in the case of elected Members to be held at the call of the Chief Justice.

The Committee shall have the task of **preliminarily investigating all complaints** involving graft and corruption and violations of ethical standards, including anonymous complaints, filed against Members of the Court, and of **submitting findings and recommendations** to the *en banc*. All proceedings shall be completely confidential. The Committee shall also monitor and report to the Court the progress of the investigation of similar complaints against Supreme Court officials and employees, and handle the annual update of the Court's ethical rules and standards for submission to the *en banc*. (emphasis and underscoring supplied)

The Court acknowledged its power to take cognizance of complaints against its incumbent Members. It is circumscribed, however, by the abovementioned principle of constitutional law[11] in terms of grounds and penalties.

---

[11] This framework of constitutional law likewise explains why incumbent Justices of the Supreme Court, by virtue of their being impeachable officers, are **not included** from the operation of A.M. No. 02-9-02-SC on the "Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan, Judges of Regular and Special Courts, and Court Officials Who Are Lawyers as Disciplinary Proceedings Against Them Both as Officials and as Members of the Philippine Bar" (September 17, 2002). The rule provides that when the said administrative case is based on grounds which are likewise grounds for a disciplinary action of members of the Bar, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar [as applied in *Avancena v. Liwanag*, A.M. No. MTJ-01-1383, March 5, 2003, 398 SCRA 541 and July 17, 2003, 406 SCRA 300 where the judge was dismissed from service and disbarred from the practice of law. See also *Juan de la Cruz (Concerned Citizen of Legazpi City) v. Carretas*, A.M. No. RTJ-07-2043, September 5, 2007, 532 SCRA 218; *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414]. Its application to a particular administrative action is not dependent on the date of commission of the offense but on the date of filing of the case. There is no automatic conversion when the administrative case was filed before October 1, 2002

In at least two recent instances, the Court had conducted administrative proceedings against its incumbent Members.

In the controversy surrounding the 1999 Bar Examinations, the Court, by Resolution of March 22, 2000 in Bar Matter No. 979, **censured** then incumbent Justice Fidel Purisima for his failure to disclose on time his relationship to an examinee and for breach of duty and confidence, and declared **forfeited** 50% of the fees due him as chairperson of the 1999 Bar Examinations Committee. The impositions did not, however, douse the clamor for stiffer penalties on Justice Purisima in case he were found liable after a full, thorough and formal investigation by an independent and impartial committee, which some quarters urged the Court to form.

Meanwhile, Justice Purisima retired from the Court on October 28, 2000. By Resolution of November 28, 2000, the Court ruled that "[h]is retirement makes it untenable for this Court to further impose administrative sanctions on him as he is no longer a member of the Court" and referred the bar matter to the Special Study Group on Bar Examination Reforms for report and recommendation.

The implication that the Court could have imposed further administrative sanctions on Justice Purisima had he not retired is a recognition that the Court may discipline one of its sitting members.

Further, the Court did not explain why the "further" imposition of administrative sanctions was untenable except for the fact that Justice Purisima was no longer a member of the Court. Could it be that the earlier imposed penalties (*i.e.*, censure and partial forfeiture of fees) were already considered sufficient? Could it be that the proper administrative case (arising from the earlier bar matter) was not instituted before Justice Purisima

---

or prior to the date of effectivity of A.M. No. 02-9-02-SC (*vide Office of the Court Administrator v. Morante*, A.M. No. P-02-1555, April 16, 2004, 428 SCRA 1, 35-36; *J. King and Sons Company, Inc., v. Hontanosas, Jr.*, A.M. No. RTJ-03-1802, February 28, 2006 Resolution) and the respondent has already been required to comment on the complaint (*Heck v. Santos*, A.M. No. RTJ-01-1657, 23 February 2004, 423 SCRA 329, 341).

retired? Or could it be that Justice Purisima's retirement benefits were already released to him, leaving the Court with nothing more to go after to or impose (except, perhaps, disqualification to hold any government office)?

I thus submit that **the failure to initiate an administrative proceeding *prior* to Justice Purisima's retirement made it untenable for the Court to further impose administrative sanctions on him**. What was confirmed by the *Purisima* case, nonetheless, for purposes of pertinent discussion, is that the Court has jurisdiction to take cognizance of a complaint against an incumbent Justice.

Then there was the case *In re: Undated Letter of Mr. Louis Biraogo*[12] where Justice Ruben Reyes was, *inter alia,* "held liable for **GRAVE MISCONDUCT** for leaking a confidential internal document of the Court" for which he was "**FINED ₱500,000.00**, to be charged against his retirement benefits, and disqualified to hold any office or employment in any branch or instrumentality of the government including government-owned or controlled corporations."[13] The question in *Biraogo* was not so much on the Court's jurisdiction over the case but on the effect of Justice Reyes' subsequent retirement during the pendency of the case.

Unlike the present case, however, impeachment proceedings against Justices Purisima and Reyes did not see the light of day as they eventually retired, which mandatory retirement either foreclosed the initiation of further administrative proceedings or directed the imposable sanctions to the retirement benefits.

In view of the impeachment complaint filed with the House of Representatives involving the same subject matter of the case, which denotes that a co-equal branch of government found the same act or omission grievous as to present a ground for impeachment and opted to exercise its constitutional function, I submit that the Court cannot proceed with the administrative

---

[12] A.M. No. 09-2-19-SC, February 24, 2009, 580 SCRA 106.

[13] *Id.* at 164.

complaint against Justice Del Castillo for it will either (i) take cognizance of an impeachable offense which it has no jurisdiction to determine, or (ii) downplay the questioned conduct and preempt the impeachment proceedings.

I thus join the call of Justice Carpio to recall the Court's October 15, 2010 Resolution, but only insofar as Justice Del Castillo is concerned. All related administrative concerns and issues involving non-impeachable officers therein should still be considered effectual.

In *Biraogo*, the unauthorized release of the unpromulgated *ponencia* of Justice Reyes in the consolidated *Limkaichong* cases spawned an investigation to determine who were responsible for the leakage of the confidential internal document of the Court. The investigation led to the disciplining of not just Justice Reyes but also two members of his staff, who were *named* without hesitation by the Court, *viz.*, Atty. Rosendo B. Evangelista and Armando Del Rosario, and who were held liable for **SIMPLE NEGLECT OF DUTY** and ordered to pay **FINE** in the amount of **₱10,000.00** and **₱5,000.00**, respectively.[14]

---

[14] *Id.* The Court explained:

Liability of Atty. Rosendo B. Evangelista

The Committee finds that Atty. Evangelista, Justice Reyes' Judicial Staff Head, was remiss in his duties, which includes the supervision of the operations of the office, particularly with respect to the promulgation of decisions. While it is incumbent upon him to devise ways and means to secure the integrity of confidential documents, his actuations reflected above evinced "a disregard of a duty resulting from carelessness or indifference."

Atty. Evangelista was admittedly unmindful of the responsible safekeeping of draft *ponencias* in an unlocked drawer of a member of the staff. He failed to make sure that the unused portion of confidential documents like the second signatory page of the *ponencia* in Gilbert form had been properly disposed of or shredded. He was not on top of things that concerned the promulgation of *ponencias*, for he failed to ascertain the status and procedural implication of an "on hold" order after having been apprised thereof by his subordinate, Del Rosario, on July 17, 2008. Despite his awareness that the Limkaichong case would eventually be called again, he admitted that he was not privy to the preparation of the copy of the *ponencia* for the subsequent session on July 29, 2008.

Why, in the present case, the legal researcher who is hiding behind her credentials appears to be held a sacred cow, I cannot fathom. Hers is a new (or better) specie of initialed personification (*e.g.*, "xxx") under the likes of *Cabalquinto*[15] which should apply only to cases involving violence against women and children.[16]

With these findings, the Court finds him **liable for SIMPLE NEGLECT OF DUTY**.

Liability of Armando Del Rosario

The committee likewise finds Del Rosario administratively liable for failing to exercise the required degree of care in the custody of the Gilbert copy. Del Rosario admittedly kept the Gilbert copy in an unlocked drawer from July 16, 2008 to December 10, 2008 when he should have known that, by the nature of the document in his custody, he should have kept it more securely. His carelessness renders him administratively **liable for SIMPLE NEGLECT OF DUTY**, defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.

Time and again, the Court has emphasized the heavy burden and responsibility which court officials and employees are mandated to carry. They are constantly reminded that any impression of impropriety, misdeed or negligence in the performance of official functions must be avoided. The Court will never countenance any conduct, act or omission on the part of all those involved in the administration of justice which would violate the norm of public accountability and diminish the people's faith in the judiciary.

Under Section 23, Rule XIV of the Omnibus Civil Service Rules and Regulations, (simple) neglect of duty is punishable by suspension of one month and one day to six months for the first offense. Under Sec. 19, Rule XIV of the same Rules, the penalty of fine (instead of suspension) may also be imposed in the alternative. Following the Court's ruling in several cases involving (simple) neglect of duty, we find the penalty of fine on Atty. Evangelista and Del Rosario in the amount of ₱10,000 and P5,000, respectively, just and reasonable. (*Id.* at 161-163; emphasis, italics and underscoring in the original).

[15] *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[16] *Vide* REPUBLIC ACT No. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act); REPUBLIC ACT No. 9262 (Anti-Violence Against Women and Their Children Act of 2004); A.M. No. 04-10-11-SC of November 14, 2004 (Rule on Violence against Women and their Children); and A.M. No. 99-7-06-SC, *In Re Internet Web page of the Supreme Court*, Resolution of February 14, 2006.

The unjustified non-disclosure of her identity is unfair to Atty. Evangelista who, aside from having his own credentials to protect, had to be mentioned as a matter of course in the committee report adopted by the Court in *In re: Undated Letter of Mr. Louis Biraogo*, after similarly cooperating with and explaining his side before the investigating committee.

Atty. Evangelista was eventually found by the Court to be wanting in care and diligence in securing the integrity and confidentiality of a document. In the present case, the Court's October 15, 2010 *per curiam* Decision cleared the name of the unnamed legal researcher.

While what was at stake in *Biraogo* was the "physical integrity" of a *ponencia*, what is at stake in the present case is the "intellectual integrity" of a *ponencia*. The Court is committing a disservice to its judicial function if it values the physical form of a decision more than what a decision substantially contains.

Moreover, the liability of Justice Reyes did not save the day for Atty. Evangelista who, as the judicial staff head, was tasked to secure and protect the copies of the *Limkaichong* Decision. Similarly in the present case, independently of Justice Del Castillo's "shortcomings," the legal researcher, who was the lone drafter, proofreader and citechecker, was tasked like any other Court Attorney to secure and ensure the substance and legal reasoning of the *Vinuya* Decision. Like Justice Reyes, Justice Del Castillo can only do so much in claiming responsibility and full control of his office processes and shielding the staff under the mantle of his impeachable wings.

Notably, Rule 10.2 of Canon 10 of the Code of Professional Responsibility states that lawyers shall "not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved." *While the provision presupposes knowledge or willful intent, it does not mean that negligent acts or omissions of the same nature by lawyers serving the government go scot-free.*

Simple neglect of duty is defined as the failure to give proper attention to a task expected of an employee resulting from either carelessness or indifference.[17]

I submit that the legal researcher was remiss in her duties of re-studying the sources or authorities invoked in the *Vinuya* Decision and checking the therein citations or, at the very least, those whose authors' rights to attribution and integrity are protected under Intellectual Property Law. While it is incumbent upon her to devise ways and means of legal research, her admitted method or process as shown in the *Vinuya* case reflects a disregard of a duty resulting from carelessness or indifference. She failed to exercise the required degree of care to a task expected of a lawyer-employee of the Supreme Court.

While the Court recognizes that there were indeed lapses in the editorial work in the drafting of the *Vinuya* Decision, it easily attributed them to "accidental deletions." It conveniently assigned such human errors to the realm of accidents, without explaining whether it could not have been foreseen or avoided.

I, therefore, posit that the legal researcher, who must hitherto be named, is liable for Simple Neglect of Duty and must be ordered to pay a Fine in the amount of, following Biraogo, ₱10,000.00, with warning of more severe sanctions for future similar conduct.

Whether liability attaches to what the October 15, 2010 *per curiam* Decision finds to be deletion or omission of citation "unquestionably due to inadvertence or pure oversight," the fact remains, nonetheless, that there is a need for a textual correction of the *Vinuya* Decision. This Court should cause the issuance of a corrected version in the form of, what Justice Ma. Lourdes P. A. Sereno suggests as, a "corrigendum."

The matter of making corrections in judicial issuances is neither novel nor something beneath the Court. As early as February 22, 2000, the Court already accepted the reality of

---

[17] *In Re: Undated Letter of Mr. Louis Biraogo*, *supra* at 162, citing *Rivera v. Buena*, A.M. No. P-07-2394, February 19, 2008, 546 SCRA 222.

human error. In **A.M. No. 00-2-05-SC**, *"In the Matter of Correction of Typographical Errors in Decisions and Signed Resolutions,"* the Court provided a simple procedure in making proper corrections:

Inadvertent typographical errors in decisions and signed resolutions of the Court may occur every now and then. As these decisions and signed resolutions are published and preserved for posterity in the Philippine Reports, the Supreme Court Reports Annotated, and other publications as well as in the Supreme Court website, the need for making them free of typographical errors cannot be overemphasized. Care should, therefore, be taken in proofreading them before they are submitted for promulgation and/or publication.

Nevertheless, should typographical errors be discovered after the promulgation and/or publication of decisions and resolutions, the following procedure should be observed to the end that unauthorized corrections, alterations, or intercalations in what are public and official documents are not made.

1. In case of decisions and signed resolutions with the author['s] names indicated, the Reporter and the Chief of the Management Information Systems Office of the Supreme Court should secure the authority of the author concerned to make the necessary correction of typographical errors. In case of *per curiam* decisions and unsigned resolutions, authority to make corrections should be secured from the Chief Justice.

2. The correction of typographical errors shall be made by crossing out the incorrect word and inserting by hand the appropriate correction immediately above the cancelled word. Such correction shall be authenticated by the author by signing his initials immediately below the correction. In *per curiam* decisions and unsigned resolutions, and in cases where the author is no longer a member of the Court, the authentication shall be made by the Chief Justice.

3. The Reporter and the Chief of the Management Information Systems Office shall submit to the Court, through the Clerk of Court, a quarterly report of decisions and resolutions in which corrections have been made. The Clerk of Court must thereafter include the report in the agenda of the Court *en banc*.

This resolution takes effect immediately.

Despite the avowals of "slip in attribution," "bad footnoting," and "editorial error" in the Court's October 15, 2010 *per curiam* Decision, to date no effort has been made to correct the *Vinuya* Decision in conformity with A.M. No. 00-2-05-SC, which only implies that the lapses are *not* typographical in nature. The corrections of the *Vinuya* Decision cannot simply be made by crossing out the incorrect word and inserting by hand the appropriate correction immediately above the cancelled word, with authentication by the *ponente* or writer.

DISSENTING OPINION

SERENO, *J.*:

Judges need not strain themselves to meet inapplicable standards of research and attribution of sources in their judicial opinions, nor seek to achieve the scholarly rigidity or thoroughness observed in academic work. They need to answer to only two standards – diligence and honesty. By honesty here is meant that good faith attempt to attribute to the author his original words and analysis.

Even if a judge has to rely in large part on the drafts of his legal researchers, the work of a diligent and honest judge will never display the severe plagiarism evident in the *Vinuya* Decision published under the name of Justice Mariano C. del Castillo. A judge will only find himself in the same predicament as Justice del Castillo if two situations coincide: (1) the judge wittingly or unwittingly entrusts a legal researcher with the task of drafting his judicial opinion, and the legal researcher decides to commit severe plagiarism; and (2) the judge: (a) does not read and study the draft decision himself; (b) even if he does read and study the same, the "red flags" that are self-evident in the draft decision completely escape him; or (c) despite having seen the red flags, he ignores them.

We use the words "severe plagiarism" here deliberately because not only were three (3) works of the four (4) complaining authors[1] plagiarized in *Vinuya*, text from the following copyrighted works was copied without attribution as well: essays contributed by Robert McCorquodale and Phoebe Okowa to the book *International Law*, edited by Malcolm Evans; an article written by Mariana Salazar Albornoz, entitled *Legal Nature and Legal Consequences of Diplomatic Protection: Contemporary Challenges*; an article written by Elizabeth Prochaska, entitled *Testing the Limits of Diplomatic Protection: Khadr v. The Prime Minister of Canada*; a report by Larry Niksch, entitled *Japanese Military's Comfort Women*; and an article by James Ladino, entitled *Ianfu: No Comfort Yet for Korean Comfort Women and the Impact of House Resolution 121*. In addition, incorporated into *Vinuya* were excerpts from a decision of an international tribunal without any signal given to the reader that the words were not those of Justice del Castillo of the Philippine Supreme Court but the words of another tribunal. While there are views that a judge cannot be guilty of plagiarism for failure to recognize foreign decisions as source materials in one's judicial writing – as when Justice Antonio C. Carpio opines that a judge cannot be guilty on this score alone – it is beyond debate that there is a duty of care to attribute to these foreign and international judicial decisions properly, and that one should never present these materials as if they are one's own.

An estimate of the extent of the plagiarism in the Vinuya Decision has been made by my office. The best approximation available to us, using the "word count" feature of Microsoft Word, reveals that 52.9% of the words used in the *Vinuya* Decision's discussion on international law, which begins in page 24 and continues to the end (2,869 out of 5,419 words), are copied without attribution from other works.

---

[1] Mark Ellis, *Breaking the Silence: Rape as an International Crime*, 38 CASE W. RES. J. INT'L L. 225 (2006-2007); CHRISTIAN J. TAMS, *ENFORCING ERGA OMNES OBLIGATIONS IN INTERNATIONAL LAW* (2005); Evan J. Criddle and Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT'L L. 331 (2009)

The *Vinuya* Decision, therefore, because of the severity of the plagiarism attending it, is the worst possible context for the Majority to draw, in its Decision dated 12 October 2010 and in its Resolution denying the Motion for Reconsideration, the following conclusions:

1. that plagiarism requires the element of "malicious intent";
2. that – calibrating its ruling in response to the outcry of the academic community after the Majority Decision was issued – the rules against plagiarism applicable to the academic community do not apply to judicial decisions;
3. that the standard of attribution applicable to judicial decisions is effectively, no standard at all – a judge cannot be guilty of plagiarism as understood by the academic world, and neither is he liable for copying without attribution, even from copyrighted materials;
4. that this lack of liability extends as well to benefit lawyers in the submission of their pleadings before courts; and
5. that on the whole, the *Vinuya* Decision is the product of hard, honest, original work.

In the course of the resolution of the Motion for Reconsideration, I have found myself counter-accused of having copied the works of others without attribution. I have debunked each of these claims and lay them bare in this Dissent. I have even proven that it was one of my co-authored works that was copied without attribution being given to me and to my co-authors. The theory propounded against me is that I cannot conclude that the *Vinuya* Decision is partly a product of plagiarism unless I am willing to call myself a plagiarist as well. I emphasize, however, my original thesis – that a diligent and honest judge or researcher will never find himself to have plagiarized, even unwittingly, to the same extent that plagiarism occurred in the *Vinuya* Decision. Herein lies the safety of a researcher – a habit of trying to give recognition where recognition is due. Should any of my works, wherein I failed to make proper attribution, surface, I will do what I have recommended that the author of the *Vinuya* Decision do: acknowledge the wrong,

apologize to the wronged, and correct the work. See pages 58 to 75 herein for a discussion on the counter-accusations leveled against me.

Irrespective of the outcome of my analysis, let it be stated that this Dissent does not make any pronouncement regarding the jurisdiction of this Court over the complaint for plagiarism against Justice del Castillo. My esteemed colleague Justice Carpio is convinced that Congress is the sole disciplining authority of all impeachable officers, including Justices of the Supreme Court. He characterizes plagiarism as a betrayal of public trust, and thus, "impeachment by Congress takes the place of administrative disciplinary proceedings against impeachable officers as there is no other power that can administratively discipline impeachable officers."[2]

I. The Flow of the Analysis in This Dissent

A. Parameters

To allay any concern from members of the judiciary, I have been very careful to underscore the limitations of my analysis of the *Vinuya* Decision. My Dissent of 12 October 2010 is very clear:

> In a certain sense, there should have been less incentive to plagiarize law review articles because the currency of judges is *stare decisis*. One wonders how the issue should have been treated had what was plagiarized been a court ruling, but that is not at issue here. **The analysis in this opinion is therefore confined to the peculiar situation of a judge who issues a decision that plagiarizes law review articles, not to his copying of precedents or parts of the pleadings of the parties to a case.**[3]

---

[2] Justice Antonio T. Carpio, Dissenting Opinion, *In the Matter of the Charges of Plagiarism, etc. against Associate Justice Mariano C. del Castillo*, A.M. No. 10-7-17-SC.

[3] Justice Maria Lourdes P. A. Sereno, Dissenting Opinion, *In the Matter of the Charges of Plagiarism, etc. against Associate Justice Mariano C. del Castillo,* AM 10-7-17-SC, promulgated 12 October 2010, at 31.

To be categorical, a judge or legal researcher cannot be guilty for using doctrines that have been incorporated into the mainstream and are standard terms of trade. Neither is a judge required to use quotation marks or blockquotes every time there is a reference to allegations in the pleadings of parties, or when he is discussing legal arguments using already accepted legal doctrines. It is when he ventures into using the original words of others, especially those of legal scholars, that he must be particularly careful. He cannot write to pass off the words of others, especially those of others' pioneering works, as his own. To do so is dishonest. It has also been suggested that Justice del Castillo cannot be guilty of plagiarism as he never read the work of Mariana Salazar Albornoz. That argument is neither here nor there. At the very least, the words he copied were those of another in an important original analysis of the state of international law on rape.

B. Structure of the Technical Analysis in This Dissent

The structure and rigidity of the Technical Analysis in this Dissent is necessary to fulfill two purposes: (1) to enable the reader to examine whether I have scientific and objective basis to conclude that severe plagiarism characterizes the *Vinuya* Decision; and (2) to examine whether I am willing to subject my work to the same standards to which I have subjected the *Vinuya* Decision.

One interesting note. My professional record had been vetted by the Judicial and Bar Council prior to my appointment to this Court. My previous works – those of an academic and those of a pleader – are presently being, and, I expect will continue to be, thoroughly scrutinized. While those previous works form part of the basis of my appointment, inasmuch as they are proof of my competence and expertise, they cannot serve as a basis to determine whether I am now performing my duties as a judge satisfactorily. One can view the scrutiny as an unwarranted collateral attack on my record. This did not happen until my Dissent of 12 October 2010.

The first part of the Technical Analysis consists of new tables of comparison presenting more instances of plagiarism as they

occur in the *Vinuya* Decision. Two of these tables deal with copied works that previously appeared in my earlier Dissent: *A Fiduciary Theory of Jus Cogens*, by Evan J. Criddle and Evan Fox-Decent, and *Breaking the Silence: Rape as an International Crime* by Mark Ellis; however, the entries for these tables present instances of plagiarism not discussed or presented in my Dissent of 12 October 2010. Following the tables are lists of violations of rules against plagiarism, each list item corresponding to one table entry.

Following the presentation of the tables, the process whereby plagiarism could have been committed in *Vinuya* is examined. The severe extent of plagiarism, which is already evident in the tables, is discussed further, followed by an analysis of the systematic commission of plagiarism in *Vinuya*. This analysis consists of the detailed dissection of specific parts of the *Vinuya* decision: the text of the body in pages 31-32, and the first paragraph of footnote 65. The research process purportedly used by the legal researcher of *Vinuya* is then broken down into separate steps that illustrate the decision points at which an honest and diligent researcher would have ensured that proper attribution to sources be given. This is then followed by a closer examination of the deletion of existing citations and the features of Microsoft Word relevant to the deletion of footnotes.

***II. Technical Analysis of Plagiarism in* Vinuya**

A. More Plagiarism

Below are **new tables of comparison** – excluding materials in tables already discussed in my earlier Dissent to the majority Decision in AM 10-7-17-SC – of excerpts from the Decision in *Vinuya vis-a-vis* text from one (1) book on international law, five (5) foreign law journal articles, and a copyrighted report of the United States Congressional Research Service. While the degree of seriousness of the offense of unattributed copying varies with the kind of material copied, the extent of the copying conveys the level of honesty or dishonesty of the work done with respect to the *Vinuya* Decision. The extent of copying enumerated in these tables also renders incredible the claim of

mechanical failure, as well as the alleged lack of intent on the part of the researcher to not give proper attribution.

The materials for comparison were first identified in the Motion for Reconsideration and in the letter of Dr. Peter B. Payoyo, a Filipino legal scholar residing in the Netherlands, addressed to the Chief Justice dated 28 October 2010. These excerpts were independently verified, and compared with the corresponding portions from the original works. In the course of independent verification, we came across three more unattributed copied works.

TABLES OF COMPARISON

To aid an objective analysis of the extent and manner of the plagiarism committed in the *Vinuya* Decision, below are tables of comparison that will compare three written works: (1) the plagiarized work; (2) the *Vinuya* Decision; and (3) the purported "original" source analyzed or cited by the concerned authors and by the *Vinuya* Decision. The left column pertains to the literary works allegedly plagiarized by the legal researcher in the *Vinuya* Decision. The middle column refers to the pertinent passage in the *Vinuya* Decision that makes unattributed use of the copied work. According to the Majority Resolution, these citations made to original sources (*e.g.* to the international law cases being referenced to support a certain point) in the *Vinuya* Decision are sufficient to refute the charges of non-attribution. To address this claim, I have chosen to add a third column to present the text of the source referred to in the nearest (location-wise and/or context-wise) citation or attribution made in the *Vinuya* Decision. This will allow us to determine whether the analysis, reference and/or collation of original sources were those of the allegedly plagiarized authors or are *Vinuya* originals. In addition, this three-column presentation will also allow us to examine the claim being made by Justice del Castillo that at least two of the authors whose works are allegedly plagiarized in the *Vinuya* Decision themselves violated academic scholarship rules against plagiarism.

TABLE A: Comparison of Evan J. Criddle & Evan Fox-Decent's article in the Yale Journal of International Law, entitled *A Fiduciary Theory of Jus Cogens* (2009) and the Supreme Court's 28 April 2010 Decision in *Vinuya v. Executive Secretary*.

	THE ALLEGEDLY PLAGIARIZED WORK	**THE DECISION**	**INTERNATIONAL SOURCE BEING ANALYZED BY CRIDDLE AND FOX-DECENT**
	Evan J. Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. INT'L L. 331 (2009).	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	
1.	…judges on the Permanent Court of International Justice affirmed the existence of peremptory norms in international law by referencing treaties *contra bonos mores* (contrary to public policy) in a series of individual concurring and dissenting opinions.[10] [10] For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B)	…Judges on the Permanent Court of International Justice affirmed the existence of peremptory norms in international law by referencing treaties *contra bonos mores* (contrary to public policy) in a series of individual concurring and dissenting opinions. (For example, in the 1934 Oscar Chinn Case, Judge Schücking's influential dissent stated that neither an international court nor an arbitral tribunal should apply a treaty provision in contradiction to *bonos mores*. Oscar Chinn Case, 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50	…It is an essential principle of any court, whether national or international, that the judges may only recognize legal rules which they hold to be valid. There is nothing to show that it was intended to disregard that legal principle when this Court was instituted, or that it was to be obliged to found its decisions on the ideas of the parties–which may be entirely wrong–as to the law to be applied in a given case…. The Court would never, for instance, apply a convention the terms of which were contrary to public morality. But, in my view, a tribunal finds

	No. 63, at 149-50 (Dec. 12) (Schücking, J., dissenting). (p.335 of *Criddle* and *Fox-Decent*)	(Dec. 12) (Schücking, J., dissenting). (p. 31, footnote 71 of *Vinuya*)	itself in the same position if a convention adduced by the parties is in reality null and void, owing to a flaw in its origin. The attitude of the tribunal should, in my opinion, be governed in such a case by considerations of international public policy, even when jurisdiction is conferred on the Court by virtue of a Special Agreement. *Source:* The Oscar Chinn Case (U.K. v. Belg.), 1934 P.C.I.J. (ser. A/B) No. 63, at 149-50 (Dec. 12) (separate opinion of Judge Schücking).
2.	While the ICJ recently endorsed the *jus cogens* concept for the first time in its 2006 Judgment on Preliminary Objections in Armed Activities on the Territory of the Congo (Congo v. Rwanda), it declined to clarify *jus cogens*'s legal status or to specify any criteria for identifying peremptory norms.[67]	While the ICJ recently endorsed the *jus cogens* concept for the first time in its 2006 Judgment on *Preliminary Objections in Armed Activities on the territory of the Congo* (Congo v. Rwanda), it declined to clarify *jus cogens*'s legal status or to specify any criteria for identifying	64. …The Court observes, however, as it has already had occasion to emphasize, that "the *erga omnes* character of a norm and the rule of consent to jurisdiction are two different things"..., and that the mere fact that rights and obligations *erga omnes* may be at issue in a dispute

	[67] Armed Activities on the Territory of the Congo, Jurisdiction of the Court and Admissibility of the Application (Dem. Rep. Congo v. Rwanda) (Judgment of Feb. 3, 2006), at 31-32, available at http://www.icj-cij.org/docket/files/126/10435.pdf (last visited Mar. 31, 2009). (p. 346, footnote 67 of *Criddle* and *Fox-Decent*)	peremptory norms. (Armed Activities on the Territory of the Congo, Jurisdiction of the Court and Admissibility of the Application (Dem. Rep. Congo v. Rwanda) (Judgment of February 3, 2006), at 31-32, available at http://www.icj-cij.org/docket/files/126/10435.pdf. (p. 32, footnote 77 of *Vinuya*)	would not give the Court jurisdiction to entertain that dispute. The same applies to the relationship between peremptory norms of general international law *(jus cogens)* and the establishment of the Court's jurisdiction: the fact that a dispute relates to compliance with a norm having such a character, which is assuredly the case with regard to the prohibition of genocide, cannot of itself provide a basis for the jurisdiction of the Court to entertain that dispute. Under the Court's Statute that jurisdiction is always based on the consent of the parties. *Source:* Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Rwanda), 2006 I.C.J. 6, 31-32 (Feb. 3).
3.	Similarly, the European Court of Human Rights has addressed *jus cogens* only once, in Al-	[77] Similarly, the European Court of Human Rights has addressed *jus cogens* only once, in *Al-*	61 While the Court accepts, on the basis of these authorities, that the prohibition of torture has achieved

	Adsani v. United Kingdom, when it famously rejected the argument that jus cogens violations would deprive a state of sovereign immunity.[75] [75] Shelton, *supra* note 3, at 309 (discussing Al-Adsani v. United Kingdom, 2001-XI Eur. Ct. H.R. 79, ¶ 61). (p. 347 of *Criddle* and *Fox-Decent*)	*Adsani v. United Kingdom,* when it famously rejected the argument that *jus cogens* violations would deprive a state of sovereign immunity. *Al-Adsani v. United Kingdom,* 2001-XI Eur. Ct. H.R. 79, ¶ 61) (p. 32, footnote 77 of *Vinuya*)	the status of a peremptory norm in international law, it observes that the present case concerns… the immunity of a State in a civil suit for damages in respect of acts of torture within the territory of that State. Notwithstanding the special character of the prohibition of torture in international law, the Court is unable to discern in the international instruments, judicial authorities or other materials before it any firm basis for concluding that, as a matter of international law, a State no longer enjoys immunity from civil suit in the courts of another State where acts of torture are alleged…. *Source:* *Al-Adsani v United Kingdom*, App. No. 35763/97, 34 Eur. H.R. Rep. 11, par. 61 (2002)(21 Nov. 2001).

TABLE B: Comparison of Mark Ellis's article entitled *Breaking the Silence: Rape as an International Crime* (2006-2007) and the Supreme Court's 28 April 2010 Decision in *Vinuya v. Executive Secretary*.

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	
	Mark Ellis's article entitled *Breaking the Silence: Rape as an International Crime* 38 Case W. Res. J. Int'l. L. 225(2006-2007).	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	**INTERNATIONAL SOURCE BEING ANALYZED BY ELLIS**
1.	A major step in this legal development came in 1949, when rape and sexual assault were included in the Geneva Conventions.... Rape is included in the following acts committed against persons protected by the 1949 Geneva Conventions: "wilful killing, torture or inhuman treatment, including biological experiments; wilfully causing great suffering or serious injury to body or health."[65] [65] Fourth Geneva Convention, *supra* note 23, art. 147.	[65] …A major step in this legal development came in 1949, when rape and sexual assault were included in the Geneva Conventions. Rape is included in the following acts committed against persons protected by the 1949 Geneva Conventions: "willful killing, torture or inhuman treatment, including biological experiments; willfully causing great suffering or serious injury to body or health."… (*See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3(1)(c), 75 U.N.T.S. 31; Geneva	[Article 50/51/147] Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons… protected by the Convention: willful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health…. *Source:* Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S.

		Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3(1)(c), 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3(1)(c), 75 U.N.T.S. 973; Fourth Geneva Convention, *supra* note 23, art. 3(1)(c). (p. 28, footnote 65 of *Vinuya*)	31; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, 75 U.N.T.S. 973; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287.
2.	Rape as a violation of the laws or customs of war generally consists of violations of Article 3 of the 1949 Geneva Conventions, which, in part, prohibits "violence to life and person, in particular mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment."[66] [66] See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in	[65] …Rape as a violation of the laws or customs of war generally consists of violations of Article 3 of the 1949 Geneva Conventions, which, in part, prohibits "violence to life and person, in particular mutilation, cruel treatment and torture; outrages upon personal dignity, in particular humiliating and degrading treatment." (*See* Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3(1)(c), 75	Article 3… (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; … *Source:* Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 75 U.N.T.S. 31; Geneva Convention

	Armed Forces in the Field, art. 3(1)(c), 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3(1)(c), 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3(1)(c), 75 U.N.T.S. 973; Fourth Geneva Convention, *supra* note 23, art. 3(1)(c).... (p. 236 of *Ellis*)	U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3(1)(c), 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3(1)(c), 75 U.N.T.S. 973; Fourth Geneva Convention, *supra* note 23, art. 3(1)(c). (p. 28, footnote 65 of *Vinuya*)	(II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 75 U.N.T.S. 85; Geneva Convention (III) Relative to the Treatment of Prisoners of War, 75 U.N.T.S. 973; Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287.
3.	Article 27 of the Fourth Geneva Convention, directed at protecting civilians during time of war, states that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."[67] [67] Fourth Geneva Convention, *supra* note 23, art. 27. (p. 236 of *Ellis*)	[65] …Article 27 of the Fourth Geneva Convention, directed at protecting civilians during time of war, states that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault." (p. 28, footnote 65 of *Vinuya*)	Article 27 Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault. *Source:* Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 287.

4.	Protocol I of the Geneva Conventions continues to expand the protected rights by providing that "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault."[68] [68] Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 76(1), 1125 U.N.T.S. 4. (pp. 236-237 of *Ellis*)	[65] …Protocol I of the Geneva Conventions continues to expand the protected rights by providing that "women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any form of indecent assault." (Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 76(1), 1125 U.N.T.S. 4). (p. 28, footnote 65 of *Vinuya*)	Article 76.-Protection of women 1. Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault. *Source:* Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3.

TABLE C: Comparison of Robert McCorquodale's work, entitled *The Individual and the International Legal System*,[4] and Phoebe Okowa's work, entitled *Issues of Admissibility and the Law on International Responsibility*,[5] both of which were published in Malcolm Evans's book (International Law), and the Supreme Court's Decision in *Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.

---

[4] Robert McCorquodale, *The Individual and the International Legal System, in INTERNATIONAL LAW*, 307-332 (Malcolm Evans ed., 2006).

[5] Phoebe Okowa, *Issues of Admissibility and the Law on International Responsibility, in INTERNATIONAL LAW* (Malcolm Evans ed., 2006).

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	**INTERNATIONAL SOURCE BEING ANALYZED AND USED BY McCORQUODALE / OKOWA**
	Essays published in MALCOLM EVANS, INTERNATIONAL LAW (ed., 2006).	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	
1.	Traditionally, the only means available for individuals to bring a claim within the international legal system has been when the individual is able to persuade a government to bring a claim on the individual's behalf. Even then, it is not the individual's international rights that are being asserted but the State's own rights….	…traditionally, the only means available for individuals to bring a claim within the international legal system has been when the individual is able to persuade a government to bring a claim on the individual's behalf.[55] Even then, it is not the individual's rights that are being asserted, but rather, the state's own rights.	*Note:* Page 231 of the *Appeal from a Judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal* case – the citation nearest in location and in context to the passage – does not contain a discussion on "persuad[ing] a government to bring a claim on the individual's behalf."
		[55] …Appeal from a Judgment of the Hungaro / Czeochoslovak Mixed Arbitral Tribunal, Judgment, 1933, PCIJ, Ser. A/B No. 61, p. 208 at 231.	The reference to *Appeal from a Judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal* case occurs in *McCorquodale* as footnote 14, four sentences before the passage copied by Vinuya, and is made following the quote, 'it is scarcely necessary to point out that the capacity to possess
	(pp. 315-16 of Evans's *International Law* book, essay written by *McCorquodale*)	(p. 24, Body of *Vinuya*)	

			civil rights does not necessarily imply the capacity to exercise those rights oneself'. In *McCorquodale*, the citation following the discussion on how "it is not the individual's international rights that are being asserted but the State's own rights" is written thus in footnote 16: [16] *Panevezeys-Saldutiskis Railway, Judgment, PCIJ, Ser A/B, No 76*, p 4. Cf *LaGrand (Germany v United States of America), Merits, Judgment, ICJ Reports 2001*, p 466, para 42.
2.	The conceptual understanding that individuals have rights and responsibilities in the international legal system does not automatically mean that they have the ability to bring international claims to assert their rights or are able to claim an immunity to prevent their responsibilities being enforced (Hohfeld, above). Thus the PCIJ	[55] The conceptual understanding that individuals have rights and responsibilities in the international arena does not automatically mean that they have the ability to bring international claims to assert their rights. Thus, the Permanent Court of International Justice declared that "it is scarcely necessary to point out that the capacity to possess civil rights	Again, it is scarcely necessary to point out that the capacity to possess civil rights does not necessarily imply the capacity to

	declared that 'it is scarcely necessary to point out that the capacity to possess civil rights does not necessarily imply the capacity to exercise those rights oneself'.[14] [14] *Appeal from a Judgment of the Hungaro/ Czechoslovak Mixed Arbitral Tribunal, Judgment, 1933, PCIJ, Ser A/B, No 61*, p 208 at p 231 (p. 315 of Evans's *International Law* book, essay written by *McCorquodale*)	does not necessarily imply the capacity to exercise those rights oneself." Appeal from a Judgment of the Hungaro/ Czeochoslovak Mixed Arbitral Tribunal, Judgment, 1933, PCIJ, Ser. A/ B No. 61, p. 208 at 231. (p. 24, footnote 55 of *Vinuya*).	exercise those rights oneself. No argument against the University's personality in law can therefore be deduced from the fact that it did not enjoy the free disposal of the property in question.... *Source:* Appeal from a Judgment of the Hungaro-Czechoslovak Mixed Arbitral Tribunal (Peter Pázmány University v. Czechoslovakia), 1933 P.C.I.J. 208, (ser. A/B) No. 61, at 231 (Dec. 15).
3.	The decisions of national courts on these constitutional provisions nevertheless support the thesis that general international law as it stands does not mandate an enforceable legal duty of diplomatic protection.[17] [17] *Kaunda and others v President of the Republic of*	Even decisions of national courts support the thesis that general international law as it stands does not mandate an enforceable legal duty of diplomatic protection.	

	South Africa and others, Case CCCT23/04. In the *Hess Decision* BverfGE, 55, 349, 90 ILR 386, the German Federal Constitutional Court upheld the existence of a federal constitutional right to diplomatic protection but denied that it was required by customary international law. See also *Abbasi v Sec of Foreign and Commonwealth Affairs and Sec of Home Office* [2002] EWCA Civ 1598, 6 November 2002. (p. 484 of Evans's *International Law* book, essay written by *Okowa*)	(p. 26, footnote 63 of *Vinuya*)	*Note:* In Okowa's essay, this statement follows a paragraph in which she discusses *Kaunda* in the context of discretionary diplomatic protection. Thus, for the pertinent passages of *Kaunda* please see entry 5 of this table.
4.	This position was been challenged in the UK in a case arising from the clearly internationally unlawful detention by the US of prisoners in Guantanamo Bay from the time of the Afghanistan conflict in 2001. In *Abassi* v *Secretary of State for Foreign and Commonwealth Affairs*[19] the applicant (a British national)	[63] …has been challenged in the UK in a case arising from the unlawful detention by the US of prisoners in Guantanamo Bay from the time of the Afghanistan conflict in 2001. In *Abbasi v Secretary of State for Foreign and Commonwealth Affairs* ([2002] EWCA Civ 1316, 19 September 2002) the applicant (a British	1. Feroz Ali Abbasi, the first claimant, is a British national.... They seek, by judicial review, to compel the Foreign Office to make representations on his behalf to the United States Government or to take other appropriate action or at least to give an explanation as to why this has not been done. ...

	sought judicial review of the adequacy of the diplomatic actions of the British government with the US government…. (p. 316 of Evans's *International Law* book, essay written by *McCorquodale*)	national) sought judicial review of the adequacy of the diplomatic actions of the British government with the US government…. (p. 26, footnote 63 of *Vinuya*)	107. ...On no view would it be appropriate to order the Secretary of State to make any specific representations to the United States, even in the face of what appears to be a clear breach of a fundamental human right, as it is obvious that this would have an impact on the conduct of foreign policy…. *Source:* *Abbasi v. Secretary of State for Foreign and Commonwealth Affairs*, 42 I.L.M. 358, 359-383 (2003) (Nov. 6)(U.K.).
5.	The South African Constitutional Court in *Kaunda and others* v *President of the Republic of South Africa and others*[16] recognized the constitutional basis of the right of diplomatic protection as enshrined in the South African constitution, but went on to hold that the nature and extent of his obligation was an aspect of foreign	[63] …The South African Constitutional Court in *Kaunda and others v. President of the Republic of South Africa and others* (Case CCCT23/04) recognized the constitutional basis of the right of diplomatic protection as enshrined in the South African Constitution, but went on to hold that the nature and extent of this obligation was an	[65] The founding values of our Constitution include human dignity, equality and the advancement of human rights and freedoms…. … [69] There may thus be a duty on government, consistent with its obligations under international law, to take action to protect one of its citizens

	policy within the discretion of the executive. [16] *Kaunda and others v. President of the Republic of South Africa and others*, Case CCCT23/04. (p. 484 of Evans's *International Law* book, essay written by *Okowa*)	aspect of foreign policy within the discretion of the executive. (p. 27, footnote 63 of *Vinuya)*	against a gross abuse of international human rights norms.... … [73] A court cannot tell the government how to make diplomatic interventions for the protection of its nationals…. … [77] A decision as to whether, and if so, what protection should be given, is an aspect of foreign policy which is essentially the function of the executive. The timing of representations if they are to be made, the language in which they should be couched, and the sanctions (if any) which should follow if such representations are rejected are matters with which courts are ill equipped to deal…. *Source:* *Kaunda v. President of the Republic of South Africa*, 44 I.L.M. 173, pars. 65-77 (2005) (C. Ct. S. Afr.).

TABLE D: Comparison of Mariana Salazar Albornoz's article, *Legal Nature and Legal Consequences of Diplomatic Protection: Contemporary Challenges*, and the Supreme Court's Decision in *Vinuya et. al. v. Executive Secretary*, G.R. No. 162230, 28 April 2010.

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	**THE PURPORTED "ORIGINAL" SOURCE CITED BY THE CONCERNED AUTHORS AND IN THE VINUYA DECISION**
	Mariana Salazar Albornoz, *Legal Nature and Legal Consequences of Diplomatic Protection: Contemporary Challenges*, 6 ANUARIO MEXICANO DE DERECHO INTERNACIONAL 377 (2006)	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	
1.	Nowhere is this position more clearly reflected than in the dictum of the Permanent Court of International Justice (PCIJ) in the 1924 Mavrommatis Palestine Concessions Case: By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its *own right* to ensure, in the person of its subjects, respect	Nowhere is this position more clearly reflected than in the dictum of the Permanent Court of International Justice (PCIJ) in the 1924 Mavrommatis Palestine Concessions Case: By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its *own right* to ensure, in the person of its subjects, respect for	By taking up the case of one of its subjects and by resorting to diplomatic action or international judicial proceedings on his behalf, a State is in reality asserting its own right to ensure, in the person of its subjects, respect for

	for the rules of international law. The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact, is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant.[85]	the rules of international law. The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact, is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant.[56]	the rules of international law. The question, therefore, whether the present dispute originates in an injury to a private interest, which in point of fact, is the case in many international disputes, is irrelevant from this standpoint. Once a State has taken up a case on behalf of one of its subjects before an international tribunal, in the eyes of the latter the State is sole claimant. The fact that Great Britain and Greece are the opposing Parties to the dispute arising out of the Mavrommatis concessions is sufficient to make it a dispute between two States within the meaning of Article 26 of the Palestine Mandate. *Source:* Mavrommatis Palestine Concessions (Greece v. Gr. Brit.), 1924 P.C.I.J. (ser. A) No. 2, at 12 (Aug. 30).
	[85] *Mavrommatis Palestine Concessions case, supra* note 9, p. 12. The emphasis is ours. This traditional view was repeated by the PCIJ in the *Panevezys-Saldutiskis Railway Case*, the Case Concerning the Payment of Various Serbian Loans issued in France, Judgment of July 12, 1929, PCIJ Reports, Series A No. 20; and in the	[56] PCIJ, Ser. A, No. 2, p. 11, at 16. This traditional view was repeated by the PCIJ in the *Panevezys-Saldutiskis Railway Case*, the Case Concerning the Payment of Various Serbian Loans issued in France, Judgment of July 12, 1929, PCIJ Reports, Series A No. 20; and in the *Case Concerning the Factory at Chorzow*, Judgment of	

	Case Concerning the Factory at Chorzow, Judgment of September 13, 1928, Merits, PCIJ Reports, Series A No. 17. The ICJ has adopted it in the *Reparation for injuries suffered in the service of the United Nations* Advisory Opinion: ICJ Reports 1949, p. 174; the *Nottebohm Case (second phase)* Judgment of April 6th, 1955: ICJ Reports 1955, p. 4 at p. 24; the *Interhandel* Case (Judgment of March 21st, 1959: ICJ Reports 1959, p. 6 at p. 27) and the *Barcelona Traction Light and Power Company, Limited* case, *supra* note 6, at p. 32 par. 33. It has also been recognized by other international tribunals: see, for example, *Administrative Decision No. V* of the US-German Claims Commission. (p. 397 of *Albornoz*)	September 13, 1928, Merits, PCIJ Reports, Series A No. 17. The ICJ has adopted it in the *Reparation for injuries suffered in the service of the United Nations* Advisory Opinion: ICJ Reports 1949, p. 174; the *Nottebohm Case (second phase)* Judgment of April 6th, 1955: ICJ Reports 1955, p. 4 at p. 24; the *Interhandel* Case (Judgment of March 21st, 1959: ICJ Reports 1959, p. 6 at p. 27) and the *Barcelona Traction Light and Power Company, Limited* case, (Belg. V. Spain), 1970 I.C.J. 3, 32 (Feb. 5). (p. 24 Body of *Vinuya*)	

2.	Under this view, the considerations underlying the decision to exercise or not diplomatic protection may vary depending on each case and may rely entirely on policy considerations regardless of the interests of the directly-injured individual, and the State is not required to provide justification for its decision.[90] [90] See in this sense, Borchard E., *Diplomatic Protection of Citizens Abroad*, New York, The Banks Law Publishing Co., 1915, at VI. Also: G. Berlia, *op. cit.* (note 86), pp. 63 y 64. (p. 398 of *Albornoz*)	[57] *See* BORCHARD, E., DIPLOMATIC PROTECTION OF CITIZENS ABROAD AT VI (1915). Under this view, the considerations underlying the decision to exercise or not diplomatic protection may vary depending on each case and may rely entirely on policy considerations regardless of the interests of the directly-injured individual, and the State is not required to provide justification for its decision. (p. 25, footnote 57 of *Vinuya*)	…The citizen abroad has no legal right to require the diplomatic protection of his national government. Resort to this remedy of diplomatic protection is solely a right of the government, the justification and expediency of its employment being a matter for the government's unrestricted discretion. This protection is subject in its grant to such rules of municipal administrative law as the state may adopt, and in its exercise internationally to certain rules which custom has recognized. *Source:* EDWIN M. BORCHARD, THE DIPLOMATIC PROTECTION OF CITIZENS ABROAD OR THE LAW OF INTERNATIONAL CLAIMS, VI (1914).
3.	The ILC's First Reading Draft Articles on diplomatic protection have fully	The International Law Commission's (ILC's) Draft Articles on Diplomatic Protection	60. The texts of the draft articles on diplomatic protection with commentaries

	attached to the traditional view on the legal nature of such institution. In this sense, (i) they expressly state that "the right of diplomatic protection belongs to or vests in the State", a statement which "gives recognition to the Vattelian notion that an injury to a national is an indirect injury to the State";[96] (ii) they affirm its discretionary nature by clarifying that diplomatic protection is a "sovereign prerogative" of the State;[97] and stressing that the state "has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so."[98]	fully support this traditional view. They (i) state that "the right of diplomatic protection belongs to or vests in the State,"[59] (ii) affirm its discretionary nature by clarifying that diplomatic protection is a "sovereign prerogative" of the State;[60] and (iii) stress that the state "has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so."[61]	thereto adopted on first reading by the Commission at its fifty-sixth session, are reproduced below. … Article 2 stresses that the right of diplomatic protection belongs to or vests in the State. It gives recognition to the Vattelian notion that an injury to a national is an indirect injury to the State.[25]… … A State has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so. The internal law of a State may oblige a State to extend diplomatic protection to a national,[29] but international law imposes no such obligation....
	[96] *ILC First Reading Draft Articles on Diplomatic Protection, supra* note 13, par. 60, Commentary to Draft Article 2, par. (1); see also, Commentary to Draft Article 1, par. (3), and text of Draft Article 2.	[59] *ILC First Reading Draft Articles on Diplomatic Protection*, U.N. Doc. A/CN.4/484, ILC Report, A/53/10 (F), par. 60, Commentary to Draft Article 2, par. (1); see also, Commentary to Draft Article 1, par.	*Source:* *Text of the Draft Articles on Diplomatic Protection Adopted by the Commission on First Reading*, Rep. of the Int'l. Law Comm'n, 56th Sess., 3 May-4 June and 5

	[97] Report of the International Law Commission on the work of its 50th session, *supra* note 13, par. 77. [98] *ILC First Reading Draft Articles on Diplomatic Protection*, *supra* note 2, commentary to Draft Article 2, par. (2). (p. 400 of *Albornoz*)	(3), and text of Draft Article 2. [60] Report of the International Law Commission on the work of its 50th session, *supra* note 60, par. 77. [61] *ILC First Reading Draft Articles on Diplomatic Protection*, *supra* note 60, commentary to Draft Article 2, par. (2). (p. 25-26 Body of *Vinuya*)	July-6 August 2004, U.N. Doc. A/59/10 at 22-28, par. 60; GAOR, 59th Sess., Supp. 10 (2004).
4.	…Special Rapporteur Dugard proposed that the ILC adopt in its Draft Articles a provision under which States would be *internationally obliged* to exercise diplomatic protection in favour of their nationals injured abroad by grave breaches to their *jus cogens* norms, if the national so requested and if he/she was not afforded direct access to an international tribunal.[116]	[62]…Special Rapporteur Dugard proposed that the ILC adopt in its Draft Articles a provision under which States would be *internationally obliged* to exercise diplomatic protection in favor of their nationals injured abroad by grave breaches to *jus cogens* norms, if the national so requested and if he/she was not afforded direct access to an international tribunal. The proposed article reads as follows:	74. The discretionary power of the State to intervene on behalf of its national is considered in the commentary on Article 4. Article 4 1. Unless the injured person is able to bring a claim for such injury before a competent international court or tribunal, the State of his/her nationality has a legal duty to exercise diplomatic protection on behalf of the injured person upon request, if the injury results from a grave breach

	[116] The proposed article read as follows: "Article [4] 1. Unless the injured person is able to bring a claim for such injury before a competent international court or tribunal, the State of his/her nationality has a legal duty to exercise diplomatic protection on behalf of the injured person upon request, if the injury results from a grave breach of a *jus cogens* norm attributable to another State. 2. The state of nationality is relieved of this obligation if: (a) The exercise of diplomatic protection would seriously endanger the overriding interests of the State and/or its people ; (b) Another State exercises diplomatic protection on behalf of the injured person; (c) The injured person does not have the effective and dominant nationality of the State. States are obliged to provide in their municipal law for the enforcement of this right before a competent domestic court or other	Article [4] 1. Unless the injured person is able to bring a claim for such injury before a competent international court or tribunal, the State of his/her nationality has a legal duty to exercise diplomatic protection on behalf of the injured person upon request, if the injury results from a grave breach of a *jus cogens* norm attributable to another State. 2. The state of nationality is relieved of this obligation if: (a) The exercise of diplomatic protection would seriously endanger the overriding interests of the State and/or its people ; (b) Another State exercises diplomatic protection on behalf of the injured person; (c) The injured person does not have the effective and dominant nationality of the State. States are obliged to provide in their municipal law for	of a *jus cogens* norm attributable to another State. 2. The State of nationality is relieved of this obligation if: (a) The exercise of diplomatic protection would seriously endanger the overriding interests of the State and/or its people; (b) Another State exercises diplomatic protection on behalf of the injured person; (c) The injured person does not have the effective and dominant nationality of the State. 3. States are obliged to provide in their municipal law for the enforcement of this right before a competent domestic court or other independent national authority.

	independent national authority." Dugard, *J.* First report on diplomatic protection, *supra* note 13, par. 74. (p. 404 of *Albornoz*)	the enforcement of this right before a competent domestic court or other independent national authority." Special Rapporteur John Dugard, appointed in 1999, First Report on Diplomatic Protection, par. 74 (UN Doc A/CN.4/ 506 (March 7, 2000) and Corr. 1 (June 7, 2000) and Add. 1 (April 20, 2000). (p. 26, footnote 62 of *Vinuya*)	*Source:* Special Rapporteur on Diplomatic Protection, First Rep. on Diplomatic Protection, Int'l. Law Comm'n, UN Doc. A/ CN.4/506, at 27, par. 74 (7 March 2000) (by John R. Dugard).
5.	…the proposal was not accepted by the ILC, as "the question was still not ripe for treatment" because "the State practice and their *opinio juris* still hadn't evolved in such direction."[120] [120] Official Records of theGeneral Assembly: 55th session, Supplement No. 10,	[62] …the proposal was not accepted by the ILC, as "the question was still not ripe for treatment" because "the State practice and their *opinio juris* still hadn't evolved in such direction." *Official Records of the General Assembly: 55th session, Supplement No. 10, Doc. A/55/10 (2000),*	456. The Special Rapporteur recognized that he had introduced article 4 *de lege ferenda*. As already indicated, the proposal enjoyed the support of certain writers, as well as of some members of the Sixth Committee and of ILA; it even formed part of some constitutions. It was

	Doc. A/55/10 (2000), Report of the ILC on the work of its 52nd session, p. 131.	Report of the ILC on the work of its 52nd session, p. 131.	thus an exercise in the progressive development of international law. But the general view was that the issue was not yet ripe for the attention of the Commission and that there was a need for more State practice and, particularly, more *opinio juris* before it could be considered. *Note:* p. 131 of the Report does not refer to the topic of diplomatic protection. Rather, the heading of the page reads "Other Decisions and Conclusions of the Commission." *Source:* Rep. of the Int'l. Law Comm'n, 52nd Sess., 1 May - 9 June and 10 July - 18 August 2000, U.N. Doc. A/55/10 at 78-79, par. 456; GAOR, 55th Sess., Supp. 10 (2000).
	(p. 405 of *Albornoz*)	(p.26, footnote 62 of *Vinuya*)	
6.	...some States have, indeed, incorporated in their *municipal law* a duty to exercise	[62] …some States have, indeed, incorporated in their *municipal law* a duty	80. …Constitutional provisions in a number of States… recognize the right of the

	diplomatic protection in favor of their nationals…. Various other States have also included such a "duty to exercise diplomatic protection" under their domestic laws,[130] but their enforceability is also, to say the least, questionable (in many cases there are not even courts competent to review the decision). [130] Dugard identifies this "obligation to exist in the Constitutions of Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, China, Croatia, Estonia, Georgia, Guyana, Hungary, Italy, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Viet Nam and Yugoslavia, albeit with different reaches. J. Dugard, First Report on diplomatic	to exercise diplomatic protection in favor of their nationals. (Dugard identifies this "obligation to exist in the Constitutions of Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, China, Croatia, Estonia, Georgia, Guyana, Hungary, Italy, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Viet Nam and Yugoslavia, albeit with different reaches. J. Dugard, First Report on diplomatic protection, *supra* note 13, par. 80.) (p. 26, footnote 62 of *Vinuya*)	individual to receive diplomatic protection for injuries suffered abroad. These include: Albania, Belarus, Bosnia and Herzegovina, Bulgaria, Cambodia, China, Croatia, Estonia, Georgia, Guyana, Hungary, Italy, Kazakhstan, Lao People's Democratic Republic, Latvia, Lithuania, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Spain, the former Yugoslav Republic of Macedonia, Turkey, Ukraine, Viet Nam and Yugoslavia…. *Source:* Special Rapporteur on Diplomatic Protection, First Rep. on Diplomatic Protection, Int'l. Law Comm'n, UN Doc. A/CN.4/506, at 30, par. 80 (7 March 2000) (by John R. Dugard).

	protection, *supra* note 13, par. 80. (p. 406 of *Albornoz*)		
7.	…but their enforceability is also, to say the least, questionable (in many cases there are not even courts competent to review the decision). Moreover, their existence in no way implies that international law imposes such an obligation,[131] simply suggesting "that certain States consider diplomatic protection for their nationals abroad to be desirable."[132] [131] *ILC First Reading Draft Articles on Diplomatic Protection, supra* note 2, Commentary to Draft Article 2, par (2). This was recognized expressly in the Barcelona Traction case, *supra* note 6. [132] Dugard, J. First report on diplomatic protection, *supra* note 13, par. 81…. (pp. 406-407 of *Albornoz*)	[62] …, but their enforceability is also, to say the least, questionable (in many cases there are not even courts competent to review the decision). Moreover, their existence in no way implies that international law imposes such an obligation, simply suggesting "that certain States consider diplomatic protection for their nationals abroad to be desirable" (*ILC First Reading Draft Articles on Diplomatic Protection, supra* note 2, Commentary to Draft Article 2, par (2)). (p. 26, footnote 62 of *Vinuya*)	(2) A State has the right to exercise diplomatic protection on behalf of a national. It is under no duty or obligation to do so. The internal law of a State may oblige a State to extend diplomatic protection to a national,[29] but international law imposes no such obligation. The position was clearly stated by the International Court of Justice in the Barcelona Traction case: … A proposal that a limited duty of protection be imposed on the State of nationality was rejected by the Commission as going beyond the permissible limits of progressive development of the law.[31] *Source:* *Commentary to the Text of the Draft Articles on Diplomatic Protection*

			Adopted by the Commission on First Reading, Rep. of the Int'l. Law Comm'n, 56th Sess., 3 May-4 June and 5 July-6 August 2004, U.N. Doc. A/59/10 at 28, par. 60; GAOR, 59th Sess., Supp. 10 (2004).

TABLE E: Comparison of Elizabeth Prochaska's article, *Testing the Limits of Diplomatic Protection: Khadr v. The Prime Minister of Canada*,[6] and the Supreme Court's Decision in *Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	**INTERNATIONAL SOURCE BEING ANALYZED BY PROCHASKA**
	Elizabeth Prochaska, Testing the Limits of Diplomatic Protection: Khadr v. The Prime Minister of Canada (2009).	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	
	Instead, Draft Article 19, entitled 'Recommended Practice,' suggests that states should be encouraged to exercise diplomatic	[62] …*Official Records of the General Assembly: 55th session, Supplement No. 10, Doc. A/55/10 (2000)*, Report of the ILC on the work of its 52nd session, p. 131. Instead, Draft Article 19, entitled 'Recommended Practice,' suggests	

[6] Published in the blog of the European Journal of International Law, accessed at http://www.ejiltalk.org/testing-the-limits-of-diplomatic-protection-khadr-versus-the-prime-minister-of-canada. Last visited 24 January 2011, 1:47 p.m.

	protection 'especially when significant injury occurred to the national. Drafted in soft language, the Article does not purport to create any binding obligations on the state. (p. 397 of *Prochaska*)	that states should be encouraged to exercise diplomatic protection 'especially when significant injury occurred to the national. Drafted in soft language, the Article does not purport to create any binding obligations on the state. (Footnote 62 of *Vinuya*)	*Note:* The *Report of the International Law Commission on the Work of its Fifty-Second Session*, and the Special Rapporteur's *First on Diplomatic Protection*, which are the nearest in location and in context to the passage, does not contain a discussion on Draft Article 19. See pp. 72-85 and 27-34 respectively.

TABLE F: Comparison of Larry Niksch's Report, *Japanese Military's Comfort Women,* 10 April 2006,[7] and the Supreme Court's Decision in *Vinuya et. al. v. Executive Secretary,* G.R. No. 162230, 28 April 2010.

[7] From the Congressional Report Services Memorandum, by Larry Niksch, Specialist in Asian Affairs, Foreign Affairs, Defense and Trade Division, accessible at http://www.awf.or.jp/pdf/h0076.pdf. This document is covered by a copyright notice from the United States Congressional Research Service posted at the website of the Asian Women's Fund: http://www.awf.or.jp/e4/un-05.html#etc. Last accessed 24 January 2011, 2:35 p.m.

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	**SOURCE BEING USED BY NIKSCH**
	Larry Niksch, *Japanese Military's Comfort Women*, 10 April 2006.	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	
1.	The Asian Women's Fund announced three programs for former comfort women who applied for assistance: (1) an atonement fund that paid two million yen (approximately $20,000) to each former comfort woman; (2) medical and welfare support programs for former comfort women, paying 2.5-3 million yen ($25,000-$30,000) for each former comfort woman; and (3) a letter of apology from the Japanese Prime Minister to each recipient woman.[8] [FN8]. From the Asian Women's Fund website, March 16, 2006. (paragraph 11 of *Niksch*)	The AWF announced three programs for former comfort women who applied for assistance: (1) an atonement fund paying ¥2 million (approximately $20,000) to each woman; (2) medical and welfare support programs, paying ¥2.5-3 million ($25,000-$30,000) for each woman; and (3) a letter of apology from the Japanese Prime Minister to each woman. (p. 17, Body of *Vinuya*)	The projects of atonement involved providing former comfort women with 2 million yen per person as atonement money donated by Japanese citizens, delivering a letter of apology from the Japanese Prime Minister, and offering goods and services under medical and welfare support projects financed by the Japanese government. *Note:* The passage in *Vinuya* does not contain a footnote. The following source is the nearest citation that may reasonably be taken as within the context of the discussion in *Vinuya*. http://web.archive.org/web/20060301213211/http://www.awf.or.jp/english/project_atonement.html

2.	...As of March 2006, the Asian Women's Fund provided 700 million yen (approximately $7 million) for these programs in South Korea, Taiwan, and the Philippines; 380 million yen (approximately $3.8 million) in Indonesia; and 242 million yen (approximately $2.4 million) in the Netherlands. [9] (paragraph 12 of *Niksch*)	...As of March 2006, the AWF provided ¥700 million yen (approximately $7 million) for these programs in South Korea, Taiwan, and the Philippines; ¥380 million yen (approximately $3.8 million) in Indonesia; and ¥242 million yen (approximately $2.4 million) in the Netherlands. (p. 17, Body of *Vinuya*)	In order to fulfill its moral responsibility in all sincerity, the Japanese government decided to disburse about 700 million yen over a five-year period for medical and welfare support projects aiding former comfort women in the Philippines, the Republic of Korea and Taiwan.... *Note:* The passage in *Vinuya* does not contain a footnote. The following source is the nearest citation that may reasonably be taken as within the context of the discussion in *Vinuya*. http://web.archive.org/web/20060301213211/http://www.awf.or.jp/english/project_atonement.html
3.	On January 15, 1997 the Asian Women's Fund and the Philippine government signed a Memorandum of understanding for medical and welfare	On January 15, 1997 the AWF and the Philippine government signed a Memorandum of Understanding for medical and welfare support programs for	The government of the Philippines and the Asian Women's Fund signed a Memorandum of Understanding on January 15, 1997….

	support programs for former comfort women. Over the next five years, these were implemented by the Philippine government's Department of Social Welfare and Development. (paragraph 19 of *Niksch*)	former comfort women. Over the next five years, these were implemented by the Department of Social Welfare and Development. (p. 17, Body of *Vinuya*)	The Philippine government's Department of Social Welfare and Development implemented the projects over a period of five years…. *Note:* The passage in *Vinuya* does not contain a footnote. The following source is the nearest citation that may reasonably be taken as within the context of the discussion in *Vinuya*. http://web.archive.org/web/20060301213211/http://www.awf.or.jp/english/project_atonement.html

TABLE G: Comparison of James Ladino's article, *Ianfu: No Comfort Yet for Korean Comfort Women and the Impact of House Resolution 121* and the Supreme Court's Decision in *Vinuya v. Executive Secretary,* G.R. No. 162230, 28 April 2010.

	THE ALLEGEDLY COPIED WORK	**THE DECISION**	
	James Ladino, *Ianfu: No Comfort Yet for Korean Comfort Women and the Impact of House Resolution 121*, 15	*Vinuya v. Executive Secretary*, G.R. No. 162230, 28 April 2010.	**SOURCE BEING ANALYZED AND/ OR USED BY LADINO**

	CARDOZO J.L. & GENDER 333 (2009).		
1.	In 1992, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan ("KCWS"), submitted a petition to the United Nations Human Rights Commission ("UNHRC"), asking for their assistance in investigating crimes committed by Japan against Korean women and pressuring Japan to pay reparations to the women who had filed lawsuits.[96] The UNHRC formally placed the issue on its agenda and appointed Radhika Coomaraswamy as the issue's special investigator.[97] Issued in 1996, the UNHRC's report reaffirmed Japan's guilt in forcing Korean women to act as sex slaves for the imperial army.[98] [96] Soh, *supra* note 7 [Chunghee Sarah Soh, The Korean "Comfort Women": Movement for Redress, 36 Asian Survey 1226,], at 1234-35.	In 1992, the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (KCWS), submitted a petition to the UN Human Rights Commission (UNHRC), asking for assistance in investigating crimes committed by Japan against Korean women and seeking reparations for former comfort women.[29] The UNHRC placed the issue on its agenda and appointed Radhika Coomaraswamy as the issue's special investigator. In 1996, Coomaraswamy issued a Report reaffirming Japan's responsibility in forcing Korean women to act as sex slaves for the imperial army, and made the following ***recommendations***: [29] SOH, THE COMFORT WOMEN PROJECT, SAN FRANCISCO STATE UNIVERSITY (1997-2001), http://online.sfsu.edu/~soh/comfortwomen.html,	...In her report to the U.N. Human Rights Commission, Radhika Coomaraswamy, the U.N. special investigator into violence against women, concluded that Japan must admit its legal responsibility... ...Lee Hyo-chae, as a co-chair of the KCWS submitted a petition to the U.N. Human Rights Commission, dated March 4, 1992, requesting that the Commission investigate Japanese atrocities committed against Korean women during World War Two, and help pressure the Japanese government to pay reparations to individual women who have filed suit. The UNHRC responded by placing the issue on the official agenda for its August 1992 meeting in Geneva….

	[97] *Id.* at 1226. [98] *Id.* (p. 344 of *Ladino*)	at 1234-35. (pp. 9-10, Body of *Vinuya*)	*Source:* Chunghee Sarah Soh, *The Korean "Comfort Women": Movement for Redress*, 36 ASIAN SURVEY 1226, 1234-35 (1996).
2.	The Women's International War Crimes Tribunal (WIWCT) was a "people's tribunal" established by a number of Asian women, human rights organizations, and supported by an international coalition of non-governmental organizations ("NGOs").[101] First proposed in 1998, the WIWCT convened in Tokyo in 2000 to discuss the issue of comfort women.[102] Specifically, the WIWCT aimed to "adjudicate Japan's military sexual violence, in particular the enslavement of comfort women, to bring those responsible for it to justice, and to end the ongoing cycle of impunity for wartime sexual violence against women."	The Women's International War Crimes Tribunal (WIWCT) was a "people's tribunal" established by a number of Asian women and human rights organizations, supported by an international coalition of non-governmental organizations.[31] First proposed in 1998, the WIWCT convened in Tokyo in 2000 in order to "adjudicate Japan's military sexual violence, in particular the enslavement of comfort women, to bring those responsible for it to justice, and to end the ongoing cycle of impunity for wartime sexual violence against women."	From December 8 to 12, 2000, a peoples' tribunal, the Women's International War Crimes Tribunal 2000, sat in Tokyo, Japan. It was established to consider the criminal liability of leading high-ranking Japanese military and political officials and the separate responsibility of the state of Japan for rape and sexual slavery as crimes against humanity arising out of Japanese military activity in the Asia Pacific region in the 1930s and 1940s .... …The tribunal arose out of the work of various women's nongovernmental organizations (NGOs) across Asia…. *Source:* Chinkin, *Women's*

	[101] Christine M. Chinkin, Women's International Tribunal on Japanese Sexual Slavery, 95 Am. J. Int'l. L. 335 (2001) [102] Violence Against Women in War-Network Japan, What is the Women's Tribunal? http.// www1.jca.apc.org/ vaww-net-japan/ English/womens tribunal2000/ whatstribunal.html (last visited Oct. 16, 2008). (p. 345 of *Ladino*)	[31] Chinkin, *Women's International Tribunal on Japanese Sexual Slavery*, 95 Am. J. Int'l. L. 335 (2001). (p. 12, Body of *Vinuya*)	*International Tribunal on Japanese Sexual Slavery*, 95 AM. J. INT'L. L. 335 (2001).
3.	A large amount of evidence was presented to the tribunal for examination. Sixty-four former comfort women from Korea and other surrounding territories in the Asia-Pacific region testified before the court.[104] Testimony was also presented by historical scholars, international law scholars, and two former Japanese soldiers.[105] Additional evidence was submitted by the prosecution teams of ten different countries, including: North and South	[32] A large amount of evidence was presented to the tribunal for examination. Sixty-four former comfort women from Korea and other surrounding territories in the Asia-Pacific region testified before the court. Testimony was also presented by historical scholars, international law scholars, and two former Japanese soldiers. Additional evidence was submitted by the prosecution teams of ten different countries, including: North and	…Prosecution teams from ten countries presented indictments.[6] North and South Korea, China, Japan, the

	Korea, China, Japan, the Philippines, Indonesia, Taiwan, Malaysia, East Timor, and the Netherlands.[106] [104] *Id.* [Violence Against Women in War-Network Japan, What is the Women's Tribunal?, http://www1.jca.apc.org/vaww-net-japan/english/womenstribunal2000/whatstribunal.html (last visited Oct. 16, 2008).] [105] *Id.* [106] Chinkin, *supra* note 101, at 336. (p. 345 of *Ladino*)	South Korea, China, Japan, the Philippines, Indonesia, Taiwan, Malaysia, East Timor, and the Netherlands. *Id.* [Chinkin] at 336. (p. 12, footnote 32 of *Vinuya*)	Philippines, Indonesia, Taiwan, Malaysia, East Timor, and the Netherlands…. Two lead prosecutors (Patricia Viseur Sellers[7] and Ustinia Dolgopol[8]) joined the separate-country prosecutors and presented a common indictment. *Source:* Chinkin, *Women's International Tribunal on Japanese Sexual Slavery*, 95 AM. J. INT'L. L. 335, 336 (2001).
	After examining the evidence for more than a year, the tribunal issued its final verdict on December 4, 2001, finding the former Emperor Hirohito and the State of Japan guilty of crimes against humanity for the rape and sexual slavery of women.[107] … Although the tribunal included prosecutors,	After examining the evidence for more than a year, the "tribunal" issued its verdict on December 4, 2001, finding the former Emperor Hirohito and the State of Japan guilty of crimes against humanity for the rape and sexual slavery of women.[32] It bears stressing, however, that although the tribunal included	The preliminary judgment indicated that the judges had found Emperor Hirohito guilty of the charges on the basis of command responsibility, that he knew or should have known of the offenses…. The judges also indicated that they had determined Japan to be responsible under international law

	witnesses, and judges, its judgment was not legally binding since the tribunal itself was organized by private citizens…. [107] Violence Against Women in War-Network Japan, *supra* note 102. (p. 345 of *Ladino*)	prosecutors, witnesses, and judges, its judgment was not legally binding since the tribunal itself was organized by private citizens. [32] …*Id.* [Chinkin] at 336. (p. 12, Body of *Vinuya*)	applicable at the time of the events for violation of its treaty obligations and principles of customary international law relating to slavery, trafficking, forced labor, and rape, amounting to crimes against humanity…. What was the value of this exercise? Lacking legal authority, was the tribunal no more than a mock trial of little concern to serious international lawyers? *Source:* Chinkin, *Women's International Tribunal on Japanese Sexual Slavery*, 95 AM. J. INT'L. L. 335 (2001).
4.	On January 31, 2007, United States Representative Michael Honda of California, along with six co-sponsor representatives, introduced House Resolution 121. The resolution called for Japanese action in light of the ongoing struggle for closure by former comfort	On January 31, 2007, US Representative Michael Honda of California, along with six co-sponsor representatives, introduced House Resolution 121 which called for Japanese action in light of the ongoing struggle for closure by former comfort women. The Resolution was	Today, Representative Michael M. Honda (CA – 15) introduced a bipartisan resolution before the U.S. House of Representatives calling on the government of Japan to formally and unambiguously apologize for and acknowledge the tragedy that comfort

	women. The House of Representatives formally passed the resolution on July 30, 2007.[110] The resolution also makes four distinct demands: [110] Press Release, Congressman Mike Honda, Rep. Honda Calls on Japan to Apologize for World War II Exploitation of "Comfort Women" (Jan. 31, 2007), available at http://www.house.gov/list/press/ca15_honda/COMFORTWOMEN.html. (p. 346 of *Ladino*)	formally passed on July 30, 2007,[33] and made four distinct demands: [33] Press Release, *Congressman Mike Honda, Rep. Honda Calls on Japan to Apologize for World War II Exploitation of "Comfort Women"* (January 31, 2007). (p. 12, Body of *Vinuya*)	women endured at the hands of its Imperial Army during World War II…. … The resolution is cosponsored by: Representatives Edward R. Royce (CA – 40), Christopher H. Smith (NJ - 4), Diane E. Watson (CA - 33), David Wu ()R - 1), Phil Hare (IL - 17), and Delegate Madaleine Bordallo (GU). *Source:* Press Release of Congressman Mike Honda, *Rep. Honda Calls on Japan to Apologize for World War II Exploitation of "Comfort Women,"* 31 Jan. 2007, *available at* http://www.house.gov/list/press/ca15_honda/COMFORTWOMEN.html
5.	…The resolution also makes four distinct demands: [I]t is the sense of the House of Representatives that	The Resolution was formally passed on July 30, 2007,[33] and made four distinct demands: [I]t is the sense of the House of Representatives that	Resolved, That it is the sense of the House of Representatives that the Government of Japan— (1) should formally acknowledge, apologize, and

	the Government of Japan (1) should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces' coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II; (2) would help to resolve recurring questions about the sincerity and status of prior statements if the Prime Minister of Japan were to make such an apology as a public statement in his official capacity; (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the "comfort women" for the Japanese Imperial Army never occurred; and (4) should educate	the Government of Japan (1) should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces' coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II; (2) would help to resolve recurring questions about the sincerity and status of prior statements if the Prime Minister of Japan were to make such an apology as a public statement in his official capacity; (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the "comfort women" for the Japanese Imperial Army never occurred; and (4) should educate	accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Force's coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the Pacific Islands from the 1930s through the duration of World War II; (2) should have this official apology given as a public statement presented by the Prime Minister of Japan in his official capacity; (3) should clearly and publicly refute any claims that the sexual enslavement and trafficking of the "comfort women" for the Japanese Imperial Armed Forces never occurred; and (4) should educate current and future generations about this horrible crime while following the

	current and future generations about this horrible crime while following the recommendations of the international community with respect to the "comfort women."[111] [111] H.R. Res. 121, 110th Cong. (2007) (enacted). (p. 346 of *Ladino*)	current and future generations about this horrible crime while following the recommendations of the international community with respect to the "comfort women."[34] [34] H.R. Res. 121, 110th Cong. (2007) (enacted). (p. 12, Body of *Vinuya*)	recommendations of the international community with respect to the "comfort women". *Source cited:* H.R. Res. 121, 110th Cong. (2007) (enacted), *available at* http://www.gpo.gov/fdsys/pkg/BILLS-110hres121ih/pdf/BILLS-110hres121ih.pdf (U.S.)
6.	In December 2007, the European Parliament, the governing body of the European Union, drafted a resolution similar to House Resolution 121.[130] … Entitled, "*Justice for Comfort Women*," the resolution demanded: (1) a formal acknowledgment of responsibility by the Japanese government; (2) a removal of the legal obstacles preventing compensation; and (3) unabridged education of the past.[132] The resolution also stresses the urgency with which Japan should act on these issues, stating:	In December 2007, the European Parliament, the governing body of the European Union, drafted a resolution similar to House Resolution 121.[35] Entitled, "*Justice for Comfort Women*," the resolution demanded: (1) a formal acknowledgment of responsibility by the Japanese government; (2) a removal of the legal obstacles preventing compensation; and (3) unabridged education of the past. The resolution also stressed the urgency with which Japan should act on these issues, stating: "the	A resolution on the 'comfort women' (sex slaves) used by Japan in World War II calls for a change of official attitudes in modern-day Japan, a right for survivors or families to apply for compensation and measures to educate people about these historical events. … Call for formal acknowledgment of responsibility by government … Legal obstacles to compensation must be removed … Education about the past …

	"the right of individuals to claim reparations against the government should be expressly recognized in national law, and cases for reparations for the survivors of sexual slavery, as a crime under international law, should be prioritized, taking into account the age of the survivors."[133]… [130] European Parliament, Human rights: Chad, Women's Rights in Saudi Arabia, Japan's Wartime Sex Slaves, Dec. 17, 2007, http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20071210BRI14639&secondRef=ITEM-008-EN. [132] *Id.* [133] *Id.* (p. 360 of *Ladino*)	right of individuals to claim reparations against the government should be expressly recognized in national law, and cases for reparations for the survivors of sexual slavery, as a crime under international law, should be prioritized, taking into account the age of the survivors." [35] European Parliament, Human rights: Chad, Women's Rights in Saudi Arabia, Japan's Wartime Sex Slaves, Dec. 17, 2007, http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20071210BRI14639&secondRef=ITEM-008-EN. (p. 13, Body of *Vinuya*)	*Source cited:* European Parliament, Human rights: Chad, Women's Rights in Saudi Arabia, Japan's Wartime Sex Slaves, (17 Dec. 2007) available at http://www.europarl.europa.eu/sides/getDoc.do?language=EN&type=IM-PRESS&reference=20071210BRI14639&secondRef=ITEM-008-EN
7.	The Canadian and Dutch parliaments have each followed suit in drafting resolutions against Japan. Canada's	The Canadian and Dutch parliaments have each followed suit in drafting resolutions against Japan. Canada's	

	resolution demands the Japanese government to issue a formal apology, to admit that its Imperial Military coerced or forced hundreds of thousands of women into sexual slavery, and to restore references in Japanese textbooks to its war crimes.[134] The Dutch parliament's resolution simply calls for the Japanese government to uphold the 1993 declaration of remorse made by Chief Cabinet Secretary Yohei Kono.[135] [134] The Comfort Women—A History of Trauma, http://taiwan.yam.org.tw/womenweb/conf_women/index_e.html. (last visited Mar. 26, 2009). [134] *Id.* (p. 360 of *Ladino*)	resolution demands the Japanese government to issue a formal apology, to admit that its Imperial Military coerced or forced hundreds of thousands of women into sexual slavery, and to restore references in Japanese textbooks to its war crimes.[36] The Dutch parliament's resolution calls for the Japanese government to uphold the 1993 declaration of remorse made by Chief Cabinet Secretary Yohei Kono. [36] The Comfort Women—A History of Trauma, http://taiwan.yam.org.tw/womenweb/conf_women/index_e.html. (p. 13, Body of *Vinuya*)	*Note:* On the issue of comfort women, the website only refers to the attitude and reaction of the following governments: Taiwan, South Korea, North Korea, Philippines, China, Indonesia, Malaysia, and Japan. *Source cited:* http://taiwan.yam.org.tw/womenweb/conf_women/index_e.html

Violations of Rules Against Plagiarism in the Vinuya Decision

Below are violations of existing rules against plagiarism as can be found in the *Vinuya* Decision, in addition to violations earlier enumerated in my Dissent:

A.1 A passage from the article of Criddle and Fox-Decent was copied verbatim, including the footnote. There are no quotation marks to indicate that this important conclusion from the article and the example to illustrate it, which were discussed in the corresponding footnote, are not the *ponente*'s own. No attribution to Criddle and Fox-Decent was made.

A.2 Similar to A.1, Criddle and Fox-Decent's conclusion was copied word for word, including the corresponding footnote, which was enclosed by parentheses and placed immediately after the sentence to which it corresponds. No attribution to Criddle and Fox-Decent was made.

A.3 Similar to A.1 and A.2, this sentence from the article was copied verbatim, including its corresponding footnote. No attribution to Criddle and Fox-Decent was made.

B.1 Save for a few words which were intentionally rearranged, the entire paragraph was lifted verbatim from Ellis's discussion on rape as an international crime. Two citations of cases from Ellis were omitted. No attribution to Ellis was made.

B.2 Ellis's identification of Article 3 of the 1949 Geneva Conventions as a general authority on rape as a violation of the laws of war, and his summation thereof, was lifted word for word. His footnote was also copied, including the intratext reference "*supra* note 23," enclosed in parentheses and inserted after the corresponding text. No attribution to Ellis was made.

B.3 Ellis's summary and analysis of Article 27 of the Fourth Geneva Convention was lifted word for word. No attribution to Ellis was made.

B.4 Ellis's conclusion regarding Protocol I of the Geneva Convention was appropriated, without any attribution to Ellis. Ellis's footnote was again copied. No attribution to Ellis was made.

C.1 McCorquodale's analysis of individual claims within the international legal system was copied word for word and inserted after the introductory clause "In the international sphere" in *Vinuya*. The footnote McCorquodale appended to his analysis of individual claims (*i.e.* the sentences copied in C.1.) is not present. No attribution to McCorquodale was made.

C.2 This item refers to the footnote attached to the copied sentence in C.1. It is composed of two instances of copying stitched together: two sentences of McCorquodale, taken from the paragraph directly preceding his analysis of individual claims in the international legal system, and the footnote corresponding to the PCIJ Decision quoted in the second of the said two sentences. No attribution to McCorquodale was made.

C.3 The conclusion Okowa reached was copied in footnote 63 of *Vinuya*, but Okowa's reference to the cases she cited in her analysis was omitted and the context of her conclusion (on the current standing of general international law with regard an enforceable legal duty of diplomatic protection) was removed. No attribution to Okowa was made.

C.4 McCorquodale's discussion of the case *Abassi v. Secretary of State* was copied without any citation of his essay or the international law book in which it was published. No attribution to McCorquodale was made.

C.5 The order of sentences were reversed, but the conclusion in Okowa's essay was copied, and as well as her discussion of the case *Kaunda v. President of the Republic of South Africa*. No attribution to Okowa was made.

D.1 Albornoz's summary and analysis was copied word for word in the body of the Decision on page 24. No indication was given that this was not the *ponente*'s original analysis, and no attribution to Albornoz was made.

D.2 The elucidation of Albornoz regarding what she calls the traditional view on the discretion of states in the exercise of diplomatic protection was copied into footnote 57 of the *Vinuya* Decision. Albornoz's citation of Borchard was used as a reference in the same footnote, but Albornoz was bypassed completely.

D.3 Albornoz's summation of the ILC's First Reading Draft Articles on diplomatic protection was copied with some modifications: the second half of the first sentence from Albornoz was removed and instead replaced with "fully support this traditional view" in an apparent effort to link this summary to the previous instance of copying (table entry D.2.). Minor edits were made to Albornoz's summary to streamline the flow of the second copied sentence. No attribution to Albornoz was made.

D.4 Albornoz's summation of Dugard's proposal was lifted word for word and used in footnote 62 of *Vinuya*. The footnote Albornoz attached to this summation, a quotation of Albornoz's cited source, was inserted directly after the copied summation. No attribution to Albornoz was made.

D.5 The conclusion reached by Albornoz regarding the rejection of Dugard's proposal was copied exactly, even with regard to the portions of the Official Records of the General Assembly that Albornoz quoted. No attribution to Albornoz was made.

D.6 The major part of a sentence from Albornoz was copied and attached to the transition phrase "In addition" to continue the pastiche of copied sentences in footnote 62 of *Vinuya*. The footnote of Albornoz regarding Dugard was inserted immediately after and enclosed in parentheses. Note that the inline text citation, "*supra* note 13, par. 80" in Albornoz's footnote 130 was copied as well. No attribution to Albornoz was made.

D.7 Continuing from the instance of copying in D.6., the second half of a sentence in Albornoz was used as what is apparently an incomplete sentence (beginning with: ", but their enforceability...") in footnote 62 of *Vinuya*. The next sentence was also copied, and its corresponding footnote enclosed in parentheses and inserted immediately after it. While the Decision cites one of the same sources Albornoz cited (*ILC First Reading Draft Articles on Diplomatic Protection*), no attribution is made to Albornoz for the excerpt, or to Dugard, whom Albornoz cited for the quoted portion.

E.1 An excerpt from the third paragraph of Prochaska is reproduced verbatim in footnote 62 of page 26 of the Decision. There were no quotation marks or attribution to Prochaska to indicate that such was not the *ponente*'s analysis, but Prochaska's.

F.1 A sentence from paragraph 11 of Niksch was reproduced verbatim without quotation marks in page 17 of the body of the Decision. No attribution to Niksch was made.

F.2 An excerpt from paragraph 12 of Niksch was reproduced verbatim without quotation marks in page 17 of the body of the Decision. No attribution to Niksch was made.

F.3 An excerpt from paragraph 19 of Niksch was reproduced verbatim without quotation marks in page 17 of the body of the Decision. No attribution to Niksch was made.

G.1 An excerpt from page 344 of Ladino was reproduced without quotation marks in pages 9 to 10 of the body of the Decision. The phrase "women who had filed" was changed to "comfort women."

G.2 An excerpt from page 345 of Ladino was reproduced without quotation marks in page 12 of the body of the Decision. The two sentences in the footnote from Ladino were combined, but the words were reproduced verbatim.

G.3 An excerpt from page 345 of Ladino is reproduced verbatim in page 12 of the body of the Decision. Part of Ladino's discussion was reproduced verbatim in footnote 32 of the Vinuya Decision, with no attribution to Ladino.

G.4 The first part of the paragraph in page 345 of Ladino was reproduced verbatim. However, the latter part of Ladino's explanation, (stating that while the judgment against Japan was not legally binding, it still "cast Japan in the shadow of moral reproach") was omitted. There was no attribution to Ladino.

G.5 An excerpt from page 346 of Ladino, along with two footnotes, was reproduced verbatim in page 12 of the Decision. No attribution to Ladino was made.

G.6 Ladino's discussion in page 350 and the corresponding footnotes were reproduced verbatim in page 13 of the Decision. No attribution to Ladino was made.

B. The Process of the Commission of Plagiarism in the Vinuya *Decision*

A careful reading of the *Vinuya* Decision reveals that it is unlike other decisions issued by this Court, except perhaps for the case of *Ang Ladlad LGBT Party v. Commission on Elections*, which Justice del Castillo likewise penned. The footnotes in *Vinuya* read like those found in theses of international law scholars, where one discursive footnote can be so extensive as to occupy three-fourths of a page (see footnotes 62, 63, and 65). An honest researcher for a Philippine judge, after painstakingly developing a perspective on an international legal issue by reading the works of scholars who have documented the debate, would deliberately refer to the works of such scholars, and not transform their works into his own.

Justice del Castillo's researcher not only contends that accidental deletion is the sole reason for the missing footnotes, but also that their office subsequently went over the Decision "sentence by sentence" and concluded that no plagiarism was committed at all. However, the rearrangement of the sentences lifted from the original work, the mimicking of the original work's use of footnotes, the subsequent back and forth copying and pasting of such footnotes – these acts belie mere negligence. The following analysis shows objective plagiarism viewed through three lenses: ***extent***, ***deliberateness***, and ***effect***.

The massiveness and frequency with which instances of unattributed copying occur in *Vinuya* highlight the *extent* of the plagiarism. Clever transpositions of excerpts to make them flow according to the researcher's transition phrases are clearly devices of a practiced plagiarist, which betray the *deliberateness* of every single act. The plagiarism in *Vinuya* will also be scrutinized on the basis of its *effect*, especially in light of its commission in a judicial decision. The rationale for such a thematic presentation will then be discussed in a succeeding section, which deals with evaluating plagiarism.

1. The extent of unattributed copying belies inadvertence.

In the tables outlined above, as well as in the analysis in my Dissent dated 12 October 2010, it can be seen that the researcher of Justice del Castillo failed to make the necessary attribution twenty-three (23) times in the body of the *Vinuya* Decision; the works whose texts were used without attribution include several copyrighted journal articles, essays from a book on international law, and one congressional report of the United States. There were thirty-six (36) missing citations in the footnotes, including twelve (12) citations missing from footnote 65 alone. This adds up to a total of fifty-nine (59) missing citations. The sheer number of missing citations is related to the length and volume of the footnotes and discussions, some of which Justice del Castillo himself admitted to be unnecessary.

The quantity of text copied without attribution is most concentrated in pages 12 to 13, which deal with actions taken in the pursuit of justice for the comfort women, and in pages 24 to 32, which appear under the section heading ***The Philippines is not under any international obligation to espouse petitioners' claims***. In the latter section, the discussion and analysis appearing on pages 24 (insofar as the section after the start of the international law discussion is concerned), 28 and 31 in particular would be significantly impaired were the unattributed portions of texts to be removed: there would be no words left in the instance of page 24; the entirety of the discursive footnote on page 28 would be reduced to one sentence and its attendant citations; three sentence fragments, and no footnotes, would remain on page 31.

In pages 24 to 32, out of a total of thirteen (13) discursive footnotes, eleven (11) of these are comprised wholly of material copied without attribution, and yet another one – footnote 69 – contains text that was copied without attribution as well. The writer of the *Vinuya* Decision displayed meticulous attention to detail in reproducing the citations to international judicial decisions, publications, and other such references in these footnotes – citations that originally appeared in the copied works – but completely bypassed the copied works themselves, thereby

appropriating the analysis, processing, and synthesizing of information, as well as the words, of the writers whose works were copied.

On its face, the sheer volume of portions copied, added to the frequency with which citations to the plagiarized works were omitted while care was taken to retain citations to the sources cited by the plagiarized works, reveal that the plagiarism committed cannot logically be anything other than deliberate.

2. Systematic commission of plagiarism demonstrates deliberateness.

In pages twelve (12) to thirteen (13) of *Vinuya*, sentences from the body of Ladino's article were interspersed with Ladino's footnotes, without a single attribution to Ladino (*please refer to Table G)*. Sentences from Ladino's article were copied into footnote 32 of Vinuya, while the immediately succeeding sentence was again copied to form part of the body of Vinuya. The cutting of sentences from Ladino's work and the patching together of these pieces to form a mishmash of sentences negate the defense of inadvertence, and give the reader the impression that the freshly crafted argument was an original creation.

The work of Criddle and Fox-Decent was subjected to a similar process. This process is dissected in the following list of instances ordered according to how they appear in pages 31 to 32 of the body of the Decision:

a. Detailed analysis of 'patchwork plagiarism' in the body of Vinuya, pp. 31-32:

1. **Page 31, par. 2:** Early strains of the *jus cogens* doctrine have existed since the 1700s,[71] but peremptory norms began to attract greater scholarly attention with the publication of Alfred von Verdross's influential 1937 article, Forbidden Treaties in International Law.[72]

[72] Verdross argued that certain discrete rules of international custom had come to be recognized as having a compulsory character notwithstanding contrary state agreements. At first, Verdross's vision of international *jus cogens* encountered skepticism within the legal

academy. These voices of resistance soon found themselves in the minority, however, as the *jus cogens* concept gained enhanced recognition and credibility following the Second World War. (See Lauri Hannikainen, Peremptory Norms (*Jus cogens*) in International Law: Historical Development, Criteria, Present Status 150 (1988) (surveying legal scholarship during the period 1945-69 and reporting that "about eighty per cent [of scholars] held the opinion that there are peremptory norms existing in international law").

> *This sentence, together with footnote 72 in Vinuya, is part of one continuous discussion by Criddle and Fox Decent, and copied verbatim. The two authors rightfully attributed the historical data to Lauri Hannikainen, but the conclusion on established jus cogens principles is wholly their own.*

2. **Page 31, par. 2:** The recognition of *jus cogens* gained even more force in the 1950s and 1960s with the ILC's preparation of the Vienna Convention on the Law of Treaties (VCLT).[73] Though there was a consensus that certain international norms had attained the status of *jus cogens*…[74]

   > *The first sentence and its subsequent clause are lifted verbatim from the article. Footnotes 73 and 74 are Criddle and Fox-Decent's analysis of how international "minimum requirements" form evidence of jus cogens. The paragraph was broken down, then rearranged in* Vinuya.

3. **Page 31, par. 2:** Though there was a consensus that certain international norms had attained the status of *jus cogens*,[74] the ILC was unable to reach a consensus on the proper criteria for identifying peremptory norms.

   > *Aside from copying the first clause in the sentence, which forms part of the premise, the conclusion of Criddle and Fox-Decent was likewise copied.*

4. **Page 32, par. 1:** After an extended debate over these and other theories of *jus cogens*, the ILC concluded ruefully in 1963 that "there is not as yet any generally accepted

criterion by which to identify a general rule of international law as having the character of *jus cogens*."[75]

After copying the sentence and footnote in No. 4 above, three sentences were omitted from the article, then this sentence in No. 5 was also copied. In the body of the work, the two sentences immediately following this statement pertaining to the conclusion of the International Law Commission were again omitted.

5. **Page 32, par. 1:** In a commentary accompanying the draft convention, the ILC indicated that "the prudent course seems to be to x x x leave the full content of this rule to be worked out in State practice and in the jurisprudence of international tribunals."[76]

This sentence was conjoined with the sentence above; footnotes 75 and 76 were also copied. The net effect is that this paragraph was spliced together, sentence by sentence, from Criddle and Fox-Decent's work.

A similar method of splicing was used extensively in the footnotes of the Decision as well. It is most evident in footnote 65, the longest discursive footnote in *Vinuya*. This portion copied heavily from the article of Dr. Mark Ellis entitled "*Breaking the Silence: Rape as an International Crime.*" To illustrate, the first paragraph of footnote 65 is broken down and scrutinized by sentence, following the original sequence in the Decision.

b. Detailed analysis of 'patchwork plagiarism' in paragraph 1, footnote 65 of Vinuya:

1. **Sentences 1 and 2:** The concept of rape as an international crime is relatively new. This is not to say that rape has never been historically prohibited, particularly in war.

These are the opening sentences from the second paragraph on page 227 of the journal article. Ellis cites the treaty between the United States and Prussia as his own example, in a footnote. In Vinuya, *this particular citation is copied, enclosed in parentheses,*

and became the sixth and seventh sentences of footnote 65.

2. **Sentence 3:** But modern-day sensitivity to the crime of rape did not emerge until after World War II.

   This is the sixth sentence in the same paragraph in Ellis' article as discussed above. It is transposed verbatim, and became the second sentence in Vinuya.

3. **Sentences 4 and 5:** In the Nuremberg Charter, the word rape was not mentioned. The article on crimes against humanity explicitly set forth prohibited acts, but rape was not mentioned by name.

   The clauses "After World War II, when the Allies established the Nuremberg Charter…" was deleted. This particular sentence is Ellis' own conclusion regarding the "Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis," but there was no attribution to Ellis, only a citation of the agreement, along with Ellis's other footnotes, at the end of the paragraph.

4. **Sentences 6 and 7:** (For example, the Treaty of Amity and Commerce between Prussia and the United States provides that in time of war all women and children "shall not be molested in their persons." The Treaty of Amity and Commerce, Between his Majesty the King of Prussia and the United States of America, art. 23, Sept. 10, 1785, U.S.-Pruss., 8 Treaties & Other Int'l Agreements Of The U.S. 78, 85.

   This is the citation originally corresponding to the first and second sentences on page 227 of Ellis's article. This portion was copied in Vinuya*, this time placed at the end of the paragraph and enclosed in parentheses.*

5. **Sentence 8:** The 1863 Lieber Instructions classified rape as a crime of "troop discipline."

   Originally the second sentence in Ellis's paragraph, this was transposed to the eighth. Its corresponding

footnote in Ellis was lifted verbatim, enclosed in parentheses, then inserted into the paragraph in Vinuya, as the ninth sentence: "(Mitchell, The Prohibition of Rape in International Humanitarian Law as a Norm of Jus cogens: Clarifying the Doctrine, 15 Duke J. Comp. Int'l. L. 219, 224)."

6. **Sentence 10:** It specified rape as a capital crime punishable by the death penalty.

   Originally the fourth sentence in Ellis' article, this was transposed, and its corresponding footnote was copied: "(Id. at 236)."

7. **Sentence 11:** The 1907 Hague Convention protected women by requiring the protection of their "honour."

   The sentence was copied, and its corresponding footnote was lifted verbatim, enclosed in parentheses, and placed at the end of the paragraph. Ellis's attribution to the Yale Law website where the pertinent law may be found was omitted, leaving only the following: ("Family honour and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected." Convention (IV) Respecting the Laws & Customs of War on Land, art. 46, Oct. 18, 1907. General Assembly resolution 95 (I) of December 11, 1946 entitled, "Affirmation of the Principles of International Law recognized by the Charter of the Nürnberg Tribunal"; General Assembly document A/64/Add.1 of 1946".

8. **Sentence 13:** *See* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.

   This is originally Ellis's citation, used to support his observation that there was no express mention of "rape" in the Nuremberg Charter. It was enclosed in parentheses and relegated to the end of the paragraph in Vinuya.

9. **Sentence 14:** Article 6(c) of the Charter established crimes against humanity as the following:
CRIMES AGAINST HUMANITY: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the Jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

This was lifted from page 227 of Ellis's work. Pages 227 to 228 of the said work, pertaining to the discussion on rape were substantially copied. Insertions were made for Ellis's own footnotes.

The conscious thought required for the act of cutting and pasting the original author's footnotes onto the precise spot where the copied sentences ended contradicts the account of inadvertence. There is consistent correspondence between the sentences copied to the footnote copied. In the example above, the act of encapsulating Ellis' footnotes in parentheses show further that in *Vinuya* there was a conscious appropriation of Ellis's sources in a usage that is substantially similar to what appears in his article. This allegedly inadvertent copying of Ellis's footnotes occurred no less than twelve (12) times in footnote 65 alone.

3. Research steps purportedly followed in the drafting of* Vinuya *cast doubt on inadvertence.

The following is a recreation of the step-by-step research procedure followed by many offices in the research and crafting of judicial decisions. It is based on the account given by the researcher of the *Vinuya* Decision of her own experiences while working on the case. This detailed breakdown is made in order to show the exact number of actions which must be made in order to input a citation, if indeed it was intentionally inputted. A recreation of the steps necessary to delete a citation is also made to show that the aggregate number of actions needed to

erase each and every citation missing in *Vinuya* is so high that the underlying cause could not have been mere inadvertence.

Step 1:

a. First, using an internet-based search engine, which could be a free search service like Google's, or a paid service like Westlaw's, the researcher would have typed in key phrases like "erga omnes," "sexual slavery," or other such terms relevant to the subject matter.

b. For some researchers, this is just a preliminary step, as they would then pick and choose which articles to read and which to discard. The researcher in *Vinuya*, however, claimed that she purposely read all the materials available through this search.[8]

Step 2:

a. The search engine would have generated a list of documents containing the search terms and topics relevant to the subject matter. The search engine would also have linked the items on this list to the corresponding online locations where these documents may be accessed.

b. In *Vinuya*, the researcher used the Westlaw legal research service (which is made available to offices of all the Justices), and perused the generated list.[9] A possible

---

[8] "So in the process, my practice, which may not be shared by other researchers, my own practice as to doing research for decisions is to basically review all the material that is available insofar as I can. So I review everything, I take notes, I do my own research and then after one has reviewed as much as I am able to, then one starts writing." TSN at 28, Hearing of 26 August 2010, Deliberations of the Committee on Ethics and Ethical Standards.

[9] "So what happens, Your Honors, is basically, one does an initial review, sorry, I do an initial review on this…all of these goes for the most articles, Law Journal articles. So one does initial review on these articles and if there is an article that immediately strikes one as relevant or as important or as useful in the course of writing a decision, you can click on it, the blue portion, you can click on this and the article will actually appear. And then you can read the whole article, you can skim through the article, if again it seems relevant, it's possible to e-mail the article to yourself, which makes it easier

item on this list would be the article entitled "*Breaking the Silence: Rape as an International Crime,"* by one of the complaining authors, Dr. Mark Ellis.

Step 3:

The researcher would read articles from the generated list and identify the portions she planned to incorporate into the draft. For this example, she would have scrolled through the work of Mark Ellis and found the selection she wanted. The level of scrutiny invested into each of the chosen articles would vary; some researchers make cursory readings and incorporate as many portions from different works and authors as they can.

Step 4:

a. The researcher can either save the articles in their entirety, or save the selections in one document. The researcher in *Vinuya* claimed that she did the latter and used the Microsoft Word program for this purpose.

b. If the researcher chose to save only pertinent selections, then ideally the attributions would have to be made at his point.

Now, this step is critical. I know of no software in the world, especially not Microsoft Word, that will generate the citation to the work of Ellis on its own, without the appropriate action of the user. An honest researcher would immediately copy and paste the citation references of Ellis into the copied portions, or type a reference or label in, even if it were only a short form placeholder of the proper citation. If she did neither, she may be sloppy, incompetent or downright dishonest.

During the deliberations of the Ethics Committee, the researcher explained this crucial step: "So I would cut and paste relevant portions, at least portions which I find relevant into

---

because…so at least I have, for instance, all of the articles available like in my home." TSN at 28, Hearing of 26 August 2010, Deliberations of the Committee on Ethics and Ethical Standards.

what turns out to be a large manuscript which I can then whittle and edit and edit further."[10] Adhering to this account, there would be an additional step in the process:

Step 5

> If an existing draft or "manuscript" has already been created, the next step would be to incorporate the selections from the articles into the draft. This is a second opportunity to ensure that the proper attributions are made. If the researcher is diligent, she would already have tried to follow the correct form as prescribed by the *Manual of Judicial Writing*.[11]

If a "manuscript" or outline has already been formulated, then incorporating the selections would require her to be conscious that these ideas and arguments are not her own. The process ideally alerts any researcher that extraneous sources are being added. It allows her to make the following considerations: *Does this portion sufficiently discuss the historical context of a particular conclusion? Do I need this literature as support for my arguments? Am I including it to support my arguments, or merely to mimic the author's?* Corollarily, the researcher would initially assess if such argument made by the author is adequately supported as well. She would check the author's footnotes. In *Vinuya*, the copying of the footnotes was so extensive, such that it practically used the uncited works as blueprint for the Decision's footnotes.

4. The frequency of instances of missing citations and actions required for deletion betray deliberateness.

To purposefully input citations would require many key strokes and movements of the computer's "mouse." If the attributions had indeed been made already, then the deletions of such attributions would not simply happen without a specific sequence of key strokes and mouse movements. The researcher testified that the necessary attributions were made in the earlier drafts,

---

[10] TSN at 29, Hearing of 26 August 2010, Deliberations of the Committee on Ethics and Ethical Standards.

[11] Approved by the court *en banc* on 15 November 2005.

but that in the process of cutting and pasting the various paragraphs, they were accidentally dropped. She makes it sound as if something like a long reference citation can just easily fall by the wayside. Not so.

The reference required under the *Manual of Judicial Writing* for the work of Ellis reads like this: "Mark Ellis, *Breaking the Silence: Rape as an International Crime*, 38 CASE W. RES. J. INT'L L. 225 (2006-2007)."

The researcher in *Vinuya* explained that footnotes were deleted along with headings of certain portions, and with the deletion of the note reference mark in the body of the text, the citations in the document's footers disappeared also. For this scenario to happen with the same frequency as the number of missing citations, the following steps must have been followed:

1. **First movement:** Using hand and eye coordination, consciously move cursor to the location of target footnote and/or heading, using either the mouse or arrow keys.

2. **Second movement:** Select the "note reference mark" by highlighting the target footnote number. Note that unlike in normal characters or texts wherein a single press of the "delete" or "backspace" button would suffice, a footnote number must be highlighted before it can be deleted. This means that either the particular footnote and/or heading must have been "double-clicked" or it must have been specifically highlighted by a precise horizontal motion of the cursor while pressing on a mouse button – both of which require two movements (either two "clicks", or a "click" and a "swipe").

3. **Third** movement: Press "delete" or "backspace" key.

Note that in the case wherein the note reference mark was not highlighted by a mouse movement, the "delete" or "backspace" key must have been pressed *twice*, as pressing it only once will merely highlight the note reference mark without deleting the same.

Hence, even accommodating the explanation given by the researcher, at least four movements must have been accomplished

to delete one footnote or reference. Multiply this with the number of references that were "dropped" or "missing," and you have a situation wherein the researcher accomplished no less than two hundred thirty-six (236) deliberate steps to be able to drop the fifty-nine (59) citations that are missing in *Vinuya*. If by some chance the cursor happened to be at the precise location of the citations, and the citations were subsequently deleted by an accidental click of the mouse, this would still have necessitated a total of one hundred seventy seven (177) clicks. It is understandable if a researcher accidentally deleted one, two or even five footnotes. That a total of 59 footnotes were erased by mere accident is inconceivable.

To make a conservative estimate, we can deduct the number of times that a footnote number in the body of the Decision could simply have been deleted inadvertently. Our analysis indicates that this could have happened a third of the time, or an estimate of twenty times, when short footnotes containing *"supra"* or *"id."* could have been easily forgotten or omitted. This would still have yielded sixty deliberate steps or movements, and would alert the researcher either that: 1) too much of the body comprises ideas which are not his own, or 2) too many of the sources in his "main manuscript" were getting lost. Subsequently, if more than half of the attributions in the International Law discussion went missing, the simple recourse would have been either to review his or her first draft, or simply delete his lengthy discursive footnotes precisely because he cannot remember which articles he might have lifted them from.

On Microsoft Word features that alert the user to discrepancies in footnote deletions

The researcher took pains to deliberately cut and paste the original sources of the author, thereby making it appear that she was the one who collated and processed this material. What she should have done was simply to cite the author from whom she took the analysis and summarization of the said sources in the first place. The latter would have been the simple, straightforward, not to mention honest path. Instead, the effect is that the *Vinuya* Decision also appropriated the author's analysis.

Actually, it would have been easier to cite the author's copied work considering the availability of short citation forms commonly used as reference tools in legal articles such as *"supra"* or *"id."*

Microsoft Word may not have an automatic alarm each time a footnote or citation is deleted, but it does contain built-in features to help raise "red flags" to signal that a particular passage was copied, or is attached to a particular citation – if indeed such citation exists. For example, the researcher in *Vinuya*, in describing her own process of drafting the Decision, stated that portions containing footnotes from the first *Vinuya* draft were lifted and transformed into the contents of a separate footnote. In short, during revisions of the draft, substantial footnoted portions which used to be in the body were relegated to footnotes. This does not result, however, in the automatic erasure of the original footnotes within the new footnote. A simple recreation of this process reveals that this "footnote within a footnote" retains a number symbol in superscript, albeit one altered due to the redundancy in the functionality of "footnotes within footnotes." Any reasonably prudent researcher would thus be alerted to the fact that something was amiss with the citations in that particular selection because the footnote would have abnormal numeric superscripts. This glaring abnormality in itself is a warning.

Another notable feature is that when a cursor, as seen on the screen in an open document, is placed over a footnote reference mark, Microsoft Word automatically supplies that footnote's citation in a popup text box. The popup box hovers over the numerical superscript, unmistakably indicating the source.[12] In addition, no single action can cause a footnote to be deleted; once the cursor is beside it, either the "delete" or "backspace" key must be pressed *twice*, or it must be deliberately highlighted and then erased with a stroke of either the "delete" or the "backspace" key. This functionality of footnote deletion in

[12] A case in which the popup text box would not appear is that in which a block of text containing the note reference mark is selected; the popup text box will only appear if the cursor is hovered near the note reference mark.

Microsoft Word thus decreases the likelihood of footnotes being deleted without the knowledge or intention of the researcher.

As to the claim of the researcher that the footnotes in the headings were accidentally deleted, there was a failure on the part of the Ethics Committee to thoroughly investigate the matter when they relied on a presentation of what, according to the researcher, happened during her research for and drafting of the *Vinuya* Decision. Instead of asking her to re-create the various situations of "inadvertent dropping," the Ethics Committee satisfied itself with a "before" and "after" Microsoft PowerPoint presentation which could not, by any stretch of the imagination, have recreated the whole process of researching and drafting that happened in *Vinuya* unless every step were to be frozen through screenshots using the "Print Screen" command in tandem with a common image management program. To simply present the "before" and "after" scenario through PowerPoint has no bearing on the reality of what happened. Had the Ethics Committee required that the presentation made before them be through recreation of the drafting process using Microsoft Word alone, without "priming the audience" through a "before" and "after" PowerPoint presentation, they would have seen the footnotes themselves behaving strangely, alerting the researcher that something was seriously wrong. The Committee would then have found incredible the claim that the accidental deletion of a footnote mark attached to a heading – and the subsequent transposition of text under that heading to another footnote – could have occurred without the researcher being reminded *that the text itself came from another source*. Proof of deliberate action is found in the *Vinuya* Decision itself – the care with which the researcher included citations of the sources to which the authors of the copied works referred, while conveniently neglecting attribution to the copied works themselves.

It is therefore impossible to conclude that such gross plagiarism, consisting of failure to attribute to nine (9) copyrighted works, could have been the result of anything other than failure to observe the requirements of the standard of conduct demanded of a legal researcher. There is also no basis to conclude that

there was no failure on the part of Justice del Castillo to meet the standard of supervision over his law clerk required of incumbent judges.

III. On Evaluating Plagiarism

A. Posner's Standards for Evaluating the Characterization of Incidents of Plagiarism

To be generous to my colleagues in this part of my analysis, I have referred to one of the scholars who hold the most liberal views on plagiarism, Judge Richard A. Posner. The three guideposts by which I structured my technical analysis of the instances of plagiarism in the *Vinuya* Decision come from his breakdown of certain key issues in his work, *The Little Book of Plagiarism*. In his "cook's tour" of the key issues surrounding plagiarism, wherein he is more liberal than most academics in speaking of the sanctions the act may merit – he is against the criminalization of plagiarism, for instance, and believes it an act more suited to informal sanctions[13] – Judge Posner characterizes plagiarism thus:

> Plagiarism is a species of intellectual fraud. It consists of unauthorized copying that the copier claims (whether explicitly or implicitly, and whether deliberately or carelessly) is original with him and the claim causes the copier's audience to behave otherwise than it would if it knew the truth. This change in behavior, as when it takes the form of readers' buying the copier's book under the misapprehension that it is original, can harm both the person who is copied and the competitors of the copier. But there can be plagiarism without publication, as in the case of student plagiarism. The fraud is directed in the first instance at the teacher (assuming that the student bought rather than stole the paper that he copied). But its principal victims are the plagiarist's student competitors, who are analogous to authors who compete with a plagiarist.[14]

---

[13] RICHARD A. POSNER, *THE LITTLE BOOK OF PLAGIARISM*, 38 (2007).

[14] *Id.* at 106.

Posner then goes on to neatly sum up, in the form of three "keys," major considerations that need to be taken into account when evaluating an occurrence of plagiarism. His book's last paragraph reads:

> In the course of my cook's tour of the principal issues that have to be addressed in order to form a thoughtful response to plagiarism in modern America, I have challenged its definition as "literary theft" and in its place emphasized **reliance, detectability, and the extent of the market for expressive works as keys to defining plagiarism and calibrating the different types of plagiarism by their gravity**. I have emphasized the variety of plagiarisms, argued for the adequacy of the existing, informal sanctions, pointed out that the "fair use" doctrine of copyright law should not protect a plagiarist, noted the analogy between plagiarism and trademark infringement (a clue to the entwinement of the modern concept of plagiarism with market values)–and warned would-be plagiarists that the continuing advance of digitization may soon trip them up. (Emphasis supplied.)

It is in this spirit that the three questions – of *extent,* an analogue of reliance, as extensive plagiarism correlates to the reliance of the text on the copied work; *deliberateness;* and *effect,* an analogue of what Posner called "extent of the market for expressive works," used here in the context of the effect of plagiarism in the *Vinuya* Decision – were put to the text being scrutinized. The first two questions have been discussed in preceding sections. To examine the effect, one must first make the distinction between the effect of copying a copyrighted work without attribution, and between the effect of copying without attribution a work in the public domain. Using these three guideposts, we can them come to a conclusion whether the plagiarism is relatively harmless and light or something severe and harmful. In the case of the *Vinuya* Decision, we have come to conclude that the plagiarism is severe; and because judicial decisions are valuable to the Philippine legal system, that the plagiarism harms this institution as well.

1. The distinction between the effect of appropriating copyrighted works and works in the public domain

The infringement of copyright necessitates a framework for characterizing the expression of ideas as *property*. It thus turns on a question of whether there exists resultant harm in a form which is economically quantifiable. Plagiarism, on the other hand, covers a much wider range of acts. In defining copyright infringement, Laurie Stearns points out how it is an offense independent from plagiarism, so that an action for violation of copyright – which may take on either a criminal and a civil aspect, or even both – *does not sufficiently remedy the broader injury inherent in plagiarism.*

> Plagiarism is not necessarily copyright infringement, nor is copyright infringement necessarily plagiarism…In some ways the concept of plagiarism is broader than infringement, in that it can include the copying of ideas, or of expression not protected by copyright, that would not constitute infringement, and it can include the copying of small amounts of material that copyright law would disregard.[15]

> Plagiarism, with its lack of attribution, severs the connection between the original author's name and the work. A plagiarist, by falsely claiming authorship of someone else's material, directly assaults the author's interest in receiving credit. In contrast, attribution is largely irrelevant to a claim of copyright infringement…infringement can occur even when a work is properly attributed if the copying is not authorized–for example, a pirated edition of a book produced by someone who does not own the publication rights.[16]

The recognition of plagiarism as an offense that can stand independently of copyright infringement allows a recognition that acts of plagiarism are subject to reproof irrespective of whether the work is copyrighted or not. In any case, the scenario presented before the Court is an administrative matter and deals with plagiarism, not infringement of copyright.

---

[15] Laurie Stearns, *Copy Wrong: Plagiarism, Property, and the Law*, 80 CAL. L. REV. 513, 518 (1992).

[16] *Id.* at 522.

2. On judicial plagiarism and the sanctions therefor

The majority Resolution quotes from the *Judicial Opinion Writing Handbook* written by Joyce George – which I cited in my earlier Dissent – thusly:

> The implicit right of judges to use legal materials regarded as belonging to the public domain is not unique to the Philippines. As Joyce C. George, whom Justice Maria Lourdes Sereno cites in her dissenting opinion, observed in her Judicial Opinion Writing Handbook:
>
> > **A judge writing to resolve a dispute, whether trial or appellate, is exempted from a charge of plagiarism even if ideas, words or phrases from a law review article, novel thoughts published in a legal periodical or language from a party's brief are used without giving attribution. Thus judges are free to use whatever sources they deem appropriate to resolve the matter before them, without fear or reprisal. This exemption applies to judicial writings intended to decide cases for two reasons: the judge is not writing a literary work and, more importantly, the purpose of the writing is to resolve a dispute. As a result, judges adjudicating cases are not subject to a claim of legal plagiarism.**

The use of this excerpt to justify the wholesale lifting of others' words without attribution as an "implicit right" is a serious misinterpretation of the discussion from which the excerpt was taken. George wrote the above-quoted passage in the context of a nuanced analysis of possible *sanctions* for judicial plagiarism, not in the context of the *existence* of plagiarism in judicial opinions. (I had candidly disclosed the existence of this liberal view even in my 12 October 2010 Dissent.) The sections preceding the text from which this passage was taken are, in fact, discussions of the following: ethical issues involving plagiarism in judicial writing, with regard to both the act of copying the work of another and the implications of plagiarism on the act of adjudication; types of judicial plagiarism, the means by which they may be committed, and the venues in and through which they can occur; and recent cases of judicial plagiarism.

In no wise does George imply that the judicial function confers upon judges the implicit right to use the writing of others without attribution. Neither does George conflate the possible lack of sanctions for plagiarism with the issue of whether a determination of judicial plagiarism can be made. Rather, George is careful to make the distinction between the issue of whether judicial plagiarism was committed and the issue of whether a sanction can be imposed for an act of judicial plagiarism. In George's terminology, the latter issue may also be framed as a question of whether judicial plagiarism is "subject to a claim of legal [that is, actionable] plagiarism", and it has no bearing whatsoever on the former issue. Thus, George writes:

> The intentional representation of another person's words, thoughts, or ideas as one's own without giving attribution is plagiarism. "Judicial plagiarism" is the copying of words or ideas first written down by another judge, advocate, legal writer or commentator without giving credit to the originator of that work. It can include such things as a judge's copying of another's judges opinion, the adoption verbatim of an advocate's findings of fact and conclusions of law, the wholesale adoption of an advocate's brief, or the copying of a portion of a law review article and representing it as the judge's own thoughts. The lack of attribution makes this activity "judicial plagiarism," but without legal sanctions.[17]

Indeed, my previous Dissent stated that inasmuch as sanctions for judicial plagiarism are concerned, "there is no strictly prevailing consensus regarding the need or obligation to impose sanctions on judges who have committed judicial plagiarism." Yet the absence of a definite answer to the question of liability does not grant judges carte blanche to use the work of others without attribution, willy-nilly, in their judicial opinions. As George puts it, "the judge is ethically bound to give proper credit to law review articles, novel thoughts published in legal periodicals,

---

[17] JOYCE C. GEORGE, *Judicial Plagiarism*, JUDICIAL OPINION WRITING HANDBOOK, accessed at <http://books.google.com.ph/books?id=7jBZ4yjmgXUC&lpg=PR1&hl=en&pg=PR1#v=onepage&q&f=false> on February 8, 2011, at 715.

newly handed down decisions, or even a persuasive case from another jurisdiction."[18] Plainly, George is of the opinion that though a judge may not be held liable for an act of judicial plagiarism, he should still attribute.

A note about "intentional representation." A careful reading of George's writing on judicial plagiarism will make it clear that she does not consider "inadvertent" or "unintentional" plagiarism *not* plagiarism; indeed, she makes the distinction between "intentional" and "unintentional" plagiarism several times, treating *both* as types of plagiarism:

> Using another's language verbatim without using quotation marks or a block quote is intentional, as opposed to unintentional, plagiarism.[19]
>
> ... ...
>
> The lack of proper attribution may be unintentional and due to sloppy note taking, either by the law clerk or the judge.[20]
>
> ... ...
>
> Judicial plagiarism may also arise from the use of law clerks performing research and writing of draft decisions and who may not accurately reflect the source. The plagiarized material may be included within the draft resulting from the law clerk's poor research skills.[21]
>
> ... ...
>
> The commission of unintended judicial plagiarism is unethical, but it is not sanctionable.[22]

The intentional representation of which George speaks, then, may be considered as the intent to represent a work as one's own – already embodied in claiming a work by, for instance,

---

[18] *Id.* at 726.

[19] *Id.* at 715.

[20] *Id.* at 718.

[21] *Id.*

[22] *Id.* at 726.

affixing one's name or byline to it – in which case the inadvertence, or lack thereof, by which an act of plagiarism was committed is irrelevant to a finding of plagiarism.

While George is perhaps not as exacting in her valuation of the penalties for plagiarism as others may be, she still emphasizes that her view on the exemption of judicial plagiarism from sanctions – among which she evidently counts social stigma, censure, and ostracism – does not negate the judge's ethical obligation to attribute. She writes:

> In conclusion, this author believes that a judicial writer cannot commit legal plagiarism because the purpose of his writing is not to create a literary work but to dispose of a dispute between parties. Even so, a judge is ethically bound to give proper credit to law review articles, novel thoughts published in legal periodicals, newly handed down decisions, or even a persuasive case from another jurisdiction. While the judge may unwittingly use the language of a source without attribution, it is not proper even though he may be relieved of the stigma of plagiarism.[23]

As I wrote in my previous Dissent:

> In so fulfilling her obligations, it may become imperative for the judge to use "the legal reasoning and language [of others *e.g.* a supervising court or a law review article] for resolution of the dispute."[31] Although these obligations of the judicial writer must be acknowledged, care should be taken to consider that said obligations do not negate the need for attribution so as to avoid the commission of judicial plagiarism. Nor do said obligations diminish the fact that judicial plagiarism "detracts directly from the legitimacy of the judge's ruling and indirectly from the judiciary's legitimacy"[32] or that it falls far short of the high ethical standards to which judges must adhere[33].[24]

It must not be forgotten, however, that George's view tends toward the very liberal. There are other writings, and actual

---

[23] *Id.*

[24] *Supra* note 3 at 29.

instances of the imposition of sanctions, that reveal a more exacting view of the penalties merited by judicial plagiarism.[25]

B. On the Countercharges Made by Justice Abad

In his Concurring Opinion in A.M. No. 10-7-17-SC, Justice Abad alleged that I myself have "lifted from works of others without proper attribution," having written "them as an academician bound by the high standards" that I espouse.

Regarding this allegation, let us recall my Dissent promulgated on 12 October 2010. I stated:

> Plagiarism thus does not consist solely of using the work of others in one's own work, but of the former *in conjunction with* the failure to attribute said work to its rightful owner and thereby, as in the case of written work, misrepresenting the work of another as one's own. As the work is another's and used without attribution, the plagiarist derives the benefit of use form the plagiarized work without expending the requisite effort for the same – at a cost (as in the concept of "opportunity cost") to its author who could otherwise have gained credit for the work and whatever compensation for its use is deemed appropriate and necessary.[26]

Allow me to analyze the allegations of Justice Robert C. Abad point by point using the same standard I propounded in my 12 October 2010 Dissent.

---

[25] See: In re Widdison, 539 N.W.2d 671 (S.D. 1995) at 865 (as cited in Jaime S. Dursht, *Judicial Plagiarism: It May Be Fair Use but Is It Ethical?,* 18 CARDOZO L. REV. 1253); Rebecca Moore Howard, *Plagiarisms, Authorships, and the Academic Death Penalty,* 57 COLLEGE ENGLISH 7 (Nov., 1995), at 788-806, as cited in the JSTOR, http://www.jstor.org./stable/378403; *Klinge v. Ithaca College*, 634 N.Y.S.2d 1000 (Sup. Ct. 1995), *Napolitano v. Trustees of Princeton Univ.*, 453 A.2d 279, 284 (N.J. Super. Ct. Ch. Div. 1987), and *In re Brennan*, 447 N.W.2d 712, 713-14 (Mich. 1949), as cited in Gerald Lebovits, Alifya V. Curtin & Lisa Solomon, *Ethical Judicial Opinion Writing,* 21 THE GEORGETOWN JOURNAL OF LEGAL ETHICS 264, note 190; *Apotex Inc. v. Janssen-Ortho Inc.* 2009, as cited in Emir Aly Crowne-Mohammed, 22 No. 4 Intell. Prop. & Tech. L. J. 15, 1 – as cited in page 28 and footnotes 24, 25, 27 to 29 of my 12 October 2010 Dissent.

[26] *Id.* at 26.

1. The alleged non-attribution to the Asian Development Bank's Country Governance Assessment Report for the Philippines (2005).

TABLE H: Comparison of Justice Abad's allegations, the 2001 and 2007 versions of the article co-authored with Drs. De Dios and Capuno, and the ADB Country Governance Assessment of 2005.

	REPRODUCTION OF J. ABAD'S ALLEGATIONS	**EXCERPT FROM THE ARTICLE CO-AUTHORED WITH DRS. DE DIOS AND CAPUNO:** *Justice and the Cost of Doing Business: The Philippines*, report submitted to the World Bank, 2001.	**EXCERPT FROM THE ADB COUNTRY GOVERNANCE ASSESSMENT: PHILIPPINES** *Asian Development Bank Country Governance Assessment: Philippines*, 2005.
1.	Cost refers to both monetary and nonmonetary opportunities that a litigant has to forego in pursuing a case. Direct cost refers not only to fees paid to the courts but also to out-of-pocket costs arising from litigation itself (*e.g.*, lawyers' fees and compensation, transcript fees for stenographic notes, *etc*.). Indirect costs refer to lost opportunities arising from delays in the resolution of cases	Costs, on the other hand, refer to both the monetary and nonmonetary opportunities that business people forego as a result of making use of the judicial system itself. *Direct costs* refer not only to the fees paid the courts but also to out-of-pocket costs arising from litigation itself (*e.g.*, lawyers' fees and documentation). *Indirect costs* also inevitably arise, of which the most important are those	Cost refers to both monetary and nonmonetary opportunities that a litigant has to forego in pursuing a case. Direct cost refers not only to fees paid to the courts but also to out-of-pocket costs arising from litigation itself (*e.g.*, lawyer's fees and compensation, transcript fees for stenographic notes, *etc*.). Indirect costs refer to lost opportunities arising from delays in the resolution of cases

	and the time spent by a litigant attending and following up a case. *[Asian Development Bank Country Governance Assessment (Philippines) 2005, page 103]*	arising from *delays* in the resolution of cases, and the failure to come up with timely decisions.	and the time spent by a litigant attending and following up a case.
		EXCERPT FROM THE ARTICLE CO-AUTHORED WITH DRS. DE DIOS AND CAPUNO: *Justice and the Cost of Doing Business: The Philippines*, UP School of Economics Discussion Paper 0711, October 2007.	
		Costs, on the other hand, refer to both the monetary and nonmonetary opportunities that business people forego as a result of making use of the judicial system itself. *Direct costs* refer not only to the fees paid the courts but also to out-of-pocket costs arising from litigation itself (*e.g.*, lawyers' fees and documentation). *Indirect costs* also inevitably arise, of which the most important are those arising from *delays* in the resolution of cases, and the failure to come up with timely decisions.	

Justice Abad accuses Dr. Emmanuel S. De Dios, Dr. Joseph J. Capuno, and me of copying, without attribution, three sentences from the Asian Development Bank's 2005 Outlook Report for the Philippines, and incorporating them into our 2007 paper entitled "Justice and the Cost of Doing Business."[27]

I thank Justice Abad for alerting me to this particular ADB publication; otherwise I would not have noticed ADB's failure to attribute the same to **my co-authored work produced in 2001**. Were it not for his charges, I would not have learned of such inadvertent error from the ADB. I have thus called the attention of my co-authors, Drs. De Dios and Capuno, to this matter. Below is a reproduction of the contents of my letter to Drs. De Dios and Capuno:

Hon. Maria Lourdes P.A. Sereno
Associate Justice
Supreme Court of the Philippines

February 4, 2011

Dr. Emmanuel C. De Dios
Dr. Joseph D. Capuno
School of Economics
University of the Philippines

Dear Drs. De Dios and Capuno

Greetings!

I have been recently alerted to a possible plagiarism that we are suspected to have committed with respect to the 2005 Asian Development Bank Outlook Report, specifically three sentences in page 103 that reads:

> ... Cost refers to both monetary and nonmonetary opportunities that a litigant has to forego in pursuing a case. Direct cost refers not only to fees paid to the courts but also to out-of-pocket costs arising from litigation itself (*e.g.* lawyer's fees and compensation, transcript fees for stenographic notes, *etc.*) Indirect costs refer to lost opportunities arising from delays in the resolution of cases and the time spent by a litigant attending and following up a case.

[27] Discussion Paper No. 07011, October 2007, UP School of Economics.

On examination, I discovered that it is the ADB that failed to attribute those sentences to the report we submitted in August 2001 to the World Bank entitled "Justice and the Cost of Doing Business: The Philippines," specifically found in the third paragraph of our 2001 report. May I suggest that perhaps you could alert our friends at the ADB regarding the oversight. It would be nice if our small study, and the World Bank support that made it possible, were appropriately recognized in this ADB publication.

Warmest regards always.

Sincerely,

Maria Lourdes P.A. Sereno

A proper reading of the ADB publication will immediately convey the fact that the ADB considers one of my writings as a resource on the topic of Philippine judicial reform. My name is quoted four (4) times in the text. A reading of the references listed one of my 2001 papers, which I wrote singly as the source. Note the following references to my writing:

... It is incumbent upon the courts to harmonize these laws, and often they would find the absence of constitutional standards to guide them (**Sereno** 2001). at page 98

... ...

... Critics pointed out that the Supreme Court should not have made factual declarations on whether a property belongs to the national patrimony in the absence of an operative law by which a factual determination can be made (**Sereno** 2001). at page 99

... As **Sereno** pointed out, if this tension between the three branches is not resolved satisfactorily, it will create a climate of unpredictability as a result of the following: at page 99

... ...

(iii) a court that will continually have to defend the exercise of its own powers against the criticism of the principal stakeholders in the process of economic policy formulation: the executive and legislative branches and the constituencies consulted on the particular economic issues at hand (**Sereno** 2001).

Had Justice Abad or his researcher taken the time to go through the ADB material, it would have been immediately apparent to either of them that ADB was merely collating the thoughts of several authors on the subject of Philippine judicial reform, and that I was one of those considered as a resource person. He would not then have presumed that I copied those sentences; rather, it might have struck him that more likely than not, it was the ADB echoing the thoughts of one or some of the authors in the reference list when it used those quoted sentences, and that the pool of authors being echoed by ADB includes me. The reference list of the ADB report with the relevant reference is quoted herein:

REFERENCES

... ...

Sereno, Ma. Lourdes. 2001. The Power of Judicial Review and Economic Policies: Achieving Constitutional Objectives. PHILJA-AGILE-USAID Project on Law and Economics." at page 158.

What is more unfortunate is that I was immediately accused of having copied my sentences from ADB when a simple turn of the page after the cover page of our 2007 paper would reveal that the 2007 paper is but a **re-posting** of our 2001 work. The notice on page 2 of the paper that is found in the asterisked footnote of the title reads:

This paper was **originally submitted in August 2001 as project report to the World Bank**. During and since the time this report was written, the Supreme Court was engaged in various projects in judicial reform. The authors are grateful to J. Edgardo Campos and Robert Sherwood for stimulating ideas and encouragement but take responsibility for remaining errors and omissions. The Asian Institute of Journalism and Communication provided excellent support to the study in the actual administration of the survey questionnaire and conduct of focus group discussions.

This charge is made even more aggravating by the fact that the Supreme Court itself, through the Project Management Office, has a copy of my 2001 paper. In July 2003, a "Project Appraisal Document on a Proposed Loan in the Amount of

US$21.9 Million to the Republic of the Philippines for a Judicial Reform Support Project" was officially filed by the World Bank as Report No. 25504.[28] The applicant Supreme Court's representative is named as Chief Justice Hilario Davide. The project leader is named as Evelyn Dumdum. The Report lists the technical papers that form the basis for the reform program. Among the papers listed is our 2001 paper.

What is worse, from the point of view of research protocols, is that a simple internet search would have revealed that this 2001 co-authored paper of mine has been internationally referred to at least four (4) times – in three (3) English language publications and one (1) Japanese- or Chinese-language publication; two of these are prior to the year 2005 when the relevant ADB Outlook Report came out. The authors of the English-language works are all scholars on judicial reform, and they cite our work as one of the pioneering ones in terms of measuring the relationship between dysfunctions in the judicial system and the cost to doing business of such dysfunctions. It would have then struck any researcher that in all probability, the alleged plagiarized sentences originated from my co-authors and me.

The references to my 2001 paper appear in the following international publications:

a) Sherwood, Robert. Judicial Performance: Its Economic Impact in Seven Countries; at page 20. (http://www.molaah.com/Economic%20Realities/Judicial%20Performance.pdf)

b) Messick, Richard. Judicial Reform and Economic Growth: What a Decade of Experience Teaches; at pages 2 and 16. (2004). http://www.cato.org/events/russianconf2004/papers/messick2.pdf

---

[28] World Bank, Project Appraisal Document on a Proposed Loan in the Amount of US$21.9 Million to the Republic of the Philippines for a Judicial Reform Support Project (Report No: 25504) (2003), *available at* http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/07/31/000012009_20030731101244/Rendered/PDF/255040PH0PAD.pdf (accessed on February 5, 2011).

c) Herro, Alvaro and Henderson, Keith. Inter-American Development Bank. The Cost of Resolving Small-Business Conflicts in Sustainable Development Department Best Practices Series; at page 46. (2004) http://www.ifes.org/~/media/Files/Publications/White%20PaperReport/2003/258/SME_Peru_Report_final_EN.pdf

d) World Development Report 2005 (Japanese language); at page 235 (2005) ("url" in Japanese characters)

2. The purported non-attribution of the "Understanding on the Rules and Procedures Governing the Settlement of Disputes, Annex 2 to the General Agreement on Tariffs and Trade 1994."[29]

I will spare the reader the tedium of reading twenty pages of treaty rules and working procedures, and thus omit the three-column table I have used in other sections of this Dissent. The rules and procedures may be accessed online at the following locations:

1. Marrakesh Declaration of 15 April 1994 <http://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.pdf> (Last accessed on 16 February 2011)

2. Understanding on Rules and Procedures Governing the Settlement of Disputes <http://www.wto.org/english/docs_e/legal_e/28-dsu.pdf> (Last accessed on 16 February 2011)

3. Working Procedures for Appellate Review <http://www.wto.org/english/tratop_e/dispu_e/ab_e.htm#20> (Last accessed on 16 February 2011)

Justice Abad himself provides evidence of the attribution I made when he says:

Justice Sereno said that 'this section is drawn from Article XX and XXII of the GATT 1994, **Understanding on Dispute Settlement** and Working Procedures.

---

[29] A minor correction is in order. The "Understanding on the Rules and Procedures Governing the Settlement of Disputes" is Annex 2 to the Marakkesh Agreement Establishing the World Trade Organization. There is no Annex 2 to the General Agreement on Tariffs and Trade 1994. Please see paragraphs 1 to 4 of said GATT 1994 for a list of all its component parts.

I think the problem lies in the fact that neither Justice Abad nor his researcher is aware that the phrase "Understanding on Dispute Settlement" is the short title for the "Understanding on the Rules and Procedures Governing the Settlement of Disputes," which is formally known also as Annex 2 of the Marakkesh Agreement Establishing the World Trade Organization (short form of treaty name: WTO Treaty). A quick visit to the WTO website will show that the WTO itself uses any of the terms "DSU," "Dispute Settlement Understanding" or "Understanding on Dispute Settlement" (UDS) as short forms for the said Annex. The WTO webpage[30] shows that "Understanding on Dispute Settlement" is the first short way they call the long set of rules covered by Annex 2 of the WTO Treaty.

More importantly, the WTO documents that were cited here are public international documents and rules governing the relations of states. In page 6 of my article, "Toward the Formulation of a Philippine Position in Resolving Trade and Investment Dispute in APEC," I explain the modes of resolving trade and investment disputes by APEC countries, and one of these modes is the WTO dispute settlement mechanism governed by the WTO rules themselves.

This is therefore a meaningless charge.

Assuming that Justice Abad knows that the above treaty titles are interchangeable, then his charge is akin to complaining of my supposed failure for having simply written thus: "The following are the requirements for filing a complaint under the Rules of Court" and then for having immediately discussed the requirements under the Rules of Court without quotation marks in reference to each specific rule and section. If this is the case, then it appears that in Justice Abad's view I should have written: "the following are the requirements provided for under the 1997 Rules of Civil Procedure (Bar Matter No. 803) for filing a complaint" and then used quotation marks every time reference

---

[30] Understanding on Dispute Settlement, *available at* http://www.inquit.com/iqebooks/WTODC/Webversion/prov/eigteen.htm (accessed on February 5, 2011).

to the law is made. Nothing can be more awkward than requiring such a tedious way of explaining the Rules of Court requirements. I have made no such comparable charge of violation against Justice del Castillo in the Dissent to the main Decision and I am not making any such claim of violation in my Dissent to the Resolution denying the Motion for Reconsideration, because that would be a meaningless point.

Regarding the phrase allegedly coming from Professor Oppenheim on good offices and mediation, this is a trite, common, standard statement – with nothing original at all about it – that can be found in any international dispute settlement reference book, including those that discuss WTO dispute settlement systems. The phrase is a necessary, cut-and-dried statement on the use of good offices and mediation, which take place alongside the formal dispute settlement system in major international dispute settlement systems. The system is provided for expressly in Article 5.5 and 5.6 of the DSU. A quick view of the WTO website makes this point very apparent.[31]

3. The supposed non-attribution of a phrase from Baker v. Carr.

TABLE I: Comparison of Justice Abad's allegations, the legal memorandum in *Province of North Cotabato v. Peace Panel*, and the decision of the U.S. Supreme Court in *Baker v. Carr*, cited in the legal memorandum.

	REPRODUCTION OF J. ABAD'S ALLEGATIONS	**EXCERPT FROM THE LEGAL MEMORANDUM PREPARED BY J. SERENO:**	**EXCERPT FROM THE SOURCE CITED BY J. SERENO:**

[31] World Trade Organization, Dispute Settlement System Training Module: Chapter 8 – Dispute Settlement Without Recourse to Panels and the Appellate Body, *available at* http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c8s1p2_e.htm (accessed on February 5, 2011).

		Petitioners-Intervenors' Memorandum, *Province of North Cotabato v. Peace Panel*	*Baker v. Carr*, 369 U.S. 186 (1962).
		3.4 The power to determine whether or not a governmental act is a political question, is solely vested in this Court, and not with the Respondents. This Honorable Court had firmly ruled that Article VIII, Section 1 of the Constitution, as rejected the prudential approach taken by courts as described in ***Baker v. Carr***. Indeed, it is a duty, not discretion, of the Supreme Court, to take cognizance of a case and exercise the power of judicial review whenever a grave abuse of discretion has been *prima facie* established, as in this instance. 3.5 In this case, Respondents cannot hide under the political question doctrine, for two compelling reasons.	

	Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a **lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion** x x x [*Baker v. Carr*, 169 U.S. 186]	3.6 First, there is no resolute textual commitment in the Constitution that accords the President the power to negotiate with the MILF……. ... 3.13 Second, there is no lack of a judicially discoverable and manageable standard for resolving the question, nor impossibility of deciding the question without an initial policy determination of a kind clearly for non-judicial discretion. On the contrary, the negotiating history with Muslim secessionist groups easily contradict any pretense that this Court cannot set down the standards for what the government cannot do in this case. (pp. 47-50 of the *Memorandum*)	Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for non-judicial discretion…. *Source cited:* *Baker v. Carr*

A simple upward glance nine paragraphs above the phrase that Justice Abad quoted from my post-hearing Memorandum in the GRP-MILF MOA-AD case would show that *Baker v. Carr* was aptly cited. For quick reference, I have reproduced the pertinent parts of my legal memorandum in the middle column of the above table.

Baker v. Carr was discussed in the context of my argument that *Marcos v. Manglapus* has adopted a more liberal approach to the political question jurisdictional defense, and has rejected the prudential approach taken in *Baker v. Carr*. The offending paragraph that Justice Abad quoted was meant to demonstrate to the Court then hearing the GRP-MILF MOA-AD case that even if we apply *Baker v. Carr*, the Petition has demonstrated satisfaction of its requirement: the presence of a judicially-discoverable standard for resolving the legal question before the Court. Justice Abad's charge bears no similarity to the violations of the rules against plagiarism that I enumerated in pages 16 to 19 of my Dissent dated 12 October 2010. I have made no similar complaint against the work in *Vinuya*.

4. The alleged plagiarism of the internet-based World Trade Organization factsheet.

TABLE J: Comparison of Justice Abad's allegations, the article, entitled *Uncertainties Beyond the Horizon: The Metamorphosis of the WTO Investment Framework in the Philippine Setting*, and the WTO Factsheet cited in the article.

	REPRODUCTION OF J. ABAD'S ALLEGATIONS	**EXCERPT FROM THE WORK OF J. SERENO:** Sereno, *Uncertainties Beyond the Horizon: The Metamorphosis of the WTO Investment Framework in the Philippine Setting*, 52 U.S.T. L. REV. 259 (2007-2008)	**EXCERPT FROM THE SOURCE CITED BY J. SERENO:** http://www.fas.usda.gov/info/factsheets/wto.html
		This reticence, to link investment regulation with the legal disciplines in the WTO, compared to the eagerness with	

		which other issues are linked to trade rules, was evident even in the precursor to the *Marakkesh Agreement*.[2] [2] *Marakkesh Agreement* established the World Trade Organization and replaced GATT as an international organization. It was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco on April 15, 1994….	*Source cited:*
	The World Trade Organization (WTO), established on January 1, 1995, is a multilateral institution charged with administering rules for trade among member countries. Currently, there are 145 official member countries. The United States and other countries participating in the Uruguay Round of Multilateral Trade Negotiations (1986-1994) called for the formation of the WTO to embody the new trade disciplines adopted during those negotiations.The	The World Trade Organization (WTO) was established on January 1, 1995. It is a multilateral institution charged with administering rules for trade among member countries. The WTO functions as the principal international body concerned with multilateral negotiations on the reduction of trade barriers and other measures that distort competition. The WTO also serves as a platform for countries to raise their concerns regarding the trade policies of	The World Trade Organization (WTO), established on January 1, 1995, is a multilateral institution charged with administering rules for trade among member countries. Currently, there are 145 official member countries. The United States and other countries participating in the Uruguay Round of Multilateral Trade Negotiations (1986-1994) called for the formation of the WTO to embody the new trade disciplines adopted during those negotiations.The

	WTO functions as the principal international body concerned with multilateral negotiations on the reduction of trade barriers and other measures that distort competition. The WTO also serves as a platform for countries to raise their concerns regarding the trade policies of their trading partners. The basic aim of the WTO is to liberalize world trade and place it on a secure basis, thereby contributing to economic growth and development. [WTO FACTSHEET http://www.fas.usda.gov/info/factsheets/wto.html, last accessed February 13, 2008.]	their trading partners. The basic aim of the WTO is to liberalize world trade and place it on a secure basis, thereby contributing to economic growth and development. **http://www.fas.usda.gov/info/factsheets/wto.html (last accessed February 13, 2008).** (Emphasis supplied.) (pp. 260-261, footnote 2 of J. Sereno's work)	WTO functions as the principal international body concerned with multilateral negotiations on the reduction of trade barriers and other measures that distort competition. The WTO also serves as a platform for countries to raise their concerns regarding the trade policies of their trading partners. The basic aim of the WTO is to liberalize world trade and place it on a secure basis, thereby contributing to economic growth and development. *Source cited:* http://www.fas.usda.gov/info/factsheets/wto.html

Justice Abad has likewise pointed out that I made it appear that the description of the WTO in my article entitled "*Uncertainties Beyond the Horizon: The Metamorphosis of the WTO Investment Framework in the Philippine Setting*" was my own original analysis. Again, a cursory reading of the article will show that the paragraph in question was actually the second footnote in page 2 of the article. The footnote was made as a background reference to the *Marrakesh Agreement*, which, as I explained earlier in the article, established the WTO. The footnote thus further provided background information on the WTO. Contrary, however, to Justice Abad's allegation, I clearly attributed the source of the information at the end of the footnote

by providing the website source of this information and the date I accessed the information. Thus, should one decide to follow the website that I cited, one would immediately see the information contained in the article was lifted from this direct source.

***5. The purported non-attribution to Judge Richard A. Posner's seminal work in his book* Economic Analysis of Law.**

TABLE K: Comparison of Justice Abad's allegations, the article entitled *Lawyers' Behavior and Judicial Decision-Making*, and Judge Richard A. Posner's book *Economic Analysis of Law*, cited in the article.

	REPRODUCTION OF J. ABAD'S ALLEGATIONS	**EXCERPT FROM THE WORK OF J. SERENO:** Sereno, *Lawyers' Behavior and Judicial Decision-Making*, 70(4) PHIL. L. J. 476 (1996).	**EXCERPT FROM THE SOURCE <u>CITED</u> BY J. SERENO:** RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW, (2ND ED. 1977).
		...We could deal with this problem later. What I would propose to evaluate at this point is the preconditions that **<u>Judge Richard Posner</u>** theorizes as dictating the likelihood of litigating... ... **<u>Posner's model</u>** is but a simple mathematical illustration or validation of what we as laymen have always believed to be true,	

	[S] e t t l e m e n t negotiations will fail and litigation ensue, only if the minimum price that the plaintiff is willing to accept in compromise of his claim is greater than the maximum price the defendant is willing to pay in satisfaction of the claim.	although how to prove it to be true has always remained a problem to us. We have always known that the decision on whether to settle or not is dictated by the size of the stakes in the eyes of the parties, the costs of litigation and the probability which each side gives to his winning or losing. But until now, we have only been intuitively dealing with a formula for arriving at an estimation of the "settlement range" or its existence in any given controversy. Simply, the settlement range is that range of prices in which both parties would be willing to settle because it would increase their welfare. Settlement negotiations will fail, and litigation will ensue, if the minimum price that plaintiff is willing to accept in compromise of his claim is greater than the maximum price that the defendant is willing to pay in satisfaction of that claim.	As with any contract, a necessary (and usually—why not always?—sufficient) conditions for negotiations to succeed is that there be a price at which both parties would feel that agreement would increase their welfare. Hence settlement negotiations should fail, and litigation ensue, only if the minimum price that the plaintiff is willing to accept in compromise of his claim is greater than the maximum price that the defendant is willing to pay in satisfaction of that claim; …. *Source cited:*

	[*Posner, p. 434*]	(pp. 481-483 of *Lawyers' Behavior and Judicial Decision-Making*)	RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW, 435 (2ND ED. 1977).
	Presumably **judges, like** the rest of us, seek **to maximize a utility function** that includes both monetary and nonmonetary elements. [*Posner, p. 415*] [T]he rules of the judicial process have been carefully designed both to the prevent the judge from receiving a monetary payoff from deciding a particular case one way or the other and to minimize the	**WHAT THE JUDGE MAXIMIZES** In understanding judicial behavior, we have to assume, that judges, like all economic actors maximize a utility function. This function in all probability includes material as well as non-material factors. **In American literature**, they have come up with several theories on what judges maximize. The first is that the American judicial system have rules designed to minimize the possibilities of a judge maximizing his financial interest by receiving a bribe from a litigant of from acceding to a politically powerful interest group by	§19.7 WHAT DO JUDGES MAXIMIZE? …This section attempts to sketch a theory of judicial incentives that will reconcile these assumptions. Presumably judges, like the rest of us, seek to maximize a utility function that includes both monetary and nonmonetary elements (the latter including leisure, prestige, and power). As noted earlier, however, the rules of the judicial process have been carefully designed both to prevent the judge from receiving a monetary payoff from deciding a particular case one way or the other and to minimize the influence of politically effective interest groups on his decisions. To be sure, the effectiveness of

	influence of politically effective interest group in his decisions. [*Posner, 415*] It is often argued, for example, that the **judge who owns land will decide in favor of landowners, the judge who walks to work will be in favour of pedestrians.** [*Posner, 415*] A somewhat more plausible case can be made that judges **might slant their decisions in favour of powerful interest groups** in order to increase **the prospects of promotion to higher office**, judicial or otherwise. [*Posner, p. 416*] [J]udges seek **to impose their**	making the rules work in such a manner as to create disincentives for the judge ruling in such a manner. The second, proceeding from the first is that the judge maximizes the interest of the group to which he belongs. If he belongs to the landowning class, he will generally favor landowners, and if he walks to work, he will generally favor pedestrians. The third is that the judge maximizes the prospects of his promotion to a higher office by slanting his decisions in favor of powerful interest groups. The last is that judges maximize their influence on society by imposing their values, tastes and preferences thereon.	these insulating rules is sometimes questioned. It is often argued, for example, that the judge who owns land will decide in favor of landowners, the judge who walks to work in favor of pedestrians, the judge who used to be a corporate lawyer in favor of corporations.... A somewhat more plausible case can be made that judges might slant their decisions in favor of powerful interest groups in order to increase the prospects of promotion to higher office, judicial or otherwise.... It would seem, therefore, that the explanation for judicial behavior must lie elsewhere than in pecuniary or political factors. That most judges are leisure maximizers is an assumption that will not survive even casual observation of judicial behavior. A more attractive

	preferences, tastes, values, *etc*. on society. [*Posner, 416*]	Depending on one's impressions and experiences (since there is no empirical data on which a more scientific conclusion can be reached on which of the above four theories are correct), we can see the relation of this utility-maximizing behavior on both our probability estimate function and **Posner's** precondition inequality for litigation. Although more research is required in this area, if we believe **Posner's** function to be true…. (Emphasis supplied.) (pp. 489 of *Lawyers' Behavior and Judicial Decision-Making*)	possibility, yet still one thoroughly consistent with the ordinary assumptions of economic analysis, is that judges seek to impose their preferences, tastes, values *etc*. on society.... *Source:* RICHARD A. POSNER, ECONOMIC ANALYSIS OF LAW, 415-16 (2ND ED. 1977).

May I invite the reader to read my entire article entitled "Lawyers' Behavior and Judicial Decision-Making," accessible online at <http://law.upd.edu.ph/plj/images/files/PLJ %20volume %2070/PLJ%20volume%2070%20number%204%20-02-%20Ma.%20Lourdes%20A.%20Sereno%20-%20Lawyers%20Behavior.pdf>, so that the alleged copying of words can be taken in the proper context.

It must first be emphasized that the whole article was largely a presentation and discussion of Judge Posner's economic models of litigation and settlement, applying what he had written to the context of the Philippines. An examination of the article will show that Posner's work was referred to no less than fourteen (14) times throughout the article, excluding the use of pronouns that also refer to Posner, such as "he" and "him." A diligent reading of the full text of the article will reveal that I have intentionally and heavily used Posner's opinions, analyses, models, and conclusions while crediting him with the same.

Furthermore, the passages cited in the table of counter-charges use what one may call the "terms of the trade" in the field of law and economics, or indeed in the field of economics itself. The maximization of an individual's utility is one of the core principles on which the study of an individual's choices and actions are based. The condition for the success/failure of settlement bargaining is practically a definition, as it is also a fundamental principle in the study of bargaining and negotiation that the minimum price of one of the parties must not exceed the maximum price the other party is willing to pay; that particular passage, indeed, may be regarded as a re-statement, in words instead of numbers, of a fundamental mathematical condition as it appears in Posner's model and in many similar models.

To allow industry professionals to have their say on the matter, I have written a letter to Dr. Arsenio M. Balisacan, the Dean of the University of the Philippines School of Economics, requesting that my paper, *Lawyers' Behavior and Judicial Decision-Making*, be examined by experts in the field to determine whether the allegations of plagiarism leveled against me have basis. I am reproducing the contents of the letter below.

Hon. Maria Lourdes P.A. Sereno
Associate Justice
Supreme Court of the Philippines

February 11, 2011

Dr. Arsenio M. Balisacan
Dean
School of Economics
University of the Philippines

Dear Dr. Balisacan:

Greetings! I hope this letter finds you in the best of health.

I write because I have a request to make of your highly-respected institution. I have been recently accused of plagiarizing the work of Judge Richard Posner in one of the articles on law and economics that I have written and that was published in the Philippine Law Journal entitled "Lawyers' Behavior and Judicial Decision-Making," 70 Phil L. J. 475-492 (June 1996). The work of Posner that I am accused of having plagiarized is the second edition of the book entitled "Economic Analysis of Law," published in 1977 by Little, Brown and Company.

May I ask you for help in this respect – I wish to submit my work to the evaluation of your esteemed professors in the UP School of Economics. My work as an academic has been attacked and I would wish very much for a statement from a panel of your choosing to give its word on my work.

I am attaching a table showing which part of Posner's work I am alleged to have plagiarized in my Philippine Law Journal article.

Thank you very much. I will be much obliged for this kind favor.

Very truly yours,

Maria Lourdes P.A. Sereno

The problem with the majority approach is that it refuses to face the scale of the plagiarism in the Vinuya Decision. If only that were the starting point for the analysis of the majority, then some of my colleagues would not have formed the impression that I was castigating or moralizing the majority. No court can lightly regard a *ponencia*, as in *Vinuya*, where around 53% of the words used for an important section were plagiarized from sources of original scholarship. Judges and their legal researchers are not being asked to be academics; only to be diligent and honest.

IV. The Role of the Judiciary in Society

On more than one occasion, this Court has referred to one of its functions as the symbolic or educative function, the competence to formulate guiding principles that may enlighten the bench and the bar, and the public in general.[32] It cannot now backpedal from the high standards inherent in the judicial role, or from the standards it has set for itself.

The need to cement ethical standards for judges and justices is intertwined with the democratic process. As Lebovits explained:

> **The judiciary's power comes from its words alone–judges command no army and control no purse. In a democracy, judges have legitimacy only when their words deserve respect, and their words deserve respect only when those who utter them are ethical. Opinion writing is public writing of the highest order; people are affected not only by judicial opinions but also by how they are written. Therefore, judges and the opinions they write–opinions scrutinized by litigants, attorneys, other judges, and the public–are held, and must be held, to high ethical standards. Ethics must constrain every aspect of the judicial opinion.**[33]

Justice George Rose Smith once pointed to the democratic process as a reason to write opinions: "Above all else to expose the court's decision to public scrutiny, to nail it up on the wall for all to see. In no other way can it be known whether the law needs revision, whether the court is doing its job, whether a particular judge is competent." Justice Smith recognized that judges are not untouchable beings. Judges serve their audience. With this service comes the need for judges to be trusted. Writing opinions makes obtaining trust easier; it allows an often opaque judicial institution to become transparent.[34]

---

[32] *Salonga v. Cruz Paño*, G.R. No. 59525, 18 February 1985, 134 SCRA 438.

[33] Gerald Lebovits, Alifya V. Curtin, & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 GEO. J. LEGAL ETHICS 264 (2008).

[34] *Id.* at 269.

Judges cannot evade the provisions in the Code of Judicial Conduct.[35]

A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The drafters of the *Model Code* were aware that to be effective, the judiciary must maintain legitimacy –and to maintain legitimacy, judges must live up to the *Model Code*'s moral standards when writing opinions. If the public is able to witness or infer from judges' writing that judges resolve disputes morally, the public will likewise be confident of judges' ability to resolve disputes fairly and justly.[36] (Citations omitted)

Canon 1 of the Code of Judicial Conduct states that a judge should uphold the integrity and independence of the judiciary. Rule 1.01 in particular states that a judge should be the embodiment of competence, integrity, and independence.

Canon 3 then focuses on the duty of honesty in the performance of official duties, as well as on the supervision of court personnel:

Rule 3.09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

Rule 3.10. A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

Paragraph 17 of the Code of Judicial Ethics[37] focuses on the writing of judicial opinions:

In disposing of controversial cases, judges should indicate the reasons for their action in opinions showing that they have not disregarded or overlooked serious arguments of counsel. They should show their full understanding of the case, avoid the suspicion of arbitrary conclusion, **promote confidence in their intellectual**

[35] Promulgated 5 September 1989, took effect 20 October 1989.

[36] *Supra* note 33 at 240-241.

[37] Administrative Order No. 162.

integrity and contribute useful precedents to the growth of the law. (Emphasis supplied)

Paragraph 31, "a summary of judicial obligations," contains a more general statement regarding the behavioral norms required of judges and justices alike, stating:

A judge's conduct should be above reproach and in the discharge of his judicial duties, he should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, and regardless of private influence should administer justice according to law and should deal with the patronage of the position as a public trust; and he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office.

That judges and justices alike are subject to higher standards by virtue of their office has been repeatedly pronounced by the Supreme Court:

Concerned with safeguarding the integrity of the judiciary, this Court has come down hard and wielded the rod of discipline against members of the judiciary who have fallen short of the exacting standards of judicial conduct. This is because a judge is the visible representation of the law and of justice. He must comport himself in a manner that his conduct must be free of a whiff of impropriety, not only with respect to the performance of his official duties but also as to his behavior outside his sala and as a private individual. His character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system.[38]

Thus, 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.[39] A judge should personify integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of his official duties and in private life should be above

---

[38] *In Re Letter of Judge Augustus C. Diaz*, A.M. No. 07-7-17-SC, 19 September 2007.

[39] A.M. No. RTJ-90-447, 199 SCRA 75, 12 July 1991, 83-84.

suspicion.[40] Concerned with safeguarding the integrity of the judiciary, this Court has come down hard on erring judges and imposed the concomitant punishment.[41]

As held by the Court in *Teban Hardware and Auto Supply Co. v. Tapucar*:[42]

> The personal and official actuations of every member of the Bench must be beyond reproach and above suspicion. The faith and confidence of the public in the administration of justice cannot be maintained if a Judge who dispenses it is not equipped with the cardinal judicial virtue of moral integrity, and if he obtusely continues to commit an affront to public decency. In fact, moral integrity is more than a virtue; it is a necessity in the Judiciary.

The inherent value of judicial decisions goes beyond the resolution of dispute between two parties. From the perspective of the judge, he has fulfilled his minimum burden when he has disposed of the case. Yet from the perspective of the public, it is only through publicized decisions that the public experiences the nearest approximation of a democratic experience from the third branch of Government.

> Decisions and opinions of a court are of course matters of public concern or interest for these are the authorized expositions and interpretations of the laws, binding upon all citizens, of which every citizen is charged with knowledge. **Justice thus requires that all should have free access to the opinions of judges and justices, and it would be against sound public policy to prevent, suppress or keep the earliest knowledge of these from the public**.[43]

The clearest manifestation of adherence to these standards is through a Justice's written opinions. In the democratic framework, it is the only way by which the public can check

---

[40] *Junio v. Rivera,* A.M. No. MTJ-91-565. August 30, 1993.

[41] *Castillo v. Calanog, Jr.*, A.M. No. RTJ-90-447, 16 December 1994, 239 SCRA 268

[42] *Teban Hardware and Auto Supply Co. v. Tapucar,* A.M. No. 1720, 31 January 1981, 102 SCRA 492, 504.

[43] *Ex Parte Brown,* 166 Ind. 593, 78 N.E. 553 (1906).

the performance of such public officer's obligations. Plagiarism in judicial opinions detracts directly from the legitimacy of the judge's ruling and indirectly from the judiciary's legitimacy.[44] It is objectionable not only because of its inherent capacity to harm, but the overarching damage it wreaks on the dignity of the Court as a whole.

The Court's Educative Function

The Court's first Decision in this case hinged on the difference between the academic publishing model on the one hand, and the judicial system on the other. It proceeded to conclude that courts are encouraged to cite "historical legal data, precedents, and related studies" in their decisions, so that "the judge is not expected to produce original scholarship in every respect."

This argument presents a narrower view of the role of the courts than what this country's history consistently reveals: the judiciary plays a more creative role than just traditional scholarship. No matter how hesitantly it assumes this duty and burden, the courts have become moral guideposts in the eyes of the public.

> Easily the most daunting task which confronts a newly appointed judge is how to write decisions. It is truly a formidable challenge considering the impact of a court's judgment reverberates throughout the community in which it is rendered, affecting issues of life, liberty, and property in ways that are more pervasive and penetrating than what usually appears on the surface – or under it.[45]

The impact of judicial decisions has even been codified in paragraph 2 of the Canon of Judicial Ethics: "Every judge should at all times be alert in his rulings and in the conduct of the business of his court, so far as he can, to make it useful to litigants and to the community."

---

[44] *Supra* note 33 at 282.

[45] Foreword of Justice Ameurfina A. Melencio Herrera, "*FUNDAMENTALS OF DECISION WRITING FOR JUDGES*," (2009).

The error in the contention of the majority that judicial writing does not put a premium on originality is evident. In the words of Daniel Farber, *stare decisis* has become an oft-repeated catchphrase to justify an unfounded predisposition to repeating maxims and doctrines devoid of renewed evaluation.

> In reviewing the Court's work, we saw a fixation on verbal formulas; likewise, race scholarship frequently seems to suffer from a similar fixation on stylized rhetoric. Yet Holmes' adage defines the problem a bit too narrowly–suggesting that we mostly need less abstraction and more concreteness. This deficiency actually is part of the problem; we could surely benefit from more empirical research and sensitivity to concrete factual situations. Yet, the problem goes beyond that.[46]

The consistent resort to *stare decisis* fails to take into account that in the exercise of the Court's self-proclaimed symbolic function, its first accountability is to its audience: the public. Its duty of guiding the bench and the bar comes a close second.

> Consider first the judge. A key weakness of current Supreme Court opinions seems to be that judges have sometimes lost track of whom they are addressing or what they are trying to accomplish. Of course, they have no literal clients, but they seek to advance a set of values and perspectives that might serve as the basis for identifying metaphorical clients…The purpose, then, is to help the system work as well as possible according to its own norms and goals…
>
> Often, the purpose is to guide other courts to advance the client's interests in their own decisions. In this respect, the important part of the opinion is that portion speaking to future cases–though as we have seen, judges sometimes fail to focus their energies there. Additionally, the opinion, if it is to elicit more than the most grudging obedience, must appeal to the values and goals of those judges as well as to the author's.[47]

The Court seemingly views the issuance of opinions to be an end in itself, as if the text of the opinion had some autonomous value unrelated to its ability to communicate to an audience.

---

[46] Daniel Farber, *Missing the Play of Intelligence*, 6 WM. & MARY L. REV. 147, (1994).

[47] *Id.* at 170.

At a deeper level, the intellectual flaw in the statutory-interpretation opinions is similar. The Court often treats statutes as free-standing texts, with little attention to their historical and social contexts or what their drafters were trying to achieve.[48]

Thus, the value of ethical judicial writing *vis-à-vis* the role that courts are called upon to play cannot be underestimated.

Worrying about the ethical status of judicial opinions seems pointless at first. Complaints about decisions and the opinions that explain them have been around as long as judges have been judging. As technology has lowered the cost of research, and of cutting and pasting earlier work, opinions often seem to be formal exercises that do not suggest deep judicial engagement. Other opinions do show the hand of a deeply engaged judge, though these can be worse than the cut-and-pasted kind. What then is to be gained by trying to make an ethical issue of judicial writing? … Professor Llewellyn said it is in part because **the judicial office acts as "a subduer of self and self-will, as an engine to promote openness to listen and to understand, to quicken evenhandedness, patience, sustained effort to see and judge for All-of-Us**."[49]

The lessons taught our country by its singular experience in history has given rise to a more defined place for our courts. With the constitutional mandate that the Supreme Court alone can exercise judicial review, or promulgate rules and guidelines for the bench and the bar, or act as the arbiter between the two branches of government, it is all the more evident that standards for judicial behavior must be formulated. After all, "the most significant aspect of the court's work may lie in just this method and process of decision: by avoiding absolutes, by testing general maxims against concrete particulars, by deciding only in the context of specific controversies, by finding accommodations between polar principles, by holding itself open to the

---

[48] *Id.* at footnote 40.

[49] David McGowan, *Judicial Writing and the Ethics of the Judicial Office*, 14 GEO. J. LEGAL ETHICS 509, 509. (2001).

reconsideration of dogma, the court at its best, provides a symbol of reconciliation."[50]

According to Paul Freund, the great fundamental guarantees of our Constitution are in fact, moral standards wrapped in legal commands. It is only fitting that the Court, in taking on the role of a public conscience, accept the fact that the people expect nothing less from it than the best of faith and effort in adhering to high ethical standards.

I affirm my response to the dispositive portion of the majority Decision in this case as stated in my Dissent of 12 October 2010, with the modification that more work of more authors must be appropriately acknowledged, apologies must be extended, and a more extensively corrected Corrigendum must be issued. Again, I make no pronouncement on liability, not only because the process was erroneously cut short by the majority when it refused to proceed to the next step of determining the duty of diligence that a judge has in supervising the work of his legal research, and whether, in this instance, Justice del Castillo discharged such duty, but also because of the view expressed by Justice Carpio that this Court had best leave the matter of clearing Justice del Castillo to Congress, the body designated by the Constitution for such matters. It seems now that the process of determining the degree of care required in this case may never be undertaken by this Court. One thing is certain, however: we cannot allow a heavily plagiarized Decision to remain in our casebooks – it must be corrected. The issues are very clear to the general public. A wrong must be righted, and this Court must move forward in the right direction.

---

[50] Paul A. Freund, "*The Supreme Court*" in TALKS ON AMERICAN LAW 81-94 (rev. ed., 1972).

EN BANC

[G.R. No. 167219. February 8, 2011]

RUBEN REYNA and LLOYD SORIA, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; REVIEW OF JUDGMENTS, FINAL ORDERS AND RESOLUTION OF THE COMMISSION ON ELECTIONS AND THE COMMISSION ON AUDIT; IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION, QUESTIONS OF FACT CANNOT BE RAISED IN A PETITION FOR *CERTIORARI,* UNDER RULE 64 OF THE RULES OF COURT.— In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for *certiorari*, under Rule 64 of the Rules of Court. The office of the petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues. Accordingly, since the validity of the prepayment scheme is inherently a question of fact, the same should no longer be looked into by this Court.

2. ID.; ID.; ID.; PETITIONERS FAILED TO SHOW CAPRICE AND ARBITRARINESS ON THE PART OF THE COMMISSION ON AUDIT WHOSE EXERCISE OF DISCRETION IS BEING ASSAILED.— Petitioners' allegation of grave abuse of discretion by the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all contemplation of law. It is imperative for petitioners to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. Proof of such grave abuse of discretion, however, is wanting in this case.

3. ID.; APPEALS; FINDINGS OF FACT OF QUASI-JUDICIAL AGENCIES SUCH AS THE COMMISSION ON AUDIT (COA) ARE GENERALLY ACCORDED RESPECT AND EVEN FINALITY, IF SUPPORTED BY SUBSTANTIAL EVIDENCE IN RECOGNITION OF THEIR EXPERTISE ON THE SPECIFIC MATTERS UNDER THEIR JURISDICTION.— This Court is not unmindful of the fact that petitioners contend that the Legal Department of Land Bank supposedly passed upon the issue of application of Section 88 of PD 1445. Petitioners argue that in an alleged August 22, 1996 Memorandum issued by the Land Bank, it opined that Section 88 of PD 1445 is not applicable. Be that as it may, this Court is again constrained by the fact that petitioners did not offer in evidence the alleged August 22, 1996 Land Bank Memorandum. Therefore, the supposed tenor of the said document deserves scant consideration. In any case, even assuming *arguendo* that petitioners are correct in their claim, they still cannot hide from the fact that they violated the procedure in releasing loans embodied in the Manual on Lending Operations as previously discussed. To emphasize, the Auditor noted that "*nowhere in the documents reviewed disclosed about prepayment scheme with REMAD.*" It is well settled that findings of fact of quasi-judicial agencies, such as the COA, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their jurisdiction. If the prepayment scheme was in fact authorized, petitioners should have produced the document to prove such fact as alleged by them in the present petition. However, as stated before, even this Court is at a loss as to whether the prepayment scheme was authorized as a review of "Annex I", the document to which petitioners base their authority to make advance payments, does not contain such a stipulation or provision. Highlighted also is the fact that petitioners clearly violated the procedure in releasing loans found in the Manual on Lending Operations which provides that payments to the dealer shall only be made after presentation of reimbursement documents acknowledged by the authorized LBP representative that the same has been delivered.

4. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; AN ABSOLUTION FROM CRIMINAL CHARGE IS NOT A

BAR TO AN ADMINISTRATIVE PROSECUTION OR *VICE VERSA*.— It bears to point out that a cursory reading of the Ombudsman's resolution will show that the complaint against petitioners was dismissed not because of a finding of good faith but because of a finding of lack of sufficient evidence. While the evidence presented before the Ombudsman may not have been sufficient to overcome the burden in criminal cases of proof beyond reasonable doubt, it does not, however, necessarily follow, that the administrative proceedings will suffer the same fate as only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. An absolution from a criminal charge is not a bar to an administrative prosecution or *vice versa*. The criminal case filed before the Officie of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. So also, the dismissal by Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao, of the criminal charges against petitioners does not necessarily foreclose the matter of their possible liability as warranted by the findings of the COA.

5. ID.; ID.; ID.; THE EVIDENCE PRESENTED BY PETITIONERS BEFORE THE COMMISSION ON AUDIT WAS INSUFFICIENT TO PROVE THEIR CASE.— This Court notes that much reliance is made by petitioners on their allegation that the terms of the CFP allowed for prepayments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. **It appears, however, that a CFP, even if admittedly a *pro forma* contract and emanating from the Land Bank main office, is merely a facility proposal and not the contract of loan between Land Bank and the cooperatives.** It is in the loan contract that the parties embody the terms and conditions of a transaction. If there is any agreement to release the loan in advance to REMAD as a form of prepayment scheme, such a stipulation should exist in the loan contract. There is, nevertheless, no proof of such stipulation as petitioners had failed to attach the CFPs or the loan contracts relating to the present petition. Based on the foregoing, the COA should, therefore, not be faulted for finding that petitioners facilitated the commission of the irregular transaction. The evidence they presented before the COA was insufficient to prove their case. So also, even this Court is at

a loss as to the truthfulness and veracity of petitioners' allegations as they did not even present before this Court the documents that would serve as the basis for their claims.

6. ID.; ID.; DISPUTABLE PRESUMPTIONS; ANY PRESUMPTION THAT PUBLIC OFFICIALS ARE IN THE REGULAR PERFORMANCE OF THEIR PUBLIC FUNCTIONS MUST NECESSARY FAIL IN CASE AT BAR DUE TO THE PRESENCE OF AN EXPLICIT RULE THAT WAS VIOLATED.— Anent the second ground raised by petitioners, the same is again without merit. Petitioners impute on the COA grave abuse of discretion when it held petitioners administratively liable for having processed the loans of the borrowing cooperatives. This Court stresses, however, that petitioners cannot rely on their supposed observance of the procedure outlined in the Manual on Lending Operations when clearly the same provides that "payment to the dealer shall be made after presentation of reimbursement documents (delivery/official receipts/purchase orders) acknowledged by the authorized LBP representative that the same has been delivered." Petitioners have not made a case to dispute the COA's finding that they violated the foregoing provision. Any presumption, therefore, that public officials are in the regular performance of their public functions must necessarily fail in the presence of an explicit rule that was violated.

7. MERCANTILE LAW; GENERAL BANKING ACT (REPUBLIC ACT 337); THE LAND BANK OF THE PHILIPPINES HAS THE POWER AND AUTHORITY TO WRITE-OFF LOANS; EVEN THOUGH NOT EXPRESSLY GRANTED IN ITS CHARTER, IT CAN BE LOGICALLY INFERRED FROM THE BANK'S AUTHORITY TO EXERCISE THE GENERAL POWERS VESTED IN BANKING INSTITUTIONS AS PROVIDED IN REPUBLIC ACT 337.— A write-off is a financial accounting concept that allows for the reduction in value of an asset or earnings by the amount of an expense or loss. It is a means of removing bad debts from the financial records of the business. In *Land Bank of the Philippines v. Commission on Audit*, this Court ruled that Land Bank has the power and authority to write-off loans. x x x While the power to write-off is not expressly granted in the charter of the Land Bank, it can be logically implied, however, from the Land Bank's

authority to exercise the general powers vested in banking institutions as provided in the General Banking Act (Republic Act 337). The clear intendment of its charter is for the Land Bank to be clothed not only with the express powers granted to it, but also with those implied, incidental and necessary for the exercise of those express powers. In the case at bar, it is thus clear that the writing-off of the loans involved was a valid act of the Land Bank. In writing-off the loans, the only requirement for the Land Bank was that the same be in accordance with the applicable *Bangko Sentral* circulars, it being under the supervision and regulation thereof. The Land Bank recommended for write-off all six loans granted to the cooperatives, and it is worthy to note that the *Bangko Sentral* granted the same. The write-offs being clearly in accordance with law, the COA should, therefore, adhere to the same, unless under its general audit jurisdiction under PD 1445, it finds that under Section 25(1) the fiscal responsibility that rests directly with the head of the government agency has not been properly and effectively discharged.

8. POLITICAL LAW; 1987 CONSTITUTION; COMMISSION ON AUDIT (COA); GOVERNMENT AUDITING CODE OF THE PHILIPPINES (PD 1445); THE USE OF THE WORD "MAY" UNDER SECTION 36 THEREOF SHOWS THAT THE POWER OF THE COA TO COMPROMISE CLAIMS IS ONLY PERMISSIVE, AND NOT MANDATORY; THE COA DOES NOT HAVE THE EXCLUSIVE PREROGATIVE TO SETTLE AND COMPROMISE LIABILITIES TO THE GOVERNMENT.— The reliance of respondent on Section 66 of PD 1445 is baseless as a reading thereof would show that the same does not pertain to the COA's power to compromise claims. Probably, what respondent wanted to refer to was Section 36 which provides: Section 36. *Power to compromise claims.* — 1. When the interest of the government so requires, the Commission **may** compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it **may** likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their

recommendations, to the National Assembly. 2. **The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters** and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph. x x x Under Section 36, the use of the word "may" shows that the power of the COA to compromise claims is only permissive, and not mandatory. Further, the second paragraph of Section 36 clearly states that respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters. Nowhere in Section 36 does it state that the COA must approve a compromise made by a government agency; the only requirement is that it be authorized by its charter. It, therefore, bears to stress that the COA does not have the exclusive prerogative to settle and compromise liabilities to the Government.

9. ID.; ID.; ID.; ID.; WRITING-OFF A LOAN DOES NOT EQUATE TO A CONDONATION OR RELEASE OF A DEBT BY THE CREDITOR AND IT IS NOT ONE OF THE LEGAL GROUNDS FOR EXTINGUISHING AN OBLIGATION UNDER THE CIVIL CODE.— This Court rules that writing-off a loan does not equate to a condonation or release of a debt by the creditor. As an accounting strategy, the use of write-off is a task that can help a company maintain a more accurate inventory of the worth of its current assets. In general banking practice, the write-off method is used when an account is determined to be uncollectible and an uncollectible expense is recorded in the books of account. If in the future, the debt appears to be collectible, as when the debtor becomes solvent, then the books will be adjusted to reflect the amount to be collected as an asset. In turn, income will be credited by the same amount of increase in the accounts receivable. Write-off is not one of the legal grounds for extinguishing an obligation

under the Civil Code. It is not a compromise of liability. Neither is it a condonation, since in condonation gratuity on the part of the obligee and acceptance by the obligor are required. In making the write-off, only the creditor takes action by removing the uncollectible account from its books even without the approval or participation of the debtor. Furthermore, write-off cannot be likened to a novation, since the obligations of both parties have not been modified. When a write-off occurs, the actual worth of the asset is reflected in the books of accounts of the creditor, but the legal relationship between the creditor and the debtor still remains the same – the debtor continues to be liable to the creditor for the full extent of the unpaid debt. Based on the foregoing, as creditor, Land Bank may write-off in its books of account the advance payment released to REMAD in the interest of accounting accuracy given that the loans were already uncollectible. Such write-off, however, as previously discussed, does not equate to a release from liability of petitioners. Accordingly, the Land Bank Ipil Branch must be required to record in its books of account the Php3,115,000.00 disallowance, and petitioners, together with their four co-employees, should be personally liable for the said amount. Such liability, is, however, without prejudice to petitioners' right to run after REMAD, to whom they illegally disbursed the loan, for the full reimbursement of the advance payment for the cattle as correctly ruled by the COA in its July 17, 2003 Decision.

APPEARANCES OF COUNSEL

Yolanda G. Villaruz for petitioners.
Office of the General Counsel (COA) for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for *certiorari*,[1] under Rule 64 of the Rules of Court, seeking to set aside Resolution No. 2004-046,[2] dated December 7, 2004, of the Commission on Audit (COA).

The facts of the case are as follows:

The Land Bank of the Philippines (Land Bank) was engaged in a cattle-financing program wherein loans were granted to various cooperatives. Pursuant thereto, Land Bank's Ipil, Zamboanga del Sur Branch (Ipil Branch) went into a massive information campaign offering the program to cooperatives.

Cooperatives who wish to avail of a loan under the program must fill up a Credit Facility Proposal (CFP) which will be reviewed by the Ipil Branch. As alleged by Emmanuel B. Bartocillo, Department Manager of the Ipil Branch, the CFP is a standard and prepared form provided by the Land Bank main office to be used in the loan application as mandated by the Field Operations Manual.[3] One of the conditions stipulated in the CFP is that prior to the release of the loan, a Memorandum of Agreement (MOA) between the supplier of the cattle, Remad Livestock Corporation (REMAD), and the cooperative, shall have been signed providing the level of inventory of stocks to be delivered, specifications as to breed, condition of health, age, color, and weight. The MOA shall further provide for a buy-back agreement, technology, transfer, provisions for biologics requirement and technical visits and replacement of sterile, unproductive stocks.[4] Allegedly contained in the contracts was

---

[1] *Rollo*, pp. 5-33.

[2] Signed by Commissioner Guillermo N. Carague, Chairman, with Commissioners Emmanuel M. Dalman and Reynaldo A. Villar, concurring; *id.* at 35-38.

[3] Records, p. 67.

[4] *Id*. at 66.

a stipulation that the release of the loan shall be made sixty (60) days prior to the delivery of the stocks.[5]

The Ipil Branch approved the applications of four cooperatives. R.T. Lim Rubber Marketing Cooperative (RT Lim RMC) and Buluan Agrarian Reform Beneficiaries MPC (BARBEMCO) were each granted two loans. Tungawan Paglaum Multi-Purpose Cooperative (Tungawan PFMPC) and Siay Farmers' Multi-Purpose Cooperative (SIFAMCO) were each granted one loan. Pursuant to the terms of the CFP, the cooperatives individually entered into a contract with REMAD, denominated as a "Cattle-Breeding and Buy-Back Marketing Agreement."[6]

In December 1993, the Ipil Branch granted six loans to the four cooperative borrowers in the following amounts:

Date of Release	Name of Borrower	Amount of Loan	Amount of Livestock Insurance	Amount Paid to Cattle Supplier (REMAD)
12-10-93	RTLim RMC	₱ 795,305	₱ 62,305	₱ 733,000
12-10-93	BARBEMCO	482,825	37,825	445,000
12-16-93	Tungawan PFMPC	482,825	37,825	445,000
12-22-93	SIFAMCO	983,010	77,010	906,000
12-22-93	RTLim RMC	187,705	14,705	173,000
12-22-93	BARBEMCO	448,105	35,105	413,000
	TOTAL	**₱3,375,775**	264,775	**3,115,000**[7]

As alleged by petitioners, the terms of the CFP allowed for pre-payments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. This Court notes, however, that copies of the CFPs were not attached to the records of the case at bar. More importantly, the very contract entered into by the cooperatives and REMAD, or the "Cattle-Breeding and Buy-Back Marketing Agreement"[8] did not contain a provision authorizing prepayment.

---

[5] *Rollo,* p. 17.

[6] See sample contract, *rollo*, pp. 93-97.

[7] *Rollo*, p. 41. (Emphasis supplied.)

[8] *Id.* at 93-97.

Three checks were issued by the Ipil Branch to REMAD to serve as advanced payment for the cattle. REMAD, however, failed to supply the cattle on the dates agreed upon.

In post audit, the Land Bank Auditor disallowed the amount of ₱3,115,000.00 under CSB No. 95-005 dated December 27, 1996 and Notices of Disallowance Nos. 96-014 to 96-019 in view of the non-delivery of the cattle.[9] Also made as the basis of the disallowance was the fact that advanced payment was made in violation of bank policies and COA rules and regulations. Specifically, the auditor found deficiencies in the CFPs, to wit:

> The Auditor commented that the failure of such loan projects deprived the farmer-beneficiaries the opportunity to improve their economic condition.
>
> From the Credit Facilities Proposals (CFP), the Auditor noted the following deficiencies.
>
> *x x x* *x x x* *x x x*
>
> *4. No. 1 of the loan terms and conditions allowed prepayments without taking into consideration the interest of the Bank. Nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the supplier/dealer.*
>
> *There was no justification for the prepayment scheme. Such is a clear deviation from existing procedures on asset financing under which the Bank will first issue a "letter guarantee" for the account of the borrower. Payment thereof will only be effected upon delivery of asset, inspection and acceptance of the same by the borrower.*

The prepayment arrangement also violates Section 88 of Presidential Decree (PD) No. 1445, to quote:

> Prohibition against advance payment on government – Except with the prior approval of the President (Prime Minister), the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not

[9] *Id.*

> yet delivered under any contract therefor. No payment, partial or final shall be made on any such contract except upon a certification by the head of the agency concerned to have effect that the services or supplies and materials have been delivered in accordance with the terms of the contract and have been duly inspected and accepted.
>
> Moreover, the Manual on FOG Lending Operations (page 35) provides the systems and procedures for releasing loans, to quote:
>
> > Loan Proceeds Released Directly to the Supplier/Dealer – Proceeds of loans granted for the acquisition of farm machinery equipment; and sub-loan components for the purchase of construction materials, farm inputs, *etc.* shall be released directly to the accredited dealers/suppliers. Payment to the dealer shall be made after presentation of reimbursement documents (delivery/ official receipts/ purchase orders) acknowledged by the authorized LBP representative that same has been delivered.
>
> In cases where supplier requires Cash on Delivery (COD), the checks may be issued and the cooperative and a LBP representative shall release the check to the supplier and then take delivery of the object of financing."[10]

The persons found liable by the Auditor for the amount of ₱3,115,000.00 which was advanced to REMAD were the following employees of the Ipil Branch:

1. Emmanuel B. Bartocillo – Department Manager II
2. George G. Hebrona – Chief, Loans and Discounts Division
3. **Petitioner Ruben A. Reyna – Senior Field Operations Specialist**
4. **Petitioner Lloyd V. Soria – Loans and Credit Analyst II**

---

[10] Lifted from the February 28, 2000 letter/endorsement of the COA Regional Director, *rollo*, pp. 81-87. It appears that the Auditor's Report does not form part of the records of the case. (Emphasis and underscoring supplied)

5. Mary Jane T. Cunting[11] – Cash Clerk IV
6. Leona O. Cabanatan – Bookkeeper III/Acting Accountant.[12]

The same employees, including petitioners, were also made respondents in a Complaint filed by the COA Regional Office No. IX, Zamboanga City, before the Office of the Ombudsman for Gross Negligence, Violation of Reasonable Office Rules and Regulations, Conduct Prejudicial to the Interest of the Bank and Giving Unwarranted Benefits to persons, causing undue injury in violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act.*[13]

On January 28, 1997, petitioners filed a Joint Motion for Reconsideration claiming that the issuance of the Notice of Disallowance was premature in view of the pending case in the Office of the Ombudsman. The Motion was denied by the Auditor. Unfazed, petitioners filed an appeal with the Director of COA Regional Office No. IX, Zamboanga City. On **August 29, 1997**, the COA Regional Office issued **Decision No. 97-001** affirming the findings of the Auditor. On February 4, 1998, petitioners filed a Motion for Reconsideration, which was denied by the Regional Office in **Decision No. 98-005**[14] issued on **February 18, 1998**.

Petitioners did not file a Petition for Review or a Notice of Appeal from the COA Regional Office Decision as required

---

[11] Filed a separate petition before this Court docketed as G.R. No. 167437. On April 12, 2005, this Court *en banc* dismissed the petition for:

> (a)failure to fully pay the legal fees in violation of Rule 64, Section 5 (par. 4) and Rule 46, Section 3, in relation to Rule 56, Section 2, the paid legal fees being short of ₱730.00; and
>
> (b)failure to accompany the petition with a clearly legible duplicate original or certified true copy of the decision dated 17 July 2003 and resolution dated 7 December 2004 in violation of Rule 64, Section 5. (Records, p. 123.)

[12] *Rollo*, p. 42.

[13] *Id.* at 41.

[14] *Id.* at 75.

under Section 3, Rule VI[15] of the 1997 Revised Rules of Procedure of the COA. Thus, the Decision of the Director of COA Regional Office No. IX became final and executory pursuant to Section 51[16] of the Government Auditing Code of the Philippines. Consequently, on April 12, 1999, the Director of the COA Regional Office No. IX issued a Memorandum to the Auditor directing him to require the accountant of the Ipil Branch to record in their books of account the said disallowance.[17]

On July 12, 1999, the Auditor sent a letter to the Land Bank Branch Manager requiring him to record the disallowance in their books of account. On August 10, 1999, petitioners sent a letter[18] to COA Regional Office No. IX, seeking to have the booking of the disallowance set aside, on the grounds that they were absolved by the Ombudsman in a February 23, 1999 Resolution,[19] and that the *Bangko Sentral ng Pilipinas* had approved the writing off of the subject loans.

---

[15] RULE VI. APPEAL FROM DIRECTOR TO COMMISSION PROPER

Section 1. *Who May Appeal and Where to Appeal.* - The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

Section 2. *How Appeal Taken.* - Appeal shall be taken by filing a petition for review in seven (7) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director. Proof of service of the petition on the Director shall be attached to the petition.

Section 3. *Period of Appeal.* - The appeal shall be taken within the time remaining of the six (6) months period under Section 2, Rule V, taking into account the suspension of the running thereof under Section 9 of the same Rule.

[16] Section 51. *Finality of decisions of the Commission or any auditor.* - A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

[17] *Rollo*, p. 43.

[18] *Id*. at 76-77.

[19] *Id*. at 47-74.

The February 23, 1999 Resolution of the Ombudsman was approved by Margarito P. Gervacio, Jr. the Deputy Ombudsman for Mindanao, the dispositive portion of which reads:

> WHERFORE, premises considered, the instant complaint is hereby dismissed for lack of sufficient evidence.
>
> SO ORDERED.[20]

COA Regional Office No. IX endorsed to the Commission proper the matter raised by the petitioners in their August 10, 1999 letter. This is contained in its February 28, 2000 letter/ endorsement,[21] wherein the Director of COA Regional Office No. IX maintained his stand that the time for filing of a petition for review had already lapsed. The Regional Director affirmed the disallowance of the transactions since the same were irregular and disadvantageous to the government, notwithstanding the Ombudsman resolution absolving petitioners from fault.

In a Notice[22] dated June 29, 2000, the COA requested petitioners to submit a reply in response to the letter/endorsement of the Regional Office Director. On August 10, 2000, petitioners submitted their Compliance/ Reply,[23] wherein they argued that the Ombudsman Resolution is a supervening event and is a sufficient ground for exemption from the requirement to submit a Petition for Review or a Notice of Appeal to the Commission proper. Petitioners also argued that by invoking the jurisdiction of the Commission proper, the Regional Director had waived the fact that the case had already been resolved for failure to submit the required Petition for Review.

On July 17, 2003, the COA rendered Decision No. 2003-107[24] affirming the rulings of the Auditor and the Regional Office, to wit:

---

[20] *Id.* at 73.

[21] *Id.* at 81-87.

[22] *Id.* at 88.

[23] *Id*. at 89-90.

[24] *Id.* at 40-46.

WHEREFORE, foregoing premises considered, this Commission hereby affirms both the subject disallowance amounting to ₱3,115,000 and the Order of the Director, COA Regional Office No. IX, Zamboanga City, directing the recording of subject disallowance in the LBP books of accounts. This is, however, without prejudice to the right of herein appellants to run after the supplier for reimbursement of the advance payment for the cattle.[25]

In denying petitioners request for the lifting of the booking of the disallowance, the COA ruled that after a circumspect evaluation of the facts and circumstances, the dismissal by the Office of the Ombudsman of the complaint did not affect the validity and propriety of the disallowance which had become final and executory.[26]

On August 22, 2003, petitioners filed a Motion for Reconsideration, which was, however, denied by the COA in a Resolution[27] dated December 7, 2004.

Hence, herein petition, with petitioners raising the following grounds in support of the petition, to wit:

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THE PREPAYMENT STIPULATION IN THE CONTRACT BETWEEN THE BANK AND REMAD PROSCRIBED BY SECTION 103 OF P.D. NO. 1445, OTHERWISE KNOWN AS THE STATE AUDIT CODE OF THE PHILIPPINES.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION FOR HOLDING THE PETITIONERS ADMINISTRATIVELY LIABLE FOR HAVING PROCESSED THE LOANS OF THE BORROWING COOPERATIVES IN ACCORDANCE WITH THE BANK'S MANUAL (FOG) LENDING OPERATIONS.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN

---

[25] *Id.* at 46.

[26] *Id.* at 44.

[27] *Id.* at 35-39.

IT HELD THE PETITIONERS LIABLE AND, THEREFORE, IN EFFECT LIKEWISE OBLIGATED TO REFUND THE DISALLOWED AMOUNT EVEN AS AMONG OTHER THINGS THEY ACTED IN EVIDENT GOOD FAITH. MORE SO, AS THE COLLECTIBLES HAVE BEEN ALREADY EFFECTIVELY WRITTEN-OFF.[28]

The petition is not meritorious.

I.

Anent the first issue raised by petitioners, the same is without merit. Petitioners argue said issue on three points: *first*, the COA is estopped from declaring the prepayment stipulation as invalid;[29] *second*, the prepayment clause in the Land Bank-REMAD contract is valid;[30] and *third*, it is a matter of judicial knowledge that is not unusual for winning bidders involving public works to enter into contracts with the government providing for partial prepayment of the contract price in the form of mobilization funds.[31]

As to their contention that the COA is estopped from declaring the prepayment stipulation as invalid, petitioners argue in the wise:

x x x x x x x x x

The CATTLE BREEDING AND BUY BACK MARKETING AGREEMENT sample of which is attached as Annex "I" was a Contract prepared by the bank and REMAD, it was agreed to by the cooperatives. It was a standard Contract used in twenty two (22) Land Bank branches throughout the country. It provided in part:

> 6.1 That the release of the loan shall be made directly to the supplier 60 days prior to the delivery of stocks per prepayment term of REMAD LIVESTOCK COPORATION (supplier). Inspection shall be done before the 60th day/delivery of the stocks.

---

[28] *Id.* at 16.

[29] *Id.*

[30] *Id.* at 17.

[31] *Id.* at 18.

Again, these Contracts were standard bank forms from Land Bank head office. None of the Petitioners participated in the drafting of the same.[32]

In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for *certiorari*, under Rule 64 of the Rules of Court. The office of the petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.[33] Accordingly, since the validity of the prepayment scheme is inherently a question of fact, the same should no longer be looked into by this Court.

In any case, even assuming that factual questions may be entertained, the facts do not help petitioners' cause for the following reasons: *first*, the supposed Annex "I" does not contain a stipulation authorizing a pre-payment scheme; and *second*, petitioners clearly violated the procedure of releasing loans contained in the Bank's Manual on Field Office Guidelines on Lending Operations (Manual on Lending Operations).

A perusal of the aforementioned Annex "I",[34] the Cattle-Breeding and Buy-Back Marketing Agreement, would show that stipulation "6.1" which allegedly authorizes prepayment does not exist. To make matters problematic is that nowhere in the records of the petition can one find a document which embodies such a stipulation. It bears stressing that the Auditor noted in his report that, "*nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the supplier/dealer.*"

Moreover, it is surprising that one of petitioners' defense is that they *processed the cooperatives' applications in accordance with their individual job descriptions as provided in the Bank's*

---

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

[33] *Ocate v. Comelec*, G.R. No. 170522, November 20, 2006, 507 SCRA 426, 437.

[34] *Rollo*, pp. 93-97.

Manual on Field Office Guidelines on Lending Operations[35] when, on the contrary, petitioners seem to be oblivious of the fact that they clearly violated the procedure in releasing loans which is embodied in the very same Manual on Lending Operations, to wit:

> *Loan Proceeds Released Directly to the Supplier/Dealer* – Proceeds of loans granted for the acquisition of farm machinery equipment; and sub-loan components for the purchase of construction materials, farm inputs, *etc.* shall be released directly to the accredited dealers/suppliers. Payment to the dealer shall be made after presentation of reimbursement documents (delivery/ official receipts/ purchase orders) acknowledged by the authorized LBP representative that same has been delivered.[36]

However, this Court is not unmindful of the fact that petitioners contend that the Legal Department of Land Bank supposedly passed upon the issue of application of Section 88 of PD 1445. Petitioners argue that in an alleged August 22, 1996 Memorandum issued by the Land Bank, it opined that Section 88 of PD 1445 is not applicable.[37] Be that as it may, this Court is again constrained by the fact that petitioners did not offer in evidence the alleged August 22, 1996 Land Bank Memorandum. Therefore, the supposed tenor of the said document deserves scant consideration. In any case, even assuming *arguendo* that petitioners are correct in their claim, they still cannot hide from the fact that they violated the procedure in releasing loans embodied in the Manual on Lending Operations as previously discussed.

To emphasize, the Auditor noted that "*nowhere in the documents reviewed disclosed about prepayment scheme with REMAD.*" It is well settled that findings of fact of quasi-judicial agencies, such as the COA, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters

---

[35] *Id.* at 10.

[36] *Id.* at 82.

[37] *Id.* at 18.

under their jurisdiction.[38] If the prepayment scheme was in fact authorized, petitioners should have produced the document to prove such fact as alleged by them in the present petition. However, as stated before, even this Court is at a loss as to whether the prepayment scheme was authorized as a review of "Annex I", the document to which petitioners base their authority to make advance payments, does not contain such a stipulation or provision. Highlighted also is the fact that petitioners clearly violated the procedure in releasing loans found in the Manual on Lending Operations which provides that payments to the dealer shall only be made after presentation of reimbursement documents acknowledged by the authorized LBP representative that the same has been delivered.

In addition, this Court notes that much reliance is made by petitioners on their allegation that the terms of the CFP allowed for prepayments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. **It appears, however, that a CFP, even if admittedly a *pro forma* contract and emanating from the Land Bank main office, is merely a facility proposal and not the contract of loan between Land Bank and the cooperatives.** It is in the loan contract that the parties embody the terms and conditions of a transaction. If there is any agreement to release the loan in advance to REMAD as a form of prepayment scheme, such a stipulation should exist in the loan contract. There is, nevertheless, no proof of such stipulation as petitioners had failed to attach the CFPs or the loan contracts relating to the present petition.

Based on the foregoing, the COA should, therefore, not be faulted for finding that petitioners facilitated the commission of the irregular transaction. The evidence they presented before the COA was insufficient to prove their case. So also, even this Court is at a loss as to the truthfulness and veracity of petitioners' allegations as they did not even present before this Court the documents that would serve as the basis for their claims.

---

[38] *Laysa v. Commission on Audit*, G.R. No. 128134, October 18, 2000, 343 SCRA 520, 526.

II.

Anent the second ground raised by petitioners, the same is again without merit. Petitioners impute on the COA grave abuse of discretion when it held petitioners administratively liable for having processed the loans of the borrowing cooperatives. This Court stresses, however, that petitioners cannot rely on their supposed observance of the procedure outlined in the Manual on Lending Operations when clearly the same provides that "payment to the dealer shall be made after presentation of reimbursement documents (delivery/official receipts/purchase orders) acknowledged by the authorized LBP representative that the same has been delivered." Petitioners have not made a case to dispute the COA's finding that they violated the foregoing provision. Any presumption, therefore, that public officials are in the regular performance of their public functions must necessarily fail in the presence of an explicit rule that was violated.

There is no grave abuse of discretion on the part of the COA as petitioners were given all the opportunity to argue their case and present any supporting evidence with the COA Regional Director. Moreover, it bears to point out that even if petitioners' period to appeal had already lapsed, the COA Commission Proper even resolved their August 10, 1999 letter where they raised in issue the favorable ruling of the Ombudsman.

III.

Anent, the last issue raised by petitioners, the same is without merit. Petitioners contend that respondent's Order, requiring them to refund the disallowed transaction, is *functus officio*, the amount having been legally written-off.[39]

A perusal of the records would show that Land Bank Vice-President Conrado B. Roxas sent a Memorandum[40] dated August 5,

---

[39] *Rollo,* p. 21.

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

1998 to the Head of the Ipil Branch, advising them that the accounts subject of the present petition have been written-off, to wit:

> We are pleased to inform you that Bangko Sentral ng Pilipinas (BSP) in its letter dated July 20, 1998 has approved the write-off of your recommended Agrarian Reform Loan Accounts and Commercial Loan Accounts as covered by LBP Board Resolution Nos. 98-291 and 98-292, respectively, both dated June 18, 1998 x x x.[41]

The Schedule of Accounts for Write-Off[42] attached to the August 5, 1998 Memorandum shows that the same covered the two loans given to BARBEMCO, the two loans given to RTLim RMC, and the only loan given to Tungawan PFPMC. The total amount approved for write-off was ₱2,209,000.00.[43] Moreover, petitioners contend that the last loan given to SIFAMCO was also the subject of a write-off in a similar advice given to the Buug Branch. The total approved write-off in the second Memorandum[44] was for ₱906,000.00.

In its Comment,[45] the COA argues that the fact that the audit disallowance was allegedly written-off is of no moment.

---

[41] *Id.* at 78.

[42] *Id.* at 80.

[43] The total original amount of loans was ₱2,396,765.00. However, since all the loans were covered by a Livestock Insurance the total of which amounted to ₱187,765.00, the total amount recommended for write-off was computed at ₱2,209,000.00.

[44] *Rollo,* pp. 101-103. No reason was given as to why the notice of write-off of the SIFAMCO account was given to the Buug Branch. However, it seems that it is the same acoount subject of the petition as it was released on December 22, 1993 which is the same day the SIFAMCO account in the Ipil Branch was released. Moreover, the amount of ₱906,000.00 is the same amount the Ipil Branch released to REMAD under the SIFAMCO account. In any case, the COA did not raise any objection on this matter.

[45] *Rollo,* pp. 116-128.

Respondent maintains that Section 66 of PD 1445[46] expressly granted unto it the right to compromise monetary liabilities of the government.[47] The COA, thus, theorizes that without its approval, the alleged write-off is ineffectual. The same argument was reiterated by the COA in its Memorandum.[48]

The COA's argument deserves scant consideration.

A write-off is a financial accounting concept that allows for the reduction in value of an asset or earnings by the amount of an expense or loss. It is a means of removing bad debts from the financial records of the business.

In *Land Bank of the Philippines v. Commission on Audit*,[49] this Court ruled that Land Bank has the power and authority to write-off loans, to wit:

> LBP was created as a body corporate and government instrumentality to provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform (Rep. Act No. 3844, as amended, Sec. 74). Section 75 of its Charter vests in LBP specific powers normally exercised by banking institutions, such as the authority to grant short, medium and long-term loans and advances against security of real estate and/or other acceptable assets; to guarantee acceptance(s), credits, loans, transactions or obligations; and to borrow from, or rediscount notes, bills of exchange and other commercial papers with the Central Bank. In addition to the enumeration of specific powers granted to LBP, Section 75 of its Charter also authorizes it:
>
> 12. To exercise the general powers mentioned in the Corporation Law and the General Banking Act, as amended, insofar as they are not inconsistent or incompatible with this Decree.

---

[46] Government Auditing Code of the Philippines, Section 66. *Special, Fiduciary and Trust Funds.* - Receipts shall be recorded as income of Special Fiduciary of Trust Fund only when authorized by law as implemented by rules and regulations issued by the Permanent Committee created in the preceding section.

[47] *Rollo,* p. 127.

[48] *Id.* at 224-238.

[49] G.R. Nos. 89679-81, September 28, 1990 SCRA 154.

One of the general powers mentioned in the General Banking Act is that provided for in Section 84 thereof, reading:

x x x x x x x x x

> Writing-off loans and advances with an outstanding amount of one hundred thousand pesos or more shall require the prior approval of the Monetary Board (As amended by PD 71).

It will, thus, be seen that LBP is a unique and specialized banking institution, not an ordinary "government agency" within the scope of Section 36 of Pres. Decree No. 1445. **As a bank, it is specifically placed under the supervision and regulation of the Central Bank of the Philippines pursuant to its Charter** (Sec. 97, Rep. Act No. 3844, as amended by Pres. Decree No. 251). **In so far as loans and advances are concerned, therefore, it should be deemed primarily governed by Central Bank Circular No. 958, Series of 1983, which vests the determination of the frequency of writing-off loans in the Board of Directors of a bank provided that the loans written-off do not exceed a certain aggregate amount**. The pertinent portion of that Circular reads:

> **b. Frequency/ceiling of write-off. The frequency for writing-off loans and advances shall be left to the discretion of the Board of Directors of the bank concerned.** Provided, that the aggregate amount of loans and advances which may be written-off during the year, shall in no case exceed 3% of total loans and investments; Provided, further, that charge-offs are made against allowance for possible losses, earnings during the year and/or retained earnings.[50]

While the power to write-off is not expressly granted in the charter of the Land Bank, it can be logically implied, however, from the Land Bank's authority to exercise the general powers vested in banking institutions as provided in the General Banking Act (Republic Act 337). The clear intendment of its charter is for the Land Bank to be clothed not only with the express powers granted to it, but also with those implied, incidental and necessary for the exercise of those express powers.[51]

---

[50] *Id.* at 157-158. (Emphasis supplied.)

[51] *Id.* at 158.

In the case at bar, it is thus clear that the writing-off of the loans involved was a valid act of the Land Bank. In writing-off the loans, the only requirement for the Land Bank was that the same be in accordance with the applicable *Bangko Sentral* circulars, it being under the supervision and regulation thereof. The Land Bank recommended for write-off all six loans granted to the cooperatives, and it is worthy to note that the *Bangko Sentral* granted the same. The write-offs being clearly in accordance with law, the COA should, therefore, adhere to the same, unless under its general audit jurisdiction under PD 1445, it finds that under Section 25(1) the fiscal responsibility that rests directly with the head of the government agency has not been properly and effectively discharged.

On this note, the reliance of respondent on Section 66 of PD 1445 is baseless as a reading thereof would show that the same does not pertain to the COA's power to compromise claims. Probably, what respondent wanted to refer to was Section 36 which provides:

> Section 36. *Power to compromise claims.* —
>
> 1. When the interest of the government so requires, the Commission **may** compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it **may** likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.
>
> 2. **The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters** and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph.

x x x x x x x x x[52]

Under Section 36, the use of the word "may" shows that the power of the COA to compromise claims is only permissive, and not mandatory. Further, the second paragraph of Section 36 clearly states that respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters. Nowhere in Section 36 does it state that the COA must approve a compromise made by a government agency; the only requirement is that it be authorized by its charter. It, therefore, bears to stress that the COA does not have the exclusive prerogative to settle and compromise liabilities to the Government.

The foregoing pronouncements notwithstanding, this Court rules that writing-off a loan does not equate to a condonation or release of a debt by the creditor.

As an accounting strategy, the use of write-off is a task that can help a company maintain a more accurate inventory of the worth of its current assets. In general banking practice, the write-off method is used when an account is determined to be uncollectible and an uncollectible expense is recorded in the books of account. If in the future, the debt appears to be collectible, as when the debtor becomes solvent, then the books will be adjusted to reflect the amount to be collected as an asset. In turn, income will be credited by the same amount of increase in the accounts receivable.

Write-off is not one of the legal grounds for extinguishing an obligation under the Civil Code.[53] It is not a compromise

---

[52] Emphasis supplied.

[53] Article 1231. Obligations are extinguished:
1. By payment of performance;
2. By loss of the thing due;
3. By the condonation or remission of the debt;
4. By the confusion or merger of the rights of the creditor and debtor;
5. By compensation;
6. By novation.

of liability. Neither is it a condonation, since in condonation gratuity on the part of the obligee and acceptance by the obligor are required.[54] In making the write-off, only the creditor takes action by removing the uncollectible account from its books even without the approval or participation of the debtor.

Furthermore, write-off cannot be likened to a novation, since the obligations of both parties have not been modified.[55] When a write-off occurs, the actual worth of the asset is reflected in the books of accounts of the creditor, but the legal relationship between the creditor and the debtor still remains the same – the debtor continues to be liable to the creditor for the full extent of the unpaid debt.

Based on the foregoing, as creditor, Land Bank may write-off in its books of account the advance payment released to REMAD in the interest of accounting accuracy given that the loans were already uncollectible. Such write-off, however, as previously discussed, does not equate to a release from liability of petitioners.

Accordingly, the Land Bank Ipil Branch must be required to record in its books of account the Php3,115,000.00 disallowance, and petitioners, together with their four co-employees,[56] should be personally liable for the said amount. Such liability, is, however, without prejudice to petitioners' right to run after REMAD, to whom they illegally disbursed the loan, for the full reimbursement of the advance payment for the cattle as correctly ruled by the COA in its July 17, 2003 Decision.[57]

On a final note, it bears to point out that a cursory reading of the Ombudsman's resolution will show that the complaint against petitioners was dismissed not because of a finding of

[54] CIVIL CODE, Art. 1270.

[55] CIVIL CODE, Art. 1291.

[56] Records reveal that the Land Bank Auditor also found the following persons liable: Mary Jane Cunting-Hamoy, Emmanuel B. Bartocillo, George G. Hebrona and Leona O. Cabanatan.

[57] *Rollo,* p. 46.

good faith but because of a finding of lack of sufficient evidence. While the evidence presented before the Ombudsman may not have been sufficient to overcome the burden in criminal cases of proof beyond reasonable doubt,[58] it does not, however, necessarily follow, that the administrative proceedings will suffer the same fate as only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[59]

An absolution from a criminal charge is not a bar to an administrative prosecution or *vice versa*.[60] The criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. So also, the dismissal by Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao, of the criminal charges against petitioners does not necessarily foreclose the matter of their possible liability as warranted by the findings of the COA.

In addition, this Court notes that the Ombudsman's Resolution relied on an alleged "April 6, 1992 Memorandum of the Field Loans Review Department" which supposedly authorized the Field Offices to undertake a prepayment scheme. On the other hand, the same Ombudsman's Resolution also made reference to a "January 19, 1994 Memorandum of EVP Diaz" and a "May 31, 1994 Memorandum of VP FSD" which tackled the prohibition on advance payment to suppliers. All these documents, however, were again not attached to the records of the case at bar. Particularly, the supposed "April 6, 1992 Memorandum of the Field Loans Review Department" was not even mentioned nor raised by petitioners as a defense in herein petition.

The decisions and resolutions emanating from the COA did not tackle the supposed April 6, 1992 Memorandum of the Field Loans Review Department which allegedly authorized the

---

[58] Rules of Civil Procedure, Rule 133, Sec. 2.

[59] Rules of Civil Procedure, Rule 133, Sec. 5.

[60] *Office of the Court Administrator v. Enriquez*, A.M. No. P-88-290, January 29, 1993, 218 SCRA 1, 10; *Tan v. Commission on Elections*, G.R. No. 112093, October 4, 1994, 237 SCRA 353, 359.

Field Offices to undertake a pre-payment scheme. While it is possible that such document would have shown that petitioners were in good faith, the same should have been presented by them in the proceedings before the Commission proper - an act which they were not able to do because of their own negligence in allowing the period to file an appeal to lapse. The April 6, 1992 Memorandum of the Field Loans Review Department would have been the best evidence to free petitioners from their liability. It appears, however, that they did not present the same before the COA and it is already too late in the day for them to present such document before this Court.

Petitioners' allegation of grave abuse of discretion by the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[61] It is imperative for petitioners to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. Proof of such grave abuse of discretion, however, is wanting in this case.

WHEREFORE, premises considered, the petition is *DENIED.* Decision No. 2003-107 dated July 17, 2003 and Resolution No. 2004-046 dated December 7, 2004, of the Commission on Audit, are hereby *AFFIRMED.*

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Brion, Bersamin, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Velasco, Jr., Leonardo-de Castro, del Castillo, and *Sereno, JJ.,* join the dissent of J. Abad.

Abad, J., see dissenting opinion.

Nachura, J., no part. Filed pleading as Solicitor General.

---

[61] *Land Bank of the Philippines v. Court of Appeals,* G.R. No. 129368, August 25, 2003, 409 SCRA 455, 481.

DISSENTING OPINION

ABAD, *J.*:

I am unable to agree with the *ponencia* of Mr. Justice Diosdado M. Peralta that the Commision on Audit was right in holding personally liable some officers and staffs of the Land Bank of the Philippines (Land Bank) for certain agricultural loans they gave out that had gone bad.

The Facts and the Case

Petitioners Ruben Reyna (Reyna) and Lloyd Soria (Soria) are Senior Field Operations Specialist and Loans and Credit Analyst II, respectively, of the Land Bank's branch in Ipil, Zamboanga del Sur. In December 1993 the Ipil Branch received loan applications from four farmers' cooperatives[1] under the bank's cattle financing program.

To process the applications, each cooperative accomplished a Credit Facility Proposal (CFP), which required that they execute a Memorandum of Agreement (MOA) with their proposed cattle supplier, Remad Livestock Corporation (Remad). The CFP provided that the bank may release the proceeds of the loans 60 days prior to the delivery of the stocks. Consequently, after the approval of the loan applications, the Ipil Branch issued to Remad three checks totaling ₱3,115,000.00 as advance payment for the cattle. But, because of foot-and-mouth disease that broke among its herds, Remad failed to make the deliveries when they fell due.

During a post audit, the Land Bank resident auditor, Belen Oranu-Lu, disalllowed the advance payment under CSB 95-005 and Notices of Disallowance 96-014 to 96-019. She pointed out that the Ipil Branch paid for the cattle in advance in violation of the Land Bank Manual of Field Office Group (FOG) Lending Operations and Commission on Audit (COA) rules and regulations.

---

[1] R.T. Lim Rubber Marketing Cooperative, Buluan Agrarian Reform Beneficiaries MPC. Tungawan Paglaum Multi-Purpose Cooperative, and Siay Farmers' Multi-Purpose Cooperative.

Notably, the disallowance was not on account of evidence of dishonest connivance with the farmers' cooperatives and their cattle supplier.

The bank branch's resident auditor held Reyna and Soria, together with four other employees[2] of the Ipil, Branch, personally liable for the disallowed advances. The auditor's action also led to the filing of a criminal complaint against the bank officers and employees with the Office of the Ombudsman (the Ombudsman) in OMB-MIN-96-0444 for gross negligence, violation of reasonable office rules and regulations, conduct prejudicial to the interest of the bank, and giving unwarranted benefits to persons, causing undue injury in violation of Section 3 (e) of the Republic Act 3019.[3]

Reyna and Soria appealed the notices of disallowance to the Director of the Commission on Audit, Regional Office IX, Zamboanga City (COA Regional Office), which affirmed the findings of the auditor. Meantime, on February 23, 1999 the Ombudsman dismissed the charges against the Ipil Branch officers and employees for lack of sufficient evidence to support a finding of probable cause against them regarding the charges.

On August 10, 1999 prompted by the Ombudsman's dismissal of the charges against them, Reyna and Soria wrote the COA Regional Office, seeking to have the auditor's disallowance of the loan advances set aside. Further, they pointed out that the *Bangko Sentral ng Pilipinas* already approved the write-off of the loans given to the farmers' cooperatives. Rather that act on Reyna and Soria's letter, the regional office forwarded it to the COA Head Office.

On July 17, 2003 the COA rendered a decision, affirming the findings of its local auditor and the regional office. The COA held that the Ombudsman's dismissal of the charges

---

[2] Emmanuel B. Bartocillo (Department Manager II), George G. Hebrona (Chief, Loans and Discounts Division), Mary Jane T. Cunting (Cash Clerk IV), and Leona O. Cabanatan (Bookkeeper III/Acting Accountant).

[3] Anti-Graft and Corrupt Practices Act.

against the Land Bank officers and employees did not affect the validity of the disallowance which had already become final and executory. Also, it ruled that the criminal case before the Ombudsman was distinct and separate from the disallowance case which was civil in nature. Finally, the COA said that Reyna and Soria violated Section 88 of Presidential Decree (P.D.) 1445[4] and the Land Bank Rules and Regulations prohibiting advance payment on government contracts. Thus, it held petitioners and other Land Bank employees personally liable for the disallowance, without prejudice to their right to reimbursement from Remad.

Reyna and Soria moved for reconsideration but the COA denied the same, hence, this petition.

The Issues Presented

Two issues are presented in this case:

1. Whether or not the petition is barred by *res judicata;* and

2. If it may be given due course, whether or not the COA was justified in requiring Reyna, Soria, and the other Land Bank employees with them to personally pay for the disallowed advances to the cattle supplier of the farmers' cooperatives.

Discussion

One. The *ponencia* points out that the decision of the COA Regional Office which found Reyna, Soria, and the other Land Bank employees personally liable had become final and executory since they failed to appeal to the COA. Consequently, their subsequent appeal to the latter is already barred by *res judicata.*

True, the appeal may have been late and the COA may have been within its authority to ignore it altogether. But it did not. Exercising its review powers, the COA in fact proceeded to rule on the merits of petitioners' appeal. This proves that petitioners raised important and substantial issues that, to the COA's mind, warranted more than just a minute resolution dismissing their

[4] State Audit Code.

appeal for being late. The Court has itself done this at times, minimizing technical rules to do justice to the parties.[5]

Quite importantly, the resident auditor instituted a complaint with the Ombudsman, charging petitioners and the others with them with gross negligence, violation of reasonable office rules and regulations, conduct prejudicial to the interest of the bank, and giving unwarranted benefits to persons, causing undue injury in violation of Section 3 (e) of the Republic Act 3019. After hearing, the Ombudsman completely absolved petitioners and the others of any wrongdoing in connection with the release of the proceeds of the loans to Remad.

The COA which initiated the complaint and was, therefore, a party to it should be bound by the Ombudsman's decision. If a judgment of aquittal by the Sandiganbayan warrants the reinstatement of and payment of back wages to the public officers accused in a case,[6] there is no justification for maintaining the punitive sanction that the resident auditor had imposed on petitioners after they have been cleared by the Ombudsman of any wrongdoing.

The revised *ponencia* of course points out that the assailed COA resolutions dealt only with the effect of the dismissal of the Ombudsman case on the propriety of the disallowance and nothing more. But this is inaccurate. The COA delved extensively into the merits of the case in both resolutions. In fact, apart from addressing the effect of the dismissal of the Ombudsman case, the COA also discussed the issues relative to the disallowance. It held that the bank's employees appeared to have violated P.D. 1445 and the bank's rules that prohibited advance payment on government contracts. Further, the COA even modified the order of disallowance. It held that the subject bank employees may seek reimbursement from Remad. If only because of this

---

[5] Just to name a few of the most recent: *Barnes v. Padilla*, 482 Phil. 903 (2004); *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468; *Tan Tiac Chiong v. Cosico*, A.M. No. CA-02-33, July 31, 2002, 385 SCRA 509.

[6] Section 13, Republic Act 3019.

modification, the right of the bank employees to appeal from the COA resolution should be deemed reinstated.

Two. The COA ruled that petitioners Reyna and Soria violated Section 88 of P.D. 1445 which prohibits the government from making advance payments for services not yet rendered or for supplies and materials not yet delivered under any contract. For instance, a government agency has no business paying the supplier long in advance for an air condition unit that is yet to be delivered. That would be truly irregular.

Here, however, the Land Bank Ipil Branch did not buy live cattle for the use or consumption of the bank. The bank was in the business of lending money, not just for profit but more so for inducing agricultural productivity among farmers. It would be quite unusual for a government bank not to give out a loan before it is paid what it lends.

Actually, it was not Remad who borrowed money from Land Bank but the four farmers' cooperatives in Zamboanga del Sur. It is not disputed that Remad was a regular cattle supplier with some track record in its business. It failed to deliver in this case because of a disastrous foot-and-mouth disease epidemic that hit its herds. The advance payment to Remad was part of the CFP terms that the cooperatives signed and submitted to the bank. And the Land Bank main office approved of this lending scheme.

The ₱3.1 million in loans would have benefited a number of farmers in four agricultural cooperatives and made more meat available for the populace had it processed as anticipated. It would be the height of unfairness to make the bank employees pay for those loans after thay had gone bad without their fault. There is no hint in this case that petitioners and the other bank employees profited from the grant of the advances against the approved farmers' loans.

Land Bank is not just a government-owned corporation. It also does business like other privately owned commercial banks except that it may be given missions consistent with promoting economic growth in the countryside. For this reason it must

lend money to farmers, perhaps assuming greater risks that ordinary banks would. The COA ruling in this case would have a chilling effect on bank officers who approve loans, placing in jeopardy the Land Bank's mission.

The COA cites Section 103 of P.D. 1445:

Sec. 103. General liability for unauthorized expenditures. — expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

But this speaks of unauthorized expenditure of government money. The *Bangko Sentral*, which approved the write-off of the debts after examination of the records, had the right perspective, being an institution tasked with closely supervising banks. It did not regard the loan, like COA did, as a government expense that cannot be incurred until the goods or the services are delivered. It was a loan that, like any other loan, is given in consideration of a promise to pay. It can be written off when every reasonable effort at collection has failed.

It should be noted that the Ipil Branch used the same CFP that all other Land Bank branches used for the bank's nationwide cattle financing program. Therefore, in the absence of the proof of bad faith, malice or gross negligence, the presumption of regularity in the performance of official duties should stand.

The revised *ponencia* suggests that there is no proof that the standard CFP in use by the bank contains a provision that authorizes prepayment to the supplier since no copy of the CFP is found in the case records. The *ponencia* points out that the Cattle Breeding and Buy-Back Agreement between Remad and the cooperatives did not contain such a provision on prepayment.

It may be so, but only because none of the parties had questioned the fact that the CFP allowed such prepayment. Indeed, the COA has never denied it. Quite contrary, the COA Regional Director himself said in his February 28, 2000 endorsement that the resident auditor found the CFP flawed

precisely because "No. 1 of the loan terms and conditions allowed prepayments without taking into consideration the interest of the bank."[7] Thus, although the agreement with Remad did not carry a prepayment provision, the auditor conceded that the Land Bank's standard CFP terms and conditions, which governed the grant of the cattle loan, provided for such prepayments.

Besides, the Court cannot ignore the criminal action that the COA itself instituted before the Ombudsman's office in OMB-MIN-96-0444. The bank employees brought it up in their appeal that the COA Regional Office elevated to the head office. The Ombudsman noted in its February 23, 1999 Resolution the fact that "per CFP terms, the release of the loan shall be made sixty (60) days prior to the delivery of stocks."[8] It also added that the prepayment scheme is in the CFPs of all cooperative borrowers and that the CFPs are embodied in a standard and prepared form provided by the Land Bank's Main Office.[9] Quite importantly, the Ombudsman found that the Land Bank management approved the prepayment scheme.[10] Actually, the COA's main concern was not the non-existence of a provision on prepayment but that, in its view, the scheme in the CFPs deviated from existing law and bank procedures, and that the bank employees erred in implementing the same.[11]

True, the Ombudsman's office said that the memoranda of Land Bank EVP Diaz dated January 19, 1994 and that of its VP FSD dated May 31, 1994 prohibited advance payments to a supplier. But, as found by the Ombudsman, it is evident that the bank's head office released these memoranda as a response to the subsequent problems encountered with Remad and after the bank had earlier authorized the scheme under the April 6, 1992 Memorandum of the Field Loans Review Department.[12]

---

[7] *Ponencia,* p. 4.

[8] *Rollo,* p. 52.

[9] *Id.* at 53.

[10] *Id.* at 73.

[11] *Id.* at 60.

[12] *Id.*

That the CFP and the above memoranda were not presented to form part of the record of this case is of no moment. The COA initiated the case before the Ombudsman and, therefore, it should be bound by the findings of that office. Notably, the COA did not appeal the Ombudsman's dismissal of its complaint against the bank's Ipil Branch employees.

The *ponencia* claims that the Ombudsman's dismissal of the case against the bank employees was for lack of sufficient evidence and not for their good faith. But a reading of the Ombudsman's resolution will show that its finding of insufficiency of evidence is essentially based on the absence of bad faith or malicious intent on the part of the employees to cause damage to the government.

First, the Ombudsman found that Remad was an active supplier from 1990 to 1993 and that its subsequent failure to deliver cattle was because of the outbreak of foot-and-mouth disease. Second, given that Remad was an active supplier since 1990, it cannot be said that the Land Bank employees gave it unwarranted benefits or that they could have foreseen the non-delivery of cattle. Third, the problem of non-delivery was not exclusive to the Ipil Branch as it also affected the Zamboanga, Catarman, and Tacloban branches. Consequently, it was unconscionable to hold the employees of the Ipil Branch liable for the failure of the Cattle Breeding Program. Fourth, the Land Bank is not without recourse in recovering the loan. And, fifth, the Land Bank management approved the prepayment scheme.[13]

From the foregoing, it is clear that the bank employees acted in good faith and, therefore, should not be made personally liable for the advance payments. Even the COA itself implicitly recognized that the employees were not at fault when it allowed them to seek reimbursement from Remad. In previous cases,[14]

---

[13] *Id.* at 71-73.

[14] *Magno vs. Commission on Audit*, G.R. No. 149941, August 28, 2007 531 SCRA 339, 350; *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*, G.R. No. 159299, July 7, 2004, 433 SCRA 769, 771-773.

this Court has affirmed disallowances made by the COA without requiring the refund or payment of the disallowed amounts on the ground of good faith. The same principle can be applied here. In fact, it is perfectly reasonable to do so in this case because the Land Bank is not without recourse.

Justice Antonio T. Carpio correctly said that the write-off is not a condonation of the debt and that the obligation remains, subject to future collection if possible. But it does not follow that Reyna, Soria, and the other employees with them should pay for the debt that they did not contract for themselves. The Cattle Breeding and Buy-Back Marketing Agreement between Remad and the cooperatives provide that "*both parties shall be liable to Land Bank of the Philippines for whatever breach of contract entered into by the cooperative and REMAD LIVESTOCK CORPORATION in relation to the loan with the bank.*"[15] Consequently, the Land Bank may still institute a civil suit for collection against the proper parties to recover the loss.

Finally, as a general rule, the reversal of a judgment on appeal is binding only on parties in the appealed case and not on those who did not join the appeal. An exception may be granted, however, where the rights and liabilities of all of them are so interwoven and dependent on each other as to be inseparable. In such case, a reversal as to one operates as a reversal as to all.[16]

Here, the COA resident auditor ordered Reyna, Soria and other subordinate Land Bank employees collectively liable for facilitating the advance payment to Remad. In fairness, such other employees should be granted the same relief.

ACCORDINGLY, I vote to *GRANT* the petition.

---

[15] *Rollo,* p. 95.

[16] *Dadizon v. Bernadas,* G.R. No. 172367, June 5, 2009, 588 SCRA 678, 684.

EN BANC

[G.R. No. 182555. February 8, 2011]

LENIDO LUMANOG and AUGUSTO SANTOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 185123. February 8, 2011]

CESAR FORTUNA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 187745. February 8, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SPO2 CESAR FORTUNA *y* ABUDO, RAMESES DE JESUS *y* CALMA, LENIDO LUMANOG *y* LUISTRO, JOEL DE JESUS *y* VALDEZ and AUGUSTO SANTOS *y* GALANG,** *accused,* **RAMESES DE JESUS *y* CALMA and JOEL DE JESUS *y* VALDEZ,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IT IS TOO LATE IN THE DAY FOR THE ACCUSED TO ASSAIL AS IRREGULAR THE OCULAR INSPECTION WHICH WAS DONE WITH CONFORMITY AND IN THE PRESENCE OF THEIR COUNSEL.— Movants are raising the issue for the first time before this Court and long after trial and rendition of judgment. We have perused the transcript of stenographic notes taken during the ocular inspection conducted by the trial court on September 26, 1996, and found no objection or comment made by the defense counsel regarding the timing of the inspection and its relevance to the evaluation of Alejo's testimony. Neither did the accused complain of any irregularity in the conduct of the said ocular inspection before the appellate court. If indeed, the accused found the timing of the ocular inspection crucial to their defense that Alejo was not really an eyewitness as he could not have clearly seen the

faces of all the accused from his guard post, they could have made a proper manifestation or objection before the trial judge. They could have even staged a reenactment to demonstrate to the trial court the alleged glare of the morning sun at the time of the commission of the crime, which could have affected Alejo's perception of the incident. But they did not. It is now too late in the day for the accused to assail as irregular the ocular inspection which was done with the conformity and in the presence of their counsel.

2. ID.; ID.; NEW TRIAL; THE BELATEDLY EXECUTED AFFIDAVIT OF THE POLICE OFFICER DOES NOT QUALIFY AS NEWLY DISCOVERED EVIDENCE THAT WILL JUSTIFY RE-OPENING OF THE TRIAL AND /OR VACATING THE JUDGMENT.— Fortuna seeks the introduction of additional evidence to support the defense argument that there was no positive identification of Abadilla's killers. To justify a new trial or setting aside of the judgment of conviction on the basis of such evidence, it must be shown that the evidence was "newly discovered" pursuant to Section 2, Rule 121 of the Revised Rules of Criminal Procedure, as amended. Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below. Movant failed to show that the defense exerted efforts during the trial to secure testimonies from police officers like Jurado, or other persons involved in the investigation, who questioned or objected to the apprehension of the accused in this case. Hence, the belatedly executed affidavit of Jurado does not qualify as newly discovered evidence that will justify re-opening of the trial and/or vacating the judgment. In any case, we have ruled that whatever flaw that may have initially attended the out-of-court identification of the accused, the same was cured when all the accused-appellants were positively identified by the prosecution eyewitness during the trial.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; NO COGENT REASON TO DEVIATE FROM THE TRIAL COURT'S FINDINGS ON THE ISSUE OF CREDIBILITY OF PROSECUTION'S LONE EYEWITNESS.— It is an admitted fact that Alejo and his family were sheltered and given financial support by the victim's family, presumably out of

gratitude and sympathy considering that Alejo lost his job after the incident. Such benevolence of the Abadilla family, however, is not sufficient basis for the conclusion that Alejo would falsely accuse movants as the perpetrators of the crime. As we have stressed, Alejo did not waver in his identification of the accused despite a grueling cross-examination by the defense lawyers. Both the trial and appellate courts found Alejo's testimony as credible, categorical and straightforward. After a painstaking review of the records, we find no cogent reason to deviate from their findings on the issue of credibility of the prosecution's lone eyewitness.

CARPIO, *J., dissenting opinion:*

1. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT; NOT ESTABLISHED IN CASE AT BAR.— The prosecution in this case gravely failed to discharge its burden of proof of guilt beyond reasonable doubt. Specifically, the prosecution unsuccessfully established the identity of the perpetrators of the crime beyond reasonable doubt. Lamentably, the majority believes otherwise. The majority relies on the highly questionable identification made by the lone eyewitness, Freddie Alejo (Alejo), in convicting the five accused for the murder of Philippine Constabulary Colonel Rolando N. Abadilla (Abadilla). The majority dismally failed to exercise caution in relying on Alejo's identification, contrary to what the Court emphasized in *People v. Rodrigo*, thus: **The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification.** This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused.

2. ID.; CRIMINAL PROCEDURE; TRIAL; IN-COURT IDENTIFICATION OF ACCUSED; SERIOUSLY DOUBTFUL IN CASE AT BAR.— As I earlier pointed out, danger signals abound in Alejo's in-court identification, rendering such identification seriously doubtful. These warnings include (1) a serious discrepancy exists between the identifying

witness' original description and the actual description of the accused; (2) there was a limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime. According to Alejo, not one, not two, but six men perpetrated the crime. He saw these six male adults, all complete strangers, for the very first time in a matter of seconds. It is quite unbelievable that Alejo, whose life was threatened by at least one of the suspects, focused his attention on all six suspects, looked at them at the same time, and memorized their faces and features in a very fleeting and extremely stressful moment. In fact, in his sworn statement given before the police investigators, Alejo was able to describe only two suspects. He failed to give any description of the other killers. This highlights Alejo's weak recollection of the crime and its perpetrators even if he is a security guard who is expected to be extra perceptive and vigilant. If Alejo indeed perfectly memorized the physical appearance of the killers, which the majority believes, nothing stopped him from describing the rest of the suspects when asked by the police investigators "*Ano ba ang itsura ng mga suspect?*" Alejo could have readily described the other suspects, which description would have strengthened his subsequent in-court identification of the accused, if indeed they were the suspects Alejo saw murdering Abadilla. However, to repeat, Alejo was able to describe only two suspects, whose remarkable features bore no resemblance with the accused's.

3. ID.; ID.; ID.; THE WITNESS WOULD NOT HAVE BEEN ABLE TO IDENTIFY THE ACCUSED IN COURT WITHOUT THE PICTURES OF THE ACCUSED THAT WERE TAKEN FROM THE MEDIA.— Notwithstanding, during the trial, Alejo easily identified the six accused as Abadilla's murderers. It must be emphasized that prior to his in-court identification, Alejo had surely seen the faces of the accused in newspapers and television, facilitating his identification of the accused during the trial. As I have previously stressed, **Alejo would not have been able to identify the accused in court without the pictures of the accused that were taken by the media.** The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the

murderers. Further, Alejo's in-court identification of the accused Joel de Jesus proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. As a consequence, Alejo's testimony based on such fatally defective identification cannot be considered as proof beyond reasonable doubt of the identity of the perpetrators, warranting Joel's acquittal.

4. ID.; ID.; ID.; THE INADMISSIBILITY OF WITNESS' EXTRAJUDICIAL CONFESSION RENDERS ITS CONTENTS, SPECIFICALLY THE IDENTITY OF THE SUPPOSED KILLERS, UNRELIABLE AND INADMISSIBLE.— As regards Lumanog, Fortuna, Santos and Rameses, it was Joel, through a coerced confession, who supplied the police investigators with the identities of his supposed cohorts and their whereabouts. The police did not possess any description or prior identification of these accused. To repeat, Joel provided the police, through a coerced confession, with the identities of his supposed co-conspirators and where they could be found. The inadmissibility of Joel's extrajudicial confession renders its contents, specifically the identity of the supposed killers, unreliable and inadmissible as well. Hence, Alejo's in-court identification of the accused must not be given any weight for to do so is to admit and give probative value to the coerced confession of Joel.

5. POLITICAL LAW; CONSTITUTIONAL LAW; RIGHTS OF THE ACCUSED; THE HIGHLY SUGGESTIVE PHOTOGRAPHIC IDENTIFICATION BY THE WITNESS VIOLATED THE ACCUSED'S DUE PROCESS RIGHTS UNDER SECTIONS 1 AND 14 (1), ARTICLE III OF THE CONSTITUTION.— At this juncture, I reemphasize the serious violations committed by the police authorities of accused's constitutional rights. The highly suggestive photographic identification of Joel made by Alejo violated Joel's due process rights under Sections 1 and 14(1), Article III of the Constitution. Meanwhile, the failure of the police to provide Joel with the assistance of counsel during the police line-up, regarded as a part of custodial investigation, violated Section 12(1), Article III of the Constitution. Moreover, torturing Joel to admit his participation in the crime and to provide the identities of his supposed co-conspirators violated his right under Section 12(2),

Article III of the Constitution. Also, the police arrested the accused without warrant contrary to Section 2, Article III of the Constitution. The police's blatant infringement of the accused's constitutional rights and the seriously flawed identification of the accused as the perpetrators of the crime generate sufficient reason to doubt the accused's guilt for the crime charged. Contrary to the majority's view, the prosecution miserably failed to establish the accused's guilt beyond reasonable doubt. The accused are therefore entitled to an acquittal.

ABAD*, J., dissenting opinion:*

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACT THAT THE WITNESS RECEIVED SOME ECONOMIC BENEFIT FROM THE VICTIM'S FAMILY SEVERELY TAINTED HIS CREDIBILITY.— The Court should not have swallowed Alejo's testimony hook, line and sinker considering that the *ponencia* acknowledged that Alejo received some economic benefit from the Abadilla Family. While it can not be disputed that Alejo was present in the scene of the incident on June 13, 1996, however, the receipt of any form of economic benefit transformed him to a partial and bias witness since he has something to gain or lose depending upon his testimony. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false. The unbiased mind is also susceptible and can succumb to the pressures brought about by life's realities. There is reason, therefore, to doubt the testimony of Alejo from the very beginning. Contrary to the *ponencia*'s findings, Alejo's acceptance of these benefits severely tainted his credibility and neither the finding that he did not waiver in his identification of the accused despite rigorous cross-examinations nor the reliance given by the trial court and CA on his testimony will overshadow the fact that he is a biased witness for the prosecution.

2. ID.; ID.; ID.; THE SELECTIVE CONSIDERATION OF THE WITNESS' TRAINING AS A SECURITY GUARD TO THE SEQUENCE OF EVENTS THAT TRANSPIRED CAN ONLY INVITE SUSPICIONS AS TO HIS CREDIBILITY.— It is

also unfair how the *ponencia* credited the inexplicable clarity of the identification of the accused by Alejo to his training as a security guard, but did not consider the very same training when he failed to notice and take action on the two men walking to and fro the establishment from more than an hour, among others. Selective consideration of Alejo's training as a security guard to the sequence of events that transpired that day can only invite suspicions as to his credibility. Evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind. Here, not only is Alejo a biased witness, but also his testimony, in itself, shows earmarks of falsehood as shown in the earlier dissenting opinions.

APPEARANCES OF COUNSEL

Vicente Dante P. Adan for petitioners in G.R. No. 182555.
Gimenez Law Office for petitioner in G.R. No. 185123.
Law Office of Dante S. David for Joel de Jesus.
M.M. Lazaro & Associates for the Family of Col. Rolando N. Abadilla.
Public Attorney's Office and *Analyn V. Virtusio* for Rameses De Jesus.
Leandro M. Azarcon for Augusto Santos.
Foria & Ureta Law Offices for Cesar Fortuna.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

This resolves the motions for reconsideration separately filed by Lenido Lumanog and Augusto Santos, Cesar Fortuna and Rameses de Jesus assailing our Decision dated September 7, 2010 convicting them of the crime of murder, the dispositive portion of which reads:

WHEREFORE, the consolidated petitions and appeal are hereby DISMISSED. The Decision dated April 1, 2008 of the Court of Appeals in CA-G.R. CR-HC No. 00667 is hereby AFFIRMED with MODIFICATIONS in that the civil indemnity for the death of Col.

Rolando N. Abadilla is hereby increased to ₱75,000.00, and the amounts of moral and exemplary damages awarded to his heirs are reduced to ₱75,000.00 and ₱30,000.00, respectively.

With costs against the accused-appellants.

SO ORDERED.[1]

Lumanog and Augusto Santos seek the reversal of their conviction on the following grounds:

The Honorable Supreme Court erred in:

I. Setting out in the facts of the case and the contents of inadmissible extrajudicial confessions;

II. Not including the extrajudicial confession of Lorenzo delos Santos as excluded evidence;

III. Applying the ruling in *People v. Rivera* "that the testimony of a sole eyewitness is sufficient to support a conviction so long as it is clear, straightforward and worthy of credence by the trial court";

IV. According finality to the evaluation made by the lower court of the testimony of Freddie Alejo;

V. Ruling that there was positive identification;

VI. Finding "none of the danger signals enumerated by Patrick M. Wall" when 3, 7, 10, 11, 12 in said enumeration are present;

VII. Dismissing the mismatch between the prior description given by the witness and the actual appearances of the accused;

VIII. Relying on the ocular inspection conducted at a time when a material condition is significantly altered;

IX. Ruling that the inconsistencies in Alejo's earlier statement and his in-court testimony have been explained;

X. Not discrediting Alejo's testimony despite acceptance of benefits from the Abadilla family;

XI. Holding that the acquittal of Lorenzo delos Santos does not necessarily benefit the appellants;

---

[1] *Rollo* (G.R. No. 182555), pp. 870-871.

XII. Ruling that the ballistic and fingerprint examination results are inconclusive and not indispensable;

XIII. Not considering the totality of evidence presented by the defense as against the alleged "positive identification" of the accused.

XIV. Allowing Justice Jose Catral Mendoza to take part in the deliberation and the voting;

XV. Dismissing the evidence presented by Augusto Santos;

XVI. Ruling that the silence of accused Lumanog amounts to a *quasi*-confession;

XVII. Holding that the delay of (4) four years during which the case remained pending with the CA and this Court was not unreasonable, arbitrary or oppressive.[2]

Rameses de Jesus raised the following grounds in his motion:

I.

THE HONORABLE SUPREME COURT GRAVELY ERRED IN HEAVILY RELYING ON THE LONE ALLEGED EYEWITNESS SECURITY GUARD (SG) FREDDIE ALEJO'S TESTIMONY, WHICH WAS CHARACTERIZED BY MATERIAL OMISSIONS, PATENT INCREDIBILITY, CONTRADICTIONS AND DISCREPANCIES.

II.

THE HONORABLE SUPREME COURT GROSSLY MISAPPRECIATED THE FIRST SWORN STATEMENT GIVEN BY SG FREDDIE ALEJO, WHEREIN HE STATED THAT THERE WERE FOUR (4) SUSPECTS WHO PERPETRATED THE CRIME CONTRARY TO HIS SUBSEQUENT TESTIMONY IN OPEN COURT.

III.

THE HONORABLE SUPREME COURT FAILED TO APPRECIATE THE PERSONAL CIRCUMSTANCES OF THE ACCUSED-APPELLANTS, WHICH WOULD SHOW AS HIGHLY UNLIKELY THEIR ALLEGED COLLECTIVE GUILT AND CONSPIRACY.

---

[2] *Id*. at 979-980.

IV.

THE HONORABLE SUPREME COURT FAILED TO GIVE WEIGHT TO PHYSICAL EVIDENCE, PARTICULARLY THE EXCULPATORY BALLISTICS AND DACTYLOSCOPY EVIDENCE, AND EXPERT TESTIMONY PRESENTED BY THE DEFENSE.[3]

On his part, Cesar Fortuna argues that:

THE LONE, CONTRADICTED AND INCREDIBLE TESTIMONY OF S/G ALEJO IS NOT SUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT[4]

At the inception, let it be emphasized that the filing of a motion for reconsideration does not impose on us the obligation to discuss and rule again on the grounds relied upon by the movant which are mere reiteration of the issues previously raised and thoroughly determined and evaluated in our Decision being questioned.[5] In particular, the Court need not dwell again on the extrajudicial confessions of Joel de Jesus and Lorenzo delos Santos which we have held inadmissible, the delay in the resolution of the appeals before the CA and this Court which under the circumstances cannot be deemed unreasonable or arbitrary, the inconclusive ballistic and fingerprint examination results, and the effect of Lorenzo delos Santos' acquittal to the rest of appellants. These matters have been passed upon and adequately discussed in our Decision.

In fine, the accused-movants strongly assail the weight and credence accorded to the identification of the accused by the lone eyewitness presented by the prosecution, security guard Freddie Alejo. It was pointed out, among others, that: (1) in his statement given to the police investigators immediately after the incident, Alejo mentioned only four suspects, contrary to his subsequent testimony in court; it was impossible for him

---

[3] *Id.* at 937.

[4] *Id.* at 1023.

[5] *People v. Larrañaga,* G.R. Nos. 138874-75, July 21, 2005, 463 SCRA 652, 659, citing *Ortigas and Company Limited Partnership v. Velasco,* G.R. Nos. 109645 and 112564, March 4, 1996, 254 SCRA 234.

not to mention the two men he had seen walking back and forth before the shooting; (2) Alejo accepted financial support and benefits from the Abadilla family which could have colored his testimony against the accused; (3) his in-court identification of the six accused is questionable and unreliable considering that it referred to them only by numbers and he had given prior description of only two suspects; and (4) the ocular inspection conducted by the trial court to confirm Alejo's observations was likewise unreliable because it was made at a time when a material condition is significantly altered, *i.e.*, it was held from 10:00 a.m. onwards whereas the incident occurred between 8:30 and 9:00 a.m. when the glare of the morning sun directly hits the guard post where Alejo was stationed.

Fortuna submitted an Affidavit dated November 12, 2009 executed by a certain Orencio G. Jurado, Jr. who claims to be one of the police officers initially assigned to investigate the case. Fortuna contends that said belated statement would certainly cast doubt on the procedures undertaken by the police authorities in the apprehension of the likely perpetrators.

We find the motions bereft of merit.

While it is true that Alejo mentioned only four and not six suspects in his June 13, 1996 sworn statement, this did not impair his testimony as an eyewitness. Alejo was simply responding to specific questions as to what he had witnessed during the shooting incident. Herein quoted is an excerpt from the questioning by SPO1 Edilberto S. Nicanor of the Criminal Investigation Division (CID) at Camp Karingal (PNP-NCR) and Alejo's answers thereto:

08. *T - Habang ikaw ay naka-duty bilang guwardiya sa 211 Katipunan Road, Quezon City, itong araw na ito, may napansin ka bang hidi pangkaraniwang pangyayari?*
    S - Mayroon, Sir.

09. *T - Ano iyon?*
    S - May binaril na sakay ng kotse sa harap ng puwesto ko sir.

10. *T - Anong oras ito nangyari?*
    S - 8:40 ng umaga kanina sir, more or less (13 June 1996)

11. *Tanong : Sino ba itong binaril na tinutukoy mo, kung kilala mo?*
Sagot : Isang hindi ko kilala na lalaki sir.

12. *T* - ***Sino naman ang bumaril sa biktima na ito, kung kilala mo?***
S - ***Apat na hindi kilalang lalaki sir na armado ng baril.***

x x x[6] (Emphasis supplied.)

The foregoing shows that Alejo merely gave the responsive answer to the question as to those persons whom he saw *actually shoot* the victim who was in his car. As the question was phrased, Alejo was not being asked about the persons who had participation or involvement in the crime, but only those who actually fired at the victim. Hence, he replied that there were four (4) armed men who suddenly fired shots at the victim. What followed was Alejo's narration of what the gunmen further did to the already wounded victim, to those people within the vicinity — including himself who was ordered at gunpoint to lie down and not interfere — and until the firing stopped as the suspects ran away. Clearly, it was not a fatal omission on the part of Alejo not to include in his first affidavit the two other suspects who were acting as lookouts. During his testimony in court, Alejo was able to fully recount the details and state that there were two men walking back and forth before the shooting. It is settled that contradictions between the contents of an affiant's affidavit and his testimony in the witness stand do not always militate against the witness' credibility. This is so because affidavits, which are usually taken *ex parte*, are often incomplete and inaccurate.[7]

There is likewise nothing irregular in Alejo's manner of testifying in court, initially referring to the accused by numbers, to indicate their relative positions as he remembered them, and the individual participation of each in the violent ambush of Abadilla. As already explained in our decision, Alejo's elevated

---

[6] Folder of Exhibits, pp. 26-27.

[7] *Resayo v. People*, G.R. No. 154502, April 27, 2007, 522 SCRA 391, 402-403, citing *People v. Quillosa*, 382 Phil. 638, 647 (2000), *People v. Bermudez*, G.R. No. 129033, June 25, 1999, 309 SCRA 124, 136, *People v. Tanilon*, 354 Phil. 1015, 1026 (1998).

position from the guardhouse gave him such a clear and unobstructed view of the incident that he was able to recognize the faces and physical features of the accused at the time. When two of the accused actually poked a gun at him, it gave him more opportunity to see the faces of the accused who had briefly turned their eyes on him. Furthermore, experience dictates, precisely because of the unusual acts of violence committed right before witnesses' eyes, that they remember with a high degree of reliability the identity of criminals.[8] Indeed, Alejos' recollection is not of "superhuman" level as accused now make it appear, considering that he was a trained security guard, whose job demands extra perceptiveness and vigilance at all times especially during emergency or critical situations. Keen scrutiny of the physical appearance and behavior of persons is a routine part of a security guard's work duties.

Movants likewise fault this Court for giving considerable weight to the observations made by the trial judge during the ocular inspection, arguing that the timing of said ocular inspection did not coincide with the precise hour in the morning when the shooting incident happened. Because the shooting took place between 8:30 to 9:00 when the glare of the morning sun directly hits the guard post of Alejo, the latter supposedly cannot be said to have had such clear vantage point as found by the trial judge when he positioned himself at the said guard post at a later time, which is already past 10:00 in the morning.

We are not persuaded.

Movants are raising the issue for the first time before this Court and long after trial and rendition of judgment. We have perused the transcript of stenographic notes taken during the ocular inspection conducted by the trial court on September 26, 1996, and found no objection or comment made by the defense counsel regarding the timing of the inspection and its relevance to the evaluation of Alejo's testimony. Neither did the accused complain of any irregularity in the conduct of the said ocular

---

[8] *Vidar v. People*, G.R. No. 177361, February 1, 2010, 611 SCRA 216, 228, citing *People v. Foncardas*, 466 Phil. 992, 1006 (2004).

inspection before the appellate court. If indeed, the accused found the timing of the ocular inspection crucial to their defense that Alejo was not really an eyewitness as he could not have clearly seen the faces of all the accused from his guard post, they could have made a proper manifestation or objection before the trial judge. They could have even staged a reenactment to demonstrate to the trial court the alleged glare of the morning sun at the time of the commission of the crime, which could have affected Alejo's perception of the incident. But they did not. It is now too late in the day for the accused to assail as irregular the ocular inspection which was done with the conformity and in the presence of their counsel.

It is an admitted fact that Alejo and his family were sheltered and given financial support by the victim's family, presumably out of gratitude and sympathy considering that Alejo lost his job after the incident. Such benevolence of the Abadilla family, however, is not sufficient basis for the conclusion that Alejo would falsely accuse movants as the perpetrators of the crime. As we have stressed, Alejo did not waver in his identification of the accused despite a grueling cross-examination by the defense lawyers. Both the trial and appellate courts found Alejo's testimony as credible, categorical and straightforward. After a painstaking review of the records, we find no cogent reason to deviate from their findings on the issue of credibility of the prosecution's lone eyewitness.

As to the affidavit of Orencio G. Jurado, Jr. submitted by Fortuna, the said affiant claimed that he had a heated argument with Inspector Roger Castillo during one of the hearings before the trial court because Inspector Castillo was urging him (Jurado) "to confirm that those arrested by the joint team of CID and PARAK-DILG were exactly the same people/suspects described by the guards to which [he] firmly declined." Jurado alleged that he was surprised to see the faces of the suspects flashed on TV several days after Herbas and Alejo gave their statements at Camp Karingal because they did not fit the description given by witnesses Herbas and Alejo. Jurado was also allegedly prevented earlier by an unidentified policeman — as per

instruction of then DILG Secretary Robert Barbers — from interviewing the suspects arrested by the operatives of the CID and PARAK-DILG.[9]

Evidently, Fortuna seeks the introduction of additional evidence to support the defense argument that there was no positive identification of Abadilla's killers. To justify a new trial or setting aside of the judgment of conviction on the basis of such evidence, it must be shown that the evidence was "newly discovered" pursuant to Section 2,[10] Rule 121 of the Revised Rules of Criminal Procedure, as amended.

Evidence, to be considered newly discovered, must be one that could not, by the exercise of due diligence, have been discovered before the trial in the court below.[11] Movant failed to show that the defense exerted efforts during the trial to secure testimonies from police officers like Jurado, or other persons involved in the investigation, who questioned or objected to the apprehension of the accused in this case. Hence, the belatedly executed affidavit of Jurado does not qualify as newly discovered evidence that will justify re-opening of the trial and/or vacating the judgment. In any case, we have ruled that whatever flaw that may have initially attended the out-of-court identification of the accused, the same was cured when all the accused-appellants were positively identified by the prosecution eyewitness during the trial.

Finally, we must make it clear that Justice Jose Catral Mendoza, who, as then presiding judge at the trial court, heard the prosecution and defense witnesses, never took part in the

---

[9] *Rollo* (G.R. No. 182555), p. 1035.

[10] SEC. 2. *Grounds for a new trial.* — The court shall grant a new trial on any of the following grounds:

(a) That errors of law or irregularities prejudicial to the substantial rights of the accused have been committed during the trial;

(b) That new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial and which if introduced and admitted would probably change the judgment.

[11] *United States v. Palanca*, 5 Phil. 269, 271 (1905).

deliberations and voting by the Court in this case. The absence of notation in the *ponencia* that Justice Mendoza had "no part" in the deliberations and voting in this case was purely an oversight and inadvertent omission. The Clerk of Court, Atty. Enriqueta Esguerra-Vidal, had already rectified such error in the Revised Page 75 of our Decision dated September 7, 2010.

IN VIEW OF THE FOREGOING, the motions for reconsideration filed by Lenido Lumanog and Augusto Santos, Rameses de Jesus and Cesar Fortuna are hereby *DENIED WITH FINALITY.*

Let entry of judgment be made in due course.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, and *Perez, JJ.,* concur.

Carpio and *Abad, JJ.*, see dissenting opinion.

Carpio Morales and *Sereno, JJ.*, maintain their dissent.

Nachura and *Mendoza, JJ.*, no part.

DISSENTING OPINION

CARPIO, *J.*:

I reiterate my dissent.

The prosecution in this case gravely failed to discharge its burden of proof of guilt beyond reasonable doubt. Specifically, the prosecution unsuccessfully established the identity of the perpetrators of the crime beyond reasonable doubt. Lamentably, the majority believes otherwise. The majority relies on the highly questionable identification made by the lone eyewitness, Freddie Alejo (Alejo), in convicting the five accused for the murder of Philippine Constabulary Colonel Rolando N. Abadilla (Abadilla). The majority dismally failed to exercise caution in relying on

Alejo's identification, contrary to what the Court emphasized in *People v. Rodrigo*,[1] thus:

> **The greatest care should be taken in considering the identification of the accused especially, when this identification is made by a sole witness and the judgment in the case totally depends on the reliability of the identification.** This level of care and circumspection applies with greater vigor when, as in the present case, the issue goes beyond pure credibility into constitutional dimensions arising from the due process rights of the accused. (Emphasis supplied)

As I earlier pointed out, danger signals abound in Alejo's in-court identification, rendering such identification seriously doubtful. These warnings include (1) a serious discrepancy exists between the identifying witness' original description and the actual description of the accused; (2) there was a limited opportunity on the part of the witness to see the accused before the commission of the crime; (3) a considerable time elapsed between the witness' view of the criminal and his identification of the accused; and (4) several persons committed the crime.

According to Alejo, not one, not two, but six men perpetrated the crime. He saw these six male adults, all complete strangers, for the very first time in a matter of seconds. It is quite unbelievable that Alejo, whose life was threatened by at least one of the suspects, focused his attention on all six suspects, looked at them at the same time, and memorized their faces and features in a very fleeting and extremely stressful moment. In fact, in his sworn statement given before the police investigators, Alejo was able to describe only two suspects. He failed to give any description of the other killers. This highlights Alejo's weak recollection of the crime and its perpetrators even if he is a security guard who is expected to be extra perceptive and vigilant.

If Alejo indeed perfectly memorized the physical appearance of the killers, which the majority believes, nothing stopped him from describing the rest of the suspects when asked by the police investigators "*Ano ba ang itsura ng mga suspect?*"

---

[1] G.R. No. 176159, 11 September 2008, 564 SCRA 584, 597.

Alejo could have readily described the other suspects, which description would have strengthened his subsequent in-court identification of the accused, if indeed they were the suspects Alejo saw murdering Abadilla. However, to repeat, Alejo was able to describe only two suspects, whose remarkable features bore no resemblance with the accused's.

Notwithstanding, during the trial, Alejo easily identified the six accused as Abadilla's murderers. It must be emphasized that prior to his in-court identification, Alejo had surely seen the faces of the accused in newspapers and television, facilitating his identification of the accused during the trial. As I have previously stressed, **Alejo would not have been able to identify the accused in court without the pictures of the accused that were taken by the media.** The media exposure of the accused casts serious doubts on the integrity of Alejo's testimony on the identification of the murderers.

Further, Alejo's in-court identification of the accused Joel de Jesus proceeded from and was influenced by impermissible suggestions in the earlier photographic identification. As a consequence, Alejo's testimony based on such fatally defective identification cannot be considered as proof beyond reasonable doubt of the identity of the perpetrators, warranting Joel's acquittal.

As regards Lumanog, Fortuna, Santos and Rameses, it was Joel, through a coerced confession, who supplied the police investigators with the identities of his supposed cohorts and their whereabouts. The police did not possess any description or prior identification of these accused. To repeat, Joel provided the police, through a coerced confession, with the identities of his supposed co-conspirators and where they could be found.

The inadmissibility of Joel's extrajudicial confession renders its contents, specifically the identity of the supposed killers, unreliable and inadmissible as well. Hence, Alejo's in-court identification of the accused must not be given any weight for to do so is to admit and give probative value to the coerced confession of Joel.

At this juncture, I reemphasize the serious violations committed by the police authorities of accused's constitutional rights. The highly suggestive photographic identification of Joel made by Alejo violated Joel's due process rights under Sections 1 and 14(1), Article III of the Constitution. Meanwhile, the failure of the police to provide Joel with the assistance of counsel during the police line-up, regarded as a part of custodial investigation, violated Section 12(1), Article III of the Constitution. Moreover, torturing Joel to admit his participation in the crime and to provide the identities of his supposed co-conspirators violated his right under Section 12(2), Article III of the Constitution. Also, the police arrested the accused without warrant contrary to Section 2, Article III of the Constitution.

The police's blatant infringement of the accused's constitutional rights and the seriously flawed identification of the accused as the perpetrators of the crime generate sufficient reason to doubt the accused's guilt for the crime charged. Contrary to the majority's view, the prosecution miserably failed to establish the accused's guilt beyond reasonable doubt. The accused are therefore entitled to an acquittal.

ACCORDINGLY, I vote to *GRANT* the motions for reconsideration.

DISSENTING OPINION

ABAD, *J.*:

Upon reading the *ponencia* of Mr. Justice Martin S. Villarama Jr, serious doubts continue to linger on the credibility of the prosecution's sole witness, Freddie Alejo. Still, I find myself unable to sustain the conviction of all the accused.

The Court should not have swallowed Alejo's testimony hook, line and sinker considering that the *ponencia* acknowledged that Alejo received some economic benefit from the Abadilla Family. While it can not be disputed that Alejo was present in the scene of the incident on June 13, 1996, however, the receipt of any form of economic benefit transformed him to a partial

and bias witness since he has something to gain or lose depending upon his testimony. A witness is said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color to his statements, or to suppress or to pervert the truth, or to state what is false.[1] The unbiased mind is also susceptible and can succumb to the pressures brought about by life's realities. There is reason, therefore, to doubt the testimony of Alejo from the very beginning.

Contrary to the *ponencia*'s findings, Alejo's acceptance of these benefits severely tainted his credibility and neither the finding that he did not waiver in his identification of the accused despite rigorous cross-examinations nor the reliance given by the trial court and CA on his testimony will overshadow the fact that he is a biased witness for the prosecution.

It is also unfair how the *ponencia* credited the inexplicable clarity of the identification of the accused by Alejo to his training as a security guard, but did not consider the very same training when he failed to notice and take action on the two men walking to and fro the establishment from more than an hour, among others. Selective consideration of Alejo's training as a security guard to the sequence of events that transpired that day can only invite suspicions as to his credibility.

Evidence, to be believed, must proceed not only from the mouth of a credible witness but must be credible in itself as to hurdle the test of conformity with the knowledge and common experience of mankind.[2] Here, not only is Alejo a biased witness, but also his testimony, in itself, shows earmarks of falsehood as shown in the earlier dissenting opinions.[3]

---

[1] *People v. Vergara*, G.R. No. 186119, October 29, 2009.

[2] *Zapatos v. People of the Philippines*, G.R. Nos. 147814-15, September 16, 2003.

[3] *See* Dissenting Opinions of Mr. Justice Antonio T. Carpio and Mr. Justice Roberto A. Abad in G.R. Nos. 182555, 185123 and 187745, *Lumanog v. People*, September 7, 2010.

Since the prosecution failed to show any credible evidence to implicate all the accused to the murder of Colonel Abadilla, the constitutional presumption of innocence will entitle them to an acquittal regardless of the weakness or strength of their defense.

WHEREFORE, I vote to *GRANT* the motion for reconsideration and acquit all the accused.

THIRD DIVISION

[A.M. No. P-05-2095. February 9, 2011]
(Formerly A.M. OCA IPI No. 05-2085-P)

BENIGNO B. REAS, *complainant, vs.* **CARLOS M. RELACION,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; COMPROMISE AGREEMENTS BETWEEN THE PARTIES DO NOT TERMINATE ADMINISTRATIVE MATTERS.— At the outset, the Court clarifies that the compromise agreement between Reas and Relacion, or the fact that Reas already forgave Relacion, does not necessarily warrant the dismissal of this administrative matter. Three reasons justify the continuation of the administrative matter despite the compromise agreement or the forgiveness. *One*, the Court's disciplinary authority is not dependent on or cannot be frustrated by the private arrangements entered into by the parties; otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, will be undermined. *Two*, public interest is at stake in the conduct and actuations of the officials and employees of the Judiciary. Accordingly, the efforts of the Court in improving the delivery of justice

to the people should not be frustrated and put to naught by any private arrangements between the parties. And, *three*, the Court's interest in the affairs of the Judiciary is a paramount concern that bows to no limits.

2. ID.; ID.; COURT PERSONNEL; SIMPLE MISCONDUCT; RESPONDENT'S FAILURE TO IMMEDIATELY RETURN THE SALARY CHECK UPON REALIZING THAT THE SAME WAS NOT HIS IS IMPROPER AND CONSTITUTED MISCONDUCT.— The *Code of Conduct for Court Personnel* requires that the officials and employees of the Judiciary serve as sentinels of justice, and declares that any act of impropriety on their part affects the dignity of the Judiciary and the people's faith in the Judiciary. Thus, the court personnel must exhibit the highest sense of honesty and integrity not only in the performance of their official duties, but also in their private dealings with their co-employees and with the public. Their professional and personal conduct must be free from any whiff of impropriety. Here, there is no sufficient proof showing that Relacion intentionally took Reas' salary check from the Cooperative. Lucino Q. Garcia, an employee of the Cooperative, admitted in his certification dated October 9, 2004 that he had "inadvertently surrendered" Reas' salary check to Relacion when the latter had demanded his own salary check "to a point of violence." Even so, Relacion could not be exculpated because he did not immediately return the salary check either to Reas or to the Cooperative upon realizing that the salary check handed to him was not his. Moreover, Relacion's excuse for not returning Reas' check was lame and implausible. x x x Relacion's failure to immediately return Reas' salary check was improper and constituted misconduct. According to *Civil Service Commission v. Ledesma*, misconduct is a transgression of some established rule of action, an unlawful behavior, or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or disregard of long-standing rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple. That Relacion did not maliciously or deliberately take Reas' salary check rendered him liable only for simple misconduct.

3. ID.; ID.; ID.; ID.; PENALTY FOR SIMPLE MISCONDUCT.— Considering that the misconduct was Relacion's first offense, the penalty imposable on him is suspension for one month and one day to six months. However, we should note that, *firstly*, Reas already forgave him and Relacion indemnified Reas in the amount of ₱100.00, as evidenced by their compromise agreement; *secondly*, the amount of the salary check was only ₱4,280.00 and was already reimbursed to Reas; and, *lastly*, Relacion was contemplating on retiring due to a lingering illness. The penalty of suspension would be too severe under the circumstances. Instead, the imposition of a fine of ₱5,000.00 suffices, and accords with the rulings involving simple misconduct committed by court employees, like those in *Guillen v. Constantino,* and in *Office of the Court Administrator v. Veneracion.*

APPEARANCES OF COUNSEL

Lawrence L. Fernandez for complainant.
Kintanar & Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Every official or employee of the Judiciary is ever accountable in the performance of official duties as well as in dealing with others.

On October 14, 2004, Benigno B. Reas, Sheriff IV of the Regional Trial Court (RTC), Branch 23, in Cebu City charged in the Office of the Court Administrator (OCA) Carlos M. Relacion, Clerk III of the RTC, Branch 15, in Cebu City with gross dishonesty and grave misconduct.[1]

Antecedents

Reas alleged in his *complaint* that by prior arrangement, the Clerk of Court of the RTC (COC) delivered to the Cebu CFI

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

Community Cooperative (Cooperative) the salary checks of court personnel with outstanding obligations with the Cooperative to pay for their loans; that his salary check for the period of September 1 to 15, 2004 in the amount of ₱4,280.00 was delivered by the COC to the Cooperative for that purpose; that when he asked for the receipt corresponding to his payment, the Cooperative informed him that his salary check had been "inadvertently surrendered" to Relacion after the latter had harassed the Cooperative "to a point of violence" to release his (Relacion) own check for that period; that Relacion did not return the salary check to the Cooperative despite repeated demands; that when he confronted Relacion, the latter admitted taking his salary check; that Relacion mauled him when he refused Relacion's offer to pay his salary check with Relacion's Judicial Development Fund (JDF) check; and that it was only after the Cooperative confronted Relacion that the latter paid his salary check.[2]

In his *answer* dated February 5, 2005,[3] Relacion denied harassing or threatening the employees of the Cooperative, explaining that on September 8, 2004, he went to the COC to get his own salary check for the first half of September 2004; that while a COC staffmember was distributing the salary checks to the court personnel in the presence of a Cooperative representative, he expressed his intention to get his own salary check because he needed the money; that the Cooperative's representative agreed to his request; and that after signing the payroll, the Cooperative's representative handed to him a salary check.

What happened next are best narrated by Relacion, to wit:

5. x x x Upon receipt of the check and thinking that it was his check, respondent who was in a hurry, immediately folded the check without verifying the check, the payee and the amount thereof. Respondent put the said check in his pocket. He proceeded to the money changer for encashment of said postdated check. There he

---

[2] *Ibid*.

[3] *Id*., pp. 13-19.

signed the dorsal side of the check. x x x He received the cash as proceeds thereof and immediately placed the cash already stapled and without counting the money to his pocket. When he arrived at his house, he got the money still stapled from his pocket and gave the money to his wife. She was surprised because the net take home pay of herein respondent as first half salary was only ₱1,575.00. Respondent counted the money and it was ₱4,240.00. Believing that there was overpayment, herein respondent immediately returned to the money changer to verify why there was overpayment but the money changer was no longer there since accordingly she was somewhere in the capitol. Herein respondent during that point in time still was not aware that the check that he endorsed and encashed to the money changer belonged to the complainant. x x x

6. On the following day he went to the Cooperative and was informed that the check that was given to him belonged to the complainant. That was the first time that this respondent knew about it. Thereafter, herein respondent prepared a letter addressed to the Cooperative requesting the manager to give the respondent his check. x x x The intention of the respondent was to immediately settle the problem, that is, by taking back the check of the complainant from the money changer and to give it to the complainant or by paying the complainant the equivalent value of his check which was ₱4,280.00. Herein respondent waited for the action and approval of the Cooperative but despite said letter-request x x x the check of herein respondent was not given to him by the Cooperative. He tried his best to immediately settle the problem. Respondent did not even work on that very day that he came to know of the problem just to immediately address said problem and just to follow it up with the Cooperative and with the money changer.[4]

Relacion further narrated that he informed Reas that he would pay him when they met at the bundy clock section; that Reas then punched him but missed; that he thus dared Reas to a fistfight outside the building, but the latter refused his dare; that both of them then entered the office of the COC; that while they both sat inside said office, Reas stood up and punched him on the left side of his neck; and that he retaliated by punching Reas.

---

[4] *Id*., pp. 15-16.

In his *reply* dated February 17, 2005,[5] Reas denied punching Relacion, clarifying that he requested Relacion to apply the latter's JDF check to his obligations with the Cooperative, and to add some cash to complete the amount of ₱4,280.00; that his request caused Relacion to flare up and to shout invectives at him; that to avoid scandal, he asked Relacion to go with him to the office of the COC; that when they were in the office of the COC, Relacion punched him; and that the COC, Atty. Jeoffrey S. Aquino, restrained Relacion from inflicting more harm on him.

Relacion's *rejoinder* of February 28, 2005 reiterated his answer.[6]

On October 7, 2005, the OCA submitted its report,[7] recommending to the Court that the matter be re-docketed as a regular administrative matter to be referred to the Executive Judge of the RTC in Cebu City for appropriate action.

The Court approved and adopted OCA's recommendation on December 5, 2005.[8]

On February 28, 2007, RTC Executive Judge Simeon P. Dumdum, Jr. (Judge Dumdum, Jr.) informed the Court that the parties had entered into a compromise agreement calling for the dismissal of the administrative matter; and that the compromise agreement had been reached after Relacion had apologized to Reas, and paid the latter the amount of ₱100.00. Judge Dumdum, Jr. recommended to the Court the approval of the compromise agreement and the dismissal of the administrative matter.[9]

---

[5] *Id*., pp. 26-32.

[6] *Id*., pp. 33-40.

[7] *Id*., pp. 42-44.

[8] *Id*., pp. 45-47.

[9] *Id*., pp. 49-52.

On June 13, 2007, the Court noted the recommendation of RTC Executive Judge Dumdum, Jr., and referred the administrative matter to the OCA for evaluation, report and recommendation.[10]

On November 16, 2007, the OCA issued a memorandum,[11] recommending to the Court that Relacion be fined in the amount of ₱2,000.00 for simple misconduct.

The Court noted the OCA's report and recommendation on January 21, 2008.[12]

On October 16, 2009, Relacion, through a letter-request,[13] implored the Court to approve the compromise agreement and to dismiss the administrative matter.

On October 28, 2009, the Court noted the letter-request and required the parties to manifest if they were submitting the case for decision on the basis of the records and pleadings filed.[14]

The parties later manifested their submission of the administrative matter for decision,[15] which manifestation the Court noted on January 20, 2010 and February 22, 2010.

On June 21, 2010, the administrative matter was transferred to the Court's Third Division for appropriate disposition.[16] Thereafter, on September 15, 2010, Relacion wrote the Court requesting for the resolution of the administrative matter before he would retire in November 2010.[17] Nonetheless, we note that the retirement of Relacion was not confirmed by the OCA as of todate.

---

[10] *Id*., pp. 61-63.

[11] *Id*., pp. 64-70.

[12] *Id*., p. 72.

[13] *Id*., pp. 74-75.

[14] *Id*., pp. 80-81.

[15] *Id*., pp. 82-85 and 90-99.

[16] *Id*., p. 104.

[17] *Id*., pp. 105-106.

Ruling

After reviewing the records, we hold that Relacion was guilty of simple misconduct, but we increase the recommended fine of ₱2,000.00 to ₱5,000.00.

I
Compromise agreements between parties do not terminate administrative matters

At the outset, the Court clarifies that the compromise agreement between Reas and Relacion, or the fact that Reas already forgave Relacion, does not necessarily warrant the dismissal of this administrative matter.[18] Three reasons justify the continuation of the administrative matter despite the compromise agreement or the forgiveness. *One*, the Court's disciplinary authority is not dependent on or cannot be frustrated by the private arrangements entered into by the parties; otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, will be undermined.[19] *Two*, public interest is at stake in the conduct and actuations of the officials and employees of the Judiciary. Accordingly, the efforts of the Court in improving the delivery of justice to the people should not be frustrated and put to naught by any private arrangements between the parties.[20] And, *three*, the Court's interest in the affairs of the Judiciary is a paramount concern that bows to no limits.[21]

---

[18] *Bulado v. Tiu, Jr.*, A.M. No. P-96-1211, March 31, 2000, 329 SCRA 308, 313.

[19] *Teodosio v. Carpio*, A.M. No. MTJ-02-1416, February 27, 2004, 424 SCRA 56, 60.

[20] *Enojas, Jr. v. Gacott, Jr.*, A.M. No. RTJ-99-1513, January 19, 2000, 322 SCRA 272, 279.

[21] *De Joya v. Diaz*, A.M. No. MTJ-02-1450, September 23, 2003, 411 SCRA 408, 410.

II
Respondent Relacion was guilty of Simple Misconduct

The *Code of Conduct for Court Personnel* requires that the officials and employees of the Judiciary serve as sentinels of justice, and declares that any act of impropriety on their part affects the dignity of the Judiciary and the people's faith in the Judiciary.[22] Thus, the court personnel must exhibit the highest sense of honesty and integrity not only in the performance of their official duties, but also in their private dealings with their co-employees and with the public.[23] Their professional and personal conduct must be free from any whiff of impropriety.[24]

Here, there is no sufficient proof showing that Relacion intentionally took Reas' salary check from the Cooperative. Lucino Q. Garcia, an employee of the Cooperative, admitted in his certification dated October 9, 2004 that he had "inadvertently surrendered" Reas' salary check to Relacion when the latter had demanded his own salary check "to a point of violence." Even so, Relacion could not be exculpated because he did not immediately return the salary check either to Reas or to the Cooperative upon realizing that the salary check handed to him was not his.

Moreover, Relacion's excuse for not returning Reas' check was lame and implausible. In this regard, we adopt the OCA's findings and observations, *viz*:

> His claim that he received and encashed complainant's salary check without bothering to look at the face of the check and without counting the money given him by the money changer in exchange for the check does not inspire belief. One does not simply fold and

---

[22] *Civil Service Commission v. Dasco,* A.M. No. P-07-2335, September 22, 2008, 566 SCRA 114, 122.

[23] *Id.;* also, *Re: Disciplinary Action Against Antonio Lamano, Jr. of the Judgment Division, Supreme Court,* A.M. No. 99-10-10-SC, November 29, 1999, 319 SCRA 350, 352.

[24] *Albano-Madrid v. Apolonio,* A.M. No. P-01-1517, February 7, 2003, 397 SCRA 120, 125.

pocket a check after receiving it from someone; it is usually examined to confirm the payee and its amount. At its encashment, the payee ensures that the right amount is given him/her by counting the money before leaving the money changer.

The incredulity of respondent's narration was all the more underscored by his claim that immediately after he was told by his wife that the money was more than the amount of his expected salary, he allegedly went back to the money changer to verify if there was an overpayment, but the money changer was no longer around. It was only when he went to the Cooperative the following day that he learned that the salary check he received and encashed belonged to complainant. Thereafter, he allegedly tried his best to settle the problem with complainant.

If, indeed, he were sincere and determined to settle the problem with complainant, he could have simply turned over to the Cooperative the proceeds of the complainant's salary check as he knew that it was intended for the payment of the loan of complainant with the Cooperative. Based on respondent's narration of events, the money given in exchange for the check was still intact at the time of the discovery of the erroneous giving of complainant's salary check to him. From the time respondent received the money from the money changer, it remained "stapled" up to the time he handed it to his wife. **Being made aware that the money could not be his, the prudent and most logical thing that he should have done was to turn over the money either to the Cooperative or to the complainant, and to request the Cooperative to release his own salary check.**

That respondent tried his best to settle the problem with complainant is further belied by his admission that he had "a chance" to meet with complainant at the "Bundy Clock section." Obviously, that meeting was not sought for by respondent, but was merely accidental. It is of no moment who between complainant and respondent started the fight, or who was telling the truth. The bottom line was the intentional failure of respondent to immediately return the money belonging to complainant precipitated that fight.

While there is no direct evidence showing that respondent used the money intended for complainant for his own use, the above circumstances point towards his administrative culpability.

Relacion's failure to immediately return Reas' salary check was improper and constituted misconduct. According to *Civil Service Commission v. Ledesma*, [25] misconduct is a transgression of some established rule of action, an unlawful behavior, or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or disregard of long-standing rules, which must be established by substantial evidence. Otherwise, the misconduct is only simple.[26] That Relacion did not maliciously or deliberately take Reas' salary check rendered him liable only for simple misconduct.

Under Section 52 (B) (2), Rule IV, of *the Revised Uniform Rules On Administrative Cases In the Civil Service*, simple misconduct is a less grave offense with a penalty ranging from suspension for one month and one day to six months for the first offense, and dismissal for the second offense, thus:

RULE IV – PENALTIES

Section 52. Classification of Offenses. – Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

x x x x x x x x x

B. The following are less grave offenses with the corresponding penalties:

x x x x x x x x x

2. Simple Misconduct

1st Offense – Suspension 1 mo. 1 day to 6 mos.
2nd Offense – Dismissal

x x x x x x x x x

---

[25] G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

[26] *Ibid*.

Considering that the misconduct was Relacion's first offense, the penalty imposable on him is suspension for one month and one day to six months. However, we should note that, *firstly*, Reas already forgave him and Relacion indemnified Reas in the amount of ₱100.00, as evidenced by their compromise agreement; *secondly*, the amount of the salary check was only ₱4,280.00 and was already reimbursed to Reas; and, *lastly*, Relacion was contemplating on retiring due to a lingering illness. The penalty of suspension would be too severe under the circumstances. Instead, the imposition of a fine of ₱5,000.00 suffices, and accords with the rulings involving simple misconduct committed by court employees, like those in *Guillen v. Constantino*,[27] and in *Office of the Court Administrator v. Veneracion*.[28]

WHEREFORE, we pronounce Carlos M. Relacion, Clerk III, of the Regional Trial Court, Branch 15, in Cebu City guilty of simple misconduct, and order him to pay a fine of ₱5,000.00, with a stern warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

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

---

[27] A.M. No. SB-95-6-P, December 10, 1997, 282 SCRA 583.

[28] A.M. No. RTJ-99-1432, June 21, 2000, 334 SCRA 145 (involving a Branch Clerk of Court found guilty of simple misconduct in office).

THIRD DIVISION

[A.M. No. MTJ-08-1714. February 9, 2011]
(Formerly A.M. OCA IPI No. 08-2016-MTJ)

DANIEL G. SEVILLA, *complainant, vs.* **JUDGE FRANCISCO S. LINDO, METROPOLITAN TRIAL COURT, BRANCH 55, MALABON CITY**, *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES GROSS MISCONDUCT; A TRIAL JUDGE WHO ALLOWS, OR ABETS, OR TOLERATES NUMEROUS UNREASONABLE POSTPONEMENTS OF THE TRIAL, WHETHER OUT OF INEFFICIENCY OR INDOLENCE, OR OUT OF BIAS TOWARDS A PARTY, IS ADMINISTRATIVELY LIABLE.— Although the postponement of a hearing in a civil or criminal case may at times be unavoidable, the Court disallows undue or unnecessary postponements of court hearings, simply because they cause unreasonable delays in the administration of justice and, thus, undermine the people's faith in the Judiciary, aside from aggravating the financial and emotional burdens of the litigants. For this reason, the Court has enjoined that postponements and resettings should be allowed only upon meritorious grounds, and has consistently reminded all trial judges to adopt a firm policy *against* improvident postponements. The strict judicial policy on postponements applies with more force and greater reason to prosecutions involving violations of BP 22, whose prompt resolution has been ensured by their being now covered by the *Rule on Summary Procedure*. The Court has pronounced that the *Rule on Summary Procedure* was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases. Yet, Judge Lindo postponed five hearings for lack of material time without bothering to state the specific causes why his court lacked material time. He also reset four hearings supposedly upon the agreement of the parties, which the complainant credibly denied because that was prejudicial to his interest. He even cancelled the hearing of May 25, 2007 on the ground that he had to file on May 28,

2007 his application for compulsory retirement and leave of absence until July 24, 2007, and set the next hearing on August 17, 2007, when he could have set the hearing sooner either on May 26 or May 27 in view of his impending long period of absence. Considering that we cannot discern any rationality for his actions in the handling of Criminal Case No. J-L00-4260, a simple BP 22 case involving only ₱2,000.00, we can only adjudge such actuations as smacking either of indolence and utter inefficiency, or of bias, if not hostility, towards Sevilla, or both.

2. ID.; ID.; ID.; THAT RESPONDENT JUDGE'S CONDUCT PROCEEDED FROM HIS BIAS TOWARDS THE ACCUSED RENDERED HIS ACTS AND OMISSIONS AS GROSS MISCONDUCT.— Judge Lindo cited the absence of the public prosecutor in one hearing and of the PAO lawyer in two hearings as justifications for the cancellation of the hearings. Such excuses for delay were not credible, however, for he could have summoned a relief prosecutor and a relief PAO attorney, or made arrangements for their attendance pursuant to the Court's Circular 1-89 (dated January 19, 1989) to avoid unnecessary postponements. Indeed, Circular 1-89 relevantly provided: 2. The Presiding Judge shall make arrangements with the prosecutor and the CLAO attorney so that a relief prosecutor and CLAO attorney are always available in case the regular prosecutor and CLAO attorney are absent; As can be seen, Judge Lindo made or allowed too many unreasonable postponements that inevitably delayed the proceedings and prevented the prompt disposition of Criminal Case No. J-L00-4260 out of manifest bias in favor of the accused, to the prejudice of Sevilla as the complainant in Criminal Case No. J-L00-4260. Thus, he flagrantly violated the letter and spirit both of Rule 1.02 of the *Code of Judicial Conduct*, which enjoined all judges to administer justice *impartially* and *without delay*; and of Canon 6 of the *Canons of Judicial Ethics*, which required him as a trial judge "to be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied." That his conduct proceeded from his bias towards the accused rendered his acts and omissions as gross misconduct. It is settled that the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or disregard of

long-standing rules, which must be established by substantial evidence; otherwise, the misconduct is only simple.

D E C I S I O N

BERSAMIN, *J.*:

A trial judge who allows, or abets, or tolerates numerous unreasonable postponements of the trial, whether out of inefficiency or indolence, or out of bias towards a party, is administratively liable.

Antecedents

On July 4, 2007, Daniel G. Sevilla charged Hon. Francisco S. Lindo, then the Presiding Judge of the Metropolitan Trial Court (MeTC), Branch 55, in Malabon City with delay in the disposition of Criminal Case No. J-L00-4260 (a prosecution for violation of *Batas Pambansa Bilang* 22 [BP 22] entitled *People v. Nestor Leynes*).

Sevilla alleged that he was the private complainant in Criminal Case No. J-L00-4260, which was filed on June 10, 2003, and raffled to Branch 55, presided by Judge Lindo; that he testified once in the case, but his testimony pertained only to his personal circumstances; that after he gave such partial testimony, Judge Lindo adjourned the session for lack of material time, and persistently reset the subsequent hearings for lack of material time; that Judge Lindo's indifference was designed to force him to accept the offer of an amicable settlement made by the accused; and that Judge Lindo's coercion was manifested in open court and in his chamber by telling him in the presence of the accused: *Mr. Sevilla, ang hirap mo namang pakiusapan. Konting pera lang yan. Bahala ka maghintay sa wala.*

Sevilla asserted that Judge Lindo thereby violated Rule 1.01, Canon 1 of the *Code of Judicial Conduct,* which requires that a judge should administer justice impartially and without delay; that Judge Lindo also violated Section 1, Rule 135 of the *Rules of Court*, which mandates that justice be impartially administered without unnecessary delay; that Judge Lindo's unreasonable

resetting of the hearings 12 times rendered inconsequential his right to the speedy disposition of his case; and that such resettings were made upon the instance of Judge Lindo, not upon motion of the parties.

In his *comment* dated July 26, 2007,[1] Judge Lindo refuted the charge, claiming that the postponements were upon valid grounds; that he set the initial trial on August 17, 2004, but due to Sevilla's absence on said date, he ordered the provisional dismissal of the case upon motion of the Defense and with the express conformity of the accused and the public prosecutor; that in the interest of fairness, he set aside the provisional dismissal and reinstated the case upon motion of Sevilla; and that he set the initial trial on October 19, 2004, but the hearing was reset on December 7, 2004, and was further reset on February 1, 2005 due to his official leave of absence.

Judge Lindo cited the other dates of hearings and the corresponding reasons for their postponement, as follows:

a) March 4, 2005, April 26, 2005, October 4, 2005, November 29, 2005, and August 2, 2006 – agreement of the parties;

b) May 20, 2005 – absence of the public prosecutor;

c) August 12, 2005 – docket inventory;

d) January 10, 2006 – absence of the complainant;

e) March 14, 2006 – lack of material time due to the continuation of the trial of two other criminal cases that preceded Criminal Case No. J-L00-4260;

f) May 16, 2005 and January 12, 2007 – absence of the lawyer from the Public Attorney's Office (PAO); and

g) September 1, 2006 and November 24, 2006 – lack of material time due to the continuation of the trial of two criminal cases that preceded Criminal Case No. J-L00-4260.

---

[1] *Rollo*, pp. 13-22.

Sevilla submitted his *reply* on August 2, 2007,[2] clarifying that he did not agree with Judge Lindo's orders of postponement but was only forced to comply with them, and that he affixed his signature to the minutes of hearings only as proof of his personal presence at the hearings, not as a ratification of what transpired.

On May 20, 2008, the Office of the Court Administrator (OCA) submitted its report,[3] which included the following evaluation and recommendation:

> EVALUATION**:** While it may appear that the reasons or justifications proffered by respondent Judge seem acceptable, a close scrutiny of the results of the judicial audit conducted by the Office of the Court Administrator (OCA) on July 12 to 19, 2007 in the Metropolitan Trial Court, Branch 55, Malabon City, of which Respondent was the Presiding Judge until he was compulsorily retired from the service on July 24, 2007, revealed that quite a number of cases that have been submitted for decision remained unacted upon. Twenty-three cases, seventeen of which were "undecided" beyond the 90-day day reglementary period, seven cases with pending incident/motion submitted for resolution which have been unresolved, 6 of which beyond the reglementary period. There were twenty-one cases with no action taken since their filing in court.
>
> The judicial audit also revealed the following findings:
>
> (1) there was no proper recordkeeping;
> (2) they had no updated inventory of cases;
> (3) there were twenty-one (21) inherited cases inside the chambers of Judge Lindo which were submitted for decision way back in the 80's. There were not reflected in the docket inventories submitted to OCA but these were reportedly just found in 2000 while the branch staff were relocating to another place following a fire that gutted their courthouse in July 2005 and were not properly turned over to him;
> (4) case folders of one hundred seventy-five (175) criminal cases were not presented to the audit team for examination;

[2] *Id.*, pp. 78-83.

[3] *Id.*, pp. 1-4.

(5) two hundred seventy (270) criminal cases were not reported/ reflected in the docket inventory that was subsequently updated up to 2007;

If the telling results of the judicial audit were not an irrefragably clear manifestation of inefficiency and ineffectiveness of the court's branch, more particularly its presiding judge, how could the herein respondent Judge convincingly argue that there was indeed no delay in the disposition of the case in respect of Criminal Case No. J-L00-4260. This Office, after a circumspect evaluation of the records at hand, together with the report on the judicial audit conducted at the MeTC, Branch 55, Malabon City, cannot help finding for the complainant and deems it reasonable to mete upon the respondent Judge a fine of TWENTY-ONE THOUSAND PESOS (₱21,000.00) to be deducted from his retirement benefits.

RECOMMENDATION: Respectfully submitted for the consideration of the Honorable Court is our recommendation that the instant complaint be re-docketed as a regular administrative matter and respondent Judge be found GUILTY of Delay in the Disposition of Cases tantamount to Inefficiency and Incompetence in the Performance of Official Duties and be meted a fine of ₱21,000.00 to be deducted from the retirement benefits of the herein respondent Judge who was compulsorily retired from the service effective July 24, 2007.

On August 4, 2008, the Court noted the *complaint*, *comment*, and *reply*, and re-docketed the case as a regular administrative matter.[4]

On October 22, 2008, Judge Lindo's *rejoinder* was noted.[5]

Thereafter, Judge Lindo moved for the early resolution of the case and for the release of his retirement benefits.[6] The Court noted his motion on January 12, 2009.[7]

---

[4] *Id.*, pp. 85-86.

[5] *Id.*, pp. 88-91.

[6] *Id.*, pp. 101-103.

[7] *Id.*, p. 104.

On February 17, 2009, Judge Lindo filed an *ex parte manifestation*,[8] stating that he was involved in A.M. No. 08-3-73-MeTC entitled *Re: Report on the Judicial Audit Conducted at the Metropolitan Trial Court, Branch 55, Malabon City*, another administrative case; that the Court, in the resolution dated April 22, 2008, ordered the release of his retirement benefits subject to the retention of ₱100,000.00 and to clearance requirements; and that the OCA's Docket Division refused to issue a clearance due to the pendency of this case; and that the ₱100,000.00 retention be considered as sufficient for both A.M. No. 08-3-73-METC and this case.

As the OCA's report stated, Judge Lindo mandatorily retired from the service on July 24, 2007.

On June 17, 2009, the Court ordered the release of Judge Lindo's retirement benefits subject to the ₱100,000.00 retention.[9]

On July 31, 2009, the Court promulgated a decision in A.M. No. 08-3-73-MeTC,[10] disposing:

> WHEREFORE, retired Judge Francisco S. Lindo, former Presiding Judge of the Metropolitan Trial Court of Malabon City, Branch 55, is found GUILTY of simple misconduct and undue delay in rendering a decision. He is FINED in the amount of Twenty Thousand Pesos (₱20,000.00) in accordance with Section 11, Rule 140 of the Revised Rules of Court, as amended, to be deducted from the One Hundred Thousand Pesos (₱100,000,00.) we ordered withheld from his retirement benefits pursuant to our Resolution dated April 22, 2008. The Chief of the Financial Management Office, Office of the Court Administrator is DIRECTED to immediately release to retired Judge Francisco S. Lindo the remaining Eighty Thousand Pesos (₱80,000.00).

---

[8] *Id*., pp. 105-112.

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

[10] Penned by Associate Justice Leonardo A. Quisumbing (retired), reported in 594 SCRA 492.

By resolution dated July 19, 2010,[11] this case was transferred to the Third Division for resolution.

Issue

The only issue is whether or not retired Judge Lindo was administratively liable for the numerous postponements in Criminal Case No. J-L00-4260.

Ruling

We agree with and adopt the report and recommendation of the OCA that Judge Lindo be held liable for delay in the disposition of his cases that was tantamount to inefficiency and incompetence in the performance of his official duties, and that he be meted a fine of ₱21,000.00 to be deducted from his retirement benefits due to his compulsory retirement from the Judiciary effective July 24, 2007. We point out that the findings of the OCA were based on the records of Judge Lindo's Branch that the OCA subjected to a judicial audit in anticipation of his mandatory retirement.

Although the postponement of a hearing in a civil or criminal case may at times be unavoidable, the Court disallows undue or unnecessary postponements of court hearings, simply because they cause unreasonable delays in the administration of justice and, thus, undermine the people's faith in the Judiciary,[12] aside from aggravating the financial and emotional burdens of the litigants. For this reason, the Court has enjoined that postponements and resettings should be allowed only upon meritorious grounds,[13] and has consistently reminded all trial judges to adopt a firm policy *against* improvident postponements.[14]

---

[11] *Rollo*, p. 114.

[12] *Sevilla v. Quintin*, A.M. No. MTJ-05-1603, October 25, 2005, 474 SCRA 10, 17-18.

[13] *Producers Bank of the Philippines v. Court of Appeals*, G.R. No. 125468, October 9, 2000, 342 SCRA 327, 334.

[14] *Re: Report on the Judicial Audit Conducted in the RTC of Kidapawan, Brs. 17 and 23, Kabacan, Brs. 16 & 17, North Cotobato*, AM No. 96-5-169-RTC, May 9, 2003, 403 SCRA 130, 133; *Gallego v. Doronila*, A.M.

The strict judicial policy on postponements applies with more force and greater reason to prosecutions involving violations of BP 22, whose prompt resolution has been ensured by their being now covered by the *Rule on Summary Procedure*. The Court has pronounced that the *Rule on Summary Procedure* was precisely adopted to promote a more expeditious and inexpensive determination of cases, and to enforce the constitutional rights of litigants to the speedy disposition of cases.[15]

Yet, Judge Lindo postponed five hearings for lack of material time without bothering to state the specific causes why his court lacked material time. He also reset four hearings supposedly upon the agreement of the parties, which the complainant credibly denied because that was prejudicial to his interest. He even cancelled the hearing of May 25, 2007 on the ground that he had to file on May 28, 2007 his application for compulsory retirement and leave of absence until July 24, 2007, and set the next hearing on August 17, 2007, when he could have set the hearing sooner either on May 26 or May 27 in view of his impending long period of absence. Considering that we cannot discern any rationality for his actions in the handling of Criminal Case No. J-L00-4260, a simple BP 22 case involving only ₱2,000.00, we can only adjudge such actuations as smacking either of indolence and utter inefficiency, or of bias, if not hostility, towards Sevilla, or both.

Judge Lindo cited the absence of the public prosecutor in one hearing and of the PAO lawyer in two hearings as justifications for the cancellation of the hearings. Such excuses for delay were not credible, however, for he could have summoned a relief prosecutor and a relief PAO attorney, or made arrangements for their attendance pursuant to the Court's Circular 1-89 (dated January 19, 1989) to avoid unnecessary postponements. Indeed, Circular 1-89 relevantly provided:

No. MTJ-00-1278, June 26, 2000, 334 SCRA 339,345; *Hernandez v. De Guzman*, A.M. No. RTJ-93-1064, January 22, 1996, 252 SCRA 64, 67.

[15] *Bernaldez v. Avelino*, A.M. No. MTJ-07-1672, July 9, 2007, 527 SCRA 11, 20; *Gallego v. Doronila*, A.M. No. MTJ-00-1278, June 26, 2000, 334 SCRA 339,345.

2. The Presiding Judge shall make arrangements with the prosecutor and the CLAO attorney so that a relief prosecutor and CLAO attorney are always available in case the regular prosecutor and CLAO attorney are absent;[16]

As can be seen, Judge Lindo made or allowed too many unreasonable postponements that inevitably delayed the proceedings and prevented the prompt disposition of Criminal Case No. J-L00-4260 out of manifest bias in favor of the accused, to the prejudice of Sevilla as the complainant in Criminal Case No. J-L00-4260. Thus, he flagrantly violated the letter and spirit both of Rule 1.02 of the *Code of Judicial Conduct*, which enjoined all judges to administer justice *impartially* and *without delay*; and of Canon 6 of the *Canons of Judicial Ethics*, which required him as a trial judge "to be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied."

That his conduct proceeded from his bias towards the accused rendered his acts and omissions as gross misconduct. It is settled that the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or disregard of long-standing rules, which must be established by substantial evidence; otherwise, the misconduct is only simple.[17]

Gross misconduct consisting in violations of the *Code of Judicial Conduct* is a serious charge under Section 8 of Rule 140, *Rules of Court*, to wit:

Section 8. *Serious charges.* – Serious charges include:

x x x x x x x x x

3. Gross misconduct constituting violations of the Code of Judicial Conduct;

x x x x x x x x x

---

[16] See also *Matias v. Plan*, A.M. No. MTJ-98-1159, August 3, 1998, 293 SCRA 532, 537.

[17] *Civil Service Commission v. Ledesma*, G.R. No. 154521, September 30, 2005, 471 SCRA 589, 603.

and is punished under Section 11 of Rule 140, *Rules of Court*, thuswise:

> Section 11. *Sanctions.* – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:
>
> 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
>
> 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
>
> 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00
>
> x x x x x x x x x

With Judge Lindo having earlier retired, only the third sanction of fine can be a practical sanction. In *Hernandez v. De Guzman*,[18] the Court imposed a fine of ₱5,000.00 on the respondent judge for allowing frequent and groundless postponements of the hearings in a criminal case. Similarly, in *Arquero v. Mendoza*,[19] the Court meted a fine of ₱5,000.00 on the respondent judge for allowing unreasonable delay in the proceedings of prosecutions for a violation of BP 22. However, the recommendation of the OCA for a fine in the amount of ₱21,000.00, to be deducted from his retirement benefits, is fully warranted, considering that Judge Lindo was previously fined for undue delay in rendering a decision in A.M. No. 08-3-73-METC.[20]

WHEREFORE, we find and declare respondent retired Judge Francisco S. Lindo guilty of grave misconduct, and, accordingly, punish him with a fine of ₱21,000.00, to be deducted from his retirement benefits.

---

[18] A.M. No. RTJ-93-1064, January 22, 1996, 252 SCRA 64, 67.

[19] A.M. No. MTJ-99-1209, September 30, 1999, 315 SCRA 503, 507.

[20] *Supra*, note 10.

The incumbent Presiding Judge of the Metropolitan Trial Court, Branch 55, in Malabon City is directed to proceed with the trial of Criminal Case No. J-L00-4260 with dispatch, and to decide it within the required period if the case has not yet been resolved.

SO ORDERED.

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

SECOND DIVISION

[A.M. No. MTJ-09-1737. February 9, 2011]

LYDELLE L. CONQUILLA, *complainant, vs.* **JUDGE LAURO G. BERNARDO, Municipal Trial Court, Bocaue, Bulacan,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; MUNICIPAL TRIAL COURT JUDGES ARE NO LONGER AUTHORIZED TO CONDUCT PRELIMINARY INVESTIGATION.— Respondent judge makes it appear that he merely conducted a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest. However, the records of the case clearly show that respondent judge indeed conducted a preliminary investigation on 8 July 2008. After finding probable cause to hold complainant for trial for the crime of direct assault, respondent judge then issued a warrant for her arrest. That respondent judge conducted a preliminary investigation and not just a preliminary examination to determine existence of probable cause for the issuance of

a warrant of arrest is evident in his Order dated 8 July 2008. x x x Furthermore, after complainant posted bail on 10 July 2008, respondent judge then issued an Order dated 10 July 2008, ordering the complainant's release and setting the case for her arraignment on 3 September 2008. The conduct of preliminary investigation by respondent judge was in direct contravention of A.M. No. 05-8-26-SC, which took effect on 3 October 2005, amending Rules 112 and 114 of the Revised Rules on Criminal Procedure by removing the conduct of preliminary investigation from judges of the first level courts. Thus, under Section 2 of Rule 112, only the following officers are authorized to conduct preliminary investigations: (a) Provincial or City Prosecutors and their assistants; (b) National and Regional State Prosecutors; and (c) Other officers as may be authorized by law. Furthermore, Section 5 of Rule 112 provides: SEC. 5. *When warrant of arrest may issue*. — x x x (b) *By the Municipal Trial Court*. — **When required pursuant to the second paragraph of Section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court SHALL be conducted by the prosecutor.** The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section. Clearly, MTC judges are no longer authorized to conduct preliminary investigation.

2. ID.; ID.; ID.; SINCE THE OFFENSE CHARGED AGAINST COMPLAINANT REQUIRES THE CONDUCT OF PRELIMINARY INVESTIGATION, IT WAS INCUMBENT UPON RESPONDENT JUDGE TO FORWARD THE RECORDS OF THE CASE TO THE OFFICE OF THE PROVINCIAL PROSECUTOR FOR PRELIMINARY INVESTIGATION, INSTEAD OF CONDUCTING THE PRELIMINARY INVESTIGATION HIMSELF.— The crime charged against complainant was direct assault against a public school teacher, who is a person in authority under Article 1523 of the Revised Penal Code. Under Article 148 of the Revised Penal Code, when the assault is committed against a person in authority while engaged in the performance of his official duties or on the occasion of such performance, the imposable penalty is *prision correccional* in its medium and maximum periods.

The duration of the penalty of *prision correccional* in its medium and maximum periods is 2 years, 4 months and 1 day to 6 years. Thus, the offense charged against complainant requires the conduct of preliminary investigation as provided under Section 1 of Rule 112 of the Rules of Court, which reads: SECTION 1. *Preliminary investigation defined; when required.* — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial. Except as provided in Section 6 of this Rule, **a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and (1) day without regard to the fine**. It was therefore incumbent upon respondent judge to forward the records of the case to the Office of the Provincial Prosecutor for preliminary investigation, instead of conducting the preliminary investigation himself.

3. ID.; ID.; ID.; RESPONDENT JUDGE'S ISSUANCE OF WARRANT OF ARREST AND THE REDUCTION OF THE AMOUNT OF BAIL ARE VOID FOR WANT OF JURISDICTION.— On respondent judge's issuance of the warrant of arrest and reduction of the amount of bail, we find such acts void for want of jurisdiction. While Rule 114 of the Rules of Court allows a judge to grant bail in bailable offenses and to increase or decrease bail, it assumes that the judge has jurisdiction over the case. In this case, respondent judge conducted the preliminary investigation without authority and issued the warrant of arrest. Thus, these acts are void for want of jurisdiction. The reduction of bail is also void because in the first place, respondent judge had no jurisdiction over the case itself.

4. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; WHEN A LAW OR RULE IS BASIC, JUDGES OWE IT TO THEIR OFFICE TO SIMPLY APPLY THE LAW AND ANYTHING LESS IS GROSS IGNORANCE OF THE LAW.— Rule 3.01, Canon 3 of the Code of Judicial Conduct mandates that a judge shall be faithful to the law and maintain professional competence. Indeed, competence and diligence

are prerequisites to the due performance of judicial office. Section 3, Canon 6 of the New Code of Judicial Conduct requires judges to maintain and enhance their knowledge and skills to properly perform their judicial functions, thus: SEC. 3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges. When a law or a rule is basic, judges owe it to their office to simply apply the law. Anything less is gross ignorance of the law. Judges should exhibit more than just a cursory acquaintance with the statutes and procedural rules, and should be diligent in keeping abreast with developments in law and jurisprudence.

5. ID.; ID.; ID.; PENALTY OF SIX (6) MONTHS SUSPENSION IMPOSED CONSIDERING THAT THE PRESENT CASE IS RESPONDENT JUDGE'S THIRD OFFENSE, THE SECOND OF WHICH WAS ALSO FOR IGNORANCE OF THE LAW.— The Court notes that this is respondent judge's third offense. In 2003, the Court found respondent judge administratively liable for undue delay in rendering decisions and fined him ₱19,000, with a stern warning that a repetition of similar acts would be dealt with more severely. More importantly, in the 2008 case of *Santos v. Bernardo*, the Court found respondent judge guilty of gross ignorance of the law and basic rules of procedure and fined him ₱20,000, with a stern warning that a repetition of the same or similar acts would be dealt with more severely. The Court found no merit in respondent judge's supposition that grave coercion is an offense not subject to preliminary investigation. The Court, however, emphasized that when the complaint was filed on 3 January 2006, respondent judge no longer had authority to conduct preliminary investigation by virtue of A.M. No. 05-8-26-SC. Thus, the Court held that respondent judge should have referred the complaint to the Office of the Provincial Prosecutor instead of issuing the subpoena directing complainants to appear before the Court. Under Section 8(9), Rule 140 of the Rules of Court, gross ignorance of the law or procedure is classified as a serious charge, for which the imposable penalty is any of the following: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from

reinstatement or appointment to any public office, including government-owned or controlled corporation: *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. Considering that this is respondent judge's third offense, the second of which was also for gross ignorance of the law, we hold that the penalty of six (6) months suspension from office without salary and other benefits is in order.

6. ID.; ID.; CODE OF JUDICIAL CONDUCT; JUDGES AND MEMBERS OF THEIR FAMILIES ARE PROHIBITED FROM ASKING FOR OR ACCEPTING ANY GIFT, BEQUEST, LOAN OR FAVOR IN RELATION TO ANYTHING DONE OR TO BE DONE OR OMITTED TO BE DONE BY HIM IN CONNECTION WITH THE PERFORMANCE OF JUDICIAL DUTIES.— On the alleged promise of respondent judge's wife that the bail would be reduced provided her ₱35,000 debt will be cancelled and that complainant grant respondent judge's wife an additional loan, we find that complainant did not substantiate her allegation. Nevertheless, the Court notes that although respondent judge denies knowledge of such transaction between his wife and complainant, respondent judge did not categorically deny his wife's debt to complainant. In his Comment, respondent judge states: "Assuming *arguendo* that there really was a loan made by his wife, he did not know of such transaction between his wife and the complainant and given this, he did not allow such transaction to take place." Canon 4 of the New Code of Judicial Conduct stresses the importance of propriety and the appearance of propriety to the performance of all the activities of a judge. Respondent judge should bear in mind that judges should avoid impropriety and the appearance of impropriety in all of their activities. Furthermore, judges and members of their families are prohibited from asking for or accepting any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him in connection with the performance of judicial duties.

D E C I S I O N

CARPIO, *J.*:

The Case

This is an administrative complaint for usurpation of authority, grave misconduct, and gross ignorance of the law filed by Lydelle L. Conquilla (complainant) against Judge Lauro G. Bernardo (respondent judge), Presiding Judge of the Municipal Trial Court (MTC) of Bocaue, Bulacan.

The Facts

In a verified complaint dated 30 July 2008, complainant Conquilla charged respondent judge with usurpation of authority, grave misconduct, and gross ignorance of the law.

Complainant alleged that on 4 July 2008, a criminal complaint for direct assault was filed against her before the MTC of Bocaue, Bulacan. The complaint was signed by Police Chief Inspector Rizalino Andaya of the Bocaue Police Station.

On 8 July 2008, respondent judge conducted a preliminary investigation and found probable cause to hold the complainant for trial for the crime of direct assault. Respondent judge then issued a warrant of arrest dated 8 July 2008, with the bail fixed at ₱12,000.

On 10 July 2008, upon motion of complainant, respondent judge issued an order reducing the bail for complainant's provisional liberty to ₱6,000. On the same date, complainant posted cash bail of ₱6,000 for her provisional liberty.

Complainant then filed an administrative complaint, alleging that under A.M. No. 05-08-[2]6-SC, first level court judges no longer have the authority to conduct preliminary investigations. Thus, complainant avers that respondent judge committed an illegal act constituting gross ignorance of the law and procedure when he conducted the preliminary investigation and issued the warrant of arrest. Complainant claims that the hasty issuance of the warrant of arrest was without legal basis and unjustly

prejudiced complainant and deprived her of her liberty. Complainant submits that respondent judge usurped the power of the prosecutor, who was not even given the chance to comment on complainant's Motion to Reduce Bail. Furthermore, complainant alleges that when she learned about the warrant of arrest, she called respondent judge's wife, who said "she would help in having the bail reduced to ₱6,000.00 and would have the case for direct assault against herein complainant dismissed provided herein complainant cancel the wife's debt of ₱35,000.00 and provided that herein complainant loan the wife an additional amount of ₱50,000.00."[1]

In his Comment, respondent judge states that he issued the warrant of arrest in good faith because he was convinced that there was probable cause and that it was necessary to place the complainant under immediate custody to prevent a frustration of justice. Although respondent judge knew that the Supreme Court already amended Rules 112 and 114 of the Revised Rules on Criminal Procedure by removing the conduct of the preliminary investigation from judges of first level courts, he argues that the power to personally determine probable cause in the issuance of a warrant of arrest cannot be revoked. Besides, even if such power to determine probable cause was indeed revoked by the amendment, respondent judge submits that technical rules can be relaxed if their implementation will result in injustice.

Respondent judge further states that he did not usurp the power of the prosecutor when he reduced the bail considering that under Section 20 of Rule 114, the court may increase or decrease the bail upon good cause.

Lastly, respondent judge denies any knowledge of the alleged conversation and transaction between complainant and his wife.

The OCA's Report and Recommendation

In its Report dated 12 February 2009, the OCA found respondent judge guilty of gross ignorance of the law for his patent and unjustified violation of the provisions of the Resolution

[1] Administrative Complaint dated 30 July 2008, p. 3.

in A.M. No. 05-8-26-SC. The OCA stated that the Resolution in A.M. No. 05-8-26-SC, which took effect on 3 October 2005, removed the conduct of investigation from the scope of authority of first level courts judges. Had respondent judge been more prudent in understanding the pertinent provisions of the Resolution in A.M. No. 05-8-26-SC, which are very clear and concise, no administrative complaint would have been filed against him.

The OCA, however, found the charge of usurpation of authority without merit. The OCA agreed with respondent judge that the power to determine the amount of bail is vested in the judge.

The OCA recommended (a) that the administrative complaint against respondent judge be re-docketed as a regular administrative matter; and (b) that respondent judge be fined in the amount of ₱20,000.00 for gross ignorance of the law, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

The Ruling of the Court

In this case, respondent judge makes it appear that he merely conducted a preliminary examination for the purpose of determining whether probable cause exists to justify the issuance of a warrant of arrest. However, the records of the case clearly show that respondent judge indeed conducted a preliminary investigation on 8 July 2008. After finding probable cause to hold complainant for trial for the crime of direct assault, respondent judge then issued a warrant for her arrest. That respondent judge conducted a preliminary investigation and not just a preliminary examination to determine existence of probable cause for the issuance of a warrant of arrest is evident in his Order dated 8 July 2008, which reads:

ORDER

The undersigned, after personal examination of the witnesses in writing and under oath, **finds that a probable cause exists and there is sufficient ground to hold the accused LYDELLE L. CONQUILLA for trial for the crime of DIRECT ASSAULT as charged in the complaint**. In order not to frustrate the ends of

justice, there is a need to place the accused in immediate custody. Let warrant immediately issue for his [sic] arrest hereby fixing bail in the amount of ₱12,000.00 for his provisional liberty.[2]

SO ORDERED.

Bocaue, Bulacan, July 8, 2008.

(signed)
HON. LAURO G. BERNARDO
Judge

Furthermore, after complainant posted bail on 10 July 2008, respondent judge then issued an Order dated 10 July 2008, ordering the complainant's release and setting the case for her arraignment on 3 September 2008.

The conduct of preliminary investigation by respondent judge was in direct contravention of A.M. No. 05-8-26-SC, which took effect on 3 October 2005, amending Rules 112 and 114 of the Revised Rules on Criminal Procedure by removing the conduct of preliminary investigation from judges of the first level courts. Thus, under Section 2 of Rule 112, only the following officers are authorized to conduct preliminary investigations: (a) Provincial or City Prosecutors and their assistants; (b) National and Regional State Prosecutors; and (c) Other officers as may be authorized by law. Furthermore, Section 5 of Rule 112 provides:

SEC. 5. *When warrant of arrest may issue*. —

(a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on records clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

---

[2] Emphasis supplied.

(b) *By the Municipal Trial Court*. — **When required pursuant to the second paragraph of Section 1 of this Rule, the preliminary investigation of cases falling under the original jurisdiction of the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court or Municipal Circuit Trial Court SHALL be conducted by the prosecutor.** The procedure for the issuance of a warrant of arrest by the judge shall be governed by paragraph (a) of this section. (Emphasis supplied.)

Clearly, MTC judges are no longer authorized to conduct preliminary investigation.

In this case, the crime charged against complainant was direct assault against a public school teacher, who is a person in authority under Article 152[3] of the Revised Penal Code.[4] Under Article 148 of the Revised Penal Code, when the assault is committed against a person in authority while engaged in the performance of his official duties or on the occasion of such performance, the imposable penalty is *prision correccional* in its medium and maximum periods. The duration of the penalty of *prision correccional* in its medium and maximum periods is 2 years, 4 months and 1 day to 6 years. Thus, the offense charged against complainant requires the conduct of preliminary investigation as provided under Section 1 of Rule 112 of the Rules of Court, which reads:

SECTION 1. *Preliminary investigation defined; when required.* — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief

---

[3] Art. 152. *Persons in authority and agents of persons in authority — Who shall be deemed as such*.†In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority. x x x

In applying the provisions of Articles 148 and 151 of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities, and lawyers in the actual performance of their professional duties or on the occasion of such performance shall be deemed persons in authority. (Emphasis supplied.)

[4] *People v. Renegado*, 156 Phil. 260 (1974).

that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Except as provided in Section 6 of this Rule, **a preliminary investigation is required to be conducted before the filing of a complaint or information for an offense where the penalty prescribed by law is at least four (4) years, two (2) months and (1) day without regard to the fine**. (Emphasis supplied.)

It was therefore incumbent upon respondent judge to forward the records of the case to the Office of the Provincial Prosecutor for preliminary investigation, instead of conducting the preliminary investigation himself.

Rule 3.01, Canon 3 of the Code of Judicial Conduct mandates that a judge shall be faithful to the law and maintain professional competence. Indeed, competence and diligence are prerequisites to the due performance of judicial office.[5] Section 3, Canon 6 of the New Code of Judicial Conduct[6] requires judges to maintain and enhance their knowledge and skills to properly perform their judicial functions, thus:

SEC. 3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

When a law or a rule is basic, judges owe it to their office to simply apply the law. Anything less is gross ignorance of the law.[7] Judges should exhibit more than just a cursory acquaintance

---

[5] Canon 6 of the New Code of Judicial Conduct.

[6] The New Code of Judicial Conduct was adopted by the Supreme Court through A.M. No. 03-05-01-SC, and which took effect on 1 June 2004.

[7] *Cabico v. Dimaculangan-Querijero*, A.M. No. RTJ-02-1735, 27 April 2007, 522 SCRA 300.

with the statutes and procedural rules,[8] and should be diligent in keeping abreast with developments in law and jurisprudence.[9]

On the alleged promise of respondent judge's wife that the bail would be reduced provided her ₱35,000 debt will be cancelled and that complainant grant respondent judge's wife an additional loan, we find that complainant did not substantiate her allegation. Nevertheless, the Court notes that although respondent judge denies knowledge of such transaction between his wife and complainant, respondent judge did not categorically deny his wife's debt to complainant. In his Comment, respondent judge states: "Assuming *arguendo* that there really was a loan made by his wife, he did not know of such transaction between his wife and the complainant and given this, he did not allow such transaction to take place."[10]

Canon 4 of the New Code of Judicial Conduct stresses the importance of propriety and the appearance of propriety to the performance of all the activities of a judge. Respondent judge should bear in mind that judges should avoid impropriety and the appearance of impropriety in all of their activities.[11] Furthermore, judges and members of their families are prohibited from asking for or accepting any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him in connection with the performance of judicial duties.[12]

On respondent judge's issuance of the warrant of arrest and reduction of the amount of bail, we find such acts void for want of jurisdiction. While Rule 114 of the Rules of Court allows a judge to grant bail in bailable offenses and to increase or decrease bail, it assumes that the judge has jurisdiction over the case. In this case, respondent judge conducted the preliminary

---

[8] *Savella v. Ines*, A.M. No. MTJ-07-1673, 19 April 2007, 521 SCRA 417.

[9] *Amante-Descallar v. Ramas*, A.M. No. RTJ-08-2142, 20 March 2009, 582 SCRA 22; *Aguilar v. Dalanao*, 388 Phil. 717 (2000).

[10] Respondent judge's Comment, p. 8.

[11] Section 1, Canon 4 of the New Code of Judicial Conduct.

[12] Section 13, Canon 4 of the New Code of Judicial Conduct.

investigation without authority and issued the warrant of arrest. Thus, these acts are void for want of jurisdiction. The reduction of bail is also void because in the first place, respondent judge had no jurisdiction over the case itself.

The Court notes that this is respondent judge's third offense. In 2003, the Court found respondent judge administratively liable for undue delay in rendering decisions and fined him ₱19,000, with a stern warning that a repetition of similar acts would be dealt with more severely.[13]

More importantly, in the 2008 case of *Santos v. Bernardo*,[14] the Court found respondent judge guilty of gross ignorance of the law and basic rules of procedure and fined him ₱20,000, with a stern warning that a repetition of the same or similar acts would be dealt with more severely.[15] The Court found no merit in respondent judge's supposition that grave coercion is an offense not subject to preliminary investigation. The Court, however, emphasized that when the complaint was filed on 3 January 2006, respondent judge no longer had authority to conduct preliminary investigation by virtue of A.M. No. 05-8-26-SC. Thus, the Court held that respondent judge should have referred the complaint to the Office of the Provincial Prosecutor instead of issuing the subpoena directing complainants to appear before the Court.

---

[13] *Report on the Judicial Audit Conducted in the Municipal Trial Court, Bocaue, Bulacan*, A.M. No. 00-3-50-MTC, 21 July 2003, 407 SCRA 1.

[14] A.M. No. MTJ-07-1670, 23 July 2008, 559 SCRA 310.

[15] In *Santos*, aside from gross ignorance of the law, respondent judge was also charged with impropriety for allowing his girlfriend (who later became his wife) to stay in respondent judge's chamber for long periods of time, in violation of Rule 2.01 of the Code of Judicial Conduct to maintain proper decorum. Although the Court likewise found that the complainants therein failed to substantiate any misuse of government funds or facilities, the Court, nevertheless, reminded respondent judge of the New Code of Judicial Conduct which mandates judges to avoid impropriety and the appearance of impropriety in all of their activities.

Under Section 8(9), Rule 140 of the Rules of Court, gross ignorance of the law or procedure is classified as a serious charge, for which the imposable penalty is any of the following:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporation: *Provided, however,* that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[16]

Considering that this is respondent judge's third offense, the second of which was also for gross ignorance of the law, we hold that the penalty of six (6) months suspension from office without salary and other benefits is in order.[17]

WHEREFORE, we find respondent Judge Lauro G. Bernardo *GUILTY* of gross ignorance of the law and *SUSPEND* him from office for a period of six (6) months without salary and other benefits, with a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

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

---

[16] Section 11, Rule 140 of the Rules of Court.

[17] In the case of *In Re: Mino v. Navarro* (A.M. No. MTJ-06-1645, 28 August 2007, 531 SCRA 271), respondent Judge Navarro, who has been previously sanctioned by the Court in two other cases, was meted the penalty of suspension from the service for six (6) months without salary and benefits, for gross ignorance of the law or procedure.

FIRST DIVISION

[A.M. No. RTJ-11-2262. February 9, 2011]
(Formerly OCA I.P.I. No. 08-3056-RTJ)

GAUDENCIO B. PANTILO III, *complainant, vs.* **JUDGE VICTOR A. CANOY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; REQUIREMENTS FOR THE RELEASE OF AN ACCUSED ON BAIL; NOT COMPLIED WITH IN CASE AT BAR. — It is settled that an accused in a criminal case has the constitutional right to bail, more so in this case when the charge against Melgazo, Reckless Imprudence Resulting in Homicide, is a non-capital offense. However, the letter-complaint focuses on the **manner** of Melgazo's release from detention. Sec. 17, Rule 114 of the Revised Rules on Criminal Procedure allows that any person in custody who is not yet charged in court "may apply for bail with any court in the province, city or municipality where he is held." In the case at bar, Melgazo did not file any application or petition for the grant of bail with the Surigao City RTC, Branch 29. Despite the absence of any written application, respondent judge verbally granted bail to Melgazo. This is a clear deviation from the procedure laid down in Sec. 17 of Rule 114. In addition to a written application for bail, Rule 114 of the Rules prescribes other requirements for the release of the accused. x x x In the case at bar, Melgazo or any person acting in his behalf did not deposit the amount of bail recommended by Prosecutor Gonzaga with the nearest collector of internal revenue or provincial, city or municipal treasurer. In clear departure from Sec. 14 of Rule 114, Judge Canoy instead verbally ordered Clerk IV Suriaga of the Surigao City RTC, Office of the Clerk of Court, to accept the cash deposit as bail, to earmark an official receipt for the cash deposit, and to date it the following day. Worse, respondent judge did not require Melgazo to sign a written undertaking containing the conditions of the bail under Sec. 2, Rule 114 to be complied with by Melgazo. Immediately upon receipt by Suriaga of the cash deposit of PhP 30,000 from Melgazo, Judge Canoy ordered

the police escorts to release Melgazo without any written order of release. In sum, there was no written application for bail, no certificate of deposit from the BIR collector or provincial, city or municipal treasurer, no written undertaking signed by Melgazo, and no written release order.

2. JUDICIAL ETHICS; JUDGES; NO SUCH THING AS "CONSTRUCTIVE BAIL"; DESPITE THE NOBLEST OF REASONS, THE RULES OF COURT MAY NOT BE IGNORED AT RANDOM TO THE PREJUDICE OF THE RIGHTS OF ANOTHER.— As regards the insistence of Judge Canoy that such may be considered as "constructive bail," there is no such species of bail under the Rules. Despite the noblest of reasons, the Rules of Court may not be ignored at will and at random to the prejudice of the rights of another. In *BPI v. Court of Appeals*, We underscored that "procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality." In other words, "[r]ules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings." In this case, the reason of Judge Canoy is hardly persuasive enough to disregard the Rules.

D E C I S I O N

VELASCO, JR., *J.*:

This administrative complaint against Judge Victor A. Canoy (Judge Canoy) of the Regional Trial Court (RTC), Branch 29 in Surigao City stems from a complaint filed by Gaudencio Pantilo III (Pantilo), charging Judge Canoy with several counts of gross ignorance of the law and/or procedures, grave abuse of authority, and appearance of impropriety (Canon 2, Code of Judicial Conduct). Pantilo prays for Judge Canoy's disbarment in relation to Criminal Case No. 8072 for Reckless Imprudence Resulting in Homicide entitled *People of the Philippines v. Leonardo Luzon Melgazo*.

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

The complainant, Pantilo, the brother of the homicide victim in the above-mentioned criminal case, recounts in his letter-complaint that, on September 3, 2008, at around 5 o'clock in the afternoon, he, along with police officers Ronald C. Perocho (Perocho) and Santiago B. Lamanilao, Jr. (Lamanilao), acting as escorts of Leonardo Luzon Melgazo (Melgazo), the accused in Criminal Case No. 8072, went to the City Prosecutor's Office, Surigao City, to attend the inquest proceedings.[1] Later, at around 8 o'clock in the evening, Pantilo was informed by Perocho that Melgazo had been released from detention.[2]

The following day, September 4, 2008, Pantilo went to the Surigao City Police Station to verify the information. Upon arriving there, Custodial Officer Anecito T. Undangan told him that Melgazo had indeed been released at around 6:30 p.m. on September 3, 2008, as shown in the Police Logbook of Detention Prisoners and as authorized by Chief of Police Supt. Ramer Perlito P. Perlas.[3] Further, the logbook showed that Melgazo was temporarily released upon the order of Judge Canoy after he posted bail in the amount of thirty thousand pesos (PhP 30,000), as evidenced by O.R. No. 0291794 dated September 3, 2008.[4]

Pantilo proceeded to the Office of the Clerk of Court to request a copy of the Information, only to find out that none had yet been filed by the Surigao City Prosecutor's Office.[5] Puzzled, he inquired from the City Prosecutor's Office the details surrounding the release of Melgazo. He learned that no Information had yet been filed in Court that would serve as the basis for the approval of the bail. Likewise, he also learned

---

[1] Letter-Complaint, Gaudencio Pantilo III, p. 1.

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

[3] *Id*. at 2.

[4] *Id*. at 4.

[5] *Id*. at 2.

from the City Police Station that no written Order of Release had been issued but only a verbal order directing the police officers to release Melgazo from his detention cell.[6] One of the police officers even said that Judge Canoy assured him that a written Order of Release would be available the following day or on September 4, 2008 after the Information is filed in Court.

On September 5, 2008, Melgazo filed a Motion for the Release of his impounded vehicle as physical evidence pending the trial of the case.[7] The motion was received by the Office of the Clerk of Court at 8:30 a.m. that day and was subsequently raffled in the afternoon. In the Notice of Hearing of the said motion, Melgazo prayed that it be heard on September 5, 2008 at 8:30 a.m. According to Pantilo, this clearly violated the rules which require that the other party must be served a copy of the motion at least three (3) days before the hearing.

Nevertheless, Judge Canoy issued an Order dated September 5, 2008, directing Assistant City Prosecutor Robert Gonzaga (Prosecutor Gonzaga), the prosecutor-in-charge of the case, to give his comment on the said motion within three (3) days upon receipt of the Order. Three (3) days later, Prosecutor Gonzaga submitted his comment. And despite his opposition, Judge Canoy granted Melgazo's motion.[8]

Subsequently, Pantilo filed a motion for inhibition of Judge Canoy which was later denied.

Aggrieved, Pantilo filed a letter-complaint dated November 3, 2008 before the Office of the Court Administrator charging Judge Canoy with (1) gross ignorance of the law and procedures; (2) grave abuse of authority; and (3) appearance of impropriety (Canon 2, Code of Judicial Conduct). Pantilo also prays for Judge Canoy's disbarment.

---

[6] *Id*. at 3.

[7] *Id*. at 5.

[8] *Id*. at 6.

On January 5, 2009, the Court Administrator required respondent judge to comment on the complaint within ten (10) days from receipt.

Accordingly, on February 5, 2009, Judge Canoy filed his comment, arguing that the facts in this case were exceptional. In his comment, he admitted that the inquest proceedings of Melgazo before Prosecutor Gonzaga concluded around 5:00 p.m. on September 3, 2008, after which, Melgazo, with his counsel, Atty. Cacel Azarcon, went to his office to post bail for Melgazo's provisional liberty.[9] He noted that because of the time, most of the clerks in his office and the Office of the Clerk of Court had already gone home. Thus, it was no longer possible to process the posting of bail and all the necessary papers needed for the release of Melgazo.

Bearing in mind the constitutional right of the accused to bail and coupled with the insistence of Melgazo's counsel, Judge Canoy summoned Prosecutor Gonzaga and inquired about the result of the inquest proceedings. Thereupon, Prosecutor Gonzaga relayed to him that the charge against Melgazo was for Reckless Imprudence with Homicide and the recommended bail bond was thirty thousand pesos (PhP 30,000). However, since it was already past 5:00 p.m., Prosecutor Gonzaga claimed that he could no longer file the Information and that it would have to be filed the next day.[10]

Despite all this, Judge Canoy informed Prosecutor Gonzaga that he would allow Melgazo to post bail in the amount recommended. He then called Mrs. Ruth O. Suriaga (Suriaga), Clerk IV, Office of the Clerk of Court, RTC, Surigao City, to accept as deposit for bail the thirty thousand pesos (PhP 30,000) from Melgazo.[11] Likewise, he instructed Suriaga to earmark an official receipt which would have to be dated the following day or September 4, 2008.

---

[9] Comment, Judge Victor A. Canoy, p. 2.

[10] *Id*.

[11] *Id*.

Accordingly, he summoned the escorting police officers, Perocho and Lamanilao, and verbally ordered them to release Melgazo from detention. He also said that the written order would be issued the following day.[12]

In his defense, Judge Canoy invokes the constitutional right of the accused to bail and Section 17(c), Rule 114 of the Revised Rules of Criminal Procedure, which does not require that a person be charged in court before he or she may apply for bail.[13] To his mind, there was already "a constructive bail given that only the papers were needed to formalize it."[14] It would be unreasonable and unjustifiable to further delay the release of the accused. Nevertheless, he submits that if he would be "faulted for such act, he does humbly concede but he merely acted in accordance with what he deemed best for the moment x x x."[15]

As to his Order dated September 8, 2008 directing the release of the vehicle subject of the case, he contends that there was no deliberate intent to disregard rules and procedure. In fact, he points out that the prosecution was given three (3) days within which to file its comment on the motion of the accused. The grounds raised by both parties were well taken into consideration, but he found the grounds raised by Melgazo to be more reasonable and practical and, hence, he granted the motion.

Similarly, he denied the motion for inhibition filed by Pantilo owing to the absence of an express imprimatur of the prosecutor handling the case.

On February 9, 2009, Pantilo filed his Reply to the Comment arguing that there is no such thing as constructive bail under

---

[12] *Id*. at 3.

[13] RULES OF COURT, Rule 114, Sec. 17(c) states:

(c) Any person in custody who is **not yet charged in court** may apply for bail with any court in the province, city, or municipality where he is held. (Emphasis supplied.)

[14] Comment, Judge Victor A. Canoy, p. 5.

[15] *Id*.

the rules. He adds that, while he does not dispute the accused's right to post bail, the granting of such should be in harmony with the rules, *i.e.*, an application or motion to that effect and a corresponding order from the court granting the motion.

On October 18, 2010, Court Administrator Jose Midas P. Marquez issued his evaluation and recommendation on the case. In his evaluation, the Court Administrator found that respondent judge failed to comply with the documents required by the rules to discharge an accused on bail. Further, the Court Administrator noted that Judge Canoy also has another pending case (but filed on a later date, September 3, 2009): OCA-IPI No. 09-3254-RTJ, entitled *Cristita Conjurado Vda. de Tolibas v. Judge Victor A. Canoy* for Gross Ignorance of the Law and Conduct Prejudicial to the Best Interest of Service.

Consequently, he recommended the following: (1) the instant complaint be re-docketed as a regular administrative matter; and (2) Judge Canoy be fined forty thousand pesos (PhP 40,000) with a stern warning that a commission of similar acts in the future will be dealt with more severely.

The Court's Ruling

We find the evaluation and recommendations of the Court Administrator well-founded.

It is settled that an accused in a criminal case has the constitutional right to bail,[16] more so in this case when the charge against Melgazo, Reckless Imprudence Resulting in Homicide, is a non-capital offense. However, the letter-complaint focuses on the **manner** of Melgazo's release from detention.

Sec. 17, Rule 114 of the Revised Rules on Criminal Procedure allows that any person in custody who is not yet charged in court "may apply for bail with any court in the province, city or municipality where he is held." In the case at bar, Melgazo did not file any application or petition for the grant of bail with the Surigao City RTC, Branch 29. Despite the absence of any

[16] CONSTITUTION, Art. III, Sec.13.

written application, respondent judge verbally granted bail to Melgazo. This is a clear deviation from the procedure laid down in Sec. 17 of Rule 114.

In addition to a written application for bail, Rule 114 of the Rules prescribes other requirements for the release of the accused:

SEC. 14. *Deposit of cash as bail*.—The accused or any person acting in his behalf may deposit in cash with the nearest collector of internal revenue or provincial, city, or municipal treasurer the amount of bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and a written undertaking showing compliance with the requirements of Section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit.

SEC. 2. *Conditions of the bail; requirements*.—All kinds of bail are subject to the following conditions:

(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in form at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

(b) The accused shall appear before the proper court whenever required by the court or these Rules;

(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed *in absentia*; and

(d) The bondsman shall surrender the accused to the court for execution of the final execution.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions required by this section. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail.

In the case at bar, Melgazo or any person acting in his behalf did not deposit the amount of bail recommended by Prosecutor Gonzaga with the nearest collector of internal revenue or provincial, city or municipal treasurer. In clear departure from Sec. 14 of Rule 114, Judge Canoy instead verbally ordered Clerk IV Suriaga of the Surigao City RTC, Office of the Clerk of Court, to accept the cash deposit as bail, to earmark an official receipt for the cash deposit, and to date it the following day. Worse, respondent judge did not require Melgazo to sign a written undertaking containing the conditions of the bail under Sec. 2, Rule 114 to be complied with by Melgazo. Immediately upon receipt by Suriaga of the cash deposit of PhP 30,000 from Melgazo, Judge Canoy ordered the police escorts to release Melgazo without any written order of release. In sum, there was no written application for bail, no certificate of deposit from the BIR collector or provincial, city or municipal treasurer, no written undertaking signed by Melgazo, and no written release order.

As regards the insistence of Judge Canoy that such may be considered as "constructive bail," there is no such species of bail under the Rules. Despite the noblest of reasons, the Rules of Court may not be ignored at will and at random to the prejudice of the rights of another.

In *BPI v. Court of Appeals*, We underscored that "procedural rules have their own wholesome rationale in the orderly administration of justice. Justice has to be administered according to the Rules in order to obviate arbitrariness, caprice, or whimsicality."[17] In other words, "[r]ules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings."[18] In this case, the reason of Judge Canoy is hardly persuasive enough to disregard the Rules.[19]

---

[17] G.R. No. 168313, October 6, 2010.

[18] *Limpot v. Court of Appeals*, G.R. No. L-44642, February 20, 1989, 170 SCRA 367, 369.

[19] *De los Santos v. Court of Appeals*, G.R. No. 147912, April 26, 2006, 488 SCRA 351, 359.

From the foregoing, the Court finds Judge Canoy guilty of a less serious charge of violation of Supreme Court rules, directives and circulars under Sec. 9, Rule 140 for which a fine of more than PhP 10,000 but not exceeding PhP 20,000 is the imposable penalty under Sec. 11(b), Rule 140 of the Rules of Court. A fine of PhP 11,000 would be the appropriate penalty under the circumstances of the case.

WHEREFORE, respondent Judge Victor A. Canoy is found *GUILTY* of violation of Supreme Court rules, directives, and circulars. He is meted the penalty of a *FINE* of **eleven thousand pesos (PhP 11,000)**. He is *STERNLY WARNED* that a repetition of similar or analogous infractions in the future shall be dealt with more severely.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 155227-28. February 9, 2011]

EMILIANA G. PEÑA, AMELIA C. MAR, and CARMEN REYES, *petitioners, vs.* **SPOUSES ARMANDO TOLENTINO and LETICIA TOLENTINO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LEASE; PETITIONERS' RELIANCE ON P.D. 20 IS FUTILE AND MISPLACED BECAUSE THE LAW HAD NO APPLICATION TO THEIR CAUSE; *B.P. BLG.* 877 WAS THE CONTROLLING RENTAL LAW WHEN THE COMPLAINTS AGAINST PETITIONERS WERE FILED ON OCTOBER 09, 1995. —

First of all, the petitioners' reliance on P.D. 20 is futile and misplaced because that law had no application to their cause. They ignored that *Batas Pambansa Blg*. 25, approved on April 10, 1979 and effective immediately, had expressly repealed P.D. 20 pursuant to its Section 10. For the enlightenment of the petitioners in order to dispel their confusion, the following brief review of the rental laws that came after P.D. 20 and *B.P. Blg*. 25 is helpful. *B.P. Blg. 25* remained in force for five years, after which P.D. 1912 and *B.P. Blg*. 867 were enacted to extend the effectivity of *B.P. Blg. 25* for eight months and six months, respectively. When the extension of *B.P. Blg*. 25 ended on June 30, 1985, a new rental law, *B.P. Blg.* 877, was enacted on July 1, 1985. *B.P. Blg.* 877, although initially effective only until December 31, 1987, came to be extended up to December 31, 1989 by Republic Act No. 6643. Subsequently, Congress passed R.A. No. 7644 to further extend the effectivity of *B.P. Blg*. 877 by three years. Finally, R.A. No. 8437 extended the rent control period provided in *B.P. Blg.* 877 from January 1, 1998 up to December 31, 2001. It is clear, therefore, that *B.P. Blg.* 877 was the controlling rental law when the complaints against the petitioners were filed on October 9, 1995.

2. ID.; ID.; ID.; SINCE NO DEFINITE PERIOD WAS AGREED UPON BY THE PARTIES, THEIR CONTRACTS OF LEASE BEING ORAL, THE LEASES WERE DEEMED FOR A DEFINITE PERIOD, CONSIDERING THAT THE RENTS AGREED UPON WERE BEING PAID MONTHLY, AND TERMINATED AT THE END OF EVERY MONTH, PURSUANT TO ARTICLE 1687.— We note that on January 1, 2002, R.A. No. 9161 took effect. Its Section 7(*e*) provided that the expiration of the period of the lease contract was still one of the grounds for judicial ejectment. Also, its Section 10 provided for the suspension of paragraph 1 of Article 1673 of the *Civil Code*, which was similar to Section 6 of *B.P. Blg.* 877, quoted hereunder: Sec. 6 *Application of the Civil Code and Rules of Court of the Philippines* – Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673 of the *Civil Code* of the Philippines, insofar as they refer to residential units covered by this Act shall be suspended during the effectivity of this Act, but other provisions of the *Civil Code* and the *Rules of Court* on lease contracts, insofar as they are not in conflict with the provisions

of the Act shall apply. In several rulings, the Court held that Section 6 of *B.P. Blg.* 877 did not suspend the effects of Article 1687 of the *Civil Code*; and that the only effect of the suspension of paragraph 1, Article 1673 of the *Civil Code* was that, independently of the grounds for ejectment enumerated in *B.P. Blg.* 877, the owner/lessor could not eject the tenant by reason of the expiration of the period of lease as fixed or determined under Article 1687 of the *Civil Code*. Consequently, the determination of the period of the lease could still be made in accordance with Article 1687. Under Section 5 (*f*) of *B.P. Blg.* 877, the expiration of the period of the lease is among the grounds for judicial ejectment of a lessee. In this case, because no definite period was agreed upon by the parties, their contracts of lease being oral, the leases were deemed to be for a definite period, considering that the rents agreed upon were being paid monthly, and terminated at the end of every month, pursuant to Article 1687. In addition, the fact that the petitioners were notified of the expiration of the leases effective September 15, 1995 brought their right to stay in their premises to a definite end as of that date.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITIONERS ARE PRECLUDED FROM INVOKING THEIR SUPPOSED RIGHT OF FIRST REFUSAL AT THIS VERY LATE STAGE AFTER FAILING TO ASSERT IT WITHIN A REASONABLE TIME FROM THE RESPONDENTS' PURCHASE OF THE RESPECTIVE PROPERTIES WHERE THEIR PREMISES WERE RESPECTIVELY LOCATED.— Firstly, the petitioners appear to have known of their supposed right of first refusal even before the respondents came to acquire the leased premises by purchase. They implied so in their petition for review filed on May 30, 1997 in the CA. x x x Yet, the petitioners did not invoke their supposed right of first refusal from the time when the respondents filed their complaints for ejectment against them on October 9, 1995 until they brought the present recourse to this Court. Neither did they offer any explanation for their failure to do so. It is notable that the only defense they raised is that their eviction from the premises on the sole ground of expiration of the lease contract violated R.A. No. 9161. Moreover, the petitioners did not also assert their supposed

right of first refusal despite the respondents informing them (through their position paper filed in the MeTC on March 21, 1996) that they had terminated the petitioners' leases *because they were intending to sell the premises to a third person.* In fact, as the records bear out, the only reliefs the petitioners prayed for in the MTC, RTC, and CA were the extension of their leases, and the reimbursement by the respondents of the values of their improvements. It is inferable from the petitioners' silence, therefore, that they had neither the interest nor the enthusiasm to assert the right of first refusal. Secondly, the petitioners are precluded from invoking their supposed right of first refusal at this very late stage after failing to assert it within a reasonable time from the respondents' purchase of the respective properties where their premises were respectively located. The presumption that they had either abandoned or declined to assert their rights becomes fully warranted.

4. ID.; ID.; ID.; THE COURT OF APPEALS' REINSTATEMENT OF THE TRIAL COURT'S DECISION ON THE EJECTMENT OF PETITIONERS IS SUSTAINED SUBJECT TO MODIFICATION ON RENTALS.— It is clear that the petitioners are changing their theory of the case on appeal. That change is impermissible on grounds of its elemental unfairness to the adverse parties, who would now be forced to adapt to the change and to incur additional expense in doing so. Besides, such a change would effectively deprive the lower courts of the opportunity to decide the merits of the case fairly. It is certainly a basic rule in appellate procedure that the trial court should be allowed the *meaningful opportunity* not only to consider and pass upon *all* the issues but also to avoid or correct any alleged *errors* before those issues or errors become the basis for an appeal. In that regard, the Court has observed in *Carantes v. Court of Appeals*: The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party. Indeed, the settled rule in this jurisdiction, according to *Mon v. Court of Appeals*, is that a party cannot change his theory of the case or his cause

of action on appeal. This rule affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid. The legal theory under which the controversy was *heard* and *decided* in the trial court should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal. This would be offensive to the basic rules of fair play, justice, and due process. Lastly, the issue of whether the leased premises were covered by P. D. 1517 or not is truly a factual question that is properly determined by the trial court, not by this Court due to its not being a trier of facts.

APPEARANCES OF COUNSEL

Oscar L. Karaan for petitioners.

Castro Castro & Associates Law Office and *Alicia A. Risos-Vidal* for respondents.

D E C I S I O N

BERSAMIN, *J.*:

By petition for review on *certiorari*, the petitioners appeal the adverse decision promulgated by the Court of Appeals (CA) on March 31, 2000,[1] and the resolution issued on August 28, 2002 (denying their *motion for reconsideration*).[2]

---

[1] C.A. *Rollo*, G.R. SP No. 44172, pp. 107-120; penned by Associate Justice Ruben T. Reyes (later Presiding Justice, and Member of the Court, but already retired), with Associate Justice Candido V. Rivera (retired and deceased) and Associate Justice Eriberto U. Rosario, Jr. (retired) concurring.

[2] *Id.*, pp. 180-183; penned by Associate Justice Ruben T. Reyes, with Associate Justice Eliezer R. Delos Santos (deceased) and Associate Justice Josefina Guevara-Salonga concurring.

Antecedents

The petitioners are lessees of three distinct and separate parcels of land owned by the respondents, located in the following addresses, to wit: Carmen Reyes, 1460 Velasquez, Tondo, Manila; for Amelia Mar, 479 Perla, Tondo, Manila; and for Emiliana Peña, 1461 Sta. Maria, Tondo, Manila.

Based on the parties' oral lease agreements, the petitioners agreed to pay monthly rents, pegged as of October 9, 1995 at the following rates, namely: for Carmen Reyes, ₱570.00; for Amelia Mar, ₱840.00; and for Emiliana Peña, ₱480.00.

On August 15, 1995, the respondents wrote a demand letter to each of the petitioners, informing that they were terminating the respective month-to-month lease contracts effective September 15, 1995; and demanding that the petitioners vacate and remove their houses from their respective premises, with warning that should they not heed the demand, the respondents would charge them ₱3,000.00/month each as reasonable compensation for the use and occupancy of the premises from October 1, 1995 until they would actually vacate.

After the petitioners refused to vacate within the period allowed, the respondents filed on October 9, 1995 three distinct complaints for ejectment against the petitioners in the Metropolitan Trial Court (MeTC) of Manila. The three cases were consolidated upon the respondents' motion.

In their respective answers, the petitioners uniformly contended that the respondents could not summarily eject them from their leased premises without circumventing Presidential Decree (P.D.) No. 20 and related laws.

During the preliminary conference, the parties agreed on the following issues:[3]

1. Whether or not each of the petitioners could be ejected on the ground that the verbal contract of lease had expired; and

---

[3] Records, Folder No. 96-78866, p. 36.

2. Whether or not the reasonable compensation demanded by the respondents was exorbitant or unconscionable.

Ruling of the MeTC

On May 17, 1996, the MeTC ruled in favor of the respondents,[4] *viz*:

WHEREFORE, judgment is rendered in favor of the plaintiff spouses:

1. Ordering defendant Emiliana Peña in Civil Case No. 149598-CV to immediately vacate the lot located at 1461 Sta. Maria, Tondo, Manila, and surrender the possession thereof to the plaintiff spouses; to pay the latter the amount of ₱2,000.00 a month as reasonable compensation for the use and occupancy of the premises from 1 October 1995 until the same is finally vacated; to pay the plaintiff spouses the amount of ₱5,000.00 as attorney's fees; and to pay the costs of suit;

2. Ordering the defendant Amelia Mar in Civil Case No. 149599-CV to immediately vacate the lot situated at 479 Perla St., Tondo, Manila, and surrender possession thereof to the plaintiff spouses; to pay the latter the amount of ₱2,500.00 per month as reasonable compensation for the use and occupancy of the premises from 1 October 1995 until the same is finally vacated; to pay the plaintiff spouses the amount of ₱5,000.00 as attorney's fees; and to pay the costs of suit; and

3. Ordering the defendant Carmen Reyes in Civil Case No. 149601-CV to immediately vacate the lot with address at 1460 Velasquez Street, Tondo, Manila, and surrender possession thereof to the plaintiff spouses; to pay the latter the amount of ₱2,0500.00 (sic) a month as reasonable compensation for the use and occupancy of the leased premises from 1 October 1995 until the same is finally vacated; to pay the plaintiff-spouses the amount of ₱5,000.00 as attorney's fees; and to pay the costs of suit; and

SO ORDERED.

---

[4] *Rollo,* pp. 65-66.

The MeTC explained in its decision:

> Defendants themselves categorically state that the rentals on the respective lots leased to them were paid every month. xxx Pertinent to the cases, thus, is the Supreme Court ruling in the case of *Acab, et al. vs. Court of Appeals* (G.R. No. 112285, 21 February 1995) that lease agreements with no specified period, but in which rentals are paid monthly, are considered to be on a month-to-month basis. They are for a definite period and expire after the last day of any given thirty day period of lease, upon proper demand and notice of lessor to vacate, and in which case, there is sufficient cause for ejectment under Sec. 5(f) of Batas Pambansa 877, that is, the expiration of the period of the lease contract.

Ruling of the RTC

On appeal, the Regional Trial Court (RTC) modified the MeTC's decision,[5] *viz*:

> WHEREFORE, premises considered, judgment is hereby rendered modifying the decision appealed from as follows:
>
> a. Defendants having stayed in the leased premises for not less than thirty (30) years, instead of being on a month-to-month basis, the lease is fixed for a term of two (2) years reckoned from the date of this decision.
>
> b. Upon expiration of the term of the lease, defendants shall demolish their respective houses at their own expense and vacate the leased premises;
>
> c. The lease being covered by the Rent Control Law, defendants shall continue to pay the old monthly rental to be gradually increased in accordance with said law;
>
> d. Both parties shall pay their respective counsels the required attorney's fees; and
>
> e. To pay the costs of the suit.
>
> SO ORDERED.

The RTC affirmed the MeTC's holding that the leases expired at the end of every month, upon demand to vacate by the

[5] *Id*., pp. 85-89.

respondents; but decreed based on the authority of the court under Article 1687 of the *Civil Code* to fix a longer term that the leases were for two years reckoned from the date of its decision, unless extended by the parties pursuant to the law and in keeping with equity and justice, considering that the respondents had allowed the petitioners to construct their own houses of good materials on the premises, and that the petitioners had been occupants for over 30 years.

Ruling of the CA

Both parties appealed by petition for review.[6]

The petitioners' petition for review was docketed as C.A.-G.R. SP NO. 44172; that of the respondents' was docketed as C.A.-G.R. SP No. 44192. Nonetheless, the separate appeals were consolidated on November 20, 1997.[7]

On March 31, 2000, the CA promulgated its decision,[8] thus:

> WHEREFORE, judgment is rendered SETTING ASIDE the decision of the RTC, Branch 26, Manila and REINSTATING the decision of the MTC, Branch 3, Manila with the modification that the defendants shall pay their respective agreed rentals which may be gradually increased in accordance with the Rent Control Law for the use and occupancy of the premises from 1 October 1995 until the same is finally vacated.
>
> SO ORDERED.

The petitioners sought reconsideration, but the CA denied their *motion for reconsideration* on August 28, 2002, and granted the respondents' *motion for execution pending appeal* and ordered the MeTC to issue a *writ of execution* to enforce the judgment pending appeal.

---

[6] CA *Rollo*, G.R. SP No. 44172, pp. 8-16; G.R. SP No. 44192, pp. 7-19.

[7] CA *Rollo*, G.R. SP No. 44192, p. 45.

[8] *Rollo*, pp. 136-149.

Issues

Hence, this appeal to the Court, whereby the petitioners urge the following grounds,[9] to wit:

I. THE EJECTMENT OF HEREIN PETITIONERS FROM THE SAID LEASED PREMISES IS VIOLATIVE OF P.D. NO. 20

II. HEREIN PETITIONER CANNOT BE EJECTED FROM THE SUBJECT LEASED PROPERTY WITHOUT CLEARLY VIOLATING THE URBAN LAND REFORM CODE (P.D. 1517) AND R.A. 3516.

Ruling of the Court

The petition lacks merit.

1.
Were the contracts of lease for an indefinite period?

The petitioners contend that their lease contracts were covered by P.D. No. 20,[10] which suspended paragraph 1 of Article 1673,[11] *Civil Code*; that as a result, the expiration of the period of their leases was no longer a valid ground to eject them; and that their leases should be deemed to be for an indefinite period.

In refutation, the respondents argue that P.D. 20 suspended only Article 1673, not Article 1687,[12] *Civil Code*; that under

---

[9] *Id.* at p. 8.

[10] *Amending Certain Provisions of Republic Act No. 6359, Entitled An Act to Regulate Rentals for the Years of Dwelling Units or of Land on Which Another's Dwelling is Located and Penalizing Violations Thereof, and for Other Purposes*. It was effective on October 12, 1972.

[11] Article 1673. The lessor may judicially eject the lessee for any of the following causes:

(1) When the period agreed upon, or that which is fixed for the duration of leases under Articles 1682 and 1687, has expired;

x x x x x x x x x

[12] Article 1687. If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from

Article 1687, a lease on a month-to-month basis was a lease with a definite period; and that the petitioners could be ejected from the leased premises upon the expiration of the definite period, particularly as a demand to that effect was made.

The petitioners' contention is erroneous.

First of all, the petitioners' reliance on P.D. 20 is futile and misplaced because that law had no application to their cause. They ignored that *Batas Pambansa Blg*. 25,[13] approved on April 10, 1979 and effective immediately, had expressly repealed P.D. 20 pursuant to its Section 10.[14]

For the enlightenment of the petitioners in order to dispel their confusion, the following brief review of the rental laws that came after P.D. 20 and *B.P. Blg*. 25 is helpful.

B.P. Blg. 25 remained in force for five years, after which P.D. 1912[15] and *B.P. Blg*. 867 were enacted to extend the effectivity of *B.P. Blg. 25* for eight months and six months, respectively. When the extension of *B.P. Blg*. 25 ended on June 30, 1985, a new rental law, *B.P. Blg.* 877,[16] was enacted on July 1, 1985. *B.P. Blg.* 877, although initially effective only until

---

day to day, if the rent is to be paid daily. However, even though a monthly rent is paid, and no period for the lease has been set, the Courts may fix a longer term for the lease after the lessee has occupied the premises for over one year. If the rent is weekly, the Courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month.

[13] *An Act Regulating Rentals of Dwelling Units or of Land on which Another's Dwelling is Located and for Other Purposes.*

[14] Section 10 of B.P. 25 provided that:

Section 10. *Repealing Clause*.—Presidential Decree Numbered Twenty and all laws, decrees, orders or parts thereof inconsistent with the provisions of this act are hereby repealed or modified accordingly.

[15] *Extending the Effectivity of Batas Pambansa Blg. 25 by Eight Months up to 31 December 1984, and for Other Purposes.*

[16] *An Act Providing for the Stabilization and Regulation of Rentals of Certain Residential Units, and for Other Purposes.*

December 31, 1987, came to be extended up to December 31, 1989 by Republic Act No. 6643.[17] Subsequently, Congress passed R.A. No. 7644[18] to further extend the effectivity of *B.P. Blg.* 877 by three years. Finally, R.A. No. 8437[19] extended the rent control period provided in *B.P. Blg.* 877 from January 1, 1998 up to December 31, 2001.

It is clear, therefore, that *B.P. Blg.* 877 was the controlling rental law when the complaints against the petitioners were filed on October 9, 1995.

We note that on January 1, 2002, R.A. No. 9161[20] took effect. Its Section 7(*e*) provided that the expiration of the period of the lease contract was still one of the grounds for judicial ejectment. Also, its Section 10 provided for the suspension of paragraph 1 of Article 1673 of the *Civil Code,* which was similar to Section 6 of *B.P. Blg.* 877, quoted hereunder:

> Sec. 6 *Application of the Civil Code and Rules of Court of the Philippines* – Except when the lease is for a definite period, the provisions of paragraph (1) of Article 1673 of the *Civil Code* of the Philippines, insofar as they refer to residential units covered by this Act shall be suspended during the effectivity of this Act, but other provisions of the *Civil Code* and the *Rules of Court* on lease contracts, insofar as they are not in conflict with the provisions of the Act shall apply.

---

[17] *An Act Extending the Effectivity of Batas Pambansa Blg. 877, Entitled "An Act Providing For The Stabilization And Regulation Of Rentals Of Certain Residential Units And For Other Purposes," for Another Two Years*.

[18] *An Act Further Extending the Rent Control Period for Certain Residential Units, Amending Thereby Batas Pambansa Blg. 877, Entitled "An Act Providing For The Stabilization And Regulation of Rentals of Certain Residential Units and For Other Purposes," As Amended.*

[19] *An Act further extending the Rent Control Period for Certain Residential Units Amending Thereby Batas Pambansa Blg. 877 Entitled: "An Act Providing For The Stabilization And Regulation Of Rentals Of Certain Residential Units, and for Other Purposes, As Amended.*

[20] *Rental Reform Act of* 2002.

In several rulings,[21] the Court held that Section 6 of *B.P. Blg.* 877 did not suspend the effects of Article 1687 of the *Civil Code*; and that the only effect of the suspension of paragraph 1, Article 1673 of the *Civil Code* was that, independently of the grounds for ejectment enumerated in *B.P. Blg*. 877, the owner/lessor could not eject the tenant by reason of the expiration of the period of lease as fixed or determined under Article 1687 of the *Civil Code*. Consequently, the determination of the period of the lease could still be made in accordance with Article 1687.

Under Section 5 (*f*) of *B.P. Blg.* 877,[22] the expiration of the period of the lease is among the grounds for judicial ejectment of a lessee. In this case, because no definite period was agreed upon by the parties, their contracts of lease being oral, the leases were deemed to be for a definite period, considering that the rents agreed upon were being paid monthly, and terminated at the end of every month, pursuant to Article 1687.[23] In addition, the fact that the petitioners were notified of the expiration of the leases effective September 15, 1995 brought their right to stay in their premises to a definite end as of that date.[24]

2
May petitioners validly raise their alleged rights under P.D. 1517, R.A. 3516 and P.D. 2016 for the first time on appeal?

The petitioners contend that the decisions of the MeTC, RTC, and CA were contrary to law; that they held the right of first refusal to purchase their leased premises pursuant to Sections 6

---

[21] *Lipata v. Court of Appeals*, G.R. No. 79670, February 19, 1991, 194 SCRA 214; *Uy Hoo & Sons Realty Development Corporation v. Court of Appeals*, G.R. No. 83263, June 14, 1989, 174 SCRA 100; *Miranda v. Ortiz*, G.R. No. 59783, December 1, 1987, 156 SCRA 10-11; *Rivera v. Florendo*, G.R. No. 60066, July 31, 1986, 143 SCRA 278, 286.

[22] Now Section 7(e) of R.A. 9161.

[23] *De Vera v. Court of Appeals*, G.R. No. 110297, August 7, 1996, 260 SCRA 396.

[24] *Ibid*.

of P.D. 1517,[25] because they had resided on the leased lots for almost 40 years, even before the respondents purchased the properties from the former owners, and because they had erected their own apartments on the leased lots; that under Section 5 of R.A. No. 3516,[26] a lessor was prohibited from selling the leased premises to any person other than his lessee, without securing the latter's written renunciation of his right of first refusal to purchase the leased property; and that Section 2 of P.D. 2016[27] likewise protected them.

The respondents counter that the petitioners could not validly raise the applicability of the cited laws for the first time in this Court, without violating their right to due process.

---

[25] *Claiming Urban Land Reform in the Philippines and Providing for the Implementing Machinery Thereof.*

Section 6. *Land Tenancy in Urban Land.* Within the Urban Zones legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract, continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree.

[26] *An Act to Further Amend Certain Sections of Republic Act Numbered Eleven Hundred And Sixty-Two, Entitled "An Act Providing for the Expropriation of Landed Estates or Haciendas or Lands Which Formerly Formed Part Thereof or Any Piece of Land in the City Of Manila, Quezon City and Suburbs, Their Subdivision into Small Lots, and the Sale of Such Lots at costs or their lease on Reasonable Terms, and for Other Purposes."*

[27] *Prohibiting the Eviction of Occupant Families from Land Identified and Proclaimed As Areas for Priority Development (APD) or as Urban Land Reform Zones and Exempting Such Land from payment of Real Property Taxes.*

Section 2 of P.D. No. 2016 provides that:

No tenant or occupant family, residing for ten years or more reckoned from the date of issuance of Presidential Decree No. 1517 otherwise known as the Urban Land Reform Law, in land proclaimed Areas for Priority Development or Urban Land Reform Zones or is a project for development under the ZIP in Metro Manila and the SIR Program in the regional cities shall be evicted from the land or otherwise dispossessed.

In reply, the petitioners posit that the provisions of P.D. 1517 and R.A. No. 3516, although cited for the first time only on appeal, were always presumed to be part of their affirmative or special defenses; that the lower courts were bound to take judicial notice of and should render decisions consistent with said provisions of law; that the Court was also clothed with ample authority to review matters even if not assigned as errors on appeal if it found that their consideration was necessary to arrive at a just determination of a case; and that Section 8 of Rule 51 of the *Rules of Court* authorizes the Court to consider and resolve a plain error, although not specifically assigned, for, otherwise, substance may be sacrificed for technicalities.

We cannot side with the petitioners.

Firstly, the petitioners appear to have known of their supposed right of first refusal even before the respondents came to acquire the leased premises by purchase. They implied so in their petition for review filed on May 30, 1997 in the CA:[28]

> xxx It must also be borne in mind herein that the said petitioners had started occupying the said property even before the same was purchased by the herein private respondents. In fact, the said sale should even be considered as illegal if not null and void from the very beginning because the herein petitioners were not even properly informed of the said sale considering that under the Urban Land Reform Code they even have the right of first refusal over the said property. The public respondent should also consider the said fact in resolving to give a longer period of lease to the herein petitioners and certainly not for two (2) years only. Of course it would be a different matter if the public respondent himself (RTC) had at least convinced if not goaded the herein private respondents to compensate the petitioners for the value of the improvements introduced on the said leased premises in the interest of equity, fairness and justice. We submit to this Honorable Court that the herein petitioners should be allowed to enjoy their said improvements for a period of at least five (5) years before they can be ejected from the said leased premises.

[28] C.A. *Rollo*, G.R. SP No. L-44172, pp. 14-15.

Yet, the petitioners did not invoke their supposed right of first refusal from the time when the respondents filed their complaints for ejectment against them on October 9, 1995 until they brought the present recourse to this Court. Neither did they offer any explanation for their failure to do so. It is notable that the only defense they raised is that their eviction from the premises on the sole ground of expiration of the lease contract violated R.A. No. 9161.

Moreover, the petitioners did not also assert their supposed right of first refusal despite the respondents informing them (through their position paper filed in the MeTC on March 21, 1996)[29] that they had terminated the petitioners' leases *because they were intending to sell the premises to a third person*. In fact, as the records bear out, the only reliefs the petitioners prayed for in the MTC, RTC, and CA were the extension of their leases, and the reimbursement by the respondents of the values of their improvements.[30] It is inferable from the petitioners' silence, therefore, that they had neither the interest nor the enthusiasm to assert the right of first refusal.

Secondly, the petitioners are precluded from invoking their supposed right of first refusal at this very late stage after failing to assert it within a reasonable time from the respondents' purchase of the respective properties where their premises were respectively located. The presumption that they had either abandoned or declined to assert their rights becomes fully warranted.[31]

---

[29] Records, Folder No. 96-78864, p. 69.

[30] In their motion for reconsideration *vis-à-vis* the RTC Decision, the petitioners prayed that the RTC fix a longer lease term of *at least* five years instead of only two years in the interest of substantial justice, stating that they would lose substantial improvements due to the houses they had built not being compensated by the respondents (Record, Folder No. 96-78865, pp. 70-72). They reiterated this additional relief in their petition for review filed in the CA (CA *Rollo*, G.R. SP No. 44172, pp. 14-15).

[31] *Atlas Consolidated Mining & Development Corp. v. Commissioner of Internal Revenue*, G.R. No. L-26911, January 27, 1981, 102 SCRA 246, 259.

Thirdly, it is clear that the petitioners are changing their theory of the case on appeal. That change is impermissible on grounds of its elemental unfairness to the adverse parties, who would now be forced to adapt to the change and to incur additional expense in doing so. Besides, such a change would effectively deprive the lower courts of the opportunity to decide the merits of the case fairly. It is certainly a basic rule in appellate procedure that the trial court should be allowed the *meaningful opportunity* not only to consider and pass upon *all* the issues but also to avoid or correct any alleged *errors* before those issues or errors become the basis for an appeal.[32] In that regard, the Court has observed in *Carantes v. Court of Appeals*:[33]

> The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party.

Indeed, the settled rule in this jurisdiction, according to *Mon v. Court of Appeals*,[34] is that a party cannot change his theory of the case or his cause of action on appeal. This rule affirms that "courts of justice have no jurisdiction or power to decide a question not in issue." Thus, a judgment that goes beyond the issues and purports to adjudicate something on which the court did not hear the parties is not only irregular but also extrajudicial and invalid.[35] The legal theory under which the

---

[32] *San Agustin v. Barrios*, 68 Phil. 475 (1939); *Toribio v. Decasa*, 55 Phil. 461 (1930); *Soriano v. Ramirez*, 44 Phil. 519 (1923); *De la Rama v. De la Rama*, 41 Phil. 980 (1916); *Pico v. U.S.*, 40 Phil. 1117 (1913); *U.S. v. Rosa*, 14 Phil. 394 (1909); *U.S. v. Paraiso*, 11 Phil. 799 (1908).

[33] G.R. No. L-33360, April 25, 1977, 76 SCRA 514, 521.

[34] G.R. No. 118292, April 14, 2004, 427 SCRA 165, 171-172.

[35] *Viajar v. Court of Appeals*, G.R. No. 77294, December 12, 1988, 168 SCRA 405, 411.

controversy was *heard* and *decided* in the trial court should be the *same* theory under which the *review on appeal* is conducted. Otherwise, prejudice will result to the adverse party. We stress that points of law, theories, issues, and arguments not adequately brought to the attention of the lower court will not be ordinarily considered by a reviewing court, inasmuch as they cannot be raised for the first time on appeal.[36] This would be offensive to the basic rules of fair play, justice, and due process.[37]

Lastly, the issue of whether the leased premises were covered by P. D. 1517 or not is truly a factual question that is properly determined by the trial court, not by this Court due to its not being a trier of facts.

3
CA's reinstatement of MeTC's decision on the ejectment of petitioners is sustained, subject to modification on rentals

Although the CA correctly reinstated the MeTC's decision as far as it ordered the petitioners' ejectment from the leased premises, we cannot uphold its modification by requiring the petitioners instead to pay their "respective agreed rentals which shall be gradually increased in accordance with the Rent Control Law for the use and occupancy of the premises from 1 October 1995 until the same is finally vacated" without any elucidation of the reasons for ordering the payment of *agreed rentals* for the use and occupancy of the premises in lieu of the MeTC's requiring the petitioners to pay *reasonable compensation*.

---

[36] *Martinez v. Court of Appeals*, G.R. No. 170409, January 28, 2008, 542 SCRA 604; *Mendoza v. Court of Appeals*, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539; *Philippine Airlines, Inc. v. NLRC*, G.R. Nos. 114280 & 115224, July 26, 1996, 259 SCRA 459; *Tay Chun Suy v. Court of Appeals*, G.R. No. 93640, January 7, 1994, 229 SCRA 151; *Berin v. Court of Appeals*, G.R. No. 57490, February 27, 1991, 194 SCRA 508, 512; *Santos v. Intermediate Appellate Court*, G.R. No. 74243, November 14, 1986, 145 SCRA 592.

[37] *Cruz v. Court of Appeals*, G.R. No. 108738, June 17, 1994, 233 SCRA 301; *National Power Corporation v. Gutierrez*, G.R. No. 60077, January 18, 1991, 193 SCRA 1.

It is true that the MeTC had not also given any justification for fixing reasonable compensation in the respective amounts found in the dispositive portion of its decision, instead of rentals. However, we discern that the MeTC had taken off from the demand letters of the respondents to each of the petitioners, which included the warning to them that should they refuse to vacate as demanded they would each be charged ₱3,000.00/ month as *reasonable compensation* for the use and occupancy of the premises from October 1, 1995 until they would actually vacate. We opt not to disturb the MeTC's holding on reasonable compensation, in lieu of *agreed* rentals, considering that the petitioners did not raise any issue against it, and considering further that the CA did not find any error committed by the MeTC as to that. At any rate, it is worthy to note that the award of reasonable compensation, not rentals, is more consistent with the conclusion of the MeTC that the leases of the petitioners had expired. Indeed, to peg the respondents' monetary recovery to the unadjusted rentals, instead of reasonable compensation, is not fair.

Accordingly, we modify the CA's decision by reinstating the MeTC's decision without qualification.

WHEREFORE, we modify the decision promulgated on March 31, 2000 by the Court of Appeals by reinstating the decision dated May 17, 1996 by the Metropolitan Trial Court in Manila without qualification.

Costs of suit to be paid by the petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Peralta,[*] and *Villarama, Jr., JJ.,* concur.

---

[*] In lieu of Justice Maria Lourdes P.A. Sereno who is on leave per Order No. 944 dated February 9, 2011.

SECOND DIVISION

[G.R. No. 159615. February 9, 2011]

SPOUSES VICTOR ONG and GRACE TIU ONG, *petitioners, vs.* **PREMIER DEVELOPMENT BANK, THE PROVINCIAL SHERIFF OF RIZAL GRACE S. BELVIS and DEPUTY SHERIFF VICTOR S. STA. ANA**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PETITIONERS' FAILED TO OVERCOME THE PRESUMPTION OF REGULARITY OF THE FORECLOSURE PROCEEDINGS CONDUCTED ON THE MORTGAGED PROPERTY.— The RTC and the CA ruled that the foreclosure proceedings conducted on the mortgaged property of Spouses Ong enjoyed the presumption of regularity in the absence of evidence to the contrary. The Court respects the ruling of the courts below. It is an elementary rule that the burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense as required by law. The Court has likewise ruled in previous cases that foreclosure proceedings enjoy the presumption of regularity and that the mortgagor who alleges absence of a requisite has the burden of proving such fact. In this case, Spouses Ong failed to overcome this presumption with no sufficient evidence to prove the contrary. Except for their bare allegations, no convincing proof of non-compliance with the posting requirement was presented. On the other hand, the foreclosure procedure undertaken by PDB was supported by an authenticated and duly executed Affidavit of Publication, Certification of the Office of the Clerk of Court that Alppa Times is an accredited publisher of Notice of Sheriff's Sale, Notice of Sheriff's Sale and Certificate of Posting. Spouses Ong likewise failed to present solid evidence of collusion between the Clerk of Court and Deputy Sheriff, on one hand, and PDB, on the other. Without doubt, the documents shown by PDB prove that the subject foreclosure proceedings were conducted in a regular manner and in accordance with law.

2. CIVIL LAW; CONTRACTS; LOAN; PETITIONERS' DEFAULT ON THEIR LOAN OBLIGATIONS WARRANTED THE LEGITIMATE EXERCISE BY RESPONDENT BANK OF ITS RIGHTS UNDER THE LOAN AND MORTGAGE CONTRACTS.— With respect to the computation of Spouses Ong's loan obligation, the Court agrees with the ruling of the CA that there was no error committed by PDB in computing their total loan obligation. The loan documents presented by PDB which included the promissory notes, real estate mortgage, and the continuing guaranty/comprehensive security, all prove that Spouses Ong owed PDB a sum of money and failed to settle that obligation. Naturally, the petitioners' default on their loan obligations warranted the legitimate exercise by the respondent bank of its rights under the loan and mortgage contracts.

APPEARANCES OF COUNSEL

Rolando P. Quimbo for petitioners.
Araos and Associates for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* filed by the petitioners, spouses Victor and Grace Ong *(Spouses Ong)*, seeking to set aside the March 31, 2003 Decision[1] of the Court of Appeals (*CA*) which affirmed the decision[2] of the Regional Trial Court Branch 267, Pasig City (*RTC*), dismissing the petitioners' complaint for annulment of extra-judicial foreclosure of real estate mortgage, and its August 13, 2003 Resolution denying the motion for reconsideration.[3]

---

[1] *Rollo*, pp. 47-65. Penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justice Elvi John S. Asuncion and Associate Justice Lucas P. Bersamin (now with this Court).

[2] *Id.* at 102-111.

[3] *Id.* at 75.

The Facts

Records reveal that Kenlene Laboratories, Inc. with Spouses Ong acting as Director and Treasurer, respectively, obtained a loan from Premier Development Bank *(PDB)* in the amount of ₱10,000,000.00. On September 27, 1990, Spouses Ong executed a promissory note obligating themselves to pay PDB on or before September 27, 1997 the amount of the loan with interest at 31% per annum with monthly installment of ₱292,658.08. The petitioners' loan application with the PDB was secured by a real estate mortgage over Spouses Ong's residential property in West Greenhills, San Juan, Metro Manila.

For failure of the Spouses Ong to pay their monthly amortizations, PDB initiated extrajudicial foreclosure proceedings on the real estate mortgage with the Provincial Sheriff in accordance with Act No. 3135, otherwise known as "An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real-Estate Mortgages." The Notice of Sheriff's Sale dated May 19, 1993 was prepared and issued by the Clerk of Court.

On May 21, 1993, the deputy sheriff issued a certificate of posting which was followed by the issuance of an affidavit of publication by the editor of Alppa Times on June 14, 1993. The deputy sheriff set the public auction sale of the mortgaged property on June 22, 1993 which was reset to July 22, 1993 upon the request of Spouses Ong.

On July 22, 1993, the mortgaged property was sold to PDB for ₱18,914,349.37.

On July 27, 1993, a certificate of sale over the mortgaged property was prepared and annotation on the title was made on August 18, 1993.

On September 2, 1993, within the one-year redemption period, PDB filed a petition for a writ of possession, which was granted by the RTC in its order dated March 15, 1994. On May 4, 1994, a writ of possession was issued. Spouses Ong filed a motion for reconsideration to recall the writ of possession, but it was denied by the RTC.

Thereafter, Spouses Ong filed a petition for prohibition and preliminary injunction before the CA to enjoin the public respondents from taking further action in connection with the extra-judicial foreclosure sale made on July 22, 1993 including the implementation of the writ of possession. On October 25, 1994, the CA rendered a decision[4] dismissing their petition. Their motion for reconsideration was likewise denied.

On June 8, 2000, this Court issued a resolution[5] dismissing the petition for review on *certiorari* filed by Spouses Ong questioning the October 25, 1994 CA decision.

On September 13, 2000, the Court issued a resolution[6] denying with finality the motion for reconsideration filed by Spouses Ong. Thus, the June 8, 2000 Resolution of this Court became final and executory on November 9, 2000 per entry of judgment.[7]

Records also show that on July 19, 1994, Spouses Ong instituted an action for annulment of extrajudicial foreclosure before the RTC alleging non-compliance with the formal requirements of notice and publication under Act No. 3135[8] specifically that: 1) the sheriff failed to post the notice of sale in the premises of the mortgaged property and the place where the auction was conducted and other conspicuous public places within the Municipality of San Juan; and 2) the newspaper Alppa Times, where the notice of sale was published, was not a newspaper of general circulation. Spouses Ong likewise alleged

---

[4] CA *rollo*, pp. 280-284.

[5] *Rollo*, pp. 288-299.

[6] *Id.* at 285.

[7] *Id.* at 300.

[8] Section 3 of Act No. 3135 provides:

SEC. 3. Notice shall be given by posting notices of the sale for not less than twenty days in at least three public places of the municipality or city where the property is situated, and if such property is worth more than four hundred pesos, such notice shall also be published once a week for at least three consecutive weeks in a newspaper of general circulation in the municipality or city.

that the interests and penalties on the loan were over-computed and the figures were bloated.

On the other hand, PDB countered that there were no irregularities in the conduct of the foreclosure proceedings explaining that: 1) the Notice of Sheriff's Sale dated May 19, 1993 was issued by the Office of the Clerk of Court and *Ex-Officio* Sheriff; 2) a Certificate of Posting was signed and issued by the deputy sheriff for the said foreclosure proceedings; and 3) the notice of sale was published once a week for three consecutive weeks in Alppa Times, as evidenced by the Affidavit of Publication dated June 14, 1993.

Decision of the RTC

On July 18, 2000, the RTC rendered a decision dismissing the complaint filed by Spouses Ong, the dispositive portion of which reads, as follows:

> WHEREFORE, in view of the foregoing considerations, the instant complaint for annulment of extra-judicial foreclosure of real estate mortgage with application for preliminary injunction and/or Temporary Restraining Order filed by plaintiffs Spouses Victor Ong and Grace Tiu Ong against the defendants Premiere Development Bank, the Provincial Sheriff of Rizal, Grace S. Belvis and Deputy Sheriff Victor S. Sta. Ana is hereby ordered DISMISSED.
>
> Finding the counterclaim of private defendant Premiere Development Bank to be lacking in merit, the same is likewise ordered DISMISSED.
>
> SO ORDERED.

The RTC ruled, among others, that Spouses Ong voluntarily and intelligently entered into a valid loan contract with the PDB. The latter was able to prove that Spouses Ong defaulted in the payment of their loan obligations, so it was proper for it to foreclose their collateral for the subject loan.

The RTC further held that there were no irregularities in the conduct of the foreclosure proceedings, which resulted in the grant of the writ of possession. First, Spouses Ong's claim of irregularities was never previously raised and contrary to their

contentions during the proceedings for the issuance of the writ of possession. In fact, they intervened only at the time PDB requested for the issuance of a writ of possession. They did not question the conduct of the foreclosure particularly the alleged defect in the publication of the notice of sheriff's sale by Alppa Times.

Second, the affidavit of publication executed by the editor of Alppa Times entitled said document to be given full faith and credit in the absence of competent evidence showing that its due execution was tainted with defects and irregularities that would warrant a declaration of its nullity.

Third, the Notice of Sale was posted in a conspicuous place within the Municipal Hall of San Juan. Thus, the presumption of regularity in the performance of duty by the sheriff prevailed.

Fourth, it was established in the certification issued by the Office of the Clerk of Court that Alppa Times was duly accredited as a publisher of the notice of sheriff's sale at the time of the foreclosure of the subject property. Spouses Ong's self-serving statement that Alppa Times was not a newspaper of general circulation could not prevail over the issued certification by the Clerk of Court and *Ex-Officio* Sheriff.

Finally, the RTC found that the newspaper dealer and newspaper vendor presented by Spouses Ong were not expert witnesses or even competent enough to declare that Alppa Times was a non-existent publication and not a newspaper of general circulation.

Not satisfied with the Decision, Spouses Ong appealed before the CA in CA G.R. CV No. 68576 entitled *Spouses Victor Ong and Grace Tiu Ong v. Premier Development Bank, The Provincial Sheriff of Rizal Grace S. Belvis and Deputy Sheriff Victor S. Sta. Ana.*

Decision of the CA

On March 31, 2003, the CA affirmed *in toto* the RTC July 18, 2000 decision.

The CA ruled, among others, that the respondents complied with the notice requirement under Act No. 3135. The CA found that the primary objective of the notice of sale was satisfied considering that there was sufficient publicity of the sale through a newspaper publication. It further stated that "courts take judicial notice that newspaper publications have far more reaching effects than posting on bulletin boards in public places. There is a much greater likelihood and probability that announcements or notices published in a newspaper of general circulation shall reach more people than those merely posted in a public bulletin board, no matter how strategic its location may be." Hence, the publication of the notice of sale in the newspaper of general circulation alone sufficiently complied with the notice and posting requirement of the law.

The CA likewise reasoned that Spouses Ong failed to discharge the burden of proving by convincing evidence that there was actually no compliance with the posting requirement. Therefore, the foreclosure proceedings had in its favor the presumption of regularity in the absence of evidence to the contrary. The CA also ruled that there was no proof that the property was sold for a price below its market value. Neither was there any proof shown of collusion among the respondents.

Moreover, the CA ruled that Alppa Times was a newspaper of general circulation for purposes of publication of notices of sale since it was enough that it was published for the dissemination of local news and general information; that it has a bona fide subscription list of paying subscribers; that it was published at regular intervals; and that it need not have the largest circulation or subscription.

Lastly, the CA ruled that Spouses Ong failed to prove that there was an error in the computation of their loan obligation. On the contrary, PDB was able to prove by preponderant evidence that Spouses Ong defaulted in the payment of their loan obligation.

Upon the denial of their motion for reconsideration, Spouses Ong filed this petition raising this lone

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN SUSTAINING THE VALIDITY OF THE EXTRA-JUDICIAL FORECLOSURE PROCEEDINGS.

Petitioners' Position

The following arguments were raised by Spouses Ong in support of their position that the subject foreclosure sale was null and void for non-compliance with the requirements of Act No. 3135.

1] There was no posting of the notice of sheriff's sale for at least twenty (20) days.

2] There was no showing that the notice of sale was posted in three (3) public places within the municipality.

3] There was no adequate showing of newspaper publication for three (3) consecutive weeks.

4] There was no proof that the Alppa Times was a newspaper of general circulation within the Municipality of San Juan, Metro Manila, as required by Act No. 3135, as amended.

5] The proper party did not execute the certificate of sale.

6] Respondent bank's petition for foreclosure did not specify the amount sought to be liquidated thereby.

7] Respondent bank's computation of the obligation was not in accordance with the promissory notes.

8] The RTC erred in admitting in evidence the bank ledgers.

Respondent Bank's Position

PDB counters that the findings of fact of the CA and the RTC were in accordance with the evidence presented and the law applicable in the said case. It further argues that both courts committed no reversible error in ruling that the foreclosure

proceedings were conducted in the regular performance of duties by the sheriff and strictly in accordance with the law.

PDB likewise asserts that Spouses Ong's default on their loan obligations warranted the legitimate exercise by PDB of its rights under the loan and mortgage contracts. It likewise contends that to entertain the challenge of Spouses Ong will allow them to re-open the merits of a final and already executed decision of this Court on the writ of possession given to PDB.

The Court's Ruling

The petition lacks merit.

First of all, the issue raised by Spouses Ong of whether the legal requirements for a valid foreclosure sale under Act No. 3135 has been actually followed is a question of fact that does not deserve a review by this Court. The recent case of *Century Savings Bank v. Spouses Danilo T. Samonte and Rosalinda M. Samonte*[9] is instructive:

> The distinction between questions of law and questions of fact is settled. A question of law exists when the doubt or difference centers on what the law is on a certain state of facts. A question of fact exists if the doubt centers on the truth or falsity of the alleged facts. Though this delineation seems simple, determining the true nature and extent of the distinction is sometimes problematic. For example, it is incorrect to presume that all cases where the facts are not in dispute automatically involve purely questions of law.
>
> There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual. Our ruling in *Paterno v. Paterno* [G.R. No. 63680, 23 March 1990, 183 SCRA 630] is illustrative on this point:

---

[9] G.R. No. 176212, October 20, 2010, citing *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact. Whether or not the body of proofs presented by a party, weighed and analyzed in relation to contrary evidence submitted by adverse party, may be said to be strong, clear and convincing; whether or not certain documents presented by one side should be accorded full faith and credit in the face of protests as to their spurious character by the other side; whether or not inconsistencies in the body of proofs of a party are of such gravity as to justify refusing to give said proofs weight – all these are issues of fact.

x x x x x x x x x

The main issue in the case at bar is whether the extrajudicial foreclosure sale of respondents' mortgaged properties was valid. The resolution of said issue, however, is dependent on the answer to the question of whether the legal requirements on the notice of sale were complied with. Necessarily, the Court must review the evidence on record, most especially, Notary Public Magpantay's Certificate of Posting, to determine the weight and probative value to accord the same. **Non-compliance with the requirements of notice and publication in an extrajudicial foreclosure sale is a factual issue. The resolution thereof by the lower courts is binding and conclusive upon this Court**. However, this rule is subject to exceptions, as when the findings of the trial court and the Court of Appeals are in conflict. Also, it must be noted that non-compliance with the statutory requisites could constitute a jurisdictional defect that would invalidate the sale. [Emphasis supplied]

In the case at bench, the RTC and the CA ruled that the foreclosure proceedings conducted on the mortgaged property of Spouses Ong enjoyed the presumption of regularity in the absence of evidence to the contrary. The Court respects the ruling of the courts below.

It is an elementary rule that the burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense as required by law. The Court has likewise ruled in previous cases that foreclosure proceedings

enjoy the presumption of regularity and that the mortgagor who alleges absence of a requisite has the burden of proving such fact.[10]

In this case, Spouses Ong failed to overcome this presumption with no sufficient evidence to prove the contrary. Except for their bare allegations, no convincing proof of non-compliance with the posting requirement was presented. On the other hand, the foreclosure procedure undertaken by PDB was supported by an authenticated and duly executed Affidavit of Publication,[11] Certification of the Office of the Clerk of Court that Alppa Times is an accredited publisher of Notice of Sheriff's Sale,[12] Notice of Sheriff's Sale[13] and Certificate of Posting.[14] Spouses Ong likewise failed to present solid evidence of collusion between the Clerk of Court and Deputy Sheriff, on one hand, and PDB, on the other.

Without doubt, the documents shown by PDB prove that the subject foreclosure proceedings were conducted in a regular manner and in accordance with law.

With respect to the computation of Spouses Ong's loan obligation, the Court agrees with the ruling of the CA that there was no error committed by PDB in computing their total loan obligation. The loan documents presented by PDB which included the promissory notes,[15] real estate mortgage,[16] and the continuing guaranty/comprehensive security,[17] all prove that Spouses Ong owed PDB a sum of money and failed to settle

---

[10] *Century Savings Bank v. Spouses Danilo T. Samonte and Rosalinda M. Samonte*, G.R. No. 176212, October 20, 2010.

[11] *Rollo*, pp. 206-207.

[12] *Id.* at 223.

[13] *Id.* at 194.

[14] *Id.* at 193.

[15] *Id.* at 175-178.

[16] *Id.* at 199-202.

[17] *Id.* at 203-205.

that obligation. Naturally, the petitioners' default on their loan obligations warranted the legitimate exercise by the respondent bank of its rights under the loan and mortgage contracts.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 165381. February 9, 2011]

NELSON A. CULILI, *petitioner, vs.* **EASTERN TELECOMMUNICATIONS PHILIPPINES, INC., SALVADOR HIZON (President and Chief Executive Officer), EMILIANO JURADO (Chairman of the Board), VIRGILIO GARCIA (Vice President) and STELLA GARCIA (Assistant Vice President),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE COURT OF APPEALS HAS THE POWER EVEN ON A PETITION FOR REVIEW ON *CERTIORARI* TO REVIEW THE EVIDENCE ON RECORD, WHEN NECESSARY, TO RESOLVE FACTUAL ISSUES.— This Court has already confirmed the power of the Court of Appeals, even on a Petition for *Certiorari* under Rule 65, to review the evidence on record, when necessary, to resolve factual issues: The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor*

Relations Commission. This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg*. 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues. While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts. In the case at bench, the Court of Appeals found itself unable to completely sustain the findings of the NLRC thus, it was compelled to review the facts and evidence and not limit itself to the issue of grave abuse of discretion. With the conflicting findings of facts by the tribunals below now before us, it behooves this Court to make an independent evaluation of the facts in this case.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; AUTHORIZED CAUSES; CLOSURE OF ESTABLISHMENT AND REDUCTION OF PERSONNEL; EXPOUNDED.— Under our laws, an employee may be terminated for reasons involving measures taken by the employer due to business necessities. x x x There is redundancy when the service capability of the workforce is greater than what is reasonably required to meet the demands of the business enterprise. A position becomes redundant when it is rendered superfluous by any number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise. This Court has been consistent in

holding that the determination of whether or not an employee's services are still needed or sustainable properly belongs to the employer. Provided there is no violation of law or a showing that the employer was prompted by an arbitrary or malicious act, the soundness or wisdom of this exercise of business judgment is not subject to the discretionary review of the Labor Arbiter and the NLRC.

3. ID.; ID.; ID.; ID.; ID.; REQUISITES OF A VALID REDUNDANCY PROGRAM; COMPLIED WITH IN CASE AT BAR.— [A]n employer cannot simply declare that it has become overmanned and dismiss its employees without producing adequate proof to sustain its claim of redundancy. Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant, such as but not limited to: preferred status, efficiency, and seniority. This Court also held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring. In the case at bar, ETPI was upfront with its employees about its plan to implement a Right-Sizing Program. Even in the face of initial opposition from and rejection of the said program by ETEU, ETPI patiently negotiated with ETEU's officers to make them understand ETPI's business dilemma and its need to reduce its workforce and streamline its organization. This evidently rules out bad faith on the part of ETPI. In deciding which positions to retain and which to abolish, ETPI chose on the basis of efficiency, economy, versatility and flexibility. It needed to reduce its workforce to a sustainable level while maintaining functions necessary to keep it operating. The records show that ETPI had sufficiently established not only its need to reduce its workforce and streamline its organization, but also the existence of redundancy in the position of a Senior Technician. x x x It is inconceivable that ETPI would effect a company-wide reorganization of this scale for the mere purpose of singling out Culili and terminating him. If Culili's position were indeed indispensable to ETPI, then it would be absurd for ETPI, which was then trying to save its operations, to abolish that one position which it

needed the most. Contrary to Culili's assertions that ETPI could not do away with his functions as long as it is in the telecommunications industry, ETPI did not abolish the functions performed by Culili as a Senior Technician. What ETPI did was to abolish the position itself for being too specialized and limited. The functions of that position were then added to another employee whose functions were broad enough to absorb the tasks of a Senior Technician.

4. ID.; ID.; ID.; ID.; ID.; THE COMPANY'S RIGHT-SIZING PROGRAM CANNOT BE CONSIDERED AS EVIDENCE OF UNDUE DISCRIMINATION OR "SINGLING OUT" SINCE NOT ONLY PETITIONER'S POSITION WAS AFFECTED BY THE SECOND PHASE OF THE PROGRAM, BUT ALSO HIS ENTIRE UNIT WHICH WAS ABOLISHED AND ABSORBED BY ANOTHER DEPARTMENT.— The December 7, 1998 termination letter signed by ETPI's AVP Stella Garcia hardly suffices to prove bad faith on the part of the company. The fact remains that the said letter was never officially transmitted and Culili was not terminated at the end of the first phase of ETPI's Right-Sizing Program. ETPI had given an adequate explanation for the existence of the letter and considering that it had been transparent with its employees, through their union ETEU, so much so that ETPI even gave ETEU this unofficial letter, there is no reason to speculate and attach malice to such act. That Culili would be subsequently terminated during the second phase of the Right-Sizing Program is not evidence of undue discrimination or "singling out" since not only Culili's position, but his entire unit was abolished and absorbed by another department.

5. ID.; ID.; DUE PROCESS REQUIREMENTS IN TERMINATION CASES; NOT PROPERLY OBSERVED IN CASE AT BAR.— Although the Court finds Culili's dismissal was for a lawful cause and not an act of unfair labor practice, ETPI, however, was remiss in its duty to observe procedural due process in effecting the termination of Culili. We have previously held that "there are two aspects which characterize the concept of due process under the Labor Code: one is substantive — whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing

jurisprudence; the other is procedural — the manner in which the dismissal was effected." Section 2(d), Rule I, Book VI of the Rules Implementing the Labor Code provides: (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: x x x For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination. In *Mayon Hotel & Restaurant v. Adana*, we observed: The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination. ETPI does not deny its failure to provide DOLE with a written notice regarding Culili's termination. It, however, insists that it has complied with the requirement to serve a written notice to Culili as evidenced by his admission of having received it and forwarding it to his union president. In *Serrano v. National Labor Relations Commission*, we noted that "a job is more than the salary that it carries." There is a psychological effect or a stigma in immediately finding one's self laid off from work. This is exactly why our labor laws have provided for mandating procedural due process clauses. Our laws, while recognizing the right of employers to terminate employees it cannot sustain, also recognize the employee's right to be properly informed of the impending severance of his ties with the company he is working for. In the case at bar, ETPI, in effecting Culili's termination, simply asked one of its guards to serve the required written notice on Culili. Culili, on one hand, claims in his petition that this was handed to him by ETPI's vice president, but previously testified before the Labor Arbiter that this was left on his table. Regardless of how this notice was served on Culili, this Court believes that ETPI failed to properly notify Culili about his termination. Aside from the manner the written notice was served, a reading of that notice

shows that ETPI failed to properly inform Culili of the grounds for his termination.

6. ID.; ID.; ID.; THE COMPANY'S FAILURE TO COMPLY WITH THE NOTICE REQUIREMENTS UNDER THE LABOR CODE ENTITLES THE DISMISSED EMPLOYEE TO NOMINAL DAMAGES IN ADDITION TO HIS SEPARATION PAY.— The Court of Appeals, in finding that Culili was not afforded procedural due process, held that Culili's dismissal was ineffectual, and required ETPI to pay Culili full backwages in accordance with our decision in *Serrano v. National Labor Relations Commission*. Over the years, this Court has had the opportunity to reexamine the sanctions imposed upon employers who fail to comply with the procedural due process requirements in terminating its employees. In *Agabon v. National Labor Relations Commission*, this Court reverted back to the doctrine in *Wenphil Corporation v. National Labor Relations Commission* and held that where the dismissal is due to a just or authorized cause, but without observance of the due process requirements, the dismissal may be upheld but the employer must pay an indemnity to the employee. The sanctions to be imposed however, must be stiffer than those imposed in *Wenphil* to achieve a result fair to both the employers and the employees. In *Jaka Food Processing Corporation v. Pacot*, this Court, taking a cue from *Agabon*, held that since there is a clear-cut distinction between a dismissal due to a just cause and a dismissal due to an authorized cause, the legal implications for employers who fail to comply with the notice requirements must also be treated differently: Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative. Hence, since it has been established that Culili's termination was due to an authorized cause and cannot be considered unfair labor practice on the part of ETPI, his dismissal is valid. However, in view of ETPI's failure to

comply with the notice requirements under the Labor Code, Culili is entitled to nominal damages in addition to his separation pay.

7. ID.; UNFAIR LABOR PRACTICES; CONCEPT; NO SHOWING THAT THE COMPANY IN IMPLEMENTING ITS RIGHT-SIZING PROGRAM, WAS MOTIVATED BY ILL WILL, BAD FAITH OR MALICE, OR THAT IT WAS AIMED AT INTERFERING WITH ITS EMPLOYEES' RIGHT TO SELF-ORGANIZE.— The concept of unfair labor practice is provided in Article 247 of the Labor Code which states: **Article 247. Concept of unfair labor practice and procedure for prosecution thereof.** — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interest of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. In the past, we have ruled that "unfair labor practice refers to 'acts that violate the workers' right to organize.' The prohibited acts are related to the workers' right to self-organization and to the observance of a CBA." We have likewise declared that "there should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization." Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize. There is no showing that ETPI, in implementing its Right-Sizing Program, was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize. In fact, ETPI negotiated and consulted with ETEU before implementing its Right-Sizing Program. Both the Labor Arbiter and the NLRC found ETPI guilty of unfair labor practice because of its failure to dispute Culili's allegations. According to jurisprudence, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same." By imputing bad faith to the actuations of ETPI, Culili has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Culili failed to discharge this burden and his bare allegations deserve no credit.

8. MERCANTILE LAW; CORPORATION CODE; LIABILITY OF CORPORATE OFFICERS; IT IS NOT ENOUGH THAT THE COMPANY FAILED TO COMPLY WITH DUE PROCESS REQUIREMENTS TO WARRANT AN AWARD OF DAMAGES, THERE BEING NO SHOWING THAT THE COMPANY'S AND ITS OFFICER'S ACTS WERE ATTENDED WITH BAD FAITH OR WERE DONE OPPRESSIVELY.— As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable with the corporation if the termination was done with malice or bad faith. In illegal dismissal cases, moral damages are awarded only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy. Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner to warrant an award for exemplary damages. It is our considered view that Culili has failed to prove that his dismissal was orchestrated by the individual respondents herein for the mere purpose of getting rid of him. In fact, most of them have not even dealt with Culili personally. Moreover, it has been established that his termination was for an authorized cause, and that there was no bad faith on the part of ETPI in implementing its Right-Sizing Program, which involved abolishing certain positions and departments for redundancy. It is not enough that ETPI failed to comply with the due process requirements to warrant an award of damages, there being no showing that the company's and its officers' acts were attended with bad faith or were done oppressively.

APPEARANCES OF COUNSEL

Sobreviñas Hayudini Bodegon Navarro & San Juan for petitioner.

Villaraza & Angangco for respondents.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before Us is a petition for review on *certiorari*[1] of the February 5, 2004 Decision[2] and September 13, 2004 Resolution[3] of the Court of Appeals in *CA-G.R. SP No. 75001*, wherein the Court of Appeals set aside the March 1, 2002 Decision[4] and September 24, 2002 Resolution[5] of the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's Decision[6] dated April 30, 2001.

Respondent Eastern Telecommunications Philippines, Inc. (ETPI) is a telecommunications company engaged mainly in the business of establishing commercial telecommunications systems and leasing of international datalines or circuits that pass through the international gateway facility (IGF).[7] The other respondents are ETPI's officers: Salvador Hizon, President and Chief Executive Officer; Emiliano Jurado, Chairman of the Board; Virgilio Garcia, Vice President; and Stella Garcia, Assistant Vice President.

Petitioner Nelson A. Culili (Culili) was employed by ETPI as a Technician in its Field Operations Department on January 27, 1981. On December 12, 1996, Culili was promoted to Senior Technician in the Customer Premises Equipment Management

---

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

[2] *Rollo*, pp. 59-76; penned by Associate Justice Portia Aliño-Hormachuelos with Associate Justices Perlita J. Tria Tirona and Rosalinda Asuncion-Vicente, concurring.

[3] *Id.* at 78-81.

[4] *Id.* at 611-624; penned by Commissioner Alberto R. Quimpo with Presiding Commissioner Roy V. Seneres and Commissioner Vicente S.E. Veloso, concurring.

[5] *Id.* at 656.

[6] *Id.* at 472-487; penned by Labor Arbiter Luis D. Flores.

[7] *Id.* at 976.

Unit of the Service Quality Department and his basic salary was increased.[8]

As a telecommunications company and an authorized IGF operator, ETPI was required, under Republic Act. No. 7925 and Executive Order No. 109, to establish landlines in Metro Manila and certain provinces.[9] However, due to interconnection problems with the Philippine Long Distance Telephone Company (PLDT), poor subscription and cancellation of subscriptions, and other business difficulties, ETPI was forced to halt its roll out of one hundred twenty-nine thousand (129,000) landlines already allocated to a number of its employees.[10]

In 1998, due to business troubles and losses, ETPI was compelled to implement a Right-Sizing Program which consisted of two phases: the *first phase* involved the reduction of ETPI's workforce to only those employees that were necessary and which ETPI could sustain; the *second phase* entailed a company-wide reorganization which would result in the transfer, merger, absorption or abolition of certain departments of ETPI.[11]

As part of the first phase, ETPI, on December 10, 1998, offered to its employees who had rendered at least fifteen years of service, the Special Retirement Program, which consisted of the option to voluntarily retire at an earlier age and a retirement package equivalent to two and a half (2½) months' salary for every year of service.[12] This offer was initially rejected by the Eastern Telecommunications Employees' Union (ETEU), ETPI's duly recognized bargaining agent, which threatened to stage a strike. ETPI explained to ETEU the exact details of the Right-Sizing Program and the Special Retirement Program and after consultations with ETEU's members, ETEU agreed to the

---

[8] *Id.* at 255.

[9] *Id.* at 976.

[10] *Id.* at 165-166.

[11] *Id.* at 979.

[12] *Id.* at 102.

implementation of both programs.[13] Thus, on February 8, 1999, ETPI re-offered the Special Retirement Program and the corresponding retirement package to the one hundred two (102) employees who qualified for the program.[14] Of all the employees who qualified to avail of the program, only Culili rejected the offer.[15]

After the successful implementation of the first phase of the Right-Sizing Program, ETPI, on March 1, 1999 proceeded with the second phase which necessitated the abolition, transfer and merger of a number of ETPI's departments.[16]

Among the departments abolished was the Service Quality Department. The functions of the Customer Premises Equipment Management Unit, Culili's unit, were absorbed by the Business and Consumer Accounts Department. The abolition of the Service Quality Department rendered the specialized functions of a Senior Technician unnecessary. As a result, Culili's position was abolished due to redundancy and his functions were absorbed by Andre Andrada, another employee already with the Business and Consumer Accounts Department.[17]

On March 5, 1999, Culili discovered that his name was omitted in ETPI's New Table of Organization. Culili, along with three of his co-employees who were similarly situated, wrote their union president to protest such omission.[18]

In a letter dated March 8, 1999, ETPI, through its Assistant Vice President Stella Garcia, informed Culili of his termination from employment effective April 8, 1999. The letter reads:

---

[13] *Id.* at 104.

[14] *Id.* at 169.

[15] *Id.* at 980.

[16] *Id.* at 980-981.

[17] *Id.* at 981-982.

[18] *Id.* at 16.

March 8, 1999

To: N. Culili
Thru: S. Dobbin/G. Ebue
From: AVP-HRD

As you are aware, the current economic crisis has adversely affected our operations and undermined our earlier plans to put in place major work programs and activities. Because of this, we have to implement a Rightsizing Program in order to cut administrative/operating costs and to avoid losses. In line with this program, your employment with the company shall terminate effective at the close of business hours on April 08, 1999. However, to give you ample time to look for other employment, provided you have amply turned over your pending work and settled your accountabilities, you are no longer required to report to work starting tomorrow. You will be considered on paid leave until April 08, 1999.

You will likewise be paid separation pay in compliance with legal requirements (see attached), as well as other benefits accruing to you under the law, and the CBA. We take this opportunity to thank you for your services and wish you well in your future endeavors.

(Signed)
Stella J. Garcia[19]

This letter was similar to the memo shown to Culili by the union president weeks before Culili was dismissed. The memo was dated December 7, 1998, and was advising him of his dismissal effective January 4, 1999 due to the Right-Sizing Program ETPI was going to implement to cut costs and avoid losses.[20]

Culili alleged that neither he nor the Department of Labor and Employment (DOLE) were formally notified of his termination. Culili claimed that he only found out about it sometime in March 1999 when Vice President Virgilio Garcia handed him a copy of the March 8, 1999 letter, after he was

---

[19] *Id.* at 260.

[20] *Id.* at 259.

barred from entering ETPI's premises by its armed security personnel when he tried to report for work.[21] Culili believed that ETPI had already decided to dismiss him even prior to the March 8, 1999 letter as evidenced by the December 7, 1998 version of that letter. Moreover, Culili asserted that ETPI had contracted out the services he used to perform to a labor-only contractor which not only proved that his functions had not become unnecessary, but which also violated their Collective Bargaining Agreement (CBA) and the Labor Code. Aside from these, Culili also alleged that he was discriminated against when ETPI offered some of his co-employees an additional benefit in the form of motorcycles to induce them to avail of the Special Retirement Program, while he was not.[22]

ETPI denied singling Culili out for termination. ETPI claimed that while it is true that they offered the Special Retirement Package to reduce their workforce to a sustainable level, this was only the first phase of the Right-Sizing Program to which ETEU agreed. The second phase intended to simplify and streamline the functions of the departments and employees of ETPI. The abolition of Culili's department - the Service Quality Department - and the absorption of its functions by the Business and Consumer Accounts Department were in line with the program's goals as the Business and Consumer Accounts Department was more economical and versatile and it was flexible enough to handle the limited functions of the Service Quality Department. ETPI averred that since Culili did not avail of the Special Retirement Program and his position was subsequently declared redundant, it had no choice but to terminate Culili.[23] Culili, however, continued to report for work. ETPI said that because there was no more work for Culili, it was constrained to serve a final notice of termination[24] to Culili, which Culili ignored. ETPI alleged that Culili informed his superiors that he would

---

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

[22] *Id.* at 21-40.

[23] *Id.* at 105-115.

[24] *Id.* at 175.

agree to his termination if ETPI would give him certain special work tools in addition to the benefits he was already offered. ETPI claimed that Culili's counter-offer was unacceptable as the work tools Culili wanted were worth almost a million pesos. Thus, on March 26, 1999, ETPI tendered to Culili his final pay check of Eight Hundred Fifty-Nine Thousand Thirty-Three and 99/100 Pesos (₱859,033.99) consisting of his basic salary, leaves, 13th month pay and separation pay.[25] ETPI claimed that Culili refused to accept his termination and continued to report for work.[26] ETPI denied hiring outside contractors to perform Culili's work and denied offering added incentives to its employees to induce them to retire early. ETPI also explained that the December 7, 1998 letter was never given to Culili in an official capacity. ETPI claimed that it really needed to reduce its workforce at that time and that it had to prepare several letters in advance in the event that none of the employees avail of the Special Retirement Program. However, ETPI decided to wait for a favorable response from its employees regarding the Special Retirement Program instead of terminating them.[27]

On February 8, 2000, Culili filed a complaint against ETPI and its officers for illegal dismissal, unfair labor practice, and money claims before the Labor Arbiter.

On April 30, 2001, the Labor Arbiter rendered a decision finding ETPI guilty of illegal dismissal and unfair labor practice, to wit:

> WHEREFORE, decision is hereby rendered declaring the dismissal of complainant Nelson A. Culili illegal for having been made through an arbitrary and malicious declaration of redundancy of his position and for having been done without due process for failure of the respondent to give complainant and the DOLE written notice of such termination prior to the effectivity thereof.

---

[25] CA *rollo*, Vol. I, pp. 185-186.

[26] *Rollo*, pp. 114-115.

[27] *Id.* at 101-105.

In view of the foregoing, respondents Eastern Telecommunications Philippines and the individual respondents are hereby found guilty of unfair labor practice/discrimination and illegal dismissal and ordered to pay complainant backwages and such other benefits due him if he were not illegally dismissed, including moral and exemplary damages and 10% attorney's fees. Complainant likewise is to be reinstated to his former position or to a substantially equivalent position in accordance with the pertinent provisions of the Labor Code as interpreted in the case of Pioneer texturing [*Pioneer Texturizing Corp. v. National Labor Relations Commission*], G.R. No. 11865[1], 16 October 1997. Hence, Complainant must be paid the total amount of TWO MILLION SEVEN HUNDRED FORTY[-] FOUR THOUSAND THREE [HUNDRED] SEVENTY[-] NINE and 41/100 (₱2,744,379.41), computed as follows:

I. Backwages (from 16 March 1999 to 16 March 2001)	
a. Basic Salary (₱29,030 x 24 mos.)	₱696,720.96
b. 13th Month Pay (₱692,720.96/12)	58,060.88
c. Leave Benefits	
1. Vacation Leave (30 days/annum) ₱1,116.54 x 60 days	66,992.40
2. Sick Leave (30 days/annum) ₱1,116.54 x 60 days	66,992.40
3. Birthday Leave (1 day/annum) ₱1,116.54 x 2 days	2,233.08
d. Rice and Meal Subsidy	
16 March – 31 July 1999 (₱1,750 x 4.5 mos. = ₱7,875.00)	
01 August 1991 – 31 July 2000 (₱1,850 x 12 mos. = ₱22,200.00)	
01 August 2000 – 16 March 2001 (₱1,950 x 7.5 mos. = ₱14,625.00)	44,700.00
e. Uniform Allowance ₱7,000/annum x 2 years	14,000.00
	₱949,699.72

II. Damages	
a. Moral……₱500,000.00	
b. Exemplary……₱250,000.00	
III. Attorney's Fees (10% of award)	94,969.97
GRAND TOTAL:	₱2,744,379.41[28]

The Labor Arbiter believed Culili's claim that ETPI intended to dismiss him even before his position was declared redundant. He found the December 7, 1998 letter to be a telling sign of this intention. The Labor Arbiter held that a reading of the termination letter shows that the ground ETPI was actually invoking was retrenchment and not redundancy, but ETPI stuck to redundancy because it was easier to prove than retrenchment. He also did not believe that Culili's functions were as limited as ETPI made it appear to be, and held that ETPI failed to present any reasonable criteria to justify the declaration of Culili's position as redundant. On the issue of unfair labor practice, the Labor Arbiter agreed that the contracting out of Culili's functions to non-union members violated Culili's rights as a union member. Moreover, the Labor Arbiter said that ETPI was not able to dispute Culili's claims of discrimination and subcontracting, hence, ETPI was guilty of unfair labor practice.

On appeal, the NLRC affirmed the Labor Arbiter's decision but modified the amount of moral and exemplary damages awarded, *viz*:

> WHEREFORE, the Decision appealed from is ***AFFIRMED*** granting complainant the money claims prayed for including full backwages, allowances and other benefits or their monetary equivalent computed from the time of his illegal dismissal on 16 March 1999 up to his actual reinstatement except the award of moral and exemplary damages which is modified to ₱200,000.00 for moral and ₱100,000.00 for exemplary damages. For this purpose, this case is ***REMANDED*** to the Labor Arbiter for computation of backwages and other monetary awards to complainant.[29]

---

[28] *Id.* at 485-488.

[29] *Id.* at 623-624.

ETPI filed a Petition for *Certiorari* under Rule 65 of the Rules of Civil Procedure before the Court of Appeals on the ground of grave abuse of discretion. ETPI prayed that a Temporary Restraining Order be issued against the NLRC from implementing its decision and that the NLRC decision and resolution be set aside.

The Court of Appeals, on February 5, 2004, partially granted ETPI's petition. The dispositive portion of the decision reads as follows:

> WHEREFORE, all the foregoing considered, the petition is ***PARTIALLY GRANTED.*** The assailed Decision of public respondent National Labor Relations Commission is ***MODIFIED*** in that petitioner Eastern Telecommunications Philippines Inc. (ETPI) is hereby ***ORDERED*** to pay respondent Nelson Culili full backwages from the time his salaries were not paid until the finality of this Decision plus separation pay in an amount equivalent to one (1) month salary for every year of service. The awards for moral and exemplary damages are ***DELETED***. The Writ of Execution issued by the Labor Arbiter dated September 8, 2003 is ***DISSOLVED***.[30]

The Court of Appeals found that Culili's position was validly abolished due to redundancy. The Court of Appeals said that ETPI had been very candid with its employees in implementing its Right-Sizing Program, and that it was highly unlikely that ETPI would effect a company-wide reorganization simply for the purpose of getting rid of Culili. The Court of Appeals also held that ETPI cannot be held guilty of unfair labor practice as mere contracting out of services being performed by union members does not *per se* amount to unfair labor practice unless it interferes with the employees' right to self-organization. The Court of Appeals further held that ETPI's officers cannot be held liable absent a showing of bad faith or malice. However, the Court of Appeals found that ETPI failed to observe the standards of due process as required by our laws when it failed to properly notify both Culili and the DOLE of Culili's termination. The Court of Appeals maintained its position in its

[30] *Id.* at 75.

September 13, 2004 Resolution when it denied Culili's Motion for Reconsideration and Urgent Motion to Reinstate the Writ of Execution issued by the Labor Arbiter, and ETPI's Motion for Partial Reconsideration.

Culili is now before this Court praying for the reversal of the Court of Appeals' decision and the reinstatement of the NLRC's decision based on the following grounds:

I

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE APPLICABLE LAW AND JURISPRUDENCE WHEN IT REVERSED THE DECISIONS OF THE NLRC AND THE LABOR ARBITER HOLDING THE DISMISSAL OF PETITIONER ILLEGAL IN THAT:

A. CONTRARY TO THE FINDINGS OF THE COURT OF APPEALS, RESPONDENTS' CHARACTERIZATION OF PETITIONER'S POSITION AS REDUNDANT WAS TAINTED BY BAD FAITH.

B. THERE WAS NO ADEQUATE JUSTIFICATION TO DECLARE PETITIONER'S POSITION AS REDUNDANT.

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN FINDING THAT NO UNFAIR LABOR PRACTICE ACTS WERE COMMITTED AGAINST THE PETITIONER.

III

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND JURISPRUDENCE IN DELETING THE AWARD OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IN FAVOR OF PETITIONER AND IN DISSOLVING THE WRIT OF EXECUTION DATED 8 SEPTEMBER 2003 ISSUED BY THE LABOR ARBITER.

IV

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH LAW AND

JURISPRUDENCE IN ABSOLVING THE INDIVIDUAL RESPONDENTS OF PERSONAL LIABILITY.

V

CONTRARY TO APPLICABLE LAW AND JURISPRUDENCE, THE COURT OF APPEALS, IN A *CERTIORARI* PROCEEDING, REVIEWED THE FACTUAL FINDINGS OF THE NLRC WHICH AFFIRMED THAT OF THE LABOR ARBITER AND, THEREAFTER, ISSUED A WRIT OF *CERTIORARI* REVERSING THE DECISIONS OF THE NLRC AND THE LABOR ARBITER EVEN IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION.[31]

Procedural Issue: Court of Appeals' Power to Review Facts in a Petition For Certiorari under Rule 65

Culili argued that the Court of Appeals acted in contravention of applicable law and jurisprudence when it reexamined the facts in this case and reversed the factual findings of the Labor Arbiter and the NLRC in a special civil action for *certiorari*.

This Court has already confirmed the power of the Court of Appeals, even on a Petition for *Certiorari* under Rule 65,[32] to review the evidence on record, when necessary, to resolve factual issues:

> The power of the Court of Appeals to review NLRC decisions via Rule 65 or Petition for *Certiorari* has been settled as early as in our decision in *St. Martin Funeral Home v. National Labor Relations Commission*. This Court held that the proper vehicle for such review was a Special Civil Action for *Certiorari* under Rule 65 of the Rules of Court, and that this action should be filed in the Court of Appeals in strict observance of the doctrine of the hierarchy of courts. Moreover, it is already settled that under Section 9 of Batas Pambansa Blg. 129, as amended by Republic Act No. 7902[10] (An Act Expanding the Jurisdiction of the Court of Appeals, amending for the purpose of Section Nine of *Batas Pambansa Blg.* 129 as amended, known as the *Judiciary Reorganization Act of 1980*), the Court of Appeals — pursuant to

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

[32] 1997 Rules of Civil Procedure.

the exercise of its original jurisdiction over Petitions for *Certiorari* — is specifically given the power to pass upon the evidence, if and when necessary, to resolve factual issues.[33]

While it is true that factual findings made by quasi-judicial and administrative tribunals, if supported by substantial evidence, are accorded great respect and even finality by the courts, this general rule admits of exceptions. When there is a showing that a palpable and demonstrable mistake that needs rectification has been committed[34] or when the factual findings were arrived at arbitrarily or in disregard of the evidence on record, these findings may be examined by the courts.[35]

In the case at bench, the Court of Appeals found itself unable to completely sustain the findings of the NLRC thus, it was compelled to review the facts and evidence and not limit itself to the issue of grave abuse of discretion.

With the conflicting findings of facts by the tribunals below now before us, it behooves this Court to make an independent evaluation of the facts in this case.

Main Issue: Legality of Dismissal

Culili asserted that he was illegally dismissed because there was no valid cause to terminate his employment. He claimed that ETPI failed to prove that his position had become redundant and that ETPI was indeed incurring losses. Culili further alleged that his functions as a Senior Technician could not be considered a superfluity because his tasks were crucial and critical to ETPI's business.

Under our laws, an employee may be terminated for reasons involving measures taken by the employer due to business necessities. Article 283 of the Labor Code provides:

---

[33] *PICOP Resources, Inc. v. Tañeca,* G.R. No. 160828, August 9, 2010.

[34] *Alcazaren v. Univet Agricultural Products, Inc.,* G.R. No. 149628, November 22, 2005, 475 SCRA 626, 650.

[35] *R & E Transport, Inc. v. Latag,* 467 Phil. 355, 364-365 (2004).

Art. 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

There is redundancy when the service capability of the workforce is greater than what is reasonably required to meet the demands of the business enterprise. A position becomes redundant when it is rendered superfluous by any number of factors such as over-hiring of workers, decrease in volume of business, or dropping a particular product line or service activity previously manufactured or undertaken by the enterprise.[36]

This Court has been consistent in holding that the determination of whether or not an employee's services are still needed or sustainable properly belongs to the employer. Provided there is no violation of law or a showing that the employer was prompted by an arbitrary or malicious act, the soundness or wisdom of this exercise of business judgment is not subject to the discretionary review of the Labor Arbiter and the NLRC.[37]

However, an employer cannot simply declare that it has become overmanned and dismiss its employees without producing

---

[36] *Soriano, Jr. v. National Labor Relations Commission*, G.R. No. 165594, April 23, 2007, 521 SCRA 526, 543.

[37] *Asufrin, Jr. v. San Miguel Corporation*, 469 Phil. 237, 244 (2004).

adequate proof to sustain its claim of redundancy.[38] Among the requisites of a valid redundancy program are: (1) the good faith of the employer in abolishing the redundant position; and (2) fair and reasonable criteria in ascertaining what positions are to be declared redundant,[39] such as but not limited to: preferred status, efficiency, and seniority.[40]

This Court also held that the following evidence may be proffered to substantiate redundancy: the new staffing pattern, feasibility studies/proposal on the viability of the newly created positions, job description and the approval by the management of the restructuring.[41]

In the case at bar, ETPI was upfront with its employees about its plan to implement a Right-Sizing Program. Even in the face of initial opposition from and rejection of the said program by ETEU, ETPI patiently negotiated with ETEU's officers to make them understand ETPI's business dilemma and its need to reduce its workforce and streamline its organization. This evidently rules out bad faith on the part of ETPI.

In deciding which positions to retain and which to abolish, ETPI chose on the basis of efficiency, economy, versatility and flexibility. It needed to reduce its workforce to a sustainable level while maintaining functions necessary to keep it operating. The records show that ETPI had sufficiently established not only its need to reduce its workforce and streamline its organization, but also the existence of redundancy in the position of a Senior Technician. ETPI explained how it failed to meet its business targets and the factors that caused this, and how this necessitated it to reduce its workforce and streamline its organization. ETPI also submitted its old and new tables of organization and sufficiently described how limited the functions of the abolished

---

[38] *Id.* at 244-245.

[39] *AMA Computer College, Inc. v. Garcia*, G.R. No. 166703, April 14, 2008, 551 SCRA 254, 264.

[40] *Panlilio v. National Labor Relations Commission*, 346 Phil. 30, 35 (1997).

[41] *AMA Computer College, Inc. v. Garcia*, *supra* note 39 at 264-265.

position of a Senior Technician were and how it decided on whom to absorb these functions.

In his affidavit dated April 10, 2000,[42] Mr. Arnel D. Reyel, the Head of both the Business Services Department and the Finance Department of ETPI, described how ETPI went about in reorganizing its departments. Mr. Reyel said that in the course of ETPI's reorganization, new departments were created, some were transferred, and two were abolished. Among the departments abolished was the Service Quality Department. Mr. Reyel said that ETPI felt that the functions of the Service Quality Department, which catered to both corporate and small and medium-sized clients, overlapped and were too large for a single department, thus, the functions of this department were split and simplified into two smaller but more focused and efficient departments. In arriving at the decision to abolish the position of Senior Technician, Mr. Reyel explained:

> 11.3. Thus, in accordance with the reorganization of the different departments of ETPI, the Service Quality Department was abolished and its functions were absorbed by the Business and Consumer Accounts Department and the Corporate and Major Accounts Department.
>
> 11.4. With the abolition and resulting simplification of the Service Quality Department, one of the units thereunder, the Customer Premises Equipment Maintenance ("CPEM") unit was transferred to the Business and Consumer Accounts Department. Since the Business and Consumer Accounts Department had to remain economical and focused yet versatile enough to meet all the needs of its small and medium sized clients, it was decided that, in the judgment of ETPI management, the specialized functions of a Senior Technician in the CPEM unit whose sole function was essentially the repair and servicing of ETPI's telecommunications equipment was no longer needed since the Business and Consumer [Accounts] Department had to remain economical and focused yet versatile enough to meet all the multifarious needs of its small and medium sized clients.

---

[42] *Rollo*, pp. 145-162.

11.5. The business reason for the abolition of the position of Senior Technician was because in ETPI's judgment, what was needed in the Business and Consumer Accounts Department was a versatile, yet economical position with functions which were not limited to the mere repair and servicing of telecommunications equipment. It was determined that what was called for was a position that could also perform varying functions such as the actual installation of telecommunications products for medium and small scale clients, handle telecommunications equipment inventory monitoring, evaluation of telecommunications equipment purchased and the preparation of reports on the daily and monthly activation of telecommunications equipment by these small and medium scale clients.

11.6. Thus, for the foregoing reasons, ETPI decided that the position of Senior Technician was to be abolished due to redundancy. The functions of a Senior Technician was to be abolished due to redundancy. The functions of a Senior Technician would then be absorbed by an employee assigned to the Business and Consumer Accounts Department who was already performing the functions of actual installation of telecommunications products in the field and handling telecommunications equipment inventory monitoring, evaluation of telecommunications equipment purchased and the preparation of reports on the daily and monthly activation of telecommunications equipment. This employee would then simply add to his many other functions the duty of repairing and servicing telecommunications equipment which had been previously performed by a Senior Technician.[43]

In the new table of organization that the management approved, one hundred twelve (112) employees were redeployed and nine (9) positions were declared redundant.[44] It is inconceivable that ETPI would effect a company-wide reorganization of this scale for the mere purpose of singling out Culili and terminating him. If Culili's position were indeed indispensable to ETPI, then it would be absurd for ETPI, which was then trying to save its operations, to abolish that one position which it needed the most. Contrary to Culili's assertions that ETPI could not do away

---

[43] *Id.* at 159-161.

[44] *Id.* at 171.

with his functions as long as it is in the telecommunications industry, ETPI did not abolish the functions performed by Culili as a Senior Technician. What ETPI did was to abolish the position itself for being too specialized and limited. The functions of that position were then added to another employee whose functions were broad enough to absorb the tasks of a Senior Technician.

Culili maintains that ETPI had already decided to dismiss him even before the second phase of the Right-Sizing Program was implemented as evidenced by the December 7, 1998 letter.

The December 7, 1998 termination letter signed by ETPI's AVP Stella Garcia hardly suffices to prove bad faith on the part of the company. The fact remains that the said letter was never officially transmitted and Culili was not terminated at the end of the first phase of ETPI's Right-Sizing Program. ETPI had given an adequate explanation for the existence of the letter and considering that it had been transparent with its employees, through their union ETEU, so much so that ETPI even gave ETEU this unofficial letter, there is no reason to speculate and attach malice to such act. That Culili would be subsequently terminated during the second phase of the Right-Sizing Program is not evidence of undue discrimination or "singling out" since not only Culili's position, but his entire unit was abolished and absorbed by another department.

Unfair Labor Practice

Culili also alleged that ETPI is guilty of unfair labor practice for violating Article 248(c) and (e) of the Labor Code, to wit:

Art. 248. Unfair labor practices of employers. — It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x x x x x x

c. To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization;

x x x x x x x x x

e. To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent.

Culili asserted that ETPI is guilty of unfair labor practice because his functions were sourced out to labor-only contractors and he was discriminated against when his co-employees were treated differently when they were each offered an additional motorcycle to induce them to avail of the Special Retirement Program. ETPI denied hiring outside contractors and averred that the motorcycles were not given to his co-employees but were purchased by them pursuant to their Collective Bargaining Agreement, which allowed a retiring employee to purchase the motorcycle he was assigned during his employment.

The concept of unfair labor practice is provided in Article 247 of the Labor Code which states:

Article 247. Concept of unfair labor practice and procedure for prosecution thereof. — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interest of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

In the past, we have ruled that "unfair labor practice refers to 'acts that violate the workers' right to organize.' The prohibited

acts are related to the workers' right to self-organization and to the observance of a CBA."[45] We have likewise declared that "there should be no dispute that all the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization."[46] Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.[47]

There is no showing that ETPI, in implementing its Right-Sizing Program, was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize. In fact, ETPI negotiated and consulted with ETEU before implementing its Right-Sizing Program.

Both the Labor Arbiter and the NLRC found ETPI guilty of unfair labor practice because of its failure to dispute Culili's allegations.

According to jurisprudence, "basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same."[48] By imputing bad faith to the actuations of ETPI, Culili has the burden of proof to present substantial evidence to support the allegation of unfair labor practice. Culili failed to discharge this burden and his bare allegations deserve no credit.

Observance of Procedural Due Process

Although the Court finds Culili's dismissal was for a lawful cause and not an act of unfair labor practice, ETPI, however, was remiss in its duty to observe procedural due process in effecting the termination of Culili.

---

[45] *Tunay na Pagkakaisa ng Manggagawa sa Asia Brewery v. Asia Brewery, Inc.*, G.R. No. 162025, August 3, 2010.

[46] *Great Pacific Life Employees Union v. Great Pacific Life Assurance Corporation*, 362 Phil. 452, 464 (1999).

[47] *Id.*

[48] *Central Azucarera De Bais Employees Union-NFL [CABEU-NFL] v. Central Azucarera De Bais, Inc. [CAB]*, G.R. No. 186605, November 17, 2010.

We have previously held that "there are two aspects which characterize the concept of due process under the Labor Code: one is substantive — whether the termination of employment was based on the provision of the Labor Code or in accordance with the prevailing jurisprudence; the other is procedural — the manner in which the dismissal was effected."[49]

Section 2(d), Rule I, Book VI of the Rules Implementing the Labor Code provides:

(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

x x x x x x x x x

For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the ground or grounds for termination.

In *Mayon Hotel & Restaurant v. Adana,*[50] we observed:

The requirement of law mandating the giving of notices was intended not only to enable the employees to look for another employment and therefore ease the impact of the loss of their jobs and the corresponding income, but more importantly, to give the Department of Labor and Employment (DOLE) the opportunity to ascertain the verity of the alleged authorized cause of termination.[51]

ETPI does not deny its failure to provide DOLE with a written notice regarding Culili's termination. It, however, insists that it has complied with the requirement to serve a written notice to Culili as evidenced by his admission of having received it and forwarding it to his union president.

---

[49] *General Milling Corporation v. Casio*, G.R. No. 149552, March 10, 2010.

[50] 497 Phil. 892 (2005).

[51] *Id.* at 921.

In *Serrano v. National Labor Relations Commission*,[52] we noted that "a job is more than the salary that it carries." There is a psychological effect or a stigma in immediately finding one's self laid off from work.[53] This is exactly why our labor laws have provided for mandating procedural due process clauses. Our laws, while recognizing the right of employers to terminate employees it cannot sustain, also recognize the employee's right to be properly informed of the impending severance of his ties with the company he is working for. In the case at bar, ETPI, in effecting Culili's termination, simply asked one of its guards to serve the required written notice on Culili. Culili, on one hand, claims in his petition that this was handed to him by ETPI's vice president, but previously testified before the Labor Arbiter that this was left on his table.[54] Regardless of how this notice was served on Culili, this Court believes that ETPI failed to properly notify Culili about his termination. Aside from the manner the written notice was served, a reading of that notice shows that ETPI failed to properly inform Culili of the grounds for his termination.

The Court of Appeals, in finding that Culili was not afforded procedural due process, held that Culili's dismissal was ineffectual, and required ETPI to pay Culili full backwages in accordance with our decision in *Serrano v. National Labor Relations Commission*.[55] Over the years, this Court has had the opportunity to reexamine the sanctions imposed upon employers who fail to comply with the procedural due process requirements in terminating its employees. In *Agabon v. National Labor Relations Commission*,[56] this Court reverted back to the doctrine in *Wenphil Corporation v. National Labor Relations Commission*[57] and held that where the dismissal is due to a just

---

[52] 387 Phil. 345 (2000).

[53] *Id.* at 354.

[54] CA *rollo*, Vol. II, p. 867.

[55] *Supra* note 52.

[56] G.R. No. 158693, November 17, 2004, 442 SCRA 573.

[57] 252 Phil. 73 (1989).

or authorized cause, but without observance of the due process requirements, the dismissal may be upheld but the employer must pay an indemnity to the employee. The sanctions to be imposed however, must be stiffer than those imposed in *Wenphil* to achieve a result fair to both the employers and the employees.[58]

In *Jaka Food Processing Corporation v. Pacot*,[59] this Court, taking a cue from *Agabon*, held that since there is a clear-cut distinction between a dismissal due to a just cause and a dismissal due to an authorized cause, the legal implications for employers who fail to comply with the notice requirements must also be treated differently:

> Accordingly, it is wise to hold that: (1) if the dismissal is based on a just cause under Article 282 but the employer failed to comply with the notice requirement, the sanction to be imposed upon him should be tempered because the dismissal process was, in effect, initiated by an act imputable to the employee; and (2) if the dismissal is based on an authorized cause under Article 283 but the employer failed to comply with the notice requirement, the sanction should be stiffer because the dismissal process was initiated by the employer's exercise of his management prerogative.[60]

Hence, since it has been established that Culili's termination was due to an authorized cause and cannot be considered unfair labor practice on the part of ETPI, his dismissal is valid. However, in view of ETPI's failure to comply with the notice requirements under the Labor Code, Culili is entitled to nominal damages in addition to his separation pay.

Personal Liability of ETPI's Officers And Award of Damages

Culili asserts that the individual respondents, Salvador Hizon, Emiliano Jurado, Virgilio Garcia, and Stella Garcia, as ETPI's officers, should be held personally liable for the acts of ETPI which were tainted with bad faith and arbitrariness. Furthermore,

---

[58] *Agabon v. National Labor Relations Commission*, *supra* note 56.

[59] 494 Phil. 114 (2005).

[60] *Id.* at 121.

Culili insists that he is entitled to damages because of the sufferings he had to endure and the malicious manner he was terminated.

As a general rule, a corporate officer cannot be held liable for acts done in his official capacity because a corporation, by legal fiction, has a personality separate and distinct from its officers, stockholders, and members. To pierce this fictional veil, it must be shown that the corporate personality was used to perpetuate fraud or an illegal act, or to evade an existing obligation, or to confuse a legitimate issue. In illegal dismissal cases, corporate officers may be held solidarily liable with the corporation if the termination was done with malice or bad faith.[61]

In illegal dismissal cases, moral damages are awarded only where the dismissal was attended by bad faith or fraud, or constituted an act oppressive to labor, or was done in a manner contrary to morals, good customs or public policy.[62] Exemplary damages may avail if the dismissal was effected in a wanton, oppressive or malevolent manner to warrant an award for exemplary damages.[63]

It is our considered view that Culili has failed to prove that his dismissal was orchestrated by the individual respondents herein for the mere purpose of getting rid of him. In fact, most of them have not even dealt with Culili personally. Moreover, it has been established that his termination was for an authorized cause, and that there was no bad faith on the part of ETPI in implementing its Right-Sizing Program, which involved abolishing certain positions and departments for redundancy. It is not enough that ETPI failed to comply with the due process requirements to warrant an award of damages, there being no showing that the company's and its officers' acts were attended with bad faith or were done oppressively.

---

[61] *Bogo Medellin Sugarcane Planters Association, Inc. v. National Labor Relations Commission*, 357 Phil. 110, 127 (1998).

[62] *Ford Philippines, Inc. v. Court of Appeals*, 335 Phil. 1, 10-11 (1997).

[63] *Maquiling v. Philippine Tuberculosis Society, Inc.*, 491 Phil. 43, 61 (2005).

WHEREFORE, the instant petition is *DENIED* and the assailed February 5, 2004 Decision and September 13, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 75001 are *AFFIRMED* with the *MODIFICATION* that petitioner Nelson A. Culili's dismissal is declared valid but respondent Eastern Telecommunications Philippines, Inc. is ordered to pay petitioner Nelson A. Culili the amount of *Fifty Thousand Pesos (₱50,000.00)* representing nominal damages for non-compliance with statutory due process, in addition to the mandatory separation pay required under Article 283 of the Labor Code.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 168240. February 9, 2011]

AURORA B. GO, *petitioner, vs.* **ELMER SUNBANUN,**[*] **GEORGIE S. TAN, DORIS SUNBANUN and RICHARD SUNBANUN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE SIGNATURES/AUTHORIZATIONS OF THE EMPLOYMENT AGENCY IN THE VERIFICATION ON NON-FORUM SHOPPING ARE NOT NECESSARY.— In filing a *certiorari* petition, one aggrieved by a court's judgment, order or resolution must verify his/her petition and

[*] Also spelled as Sunbanon in some parts of the record.

must also attach a sworn certification of non-forum shopping. In dismissing Aurora's petition, the CA cited as one of its grounds the lack of signatures or authorizations of Sang and Yiu-Go Employment Agency in the verification and certification of non-forum shopping. Such signatures, however, may be dispensed with as these parties are not involved in the petition. Although the caption in Aurora's petition before the CA erroneously included Sang and Yiu-Go Employment Agency as petitioners, its contents reveal that it is solely Aurora who is the 'person aggrieved,' as she is the one who assailed before the CA the RTC's Order that denied her notice of appeal and, hence, she should be the one who should sign the petition. Notably, Aurora is the only one held liable by the trial court for damages and thus is the one interested in filing an appeal and in elevating the case to the CA. Moreover, only Aurora filed her answer before the RTC while Sang and Yiu-Go Employment Agency did not file any.

2. ID.; ID.; ID.; NON-SUBMISSION OF CERTIFIED TRUE COPY OF THE JANUARY 26, 2004 DECISION AND COPIES OF THE COMPLAINT AND ANSWER NOT FATAL.— Another ground cited by the CA was the non-submission of the certified true copy of the January 26, 2004 Decision as well as the failure to attach copies of the complaint and answer in Aurora's petition. The second paragraph of Section 1 of Rule 65 requires the submission of a certified true copy of the judgment, order or resolution subject of the petition as well as the submission of copies of all pleadings and documents relevant to the petition. "The initial determination of what pleadings, documents or order are relevant and pertinent to the petition rests on the petitioner. [Should the CA opine that additional documents must be submitted together with the petition, it may] (a) dismiss the petition under the last paragraph of [Section 3,] Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period." We emphasize that not all pleadings and parts of case records are required to be attached, but only those which are material and pertinent that they may provide the basis for a determination of a *prima facie* case for abuse of discretion. Thus, we agree with the petitioner

that the CA required pleadings immaterial to the issue presented before it. The questioned subject of *certiorari* does not touch upon the substantive merits of the suit for damages against Aurora but actually involves the refusal of the trial court to entertain her notice of appeal due to late filing. The complaint and answer are not indispensable at all in the resolution of this issue, the contents of which are already summarized in the January 26, 2004 Decision attached to the petition. Furthermore, since Aurora's petition assails the May 12 and June 10, 2004 Orders of the RTC, it is the certified true copies of these orders that are required to be attached to the petition. On the other hand, photocopy of the January 26, 2004 Decision will suffice, as this document is material and pertinent to the petition.

3. ID.; ID.; ID.; FAILURE TO INDICATE PTR AND IBP OFFICIAL RECEIPT NUMBERS ARE LIKEWISE NOT FATAL.— The failure of petitioner's former counsel, Atty. Ycong, to indicate in the petition before the CA his PTR and IBP numbers for the year 2004 was obviously an oversight. A perusal of the records of the case would show that counsel had duly paid the required dues for that year and that his PTR and IBP receipt numbers are indicated in the pleadings he had filed with the RTC. Although he omitted to indicate the numbers on Aurora's CA petition, the same numbers were nevertheless stated on his Notice of Change of Address, around two months before the appellate court issued the questioned December 8, 2004 Resolution.

4. ID.; ID.; ID.; RULES ON PERFECTING APPEALS MUST BE STRICTLY COMPLIED WITH; LIBERAL APPLICATION AVAILABLE ONLY UNDER EXCEPTIONAL CIRCUMSTANCES.— Whenever practicable, personal service and personal filing of pleadings are always the preferred modes of service. Under Section 11, Rule 13 of the Rules of Court, should one deviate from the general rule, it is mandatory for him/her to submit a written explanation why the pleading was not personally filed/served. Otherwise, the court has the discretion to consider the paper as not filed. Petitioner should be aware that a court, in reasonably exercising discretionary power to dismiss a petition that violated the rule on written explanation for resorting to modes other than personal service,

also has to take into account another factor, *i.e.*, the *prima facie* merit of the pleading sought to be expunged for violation of Section 11. For this reason, we do not find any grave abuse on the part of the CA in exercising its discretion to dismiss Aurora's petition. Indeed, judicial notice may be taken that personal service is impracticable considering the distance between Cebu and Manila, and that *Musa v. Amor* supports Aurora's argument that a written explanation why service was not done personally might have been superfluous considering the evident distance between the appellate court and the place where the petition was posted. It must be emphasized, however, that provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations. In the case at bar, the reason behind the filing of an extension of time to file her notice of appeal was not per se, a compelling and a highly exceptional one. Just as it is the lawyer's duty to safeguard her client's interest, it is the responsibility of the client to make herself available to her counsel and open the lines of communication, even during the busy election period, for their discussions of legal options. She is obliged to be vigilant in fighting for her cause and in protecting her rights. It is Aurora's duty, "as a client, to be in touch with [her] counsel so as to be constantly posted about the case. [She] is mandated to inquire from [her] counsel about the status and progress of the case from time to time and cannot expect that all [she] has to do is sit back, relax and await the outcome of the case." Additionally, "motions for extension are not granted as a matter of right but in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted the length of time they pray for."

5. ID.; ID.; ID.; IN SPITE OF PETITIONER'S ERROR, THE FRESH PERIOD RULE AMENDMENT AS HELD IN *NEYPES V. COURT OF APPEALS* WILL BE APPLIED TO HER BENEFIT.— Aurora had almost lost her statutory privilege to appeal, but in view of our ruling on *Neypes v. Court of Appeals*, we shall grant Aurora's petition. In *Neypes* we held that a litigant is given another fresh period of 15 days to perfect an appeal after receipt of the order of denial of his/her motion for reconsideration/new trial before the RTC. We said: **To**

standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration. Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution. "[P]rocedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure." *Neypes*, which we rendered in September 2005, has been applied retroactively to a number of cases wherein the original period to appeal had already lapsed subsequent to the denial of the motion for reconsideration. Aurora's situation is no exception, and thus she is entitled to benefit from the amendment of the procedural rules. The denial of Aurora's Motion for Reconsideration of the trial court's January 26, 2004 decision was received by her former counsel on May 6, 2004. Sans her motion for extension to file a notice of appeal, with the fresh period rule under *Neypes*, she still has until May 21, 2004 to file her notice of appeal and thus, had timely filed her notice of appeal on May 11, 2004.

APPEARANCES OF COUNSEL

Paguio & Associates and *Cecilia T. Alcaraz* for petitioner.
Florido & Largo Law Offices for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

When a procedural rule is amended for the benefit of litigants for the furtherance of the administration of justice, it shall be retroactively applied to likewise favor actions then pending, as equity delights in equality.

For non-compliance with the formal requirements of a petition, the Court of Appeals (CA) dismissed the *certiorari* petition filed by herein petitioner Aurora Go (Aurora), prompting her to file before us this petition for review on *certiorari*. Aurora now calls for liberality in the application of the procedural rules in the hope that she would eventually be given a chance to be heard by the CA after the trial court denied her prayer for an extension of time to file a notice of appeal.

Factual Antecedents

In November 2000, respondents filed a suit for damages against Aurora, her husband Yiu Wai Sang (Sang), and Yiu-Go Employment Agency (hereinafter collectively referred to as defendants), docketed as Civil Case No. CEB-25778, before the Regional Trial Court (RTC) of Cebu, Branch 58.[1] The respondents claimed that the spouses occupied the ground floor portion of their house in 68-F General Junquera Street, Cebu City under a one-year lease contract and had used the premises as the business office of Yiu-Go Employment Agency. This allegedly increased the risk of loss by fire, and thus a breach of warranty in the fire insurance policies that the respondents made which described the property as residential type.[2]

Only Aurora filed her Answer with Affirmative Defenses and Counter-Claim.[3] In her answer, Aurora averred that they already left the premises sometime in 2001and that during the entirety

---

[1] *Rollo*, pp. 77-79.

[2] *Id.* at 57-76.

[3] *Id.* at 80-84.

of their stay, they used the leased floor as a private residence and as a lodging house. She denied that their employment agency held office there. She also pointed out that the lease contract was terminated when the one-year term expired in July 1996, and that she was not privy to the contracts of insurance since she was not informed of the contracts' existence. To her, whether the house was used as a business office or as a lodging house was immaterial as there was no increased risk of fire either way. Aurora demanded actual damages as she claimed that she works in Hong Kong on a no-work-no-pay basis and the suit would result in spending airfare and lost earnings.

After the respondents concluded their presentation of evidence, Aurora moved on October 28, 2002 that her testimony be taken by deposition upon written interrogatories, as she was unsure as to when she could come home to the Philippines considering that her work schedule as a court interpreter in Hong Kong is erratic. She averred that arrangements have already been made with the Philippine consulate in Hong Kong to take her deposition.[4] Over the objection of the respondents, the RTC granted Aurora's motion on November 21, 2002.[5] However, Aurora's deposition was taken only on January 28, 2004[6] after her follow-up letter dated November 7, 2003 to the Philippine consulate.[7]

Before this deposition was taken, the RTC in its December 1, 2003 Order[8] already deemed the defendants to have waived their right to present their evidence and considered the case submitted for resolution since more than a year had elapsed from the date the RTC granted Aurora's motion to have her testimony be taken by deposition. Again, only Aurora moved for reconsideration[9] and prayed that the December 1, 2003 Order be recalled and instead admit the deposition. She attributed the

---

[4] *Id.* at 157-160.

[5] *Id.* at 163.

[6] *Id.* at 165-225.

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

[8] *Rollo*, p. 85.

[9] *Id.* at 86-89.

delay of her deposition-taking to the consulate's fault, as she was passed from one officer to another or no officer was available.

On January 26, 2004, the RTC rendered judgment[10] finding only Aurora liable and ordering her to pay moral damages, attorney's fees, litigation expenses and costs.[11] The trial court disregarded her two-page transcript of deposition when it received the same on March 5, 2004.[12]

Aurora's former counsel of record, Atty. Jude Henritz R. Ycong (Atty. Ycong), belatedly discovered about this adverse judgment when he received from respondents' counsel a Motion to Direct Issuance of Entry of Judgment and Writ of Execution[13] on March 16, 2004. It turned out that although he had already previously informed the court of his new office address, the court mistakenly sent the January 26, 2004 Decision to his former office address.[14] He raised this in his opposition to the motion filed by the respondents.[15] Finding this point meritorious, the court denied respondents' motion, ruling that the judgment against Aurora has not yet attained finality as the 15-day period to appeal, counted from March 16, 2004, has not yet lapsed.[16]

Aurora filed her Motion for Reconsideration[17] on March 31, 2004, the last day to file her appeal. The court in its April 27, 2004 Order[18] denied said motion.

---

[10] *Id.* at 92-96; penned by Judge Gabrile T. Ingles.

[11] In said Decision, the RTC ordered Aurora Go to pay the following:
1. ₱200,000.00 for moral damages;
2. ₱30,000.00 plus ₱2,000.00 per appearance as attorney's fees.
3. ₱10,000.00 as litigation expense; and
4. cost of suit. (*Id.* at 96.)

[12] *Id.* at 110.

[13] *Id.* at 90-91.

[14] *Id.* at 97.

[15] *Id.* at 100-101.

[16] *Id.* at 103.

[17] *Id.* at 104-109.

[18] *Id.* at 111.

Atty. Ycong received the notice of denial on May 6, 2004, thus giving his client a day left to file her appeal. Explaining that Aurora has been busy campaigning for the local elections as she was running for the position of town mayor in Calubian, Leyte[19] and that he and his client have yet to discuss the pros and cons of appealing the case, Atty. Ycong sought for the relaxation of the procedural rules by filing an extension of 15 days to file Aurora's notice of appeal.[20]

Atty. Ycong thereafter filed the Notice of Appeal on May 11, 2004.

Ruling of the Regional Trial Court

In its May 12, 2004 Order, the RTC denied the notice of appeal, *viz*:

> While there are rulings of the Supreme Court declaring that the period to appeal is not extendible, there are also instances when it allowed appeals to be perfected despite their filing out of time. x x x
>
> In the instant case, the delay is due to defendant-Go's running for an elective post. Such is no excuse.
>
> In other words, contrary to the belief of this court that Aurora Go had been and is out of the country, she in fact is in the Philippines. Consequently, she could have the time to confer with her counsels in order to prepare for her appeal.
>
> Accordingly, the Motion for Extension of Time to File Notice of Appeal is DENIED for lack of merit and the Notice of Appeal is hereby declared filed out of time.
>
> SO ORDERED.[21]

Aurora sought for reconsideration but it was denied by the RTC on June 10, 2004.[22]

---

[19] *Id.* at 114.

[20] *Id.* at 112-113.

[21] *Id.* at 116.

[22] *Id.* at 121.

Ruling of the Court of Appeals

Filing her petition for *certiorari* with the CA by way of registered mail on August 13, 2004,[23] Aurora claimed that the RTC gravely abused its discretion in refusing to relax the period for filing the notice of appeal. She contended that her situation is enough reason to grant her prayer. She averred that she could not just leave the campaign trail just to discuss matters with her lawyer about her case as she was busy in Leyte at the homestretch of the campaign period.

However, the CA on December 8, 2004, dismissed the petition (docketed as CA-G.R. SP No. 85897) for being procedurally flawed, *viz*:

1) The Verification/Certification of Non-Forum Shopping is signed by only one petitioner without a Special Power of Attorney/ Secretary's Certificate authorizing her to represent the two (2) other petitioners;

2) The Affidavit of Service shows that respondents were personally served copies of the petition but lacks explanation why service of the petition with this Court was not done personally (Section 11, Rule 13 of the Revised Rules of Court);

3) Counsel for petitioners failed to indicate his PTR and IBP numbers;

4) Certified true [sic] copies of the assailed decision dated January 26, 2004 attached to the petition is a mere photocopy of a certified true copy;

5) The following copies of pleadings and other relevant documents referred to in the petition which would support the allegations therein are not attached:

a) Complaint; and,

b) Answer.[24]

---

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

[24] *Rollo*, pp. 130-131; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

Invoking the liberal construction of procedural rules, petitioner Aurora asked for reconsideration[25] with the following justifications:

1) A certification/verification of one of a number of principal parties is sufficient compliance. Although her *certiorari* petition named her, her spouse, and Yiu-Go Employment Agency, as 'petitioners,' her co-defendants were not held liable in the lower court. It is only she who is interested in filing the *certiorari* petition for her to be able to appeal, hence her lone signature.

2) Anent the lack of explanation of why personal service to the CA was not resorted to, Aurora averred that it was redundant to explain why registered mail was used considering the distance between Cebu, where she is based, and the CA in Manila.

3) The professional tax receipt (PTR) and Integrated Bar of the Philippines (IBP) receipt numbers were inadvertently overlooked. However, the defect was cured when Atty. Ycong included the numbers when he subsequently filed on October 14, 2004 his Notice of Change of Address[26] with the CA.

4) Questioned in the *certiorari* are the May 12 and June 10, 2004 Orders that denied Aurora's prayer for an extension of time to file her notice of appeal. Requiring her to additionally append to the CA petition the certified true copies of the January 26, 2004 RTC Decision (*i.e.*, the decision on the merits of the case), the complaint, and the answer was not necessary as these documents are not relevant and material to the issue to be resolved.

Finding Aurora's reasoning unacceptable, the CA insisted on a strict observance of the rules in its April 8, 2005 Resolution:

As to the first ground, petitioners merely disagree with the deficiency which occasioned the outright dismissal of their petition without even curing the said defect. Suffice it to say here that the petition itself contains more than one petitioner. No less than the Supreme Court pronounced in *Loquias vs. Office of the Ombudsman* that where there are two or more plaintiffs or petitioners, a complaint

---

[25] *Id.* at 132-140.

[26] CA *rollo*, pp. 39-40.

or petition signed by only [sic] of the parties is defective unless he/she is authorized by his co-parties. x x x

x x x x x x x x x

The reason why petitioners' petition was dismissed based on the second defect was because the said petition lacks explanation why service of the petition with this Court was not done personally, not much for having filed the same by registered mail. In other words, the dismissal was not due to the fact that the petition was filed by registered mail, but because of the failure to explain why the personal service was not resorted to. Then again, petitioners did not even bother to cure such defect.

Anent the third ground, counsel for petitioners posits that his failure to indicate in the petition for *certiorari* his PTR and IBP numbers was cured by his succeeding Notice of Change Address filed with this Court. However, a closer of [sic] examination of the same reveals that the same was only filed on October 14, 2004 or some two (2) months after the petition for *certiorari* was filed on August 13, 2004. If it was really the intention of counsel for petitioners to cure such defect, he could have done it immediately after filing the petition. Had it not been due to the filing of the notice of change of address, We doubt if petitioners would have cured such defect.

Considering the foregoing, We deem it unnecessary to discuss the other grounds raised by petitioners.

x x x x x x x x x[27]

The Parties' Respective Arguments

Believing that her case should not have been dismissed for procedural defects, Aurora assails the December 8, 2004 and April 8, 2005 Resolutions of the CA, reiterating to this Court that she deserves to be accorded the chance to prove to the CA that the RTC had unfairly denied her motion for extension of time to file her notice of appeal.

On the other hand, respondents defend the stance of the CA, insisting that perfection of an appeal is jurisdictional and

---

[27] *Rollo*, pp. 142-143. Citations omitted. Underscoring in the original.

mandatory; and that the circumstances do not justify granting Aurora leniency in the application of the procedural rules. Moreover, ever since she filed her motion for reconsideration on the RTC's January 26, 2004 Decision, she had in the interim sufficient time to think about the next legal action to take before the trial court issued its order of denial on April 27, 2004.

Issue

The sole question to resolve is whether the formal deficiencies in the petition before the CA may be relaxed in the interest of justice.

Our Ruling

The signatures/authorizations of Sang and Yiu-Go Employment Agency in the verification and certification on non-forum shopping are not necessary.

In filing a *certiorari* petition, one aggrieved by a court's judgment, order or resolution must verify his/her petition and must also attach a sworn certification of non-forum shopping.[28] In dismissing Aurora's petition, the CA cited as one of its grounds the lack of signatures or authorizations of Sang and Yiu-Go Employment Agency in the verification and certification of non-forum shopping. Such signatures, however, may be dispensed with as these parties are not involved in the petition. Although the caption in Aurora's petition before the CA erroneously included Sang and Yiu-Go Employment Agency as petitioners, its contents reveal that it is solely Aurora who is the 'person aggrieved,' as she is the one who assailed before the CA the RTC's Order that denied her notice of appeal and, hence, she should be the one who should sign the petition. Notably, Aurora is the only one held liable by the trial court for damages and thus is the one interested in filing an appeal and in elevating the case to the CA. Moreover, only Aurora filed her answer before the RTC while Sang and Yiu-Go Employment Agency did not file any.

---

[28] RULES OF COURT, Rule 65, Sec. 1.

Non-submission of certified true copy of the January 26, 2004 Decision and copies of the Complaint and Answer not fatal.

Another ground cited by the CA was the non-submission of the certified true copy of the January 26, 2004 Decision as well as the failure to attach copies of the complaint and answer in Aurora's petition.

The second paragraph of Section 1 of Rule 65 requires the submission of a certified true copy of the judgment, order or resolution subject of the petition as well as the submission of copies of all pleadings and documents relevant to the petition. "The initial determination of what pleadings, documents or order are relevant and pertinent to the petition rests on the petitioner. [Should the CA opine that additional documents must be submitted together with the petition, it may] (a) dismiss the petition under the last paragraph of [Section 3,] Rule 46 of the Rules of Court; (b) order the petitioner to submit the required additional pleadings, documents, or order within a specific period of time; or (c) order the petitioner to file an amended petition appending thereto the required pleadings, documents or order within a fixed period."[29] We emphasize that not all pleadings and parts of case records are required to be attached, but only those which are material and pertinent that they may provide the basis for a determination of a *prima facie* case for abuse of discretion.[30]

Thus, we agree with the petitioner that the CA required pleadings immaterial to the issue presented before it. The questioned subject of *certiorari* does not touch upon the substantive merits of the suit for damages against Aurora but actually involves the refusal of the trial court to entertain her notice of appeal due to late filing. The complaint and answer are not indispensable at all in the resolution of this issue, the

---

[29] *Garcia v. Philippine Airlines, Inc.*, 498 Phil. 809, 820 (2005).

[30] *Air Philippines Corporation v. Zamora*, G.R. No.148247, August 7, 2006, 498 SCRA 59, 62.

contents of which are already summarized in the January 26, 2004 Decision attached to the petition. Furthermore, since Aurora's petition assails the May 12 and June 10, 2004 Orders of the RTC, it is the certified true copies of these orders that are required to be attached to the petition. On the other hand, photocopy of the January 26, 2004 Decision will suffice, as this document is material and pertinent to the petition.

Failure to indicate PTR and IBP Official Receipt Numbers not fatal.

The failure of petitioner's former counsel, Atty. Ycong, to indicate in the petition before the CA his PTR and IBP numbers for the year 2004 was obviously an oversight. A perusal of the records of the case would show that counsel had duly paid the required dues for that year and that his PTR and IBP receipt numbers are indicated in the pleadings he had filed with the RTC.[31] Although he omitted to indicate the numbers on Aurora's CA petition, the same numbers were nevertheless stated on his Notice of Change of Address, around two months before the appellate court issued the questioned December 8, 2004 Resolution.

Rules on perfecting appeals must be strictly complied with; liberal application available only under exceptional circumstances.

Whenever practicable, personal service and personal filing of pleadings are always the preferred modes of service. Under Section 11, Rule 13 of the Rules of Court, should one deviate from the general rule, it is mandatory for him/her to submit a written explanation why the pleading was not personally filed/served. Otherwise, the court has the discretion to consider the paper as not filed. Petitioner should be aware that a court, in reasonably exercising discretionary power to dismiss a petition that violated the rule on written explanation for resorting to modes other than personal service, also has to take into account another factor, *i.e.*, the *prima facie* merit of the pleading sought

[31] CA *rollo*, pp. 19-24, 27-28, 30-33.

to be expunged for violation of Section 11.[32] For this reason, we do not find any grave abuse on the part of the CA in exercising its discretion to dismiss Aurora's petition.

Indeed, judicial notice may be taken that personal service is impracticable considering the distance between Cebu and Manila, and that *Musa v. Amor*[33] supports Aurora's argument that a written explanation why service was not done personally might have been superfluous considering the evident distance between the appellate court and the place where the petition was posted. It must be emphasized, however, that provisions with respect to the rules on the manner and periods for perfecting appeals are strictly applied and are only relaxed in very exceptional circumstances on equitable considerations.[34] In the case at bar, the reason behind the filing of an extension of time to file her notice of appeal was not per se, a compelling and a highly exceptional one. Just as it is the lawyer's duty to safeguard her client's interest, it is the responsibility of the client to make herself available to her counsel and open the lines of communication, even during the busy election period, for their discussions of legal options. She is obliged to be vigilant in fighting for her cause and in protecting her rights. It is Aurora's duty, "as a client, to be in touch with [her] counsel so as to be constantly posted about the case. [She] is mandated to inquire from [her] counsel about the status and progress of the case from time to time and cannot expect that all [she] has to do is sit back, relax and await the outcome of the case."[35] Additionally, "motions for extension are not granted as a matter of right but

---

[32] *Solar Team Entertainment, Inc. v. Judge Ricafort*, 355 Phil. 404, 414 (1998).

[33] 430 Phil. 128 (2002).

[34] *Heirs of Gaudiano v. Benemerito*, G.R. No. 174247, February 21, 2007, 516 SCRA 416, 420-421 citing *Sps. Buenaflor v. Court of Appeals*, 400 Phil. 395, 402-403 (2000).

[35] *GCP-Manny Transport Services, Inc. v. Judge Principe*, 511 Phil. 176, 186 (2005), citing *Philhouse Development Corp. v. Consolidated Orix Leasing & Finance Corp.*, 408 Phil. 392, 398 (2001) and *Balgami v. Court of Appeals*, 487 Phil. 102, 114-115 (2004).

in the sound discretion of the court, and lawyers should never presume that their motions for extension or postponement will be granted or that they will be granted the length of time they pray for."[36]

In spite of petitioner's error, the 'fresh period rule' amendment as held in Neypes v. Court of Appeals will be applied to her benefit

Aurora had almost lost her statutory privilege to appeal, but in view of our ruling on *Neypes v. Court of Appeals,*[37] we shall grant Aurora's petition.

In *Neypes* we held that a litigant is given another fresh period of 15 days to perfect an appeal after receipt of the order of denial of his/her motion for reconsideration/new trial before the RTC. We said:

To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.

Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[38] (Emphasis supplied.)

---

[36] *Ramos v. Atty. Dajayog, Jr.*, 428 Phil. 267, 278 (2002).

[37] 506 Phil. 613 (2005).

[38] *Id.* at 626-627.

"[P]rocedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure."[39] *Neypes*, which we rendered in September 2005, has been applied retroactively to a number of cases[40] wherein the original period to appeal had already lapsed subsequent to the denial of the motion for reconsideration. Aurora's situation is no exception, and thus she is entitled to benefit from the amendment of the procedural rules.

The denial of Aurora's Motion for Reconsideration of the trial court's January 26, 2004 decision was received by her former counsel on May 6, 2004. Sans her motion for extension to file a notice of appeal, with the fresh period rule under *Neypes*, she still has until May 21, 2004 to file her notice of appeal and thus, had timely filed her notice of appeal on May 11, 2004.

WHEREFORE, the petition is *GRANTED*. The challenged Resolutions of the Court of Appeals in CA-G.R. SP No. 85897 dated December 8, 2004 and April 8, 2005 are *REVERSED* and *SET ASIDE;* the Orders of the Regional Trial Court of Cebu, Branch 58, dated May 12 and June 10, 2004 that denied Aurora Go's notice of appeal are likewise *REVERSED and SET ASIDE*. The Regional Trial Court of Cebu, Branch 58 is hereby *DIRECTED* to give due course to petitioner's Notice of Appeal dated May 11, 2004.

SO ORDERED.

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

---

[39] *Pfizer, Inc. v. Galan,* 410 Phil. 483, 491 (2001).

[40] *Sumiran v. Damaso,* G.R. No. 162518, August 19, 2009, 596 SCRA 450; *Fil-Estate Properties, Inc. v. Homena-Valencia*, G.R. No. 173942, June 25, 2008, 555 SCRA 345; *First Aqua Sugar Traders, Inc. v. Bank of the Philippine Islands*, G.R. No. 154034, February 5, 2007, 514 SCRA 223; *Sumaway v. Urban Bank, Inc.*, G.R. No. 142534, June 27, 2006, 493 SCRA 99; *Elbiña v. Ceniza*, G.R. No. 154019, August 10, 2006, 498 SCRA 439.

FIRST DIVISION

[G.R. No. 168770. February 9, 2011]

ANUNCIACION *VDA. DE* OUANO, MARIO P. OUANO, LETICIA OUANO ARNAIZ, and CIELO OUANO MARTINEZ, *petitioners, vs.* **THE REPUBLIC OF THE PHILIPPINES, THE MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, and THE REGISTER OF DEEDS FOR THE CITY OF CEBU,** *respondents.*

[G.R. No. 168812. February 9, 2011]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), *petitioner, vs.* **RICARDO L. INOCIAN, in his personal capacity and as Attorney-in-Fact of OLYMPIA E. ESTEVES, EMILIA E. BACALLA, RESTITUTA E. MONTANA, and RAUL L. INOCIAN; and ALETHA SUICO MAGAT, in her personal capacity and as Attorney-in-Fact of PHILIP M. SUICO, DORIS S. DELA CRUZ, JAMES M. SUICO, EDWARD M. SUICO, ROSELYN SUICO-LAWSIN, REX M. SUICO, KHARLA SUICO-GUTIERREZ, ALBERT CHIONGBIAN, and JOHNNY CHAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; EMINENT DOMAIN; PETITIONERS OUANOS AND RESPONDENTS INOCIANS ARE ENTITLED TO RECOVER THEIR PREDECESSORS' RESPECTIVE PROPERTIES IN THE SAME MANNER AND ARRANGEMENT AS THE HEIRS OF *MORENO* AND *TUDTUD*; THE PUBLIC PURPOSE OF THE EXPROPRIATION WAS NEVER MET AND THE EXPROPRIATED LOTS WERE NEVER USED AND, IN FACT, ABANDONED BY THE EXPROPRIATING GOVERNMENT AGENCIES.— For perspective, *Heirs of*

Moreno—later followed by *MCIAA v. Tudtud* (*Tudtud*) and the consolidated cases at bar—is cast under the same factual setting and centered on the expropriation of privately-owned lots for the public purpose of expanding the Lahug Airport and the alleged promise of reconveyance given by the negotiating NAC officials to the private lot owners. All the lots being claimed by the former owners or successors-in-interest of the former owners in the *Heirs of Moreno*, *Tudtud*, and the present cases were similarly adjudged condemned in favor of the Republic in Civil Case No. R-1881. All the claimants sought was or is to have the condemned lots reconveyed to them upon the payment of the condemnation price since the **public purpose** of the expropriation was never met. Indeed, the expropriated lots were never used and were, in fact, abandoned by the expropriating government agencies. In all then, the issues and supporting arguments presented by both sets of petitioners in these consolidated cases have already previously been passed upon, discussed at length, and practically peremptorily resolved in *Heirs of Moreno* and the November 2008 *Tudtud* ruling. The Ouanos, as petitioners in G.R. No. 168770, and the Inocians, as respondents in G.R. No. 168812, are similarly situated as the heirs of Moreno in *Heirs of Moreno* and Benjamin Tudtud in *Tudtud*. Be that as it may, there is no reason why the *ratio decidendi* in *Heirs of Moreno* and *Tudtud* should not be made to apply to petitioners Ouanos and respondents Inocians such that they shall be entitled to recover their or their predecessors' respective properties under the same manner and arrangement as the heirs of Moreno and Tudtud. *Stare decisis et non quieta movere* (to adhere to precedents, and not to unsettle things which are established).

2. ID.; ID.; PETITIONER MCIAA CANNOT RIGHTFULLY SAY THAT IT HAS ABSOLUTE TITLE TO THE LOTS DECREED EXPROPRIATED IN CIVIL CASE NO. R-1881; THE GOVERNMENT ACQUIRES ONLY SUCH RIGHTS IN EXPROPRIATED PARCELS OF LAND AS MAY BE ALLOWED BY THE CHARACTER OF ITS TITLE OVER THE PROPERTIES.— The Court has, to be sure, taken stock of *Fery v. Municipality of Cabanatuan*, a case MCIAA cites at every possible turn, where the Court made these observations: If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned

the property shall return to its former owner, then of course, when the purpose is terminated or abandoned, the former owner reacquires the property so expropriated. x x x If, upon the contrary, however the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator x x x and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings x x x. *Fery* notwithstanding, MCIAA cannot really rightfully say that it has absolute title to the lots decreed expropriated in Civil Case No. R-1881. The correct lesson of *Fery* is captured by what the Court said in that case, thus: "the government acquires only such rights in expropriated parcels of land as may be allowed by the character of its title over the properties." In light of our disposition in *Heirs of Moreno* and *Tudtud*, the statement immediately adverted to means that in the event the particular public use for which a parcel of land is expropriated is abandoned, the owner shall not be entitled to recover or repurchase it as a matter of right, unless such recovery or repurchase is expressed in or **irresistibly deducible from the condemnation judgment**. But as has been determined below, the decision in Civil Case No. R-1881 enjoined MCIAA, as a condition of approving expropriation, to allow recovery or repurchase upon abandonment of the Lahug airport project. To borrow from our underlying decision in *Heirs of Moreno*, "[n]o doubt, the return or repurchase of the condemned properties of petitioners could readily be justified as the manifest legal effect of consequence of the trial court's underlying presumption that *'Lahug Airport will continue to be in operation'* when it granted the complaint for eminent domain and the airport discontinued its activities."

3. ID.; ID.; IF THE GENUINE PUBLIC NECESSITY—THE VERY REASON OR CONDITION AS IT WERE—ALLOWING, AT THE FIRST INSTANCE, THE EXPROPRIATION OF A PRIVATE LAND CEASES OR DISAPPEARS, THEN THERE IS NO MORE COGENT POINT FOR THE GOVERNMENT'S RETENTION OF THE EXPROPRIATED LAND.— The Court, in the recent *MCIAA v. Lozada, Sr.*, revisited and abandoned the *Fery* ruling that the former owner is not entitled to reversion of the property even if the public purpose were not pursued and were abandoned. x x x Clinging

to *Fery*, specifically the fee simple concept underpinning it, is no longer compelling, considering the ensuing inequity such application entails. Too, the Court resolved *Fery* not under the cover of any of the Philippine Constitutions, each decreeing that private property shall not be taken for public use without just compensation. The twin elements of just compensation and public purpose are, by themselves, direct limitations to the exercise of eminent domain, arguing, in a way, against the notion of fee simple title. The fee does not vest until payment of just compensation. *In esse*, expropriation is forced private property taking, the landowner being really without a ghost of a chance to defeat the case of the expropriating agency. In other words, in expropriation, the private owner is deprived of property against his will. Withal, the mandatory requirement of due process ought to be strictly followed, such that the state must show, at the minimum, a genuine need, an exacting public purpose to take private property, the purpose to be specifically alleged or least reasonably deducible from the complaint. Public use, as an eminent domain concept, has now acquired an expansive meaning to include any use that is of "usefulness, utility, or advantage, or what is productive of general benefit [of the public]." If the genuine public necessity—the very reason or condition as it were—allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land. The same legal situation should hold if the government devotes the property to another public use very much different from the original or deviates from the declared purpose to benefit another private person. It has been said that the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws.

4. ID.; ID.; THE NOTION, THAT THE GOVERNMENT, VIA EXPROPRIATION PROCEEDINGS, ACQUIRES UNRESTRICTED OWNERSHIP OVER A FEE SIMPLE TITLE TO THE COVERED LAND, IS NO LONGER TENABLE.— A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property

to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor the judgment of expropriation. This is not in keeping with the idea of fair play. The notion, therefore, that the government, via expropriation proceedings, acquires unrestricted ownership over or a fee simple title to the covered land, is no longer tenable. We suggested as much in *Heirs of Moreno* and in *Tudtud* and more recently in *Lozada, Sr*. Expropriated lands should be differentiated from a piece of land, ownership of which was absolutely transferred by way of an unconditional purchase and sale contract freely entered by two parties, one without obligation to buy and the other without the duty to sell. In that case, the fee simple concept really comes into play. There is really no occasion to apply the "fee simple concept" if the transfer is conditional. The taking of a private land in expropriation proceedings is always conditioned on its continued devotion to its public purpose. As a necessary corollary, once the purpose is terminated or peremptorily abandoned, then the former owner, if he so desires, may seek its reversion, subject of course to the return, at the very least, of the just compensation received. To be compelled to renounce dominion over a piece of land is, in itself, an already bitter pill to swallow for the owner. But to be asked to sacrifice for the common good and yield ownership to the government which reneges on its assurance that the private property shall be for a public purpose may be too much. But it would be worse if the power of eminent domain were deliberately used as a subterfuge to benefit another with influence and power in the political process, including development firms. The mischief thus depicted is not at all far-fetched with the continued application of *Fery*. Even as the Court deliberates on these consolidated cases, there is an uncontroverted allegation that the MCIAA is poised to sell, if it has not yet sold, the areas in question to Cebu Property Ventures, Inc. This provides an added dimension to abandon *Fery*.

5. ID.; ID.; EQUITY, JUSTICE AND FAIR PLAY MUST BE OBSERVED IN THE RECONVEYANCE OF THE SUBJECT LITIGATED LANDS; RIGHTS AND OBLIGATIONS OF THE PARTIES, CLARIFIED.— Given the foregoing disquisitions, equity and justice demand the

reconveyance by MCIAA of the litigated lands in question to the Ouanos and Inocians. In the same token, justice and fair play also dictate that the Ouanos and Inocians return to MCIAA what they received as just compensation for the expropriation of their respective properties plus legal interest to be computed from default, which in this case should run from the time MCIAA complies with the reconveyance obligation. They must likewise pay MCIAA the necessary expenses it might have incurred in sustaining their respective lots and the monetary value of its services in managing the lots in question to the extent that they, as private owners, were benefited thereby. In accordance with Art. 1187 of the Civil Code on mutual compensation, MCIAA may keep whatever income or fruits it may have obtained from the parcels of land expropriated. In turn, the Ouanos and Inocians need not require the accounting of interests earned by the amounts they received as just compensation. Following Art. 1189 of the Civil Code providing that **"[i]f the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor** x x x," the Ouanos and Inocians do not have to settle the appreciation of the values of their respective lots as part of the reconveyance process, since the value increase is merely the natural effect of nature and time.

6. CIVIL LAW; CONTRACTS; STATUTE OF FRAUDS; PETITIONER MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY'S (MCIAA) INVOCATION OF THE STATUTE OF FRAUDS IS MISPLACED PRIMARILY BECAUSE THE STATUTE APPLIES ONLY TO EXECUTORY AND NOT TO COMPLETED, EXECUTED OR PARTIALLY CONSUMMATED CONTRACTS.— Under the rule on the Statute of Frauds, as expressed in Article 1403 of the Civil Code, a contract for the sale or acquisition of real property shall be unenforceable unless the same or some note of the contract be in writing and subscribed by the party charged. Subject to defined exceptions, evidence of the agreement cannot be received without the writing, or secondary evidence of its contents. MCIAA's invocation of the Statute of Frauds is misplaced primarily because the statute applies only to executory and not to completed, executed, or partially consummated contracts. *Carbonnel v. Poncio, et al.*, quoting Chief Justice Moran, explains the rationale behind this rule,

thusly: x x x "The reason is simple. In executory contracts there is a wide field for fraud because unless they may be in writing there is no palpable evidence of the intention of the contracting parties. The statute has been precisely been enacted to prevent fraud." x x x However, if a contract has been totally or partially performed, *the exclusion of parol evidence would promote fraud or bad faith*, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby. Analyzing the situation of the cases at bar, there can be no serious objection to the proposition that the agreement package between the government and the private lot owners was already partially performed by the government through the acquisition of the lots for the expansion of the Lahug airport. The parties, however, failed to accomplish the more important condition in the CFI decision decreeing the expropriation of the lots litigated upon: the expansion of the Lahug Airport. The project—the public purpose behind the forced property taking—was, in fact, never pursued and, as a consequence, the lots expropriated were abandoned. Be that as it may, the two groups of landowners can, in an action to compel MCIAA to make good its oral undertaking to allow repurchase, adduce parol evidence to prove the transaction. At any rate, the objection on the admissibility of evidence on the basis of the Statute of Frauds may be waived if not timely raised. Records tend to support the conclusion that MCIAA did not, as the Ouanos and the Inocians posit, object to the introduction of parol evidence to prove its commitment to allow the former landowners to repurchase their respective properties upon the occurrence of certain events.

7. ID.; ID.; TRUST; CONSTRUCTIVE TRUST; APPLICABLE IN CASE AT BAR.— Providing added support to the Ouanos and the Inocians' right to repurchase is what in *Heirs of Moreno* was referred to as constructive trust, one that is akin to the implied trust expressed in Art. 1454 of the Civil Code, the purpose of which is to prevent unjust enrichment. In the case at bench, the Ouanos and the Inocians parted with their respective lots in favor of the MCIAA, the latter obliging itself to use the realties for the expansion of Lahug Airport; failing to keep its end of the bargain, MCIAA can be compelled by the former

landowners to reconvey the parcels of land to them, otherwise, they would be denied the use of their properties upon a state of affairs that was not conceived nor contemplated when the expropriation was authorized. In effect, the government merely held the properties condemned in trust until the proposed public use or purpose for which the lots were condemned was actually consummated by the government. Since the government failed to perform the obligation that is the basis of the transfer of the property, then the lot owners Ouanos and Inocians can demand the reconveyance of their old properties after the payment of the condemnation price. Constructive trusts are fictions of equity that courts use as devices to remedy any situation in which the holder of the legal title, MCIAA in this case, may not, in good conscience, retain the beneficial interest. We add, however, as in *Heirs of Moreno*, that the party seeking the aid of equity—the landowners in this instance, in establishing the trust—must himself do equity in a manner as the court may deem just and reasonable.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez & Gatmaitan for Ouano, *et al.*

Jacinto Baydo Magtanong & Uy for A. Suico-Magat, P. Suico, *et al.*

Gica Del Socorro Espinosa Villarmia Fernandez & Tan for R. Inocian, *et al.*

Emmanuel R. Pichay for P. Suico.

Bienvenido V. Baring, Jr. for J. Chan.

Arguedo Go & Associates Law Offices for the Heirs of Ricardo Inocian.

Orfanel Alambra Limwan & Solis Law Offices for Heirs of Restituta Montano.

D E C I S I O N

VELASCO, JR., *J.*:

At the center of these two (2) Petitions for Review on *Certiorari* under Rule 45 is the issue of the right of the former owners of lots acquired for the expansion of the Lahug Airport

in Cebu City to repurchase or secure reconveyance of their respective properties.

In the first petition, docketed as **G.R. No. 168770**, petitioners Anunciacion *vda. de* Ouano, Mario Ouano, Leticia Ouano Arnaiz and Cielo Ouano Martinez (the Ouanos) seek to nullify the Decision[1] dated September 3, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 78027, affirming the Order dated December 9, 2002 of the Regional Trial Court (RTC), Branch 57 in Cebu City, in Civil Case No. CEB-20743, a suit to compel the Republic of the Philippines and/or the Mactan-Cebu International Airport Authority (MCIAA) to reconvey to the Ouanos a parcel of land.

The second petition, docketed as **G.R. No. 168812**, has the MCIAA seeking principally to annul and set aside the Decision[2] and Resolution[3] dated January 14, 2005 and June 29, 2005, respectively, of the CA in CA-G.R. CV No. 64356, sustaining the RTC, Branch 13 in Cebu City in its Decision of October 7, 1988 in Civil Case No. CEB-18370.

Per its October 19, 2005 Resolution, the Court ordered the consolidation of both cases.

Except for the names of the parties and the specific lot designation involved, the relevant factual antecedents which gave rise to these consolidated petitions are, for the most part, as set forth in the Court's Decision[4] of October 15, 2003, as reiterated in a Resolution[5] dated August 9, 2005, in **G.R.**

---

[1] *Rollo* (G.R. No.168770), pp. 45-56. Penned by Associate Justice Mercedes Gozo-Dadole and concurred in by Associate Justices Pampio A. Abarintos and Ramon M. Bato, Jr.

[2] Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Sesinando E. Villon and Ramon M. Bato, Jr.

[3] *Rollo* (G.R. No.168812), pp. 77-78.

[4] *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority*, G.R. No. 156273, October 15, 2003, 413 SCRA 502.

[5] *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority*, G.R. No. 156273, August 9, 2005, 466 SCRA 288.

No. 156273 entitled *Heirs of Timoteo Moreno and Maria Rotea v. Mactan-Cebu International Airport Authority* (*Heirs of Moreno*), and in other earlier related cases.[6]

In 1949, the National Airport Corporation (NAC), MCIAA's predecessor agency, pursued a program to expand the Lahug Airport in Cebu City. Through its team of negotiators, NAC met and negotiated with the owners of the properties situated around the airport, which included Lot Nos. 744-A, 745-A, 746, 747, 761-A, 762-A, 763-A, 942, and 947 of the Banilad Estate. As the landowners would later claim, the government negotiating team, as a sweetener, assured them that they could repurchase their respective lands should the Lahug Airport expansion project do not push through or once the Lahug Airport closes or its operations transferred to Mactan-Cebu Airport. Some of the landowners accepted the assurance and executed deeds of sale with a right of repurchase. Others, however, including the owners of the aforementioned lots, refused to sell because the purchase price offered was viewed as way below market, forcing the hand of the Republic, represented by the then Civil Aeronautics Administration (CAA), as successor agency of the NAC, to file a complaint for the expropriation of Lot Nos. 744-A, 745-A, 746, 747, 761-A, 762-A, 763-A, 942, and 947, among others, docketed as **Civil Case No. R-1881** entitled *Republic v. Damian Ouano, et al.*

On December 29, 1961, the then Court of First Instance (CFI) of Cebu rendered judgment for the Republic, disposing, in part, as follows:

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1. Declaring the expropriation of Lots Nos. 75, 76, 76, 89, 90, 91, 92, 105, 106, 107, 108, 104, 921-A, 88, 93, 913-B, 72, 77, 916, 777-A, 918, 919, 920, 764-A, 988, 744-A, 745-A, 746, 747, 762-A, 763-A, 951, 942, 720-A, x x x and 947, included in the Lahug Airport, Cebu City, justified in and in lawful exercise of the right of eminent domain.

---

[6] *Air Transportation Office v. Gopuco, Jr.*, G.R. No. 158563, June 30, 2005, 462 SCRA 544; *MCIAA v. Court of Appeals*, G.R. No. 139495, November 27, 2000, 346 SCRA 126.

x x x x x x x x x

3. After the payment of the foregoing financial obligation to the landowners, directing the latter to deliver to the plaintiff the corresponding Transfer Certificates of Title to their respective lots; and upon the presentation of the said titles to the Register of Deeds, ordering the latter to cancel the same and to issue, in lieu thereof, new Transfer Certificates of Title in the name of the plaintiff.[7]

In view of the adverted buy-back assurance made by the government, the owners of the lots no longer appealed the decision of the trial court.[8] Following the finality of the judgment of condemnation, certificates of title for the covered parcels of land were issued in the name of the Republic which, pursuant to Republic Act No. 6958,[9] were subsequently transferred to MCIAA.

At the end of 1991, or soon after the transfer of the aforesaid lots to MCIAA, Lahug Airport completely ceased operations, Mactan Airport having opened to accommodate incoming and outgoing commercial flights. On the ground, the expropriated lots were never utilized for the purpose they were taken as no expansion of Lahug Airport was undertaken. This development prompted the former lot owners to formally demand from the government that they be allowed to exercise their promised right to repurchase. The demands went unheeded. Civil suits followed.

G.R. No. 168812 (MCIAA Petition)

On February 8, 1996, Ricardo L. Inocian and four others (all children of Isabel Limbaga who originally owned six [6] of the lots expropriated); and Aletha Suico Magat and seven others, successors-in-interest of Santiago Suico, the original owner of two (2) of the condemned lots (collectively, the Inocians), filed

---

[7] *Rollo* (G.R. No.168812), pp. 31-32.

[8] *Id*. at 10.

[9] An Act Creating [MCIAA], Transferring Existing Assets of the Mactan International Airport to the [MCIAA], Vesting the [MCIAA] with Powers to Administer and Operate the Mactan International Airport and the Lahug Airport.

before the RTC in Cebu City a complaint for reconveyance of real properties and damages against MCIAA. The complaint, docketed as **Civil Case No. CEB-18370**, was eventually raffled to Branch 13 of the court.

On September 29, 1997, one Albert Chiongbian (Chiongbian), alleging to be the owner of Lot Nos. 761-A and 762-A but which the Inocians were now claiming, moved and was later allowed to intervene.

During the pre-trial, MCIAA admitted the following facts:

1. That the properties, which are the subject matter of Civil Case No. CEB-18370, are also the properties involved in Civil Case R-1881;

2. That the purpose of the expropriation was for the expansion of the old Lahug Airport; that the Lahug Airport was not expanded;

3. That the old Lahug Airport was closed sometime in June 1992;

4. That the price paid to the lot owners in the expropriation case is found in the decision of the court; and

5. That some properties were reconveyed by the MCIAA because the previous owners were able to secure express waivers or riders wherein the government agreed to return the properties should the expansion of the Lahug Airport not materialize.

During trial, the Inocians adduced evidence which included the testimony of Ricardo Inocian (Inocian) and Asterio Uy (Uy). Uy, an employee of the CAA, testified that he was a member of the team which negotiated for the acquisition of certain lots in Lahug for the proposed expansion of the Lahug Airport. He recalled that he acted as the interpreter/spokesman of the team since he could speak the Cebuano dialect. He stated that the other members of the team of negotiators were Atty. Pedro Ocampo, Atty. Lansang, and Atty. Saligumba. He recounted that, in the course of the negotiation, their team assured the landowners that their landholdings would be reconveyed to them in the event the Lahug Airport would be abandoned or if its operation were transferred to the Mactan Airport. Some

landowners opted to sell, while others were of a different bent owing to the inadequacy of the offered price.

Inocian testified that he and his mother, Isabel Lambaga, attended a meeting called by the NAC team of negotiators sometime in 1947 or 1949 where he and the other landowners were given the assurance that they could repurchase their lands at the same price in the event the Lahug Airport ceases to operate. He further testified that they rejected the NAC's offer. However, he said that they no longer appealed the decree of expropriation due to the repurchase assurance adverted to.

The MCIAA presented Michael Bacarizas (Bacarizas), who started working for MCIAA as legal assistant in 1996. He testified that, in the course of doing research work on the lots subject of Civil Case No. CEB-18370, he discovered that the same lots were covered by the decision in Civil Case No. R-1881. He also found out that the said decision did not expressly contain any condition on the matter of repurchase.

Ruling of the RTC

On October 7, 1998, the RTC rendered a Decision in Civil Case No. CEB-18370, the dispositive portion of which reads as follows:

> WHEREFORE, in view of the foregoing, judgment is hereby rendered directing defendant Mactan Cebu International Airport Authority (MCIAA) to reconvey (free from liens and encumbrances) to plaintiffs Ricardo Inocian, Olimpia E. Esteves, Emilia E. Bacalla, Restituta E. Montana and Raul Inocian Lots No. 744-A, 745-A, 746, 762-A, 747, 761-A and to plaintiffs Aletha Suico Magat, Philip M. Suico, Doris S. dela Cruz, James M. Suico, Edward M. Suico, Roselyn S. Lawsin, Rex M. Suico and Kharla Suico-Gutierrez Lots No. 942 and 947, after plaintiffs shall have paid MCIAA the sums indicated in the decision in Civil Case No. R-1881. Defendant MCIAA is likewise directed to pay the aforementioned plaintiffs the sum or ₱50,000.00 as and for attorney's fees and ₱10,000.00 for litigation expenses.

Albert Chiongbian's intervention should be, as it is hereby DENIED for utter lack of factual basis.

With costs against defendant MCIAA.[10]

Therefrom, MCIAA went to the CA on appeal, docketed as CA-G.R. CV No. 64356.

Ruling of the CA

On January 14, 2005, the CA rendered judgment for the Inocians, declaring them entitled to the reconveyance of the questioned lots as the successors-in-interest of the late Isabel Limbaga and Santiago Suico, as the case may be, who were the former registered owners of the said lots. The decretal portion of the CA's Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DISMISSING the appeal filed in this case and AFFFIRMING the decision rendered by the court *a quo* on October 7, 1998 in Civil Case No. CEB-18370.

SO ORDERED.

The CA, citing and reproducing excerpts from *Heirs of Moreno*,[11] virtually held that the decision in Civil Case No. R-1881 was conditional, stating "that the expropriation of [plaintiff-appellees'] lots for the proposed expansion of the Lahug Airport was ordered by the CFI of Cebu under the impression that Lahug Airport would continue in operation."[12] The condition, as may be deduced from the CFI's decision, was that should MCIAA, or its precursor agency, discontinue altogether with the operation of Lahug Airport, then the owners of the lots expropriated may, if so minded, demand of MCIAA to make good its verbal assurance to allow the repurchase of the properties. To the CA, this assurance, a demandable agreement of repurchase by itself, has been adequately established.

---

[10] *Rollo* (G.R. No. 168812), pp. 95-96. Penned by Judge Meinrado P. Paredes.

[11] *Supra* note 4.

[12] *Rollo* (G.R. No. 168812), p. 70.

On September 21, 2005, the MCIAA filed with Us a petition for review of the CA's Decision, docketed as G.R. No. 168812.

G.R. No. 168770 (Ouano Petition)

Soon after the MCIAA jettisoned the Lahug Airport expansion project, informal settlers entered and occupied Lot No. 763-A which, before its expropriation, belonged to the Ouanos. The Ouanos then formally asked to be allowed to exercise their right to repurchase the aforementioned lot, but the MCIAA ignored the demand. On August 18, 1997, the Ouanos instituted a complaint before the Cebu City RTC against the Republic and the MCIAA for reconveyance, docketed as Civil Case No. CEB-20743.

Answering, the Republic and MCIAA averred that the Ouanos no longer have enforceable rights whatsoever over the condemned Lot No. 763-A, the decision in Civil Case No. R-1881 not having found any reversionary condition.

Ruling of the RTC

By a Decision dated November 28, 2000, the RTC, Branch 57 in Cebu City ruled in favor of the Ouanos, disposing as follows:

> WHEREFORE, in the light of the foregoing, the Court hereby renders judgment in favor of the plaintiffs, Anunciacion *Vda. De* Ouano, Mario P. Ouano, Leticia Ouano Arnaiz and Cielo Ouano Martinez and against the Republic of the Philippines and Mactan Cebu International Airport Authority (MCIAA) to restore to plaintiffs, the possession and ownership of their land, Lot No. 763-A upon payment of the expropriation price to defendants; and
>
> 2. Ordering the Register of Deeds to effect the transfer of the Certificate of Title from defendant Republic of the Philippines on Lot 763-A, canceling TCT No. 52004 in the name of defendant Republic of the Philippines and to issue a new title on the same lot in the names of Anunciacion *Vda. De* Ouano, Mario P. Ouano, Leticia Ouano Arnaiz and Cielo Ouano Martinez.
>
> No pronouncement as to costs.[13]

---

[13] *Rollo* (G.R. No. 168770), pp. 77-78. Penned by Judge Victorio U. Montecillo.

Acting on the motion of the Republic and MCIAA for reconsideration, however, the RTC, Branch 57 in Cebu City, presided this time by Judge Enriqueta L. Belarmino, issued, on December 9, 2002, an Order[14] that reversed its earlier decision of November 28, 2000 and dismissed the Ouanos' complaint.

Ruling of the CA

In time, the Ouanos interposed an appeal to the CA, docketed as CA-G.R. CV No. 78027. Eventually, the appellate court rendered a Decision[15] dated September 3, 2004, denying the appeal, thus:

> WHEREFORE, premises considered, the Order dated December 9, 2002, of the Regional Trial Court, 7th Judicial Region, Branch 57, Cebu City, in Civil Case No. CEB-20743, is hereby AFFIRMED. No pronouncement as to costs.
>
> SO ORDERED.

Explaining its case disposition, the CA stated that the decision in Civil Case No. R-1881 did not state any condition that Lot No. 763-A of the Ouanos—and all covered lots for that matter––would be returned to them or that they could repurchase the same property if it were to be used for purposes other than for the Lahug Airport. The appellate court also went on to declare the inapplicability of the Court's pronouncement in *MCIAA v. Court of Appeals, RTC, Branch 9, Cebu City, Melba Limbago, et al.*,[16] to support the Ouanos' cause, since the affected landowners in that case, unlike the Ouanos, parted with their property not through expropriation but via a sale and purchase transaction.

---

[14] *Id*. at 79-81.

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

[16] G.R. No. 121506, October 30, 1996, 263 SCRA 736. This case should not be confused with *MCIAA v. Court of Appeals*, *supra* note 6, which involved the complaint by Virginia Chiongbian.

The Ouanos filed a motion for reconsideration of the CA's Decision, but was denied per the CA's May 26, 2005 Resolution.[17] Hence, they filed this petition in G.R. No. 168770.

The Issues

G.R. No. 168812

GROUNDS FOR ALLOWANCE OF THE PETITION

l. THE ASSAILED ISSUANCES ILLEGALLY STRIPPED THE REPUBLIC OF ITS ABSOLUTE AND UNCONDITIONAL TITLE TO THE SUBJECT EXPROPRIATED PROPERTIES.

ll. THE IMPUNGED DISPOSITIONS INVALIDLY OVERTURNED THIS HONORABLE COURT'S FINAL RULINGS IN *FERY V. MUNICIPALITY OF CABANATUAN*, *MCIAA V. COURT OF APPEALS AND REYES V. NATIONAL HOUSING AUTHORITY*.

lll. THE COURT OF APPEALS GRAVELY ERRED IN APPLYING THIS HONORABLE COURT'S RULING IN *MORENO*, ALBEIT IT HAS NOT YET ATTAINED FINALITY.[18]

G.R. No. 168770

Questions of law presented in this Petition

Whether or not the testimonial evidence of the petitioners proving the promises, assurances and representations by the airport officials and lawyers are inadmissible under the Statute of Frauds.

Whether or not under the ruling of this Honorable Court in the heirs of Moreno Case, and pursuant to the principles enunciated therein, petitioners herein are entitiled to recover their litigated property.

Reasons for Allowances of this Petition

Respondents did not object during trial to the admissibility of petitioners' testimonial evidence under the Statute of Frauds and have thus waived such objection and are now barred from raising the same. In any event, the Statute of Frauds is not applicable herein. Consequently, petitioners' evidence is admissible and should be duly

---

[17] *Rollo* (G.R. No. 168770), pp. 57-58.

[18] *Rollo* (G.R. No. 168812), p. 39.

given weight and credence, as initially held by the trial court in its original Decision.[19]

While their respective actions against MCIAA below ended differently, the Ouanos and the Inocians' proffered arguments presented before this Court run along parallel lines, both asserting entitlement to recover the litigated property on the strength of the Court's ruling in *Heirs of Moreno*. MCIAA has, however, formulated in its Consolidated Memorandum the key interrelated issues in these consolidated cases, as follows:

I

WHETHER ABANDONMENT OF THE PUBLIC USE FOR WHICH THE SUBJECT PROPERTIES WERE EXPROPRIATED ENTITLES PETITIONERS OUANOS, *ET AL.* AND RESPONDENTS INOCIAN, *ET AL.* TO REACQUIRE THEM.

II

WHETHER PETITIONERS OUANOS, *ET AL.* AND RESPONDENTS INOCIAN, *ET AL.* ARE ENTITLED TO RECONVEYANCE OF THE SUBJECT PROPERTIES SIMPLY ON THE BASIS OF AN ALLEGED VERBAL PROMISE OR ASSURANCE OF SOME NAC OFFICIALS THAT THE SUBJECT PROPERTIES WILL BE RETURNED IF THE AIRPORT PROJECT WOULD BE ABANDONED.

The Court's Ruling

The Republic and MCIAA's petition in G.R. No. 168812 is bereft of merit, while the Ouano petition in G.R. No. 168770 is meritorious.

At the outset, three (3) fairly established factual premises ought to be emphasized:

First, the MCIAA and/or its predecessor agency had not actually used the lots subject of the final decree of expropriation in Civil Case No. R-1881 for the purpose they were originally taken by the government, *i.e.*, for the expansion and development of Lahug Airport.

---

[19] *Rollo* (G.R. No. 168770), p. 22.

Second, the Lahug Airport had been closed and abandoned. A significant portion of it had, in fact, been purchased by a private corporation for development as a commercial complex.[20]

Third, it has been preponderantly established by evidence that the NAC, through its team of negotiators, had given assurance to the affected landowners that they would be entitled to repurchase their respective lots in the event they are no longer used for airport purposes.[21] "No less than Asterio Uy," the Court noted in *Heirs of Moreno*, "one of the members of the CAA Mactan Legal Team, which interceded for the acquisition of the lots for the Lahug Airport's expansion, affirmed that persistent assurances were given to the landowners to the effect that as soon as the Lahug Airport is abandoned or transferred to Mactan, the lot owners would be able to reacquire their properties."[22] In Civil Case No. CEB-20743, Exhibit "G", the transcript of the deposition[23] of Anunciacion *vda. de* Ouano covering the assurance made had been formally offered in evidence and duly considered in the initial decision of the RTC Cebu City. In Civil Case No. CEB-18370, the trial court, on the basis of testimonial evidence, and later the CA, recognized the reversionary rights of the suing former lot owners or their successors in interest[24] and resolved the case accordingly. In point with respect to the representation and promise of the government to return the lots taken should the planned airport expansion do not materialize is what the Court said in *Heirs of Moreno*, thus:

> This is a difficult case calling for a difficult but just solution. To begin with there exists an **undeniable historical narrative** that the predecessors of respondent MCIAA had suggested to the landowners of the properties covered by the Lahug Airport

---

[20] *MCIAA v. Tudtud*, G.R. No. 174012, November 14, 2008, 571 SCRA 165; *Heirs of Moreno*, *supra* note 4.

[21] *Id*.

[22] *Supra* note 5, at 303.

[23] *Rollo* (G.R. No. 168770), pp. 180-194.

[24] *Id*. at 93.

expansion scheme that they could repurchase their properties at the termination of the airport's venue. Some acted on this assurance and sold their properties; other landowners held out and waited for the exercise of eminent domain to take its course until finally coming to terms with respondent's predecessors that they would not appeal nor block further judgment of condemnation if the right of repurchase was extended to them. A handful failed to prove that they acted on such assurance when they parted with ownership of their land.[25] (Emphasis supplied; citations omitted.)

For perspective, *Heirs of Moreno*—later followed by *MCIAA v. Tudtud* (*Tudtud*)[26] and the consolidated cases at bar—is cast under the same factual setting and centered on the expropriation of privately-owned lots for the public purpose of expanding the Lahug Airport and the alleged promise of reconveyance given by the negotiating NAC officials to the private lot owners. All the lots being claimed by the former owners or successors-in-interest of the former owners in the *Heirs of Moreno*, *Tudtud*, and the present cases were similarly adjudged condemned in favor of the Republic in Civil Case No. R-1881. All the claimants sought was or is to have the condemned lots reconveyed to them upon the payment of the condemnation price since the **public purpose** of the expropriation was never met. Indeed, the expropriated lots were never used and were, in fact, abandoned by the expropriating government agencies.

In all then, the issues and supporting arguments presented by both sets of petitioners in these consolidated cases have already previously been passed upon, discussed at length, and practically peremptorily resolved in *Heirs of Moreno* and the November 2008 *Tudtud* ruling. The Ouanos, as petitioners in G.R. No. 168770, and the Inocians, as respondents in G.R. No. 168812, are similarly situated as the heirs of Moreno in *Heirs of Moreno* and Benjamin Tudtud in *Tudtud*. Be that as it may, there is no reason why the *ratio decidendi* in *Heirs of Moreno* and *Tudtud* should not be made to apply to petitioners Ouanos and respondents Inocians such that they shall be entitled

[25] *Supra* note 4, at 507-508.

[26] *Supra* note 20.

to recover their or their predecessors' respective properties under the same manner and arrangement as the heirs of Moreno and Tudtud. *Stare decisis et non quieta movere* (to adhere to precedents, and not to unsettle things which are established).[27]

Just like in *Tudtud* and earlier in *Heirs of Moreno*, MCIAA would foist the theory that the judgment of condemnation in Civil Case No. R-1881 was without qualification and was unconditional. It would, in fact, draw attention to the *fallo* of the expropriation court's decision to prove that there is nothing in the decision indicating that the government gave assurance or undertook to reconvey the covered lots in case the Lahug airport expansion project is aborted. Elaborating on this angle, MCIAA argues that the claim of the Ouanos and the Inocians regarding the alleged verbal assurance of the NAC negotiating team that they can reacquire their landholdings is barred by the Statute of Frauds.[28]

Under the rule on the Statute of Frauds, as expressed in Article 1403 of the Civil Code, a contract for the sale or acquisition of real property shall be unenforceable unless the same or some note of the contract be in writing and subscribed by the party charged. Subject to defined exceptions, evidence of the agreement cannot be received without the writing, or secondary evidence of its contents.

MCIAA's invocation of the Statute of Frauds is misplaced primarily because the statute applies only to executory and not to completed, executed, or partially consummated contracts.[29]

---

[27] *Confederation of Sugar Producers Association, Inc. v. Department of Agrarian Reform (DAR)*, G.R. No. 169514, March 30, 2007, 519 SCRA 582, 618; citing *BLACK'S LAW DICTIONARY* (5th ed.).

[28] CIVIL CODE, Art. 1403(2)(e), as a general proposition, places agreements for the sale of real property within the coverage of the Statute of Fraud, a postulate that declares unenforceable all contracts of realty unless made in writing. Contracts infringing the Statute of Frauds referred to in Art. 1403 of the Code are ratified by the failure to object to the presentation of oral evidence to prove the same, or by acceptance of benefits under them.

[29] *Arrogante v. Deliarte*, G.R. No. 152132, July 24, 2007, 528 SCRA 63, 74; *Tudtud*, *supra* note 20.

Carbonnel v. Poncio, et al., quoting Chief Justice Moran, explains the rationale behind this rule, thusly:

> x x x "The reason is simple. In executory contracts there is a wide field for fraud because unless they may be in writing there is no palpable evidence of the intention of the contracting parties. The statute has been precisely been enacted to prevent fraud." x x x However, if a contract has been totally or partially performed, *the exclusion of parol evidence would promote fraud or bad faith*, for it would enable the defendant to keep the benefits already derived by him from the transaction in litigation, and at the same time, evade the obligations, responsibilities or liabilities assumed or contracted by him thereby.[30] (Emphasis in the original.)

Analyzing the situation of the cases at bar, there can be no serious objection to the proposition that the agreement package between the government and the private lot owners was already partially performed by the government through the acquisition of the lots for the expansion of the Lahug airport. The parties, however, failed to accomplish the more important condition in the CFI decision decreeing the expropriation of the lots litigated upon: the expansion of the Lahug Airport. The project—the public purpose behind the forced property taking—was, in fact, never pursued and, as a consequence, the lots expropriated were abandoned. Be that as it may, the two groups of landowners can, in an action to compel MCIAA to make good its oral undertaking to allow repurchase, adduce parol evidence to prove the transaction.

At any rate, the objection on the admissibility of evidence on the basis of the Statute of Frauds may be waived if not timely raised. Records tend to support the conclusion that MCIAA did not, as the Ouanos and the Inocians posit, object to the introduction of parol evidence to prove its commitment to allow the former landowners to repurchase their respective properties upon the occurrence of certain events.

---

[30] 103 Phil. 655, 659 (1958); citing 3 Moran, *COMMENTS ON THE RULES OF COURT* 178 (1957).

In a bid to deny the lot owners the right to repurchase, MCIAA, citing cases,[31] points to the dispositive part of the decision in Civil Case R-1881 which, as couched, granted the Republic absolute title to the parcels of land declared expropriated. The MCIAA is correct about the unconditional tone of the dispositive portion of the decision, but that actuality would not carry the day for the agency. Addressing the matter of the otherwise absolute tenor of the CFI's disposition in Civil Case No. R-1881, the Court, in *Heirs of Moreno*, after taking stock of the ensuing portion of the body of the CFI's decision, said:

> As for the public purpose of the expropriation proceeding, it cannot now be doubted. Although Mactan Airport is being constructed, it does not take away the actual usefulness and importance of the Lahug Airport: it is handling the air traffic of both civilian and military. From it aircrafts fly to Mindanao and Visayas and pass thru it on their flights to the North and Manila. *Then, no evidence was adduced to show how soon is the Mactan Airport to be placed in operation and whether the Lahug Airport will be closed immediately thereafter.* It is up to the other departments of the Government to determine said matters. The Court cannot substitute its judgments for those of the said departments or agencies. In the absence of such showing, **the court will presume that the Lahug Airport will continue to be in operation**.[32] (Emphasis supplied.)

We went on to state as follows:

> While the trial court in Civil Case No. R-1881 could have simply acknowledged the presence of public purpose for the exercise of eminent domain regardless of the survival of the Lahug Airport, the trial court in its *Decision* chose not to do so but instead prefixed its finding of public purpose upon its understanding that *'Lahug Airport will continue to be in operation.'* Verily, these meaningful statements in the body of the *Decision* warrant the conclusion that the expropriated properties would remain to be so until it was confirmed that Lahug Airport was no longer *'in operation.'* This

---

[31] *Air Transportation Office v. Gopuco, Jr.*, *supra* note 6; *Reyes v. National Housing Authority*, G.R. No. 147511, January 20, 2003, 395 SCRA 494; *MCIAA v. Court of Appeals*, *supra* note 6; *Fery v. Municipality of Cabanatuan*, 42 Phil. 28 (1921).

[32] *Heirs of Moreno*, *supra* note 4, at 510.

inference further implies two (2) things: (a) after the Lahug Airport ceased its undertaking as such and the expropriated lots were not being used for any airport expansion project, the rights *vis-à-vis* the expropriated lots x x x as between the State and their former owners, petitioners herein, must be equitably adjusted; and (b) the foregoing unmistakable declarations in the body of the *Decision* should merge with and become an intrinsic part of the *fallo* thereof which under the premises is clearly inadequate since the dispositive portion is not in accord with the findings as contained in the body thereof.[33]

Not to be overlooked of course is what the Court said in its Resolution disposing of MCIAA's motion to reconsider the original ruling in *Heirs of Moreno.* In that resolution, We stated that the *fallo* of the decision in Civil Case R-1881 should be viewed and understood in connection with the entire text, which contemplated a return of the property taken if the airport expansion project were abandoned. For ease of reference, following is what the Court wrote:

> Moreover, we do not subscribe to the [MCIAA's] contention that since the possibility of the Lahug Airport's closure was actually considered by the trial court, a stipulation on reversion or repurchase was so material that it should not have been discounted by the court *a quo* in its decision in Civil Case No. R-1881, if, in fact, there was one. We find it proper to cite, once more, this Court's ruling that the *fallo* of the decision in Civil Case No. R-1881 must be read in reference to the other portions of the decision in which it forms a part. A reading of the Court's judgment must not be confined to the dispositive portion alone; rather it should be meaningfully construed in unanimity with the *ratio decidendi* thereof to grasp the true intent and meaning of a decision.[34]

The Court has, to be sure, taken stock of *Fery v. Municipality of Cabanatuan*,[35] a case MCIAA cites at every possible turn, where the Court made these observations:

---

[33] *Id*.

[34] *Heirs of Moreno*, *supra* note 5, at 305.

[35] *Supra* note 31.

If, for example, land is expropriated for a particular purpose, with the condition that when that purpose is ended or abandoned the property shall return to its former owner, then of course, when the purpose is terminated or abandoned, the former owner reacquires the property so expropriated. x x x If, upon the contrary, however the decree of expropriation gives to the entity a fee simple title, then, of course, the land becomes the absolute property of the expropriator x x x and in that case the non-user does not have the effect of defeating the title acquired by the expropriation proceedings x x x.

Fery notwithstanding, MCIAA cannot really rightfully say that it has absolute title to the lots decreed expropriated in Civil Case No. R-1881. The correct lesson of *Fery* is captured by what the Court said in that case, thus: "the government acquires only such rights in expropriated parcels of land as may be allowed by the character of its title over the properties." In light of our disposition in *Heirs of Moreno* and *Tudtud*, the statement immediately adverted to means that in the event the particular public use for which a parcel of land is expropriated is abandoned, the owner shall not be entitled to recover or repurchase it as a matter of right, unless such recovery or repurchase is expressed in or **irresistibly deducible from the condemnation judgment**. But as has been determined below, the decision in Civil Case No. R-1881 enjoined MCIAA, as a condition of approving expropriation, to allow recovery or repurchase upon abandonment of the Lahug airport project. To borrow from our underlying decision in *Heirs of Moreno*, "[n]o doubt, the return or repurchase of the condemned properties of petitioners could readily be justified as the manifest legal effect of consequence of the trial court's underlying presumption that *'Lahug Airport will continue to be in operation'* when it granted the complaint for eminent domain and the airport discontinued its activities."[36]

Providing added support to the Ouanos and the Inocians' right to repurchase is what in *Heirs of Moreno* was referred to as constructive trust, one that is akin to the implied trust

[36] *Supra* note 4, at 512. Emphasis in the original.

expressed in Art. 1454 of the Civil Code,[37] the purpose of which is to prevent unjust enrichment.[38] In the case at bench, the Ouanos and the Inocians parted with their respective lots in favor of the MCIAA, the latter obliging itself to use the realties for the expansion of Lahug Airport; failing to keep its end of the bargain, MCIAA can be compelled by the former landowners to reconvey the parcels of land to them, otherwise, they would be denied the use of their properties upon a state of affairs that was not conceived nor contemplated when the expropriation was authorized. In effect, the government merely held the properties condemned in trust until the proposed public use or purpose for which the lots were condemned was actually consummated by the government. Since the government failed to perform the obligation that is the basis of the transfer of the property, then the lot owners Ouanos and Inocians can demand the reconveyance of their old properties after the payment of the condemnation price.

Constructive trusts are fictions of equity that courts use as devices to remedy any situation in which the holder of the legal title, MCIAA in this case, may not, in good conscience, retain the beneficial interest. We add, however, as in *Heirs of Moreno*, that the party seeking the aid of equity—–the landowners in this instance, in establishing the trust—–must himself do equity in a manner as the court may deem just and reasonable.

The Court, in the recent *MCIAA v. Lozada, Sr.*, revisited and abandoned the *Fery* ruling that the former owner is not entitled to reversion of the property even if the public purpose were not pursued and were abandoned, thus:

On this note, we take this opportunity to revisit our ruling in *Fery*, which involved an expropriation suit commenced upon parcels of

---

[37] Art. 1454.—If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor towards the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

[38] 4 Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 668 (10th ed.).

land to be used as a site for a public market. Instead of putting up a public market, respondent Cabanatuan constructed residential houses for lease on the area. Claiming that the municipality lost its right to the property taken since it did not pursue its public purpose, petitioner Juan Fery, the former owner of the lots expropriated, sought to recover his properties. However, as he had admitted that, in 1915, respondent Cabanatuan acquired a fee simple title to the lands in question, judgment was rendered in favor of the municipality, following American jurisprudence, particularly *City of Fort Wayne v. Lake Shore & M.S. RY. Co.*, *McConihay v. Theodore Wright*, and *Reichling v. Covington Lumber Co.*, all uniformly holding that the transfer to a third party of the expropriated real property, which necessarily resulted in the abandonment of the particular public purpose for which the property was taken, is not a ground for the recovery of the same by its previous owner, the title of the expropriating agency being one of fee simple.

Obviously, *Fery* was not decided pursuant to our now sacredly held constitutional right that private property shall not be taken for public use without just compensation. It is well settled that the taking of private property by the Governments power of eminent domain is subject to two mandatory requirements: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake of the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

More particularly, with respect to the element of public use, the expropriator should commit to use the property pursuant to the purpose stated in the petition for expropriation filed, failing which, it should file another petition for the new purpose. If not, it is then incumbent upon the expropriator to return the said property to its private owner, if the latter desires to reacquire the same. Otherwise, the judgment of expropriation suffers an intrinsic flaw, as it would lack one indispensable element for the proper exercise of the power of eminent domain, namely, the particular public purpose for which the property will be devoted. Accordingly, the private property owner would be denied due process of law, and the judgment would violate the property owners right to justice, fairness, and equity.

In light of these premises, we now expressly hold that the taking of private property, consequent to the Governments exercise of its

power of eminent domain, is always subject to the condition that the property be devoted to the specific public purpose for which it was taken. Corollarily, if this particular purpose or intent is not initiated or not at all pursued, and is peremptorily abandoned, then the former owners, if they so desire, may seek the reversion of the property, subject to the return of the amount of just compensation received. In such a case, the exercise of the power of eminent domain has become improper for lack of the required factual justification.[39] (Emphasis supplied.)

Clinging to *Fery*, specifically the fee simple concept underpinning it, is no longer compelling, considering the ensuing inequity such application entails. Too, the Court resolved *Fery* not under the cover of any of the Philippine Constitutions, each decreeing that private property shall not be taken for public use without just compensation. The twin elements of just compensation and public purpose are, by themselves, direct limitations to the exercise of eminent domain, arguing, in a way, against the notion of fee simple title. The fee does not vest until payment of just compensation.[40]

In esse, expropriation is forced private property taking, the landowner being really without a ghost of a chance to defeat the case of the expropriating agency. In other words, in expropriation, the private owner is deprived of property against his will. Withal, the mandatory requirement of due process ought to be strictly followed, such that the state must show, at the minimum, a genuine need, an exacting public purpose to take private property, the purpose to be specifically alleged or least reasonably deducible from the complaint.

Public use, as an eminent domain concept, has now acquired an expansive meaning to include any use that is of "usefulness, utility, or advantage, or what is productive of general benefit [of the public]."[41] If the genuine public necessity—the very

---

[39] G.R. No. 176625, February 25, 2010, 613 SCRA 618, 629-631.

[40] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 389-390.

[41] Bernas, *THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY* 391 (2003).

reason or condition as it were—allowing, at the first instance, the expropriation of a private land ceases or disappears, then there is no more cogent point for the government's retention of the expropriated land. The same legal situation should hold if the government devotes the property to another public use very much different from the original or deviates from the declared purpose to benefit another private person. It has been said that the direct use by the state of its power to oblige landowners to renounce their productive possession to another citizen, who will use it predominantly for that citizen's own private gain, is offensive to our laws.[42]

A condemnor should commit to use the property pursuant to the purpose stated in the petition for expropriation, failing which it should file another petition for the new purpose. If not, then it behooves the condemnor to return the said property to its private owner, if the latter so desires. The government cannot plausibly keep the property it expropriated in any manner it pleases and, in the process, dishonor the judgment of expropriation. This is not in keeping with the idea of fair play,

The notion, therefore, that the government, via expropriation proceedings, acquires unrestricted ownership over or a fee simple title to the covered land, is no longer tenable. We suggested as much in *Heirs of Moreno* and in *Tudtud* and more recently in *Lozada, Sr*. Expropriated lands should be differentiated from a piece of land, ownership of which was absolutely transferred by way of an unconditional purchase and sale contract freely entered by two parties, one without obligation to buy and the other without the duty to sell. In that case, the fee simple concept really comes into play. There is really no occasion to apply the "fee simple concept" if the transfer is conditional. The taking of a private land in expropriation proceedings is always conditioned on its continued devotion to its public purpose. As a necessary corollary, once the purpose is terminated or peremptorily abandoned, then the former owner, if he so desires, may seek

---

[42] *Heirs of Moreno, supra* note 5, at 302; citing *City of Owensboro v. McCormick*, 581 S.W.2d 3, 5 (1979).

its reversion, subject of course to the return, at the very least, of the just compensation received.

To be compelled to renounce dominion over a piece of land is, in itself, an already bitter pill to swallow for the owner. But to be asked to sacrifice for the common good and yield ownership to the government which reneges on its assurance that the private property shall be for a public purpose may be too much. But it would be worse if the power of eminent domain were deliberately used as a subterfuge to benefit another with influence and power in the political process, including development firms. The mischief thus depicted is not at all far-fetched with the continued application of *Fery*. Even as the Court deliberates on these consolidated cases, there is an uncontroverted allegation that the MCIAA is poised to sell, if it has not yet sold, the areas in question to Cebu Property Ventures, Inc. This provides an added dimension to abandon *Fery*.

Given the foregoing disquisitions, equity and justice demand the reconveyance by MCIAA of the litigated lands in question to the Ouanos and Inocians. In the same token, justice and fair play also dictate that the Ouanos and Inocian return to MCIAA what they received as just compensation for the expropriation of their respective properties plus legal interest to be computed from default, which in this case should run from the time MCIAA complies with the reconveyance obligation.[43] They must likewise pay MCIAA the necessary expenses it might have incurred in sustaining their respective lots and the monetary value of its services in managing the lots in question to the extent that they, as private owners, were benefited thereby.

In accordance with Art. 1187 of the Civil Code on mutual compensation, MCIAA may keep whatever income or fruits it may have obtained from the parcels of land expropriated. In turn, the Ouanos and Inocians need not require the accounting

---

[43] *Eastern Shipping Lines, Inc. v. CA*, G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95; and CIVIL CODE, Art. 1169: "In reciprocal obligations, neither party incurs delay if the other does not comply or is not ready to comply in a proper manner what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins."

of interests earned by the amounts they received as just compensation.[44]

Following Art. 1189 of the Civil Code providing that **"[i]f the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor** x x x," the Ouanos and Inocians do not have to settle the appreciation of the values of their respective lots as part of the reconveyance process, since the value increase is merely the natural effect of nature and time.

Finally, We delete the award of PhP 50,000 and PhP 10,000, as attorney's fees and litigation expenses, respectively, made in favor of the Inocians by the Cebu City RTC in its judgment in Civil Case No. CEB-18370, as later affirmed by the CA. As a matter of sound policy, no premium should be set on the right to litigate where there is no doubt about the *bona fide*s of the exercise of such right,[45] as here, albeit the decision of MCIAA to resist the former landowners' claim eventually turned out to be untenable.

WHEREFORE, the petition in *G.R. No. 168770* is *GRANTED.* Accordingly, the CA Decision dated September 3, 2004 in CA-G.R. CV No. 78027 is *REVERSED* and *SET ASIDE*. Mactan-Cebu International Airport Authority is ordered to reconvey subject Lot No. 763-A to petitioners Anunciacion *vda. de* Ouano, Mario P. Ouano, Leticia Ouano Arnaiz, and Cielo Ouano Martinez. The Register of Deeds of Cebu City is ordered to effect the necessary cancellation of title and transfer it in the name of the petitioners within fifteen (15) days from finality of judgment.

The petition of the Mactan-Cebu International Airport Authority in *G.R. No. 168812* is *DENIED*, and the CA's Decision

---

[44] CIVIL CODE, Art. 1187: "The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes prestations upon parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated."

[45] *Cordero v. F.S. Management & Development Corporation*, G.R. No. 167213, October 31, 2006, 506 SCRA 451, 465.

and Resolution dated January 14, 2005 and June 29, 2005, respectively, in CA-G.R. CV No. 64356 are *AFFIRMED*, except insofar as they awarded attorney's fees and litigation expenses that are hereby *DELETED.* Accordingly, Mactan-Cebu International Airport Authority is ordered to reconvey to respondents Ricardo L. Inocian, Olympia E. Esteves, Emilia E. Bacalla, Restituta E. Montana, and Raul L. Inocian the litigated Lot Nos. 744-A, 745-A, 746, 762-A, 747, and 761-A; and to respondents Aletha Suico Magat, Philip M. Suico, Dolores S. dela Cruz, James M. Suico, Edward M. Suico, Roselyn S. Lawsin, Rex M. Suico, and Kharla Suico-Gutierrez the litigated Lot Nos. 942 and 947. The Register of Deeds of Cebu City is ordered to effect the necessary cancellation of title and transfer it in the name of respondents within a period of fifteen (15) days from finality of judgment.

The foregoing dispositions are subject to *QUALIFICATIONS,* to apply to these consolidated petitions, when appropriate, as follows:

(1) Petitioners Ouano, *et al.* in G.R. No. 168770 and respondents Ricardo L. Inocian, *et al.* in G.R. No. 168812 are ordered to return to the MCIAA the just compensation they or their predecessors-in-interest received for the expropriation of their respective lots as stated in Civil Case No. R-1881, within a period of sixty (60) days from finality of judgment;

(2) The MCIAA shall be entitled to *RETAIN* whatever fruits and income it may have obtained from the subject expropriated lots without any obligation to refund the same to the lot owners; and

(3) Petitioners Ouano, *et al.* in G.R. No. 168770 and respondents Ricardo L. Inocian, *et al.* in G.R. No. 168812 shall *RETAIN* whatever interests the amounts they received as just compensation may have earned in the meantime without any obligation to refund the same to MCIAA.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 170459. February 9, 2011]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **CANDIDO, DEMETILA, JESUS, ANGELITO, and TERESITA, all surnamed VERGEL DE DIOS,** *respondents.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; CONSIDERING THAT THE COURT OF APPEALS FOUND THAT THERE WAS NO BASIS FOR RECONSTITUTION, IT SHOULD HAVE DELETED THE ORDER FOR THE ISSUANCE OF OWNER'S DUPLICATE OF TITLE.— The CA erred in not deleting the trial court's order for the issuance of a new owner's duplicate title to respondents after it deleted the order for reconstitution. The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred. The lost or destroyed document referred to is the one that is in the custody of the Register of Deeds. When reconstitution is ordered, this document is replaced with a new one—the reconstituted title—that basically reproduces the original. After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title. This is specifically provided under Section 16 of Republic Act No. 26, *An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed*, which states: Sec. 16. After the reconstitution of a certificate of title under the provisions of this Act, the register of deeds shall issue the corresponding owner's duplicate and the additional copies of said certificates of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.

2. ID.; ID.; ID.; IT DOES NOT MATTER IF PETITIONER DID NOT SPECIFICALLY QUESTION THE ORDER FOR THE ISSUANCE OF A NEW OWNER'S DUPLICATE TITLE; THE FACT THAT PETITIONER PRAYED FOR THE DISMISSAL OF THE PETITION FOR RECONSTITUTION MEANT THAT IT WAS QUESTIONING THE ORDER OF RECONSTITUTION AND ALL ORDERS COROLLARY THERETO.— Petitioner went to great lengths to convince the CA that the order for the issuance of a duplicate title to respondents was included in its appeal. We find such exercise unnecessary. The CA should not have been quick in declaring that such order had already become final and executory. It really does not matter if petitioner did not specifically question the order for the issuance of a new owner's duplicate title. The fact that petitioner prayed for the dismissal of the petition for reconstitution meant that it was questioning the order for reconstitution and all orders corollary thereto. The trial court's order for the Register of Deeds to issue a new duplicate certificate of title was only an offshoot of its having granted the petition for reconstitution of title. Without the order for reconstitution, the order to issue a new owner's duplicate title had no leg to stand on. More importantly, it would have been impossible for the Register of Deeds to comply with such order. The Register of Deeds cannot issue a duplicate of a document that it does not have. The original copy of the certificate of title was burned, and the Register of Deeds does not have a reconstituted title. Thus, it does not have a certificate of title that it can reproduce as the new owner's duplicate title.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Castelo & Associates Law Offices for respondents.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated August 17, 2005 and Resolution[2] dated November 16, 2005. The assailed Decision deleted the trial court's order to reconstitute a certificate of title, but maintained the order directing the Register of Deeds to issue a second owner's copy of the said title.

Danilo, Candido, Marciana, Francisco, Leonardo, Milagros, Petra, Demetila, and Clarita, all surnamed Vergel De Dios, are the registered owners of three parcels of land (Lots 1, 2 and 3) located in Angat, Bulacan. The entire land is covered by Transfer Certificate of Title (TCT) No. T-141671. The owners sold Lot 1, with an area of 246,377 square meters (sq m), in 1989; and Lot 3, with an area of 135 sq m, became part of the provincial road. Thus, only Lot 2, with an area of 1,839 sq m, remained with the registered owners. Out of the total area of Lot 2, a 50.01 sq m-portion was used for road widening, leaving only an area of 1,788.99 sq m, owned by the above-named individuals. This remaining portion was allotted to herein respondents, Candido, Demetila, and the heirs of Danilo, namely: Jesus, Angelito, and Teresita, all surnamed Vergel De Dios, by virtue of a *Kasulatan ng Partihan sa Lupa na may Kalakip na Pagmamana at Pagtalikod sa Karapatan* (*Kasulatan*) signed by all co-owners.[3]

The owner's duplicate of TCT No. T-141671, which was allegedly in the custody of a certain Elmer Gonzales, was destroyed on October 17, 1978 when the Angat River overflowed and caused a big flood which inundated their houses. On

---

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Lucas P. Bersamin (now a member of this Court) and Celia C. Librea-Leagogo, concurring; *rollo*, pp. 11-18.

[2] *Id.* at 10.

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

March 7, 1987, the original copy of TCT No. T-141671 was among the documents destroyed by the fire that razed the office of the Register of Deeds of Bulacan.[4]

In view of all these circumstances, respondent Candido, for himself and as attorney-in-fact of the other respondents, Demetila, Jesus, Angelito, and Teresita, filed with the Regional Trial Court (RTC) of Malolos, Bulacan, a Petition for Reconstitution of the Burned Original of TCT No. T-141671 and Issuance of a New Owner's Duplicate Copy in Lieu of the Destroyed One.[5] The petition alleged that the owner's duplicate was not pledged to any person or entity to answer for any obligation; that no co-owner's copy, no mortgagee's copy or any lessee's copy of the said title had been issued by the Register of Deeds; that the parcel of land is in the possession of respondents; and that no other document is pending registration in favor of third persons, except the *Kasulatan*. Attached to the petition were the following documents:

1. Special Power of Attorney
2. Photocopy of the owner's duplicate certificate of TCT No. 141671
3. *Kasulatan ng Partihan sa Lupa na may Kalakip na Pagmamana at Pagtalikod sa Karapatan*
4. Technical description of Lot 2
5. Print copy of plan
6. Tax declaration
7. Official receipt
8. Certification by the Register of Deeds that TCT No. 141671 was among the titles burned during the fire
9. Affidavit of Loss

On January 21, 2003, the RTC of Malolos, Bulacan, granted the petition for reconstitution, thus:

WHEREFORE, finding the instant petition to be meritorious, the same is GRANTED. The Register of Deed[s] of Bulacan is directed, upon payment of all legal fees, to reconstitute Transfer Certificate

---

[4] *Id*. at 62.

[5] *Id*. at 48-51.

of Title No. [T-]141671 on the basis of the Plan, Technical Description and Tax Declaration and thereafter to issue a second owner's copy thereof in lieu of the lost one which is declared of no force and effect and ordered cancelled.

SO ORDERED.[6]

Petitioner appealed the case to the CA. Applying the Court's ruling in *Heirs of Ragua v. Court of Appeals*,[7] the CA ruled that the photocopies of the subject TCT, survey plan, technical description, tax declaration, and certification of the Register of Deeds were not sufficient to order a reconstitution of the lost title. It noted in particular that, in *Heirs of Ragua*, a photocopy of the TCT which was not certified by the Register of Deeds was held as not sufficient basis for reconstitution of title. The CA also held as insufficient evidence the *Kasulatan* which was executed only in 1996, long after the original TCT was burned and the owner's duplicate title was lost.

The CA, however, noted that the appeal merely questioned the order granting reconstitution; it did not question the order for the issuance of a new owner's duplicate title. Hence, it held as final and executory the portion of the Decision ordering the issuance of a new owner's duplicate title. Thus, the dispositive portion of the CA Decision dated August 17, 2005 reads:

WHEREFORE, premises considered, the Decision dated 21 January 2003 of the Regional Trial Court of Malolos, Branch 15, is hereby MODIFIED in that the Order for reconstitution of TCT No. 141671 is deleted and is affirmed in all other respect.[8]

Petitioner filed a motion for partial reconsideration, averring that the subject of its appeal was the entire decision of the RTC, and that the issuance of a new owner's duplicate title was but a consequence of the grant of the petition for reconstitution. Petitioner prayed that the CA Decision granting the issuance of a new owner's duplicate title of the TCT be reconsidered.

---

[6] *Id.* at 66.

[7] 381 Phil. 7 (2000).

[8] *Rollo*, p. 18.

Unconvinced, the CA, in a Resolution[9] dated November 16, 2005, denied petitioner's motion for reconsideration.

Petitioner filed this petition for review on *certiorari* on the ground that the CA erred in maintaining and declaring as final and executory the order for the issuance of a new owner's duplicate title despite its judgment deleting the trial court's order for reconstitution.[10]

Petitioner insists that the subject of its appeal before the CA was the entire Decision granting the petition for reconstitution, and ordering the issuance of the owner's duplicate copy of the reconstituted title. It points out that, in its notice of appeal, it stated that it was filing with the CA an appeal from the RTC decision dated January 21, 2003. Likewise, in its appellant's brief, it prayed for the reversal and setting aside of the January 21, 2003 decision.[11] At any rate, petitioner avers that the CA was imbued with sufficient discretion to review matters not otherwise assigned as errors on appeal, if it finds that their consideration is necessary in arriving at a complete and just resolution of the case.[12]

Petitioner points out that the order for the issuance of a new owner's duplicate title was but a consequence of the order for the reconstitution of the title. Considering that the CA found that there was no basis for the reconstitution, it should have deleted the order for the issuance of the owner's duplicate certificate of title.[13]

Respondents, on the other hand, contend that petitioner's appeal centered only on the trial court's order granting the reconstitution of title. Hence, the trial court decision ordering

---

[9] *Supra* note 2.

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

[11] *Id*. 31-35.

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

[13] *Id*. at 39-41.

the issuance of a new owner's duplicate title is already final and executory and can no longer be the subject of an appeal.[14]

The petition is meritorious. The CA erred in not deleting the trial court's order for the issuance of a new owner's duplicate title to respondents after it deleted the order for reconstitution.

The reconstitution of a certificate of title denotes restoration in the original form and condition of a lost or destroyed instrument attesting the title of a person to a piece of land. The purpose of the reconstitution of title is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.[15]

The lost or destroyed document referred to is the one that is in the custody of the Register of Deeds. When reconstitution is ordered, this document is replaced with a new one—the reconstituted title—that basically reproduces the original. After the reconstitution, the owner is issued a duplicate copy of the *reconstituted* title. This is specifically provided under Section 16 of Republic Act No. 26, *An Act Providing a Special Procedure for the Reconstitution of Torrens Certificates of Title Lost or Destroyed*, which states:

> Sec. 16. After the reconstitution of a certificate of title under the provisions of this Act, the register of deeds shall issue the corresponding owner's duplicate and the additional copies of said certificates of title, if any had been previously issued, where such owner's duplicate and/or additional copies have been destroyed or lost. This fact shall be noted on the reconstituted certificate of title.

Petitioner went to great lengths to convince the CA that the order for the issuance of a duplicate title to respondents was included in its appeal. We find such exercise unnecessary. The CA should not have been quick in declaring that such order had already become final and executory.

---

[14] *Id.* at 187.

[15] *Republic v. Tuastumban,* G.R. No. 173210, April 24, 2009, 586 SCRA 600, 614.

It really does not matter if petitioner did not specifically question the order for the issuance of a new owner's duplicate title. The fact that petitioner prayed for the dismissal of the petition for reconstitution meant that it was questioning the order for reconstitution and all orders corollary thereto. The trial court's order for the Register of Deeds to issue a new duplicate certificate of title was only an offshoot of its having granted the petition for reconstitution of title. Without the order for reconstitution, the order to issue a new owner's duplicate title had no leg to stand on.

More importantly, it would have been impossible for the Register of Deeds to comply with such order. The Register of Deeds cannot issue a duplicate of a document that it does not have. The original copy of the certificate of title was burned, and the Register of Deeds does not have a reconstituted title. Thus, it does not have a certificate of title that it can reproduce as the new owner's duplicate title.

IN LIGHT OF THE FOREGOING, the petition is *GRANTED*. The Court of Appeals Decision dated August 17, 2005 is *AFFIRMED* with the *MODIFICATION* that the entire January 21, 2003 decision of the Regional Trial Court of Malolos, Bulacan, is *REVERSED* and *SET ASIDE*.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 170979. February 9, 2011]

JUDITH YU, *petitioner, vs.* **HON. ROSA SAMSON-TATAD, Presiding Judge, Regional Trial Court, Quezon City, Branch 105, and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; "FRESH PERIOD RULE"; EXPOUNDED.— The right to appeal is not a constitutional, natural or inherent right — it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. It may be exercised only in the manner prescribed by the provisions of the law. The period to appeal is specifically governed by Section 39 of *Batas Pambansa Blg*. 129 (*BP 129*), as amended, Section 3 of Rule 41 of the 1997 Rules of Civil Procedure, and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure. x x x In *Neypes*, the Court modified the rule in civil cases on the counting of the 15-day period within which to appeal. The Court categorically set a **fresh period of 15 days from a denial of a motion for reconsideration within which to appeal. x x x** The Court also reiterated its ruling that it is the denial of the motion for reconsideration that constituted the final order which finally disposed of the issues involved in the case. The *raison d'être* for the "fresh period rule" is to standardize the appeal period provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the 15-day period to appeal is no longer interrupted by the filing of a motion for new trial or motion for reconsideration; litigants today need not concern themselves with counting the balance of the 15-day period to appeal since the 15-day period is now counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

2. ID.; ID.; ID.; ID.; WHILE *NEYPES V. COURT OF APPEALS* INVOLVE THE PERIOD TO APPEAL IN CIVIL CASES,

THE COURT'S PRONOUNCEMENT OF A "FRESH PERIOD" TO APPEAL SHOULD EQUALLY APPLY TO THE PERIOD FOR APPEAL IN CRIMINAL CASES UNDER SECTION 6 OF RULE 122 OF THE REVISED RULES OF CRIMINAL PROCEDURE; REASONS.— While *Neypes* involved the period to appeal in civil cases, the Court's pronouncement of a "fresh period" to appeal should equally apply to the period for appeal in criminal cases under Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, for the following reasons: *First*, BP 129, as amended, the substantive law on which the Rules of Court is based, makes no distinction between the periods to appeal in a civil case and in a criminal case. Section 39 of BP 129 categorically states that *"[t]he period for appeal from final orders, resolutions, awards, judgments, or decisions of any court* ***in all cases*** *shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from." Ubi lex non distinguit nec nos distinguere debemos.* When the law makes no distinction, we (this Court) also ought not to recognize any distinction. *Second*, the provisions of Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, though differently worded, mean exactly the same. There is no substantial difference between the two provisions insofar as legal results are concerned – the appeal period stops running upon the filing of a motion for new trial or reconsideration and starts to run again upon receipt of the order denying said motion for new trial or reconsideration. It was this situation that *Neypes* addressed in civil cases. No reason exists why this situation in criminal cases cannot be similarly addressed. *Third*, while the Court did not consider in *Neypes* the ordinary appeal period in criminal cases under Section 6, Rule 122 of the Revised Rules of Criminal Procedure since it involved a purely civil case, it did include Rule 42 of the 1997 Rules of Civil Procedure on petitions for review from the RTCs to the Court of Appeals (CA), and Rule 45 of the 1997 Rules of Civil Procedure governing appeals by *certiorari* to this Court, both of which also apply to appeals in criminal cases, as provided by Section 3 of Rule 122 of the Revised Rules of Criminal Procedure. x x x Clearly, if the modes of appeal to the CA (in cases where the RTC exercised its appellate jurisdiction) and

to this Court in civil and criminal cases are the same, no cogent reason exists why the periods to appeal from the RTC (in the exercise of its original jurisdiction) to the CA in civil and criminal cases under Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure should be treated differently.

3. ID.; ID.; ID.; ID.; TO STRICTLY INTERPRET THE "FRESH PERIOD RULE" AS APPLICABLE ONLY TO THE PERIOD TO APPEAL IN CIVIL CASES WILL EFFECTIVELY FOSTER AN ABSURD SITUATION WHERE A LITIGANT IN CIVIL CASE WILL HAVE A BETTER RIGHT TO APPEAL THAN AN ACCUSED IN A CRIMINAL CASE; CASE AT BAR.— Were we to strictly interpret the "fresh period rule" in *Neypes* and make it applicable only to the period to appeal in civil cases, we shall effectively foster and encourage an absurd situation where a litigant in a civil case will have a better right to appeal than an accused in a criminal case – a situation that gives undue favor to civil litigants and unjustly discriminates against the accused-appellants. It suggests a *double standard of treatment* when we favor a situation where property interests are at stake, as against a situation where liberty stands to be prejudiced. We must emphatically reject this double and unequal standard for being contrary to reason. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law – *Quod est inconveniens, aut contra rationem non permissum est in lege.* Thus, we agree with the OSG's view that if a delay in the filing of an appeal may be excused on grounds of substantial justice in civil actions, with more reason should the same treatment be accorded to the accused in seeking the review on appeal of a criminal case where no less than the liberty of the accused is at stake. The concern and the protection we must extend to matters of liberty cannot be overstated. In light of these legal realities, we hold that the petitioner seasonably filed her notice of appeal on November 16, 2005, within the fresh period of 15 days, counted from November 3, 2005, the date of receipt of notice denying her motion for new trial.

APPEARANCES OF COUNSEL

Dominic C.M. Solis for petitioner.
The Solicitor General for respondents.
Oscar G. Raro for private complainant.

D E C I S I O N

BRION, *J.*:

We resolve the petition for prohibition filed by petitioner Judith Yu to enjoin respondent Judge Rosa Samson-Tatad of the Regional Trial Court (*RTC*), Branch 105, Quezon City, from taking further proceedings in Criminal Case No. Q-01-105698, entitled "*People of the Philippines v. Judith Yu, et al.*"[1]

The Factual Antecedents

The facts of the case, gathered from the parties' pleadings, are briefly summarized below.

Based on the complaint of Spouses Sergio and Cristina Casaclang, an information for estafa against the petitioner was filed with the RTC.

In a May 26, 2005 decision, the RTC convicted the petitioner as charged. It imposed on her a penalty of three (3) months of imprisonment (*arresto mayor*), a fine of ₱3,800,000.00 with subsidiary imprisonment, and the payment of an indemnity to the Spouses Casaclang in the same amount as the fine.[2]

Fourteen (14) days later, or on June 9, 2005, the petitioner filed a motion for new trial with the RTC, alleging that she discovered new and material evidence that would exculpate her of the crime for which she was convicted.[3]

---

[1] Pursuant to Rule 65 of the Rules of Court; *rollo*, pp. 3-23.

[2] Penned by Pairing Judge Thelma A. Ponferrada; *id.* at 24-40.

[3] *Id.* at 41-45.

In an October 17, 2005 order, respondent Judge denied the petitioner's motion for new trial for lack of merit.[4]

On November 16, 2005, the petitioner filed a notice of appeal with the RTC, alleging that pursuant to our ruling in *Neypes v. Court of Appeals*,[5] she had a "fresh period" of 15 days from November 3, 2005, the receipt of the denial of her motion for new trial, or up to November 18, 2005, within which to file a notice of appeal.[6]

On November 24, 2005, the respondent Judge ordered the petitioner to submit a copy of *Neypes* for his guidance.[7]

On December 8, 2005, the prosecution filed a motion to dismiss the appeal for being filed 10 days late, arguing that *Neypes* is inapplicable to appeals in criminal cases.[8]

On January 4, 2006, the prosecution filed a motion for execution of the decision.[9]

On January 20, 2006, the RTC considered the twin motions submitted for resolution.

On January 26, 2006, the petitioner filed the present petition for prohibition with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin the RTC from acting on the prosecution's motions to dismiss the appeal and for the execution of the decision.[10]

The Petition

The petitioner argues that the RTC lost jurisdiction to act on the prosecution's motions when she filed her notice of appeal

---

[4] *Id.* at 53-57.

[5] G.R. No. 141524, September 14, 2005, 469 SCRA 633.

[6] *Rollo*, pp. 58-60.

[7] *Id*. at 63.

[8] *Id.* at 64-71.

[9] *Id.* at 85-92.

[10] *Supra* note 1.

within the 15-day reglementary period provided by the Rules of Court, applying the "fresh period rule" enunciated in *Neypes*.

The Case for the Respondents

The respondent People of the Philippines, through the Office of the Solicitor General (*OSG*), filed a manifestation in lieu of comment, stating that *Neypes* applies to criminal actions since the evident intention of the "fresh period rule" was to set a uniform appeal period provided in the Rules.[11]

In view of the OSG's manifestation, we required the Spouses Casaclang to comment on the petition.[12]

In their comment, the Spouses Casaclang aver that the petitioner cannot seek refuge in *Neypes* to extend the "fresh period rule" to criminal cases because *Neypes* involved a civil case, and the pronouncement of "standardization of the appeal periods in the Rules" referred to the interpretation of the appeal periods in civil cases, *i.e.*, Rules 40, 41, 42 and 45, of the 1997 Rules of Civil Procedure among others; nowhere in *Neypes* was the period to appeal in criminal cases, Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, mentioned.[13]

Issue

The core issue boils down to whether the "fresh period rule" enunciated in *Neypes* applies to appeals in criminal cases.

The Court's Ruling

We find merit in the petition.

The right to appeal is not a constitutional, natural or inherent right — it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. It may be exercised only in the manner prescribed by the provisions

---

[11] *Id.* at 118-129.

[12] Per the Court's July 26, 2006 resolution; *id.* at 131-134.

[13] *Id.* at 150-163.

of the law.[14] The period to appeal is specifically governed by Section 39 of *Batas Pambansa Blg.* 129 (*BP 129*),[15] as amended, Section 3 of Rule 41 of the 1997 Rules of Civil Procedure, and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure.

Section 39 of BP 129, as amended, provides:

SEC. 39. *Appeals*. – The period for appeal from final orders, resolutions, awards, judgments, or decisions of any court **in all cases** shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from: *Provided, however*, That in *habeas corpus* cases, the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

Section 3, Rule 41 of the 1997 Rules of Civil Procedure states:

SEC. 3. *Period of ordinary appeal*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

Section 6, Rule 122 of the Revised Rules of Criminal Procedure reads:

SEC. 6. *When appeal to be taken*. — An appeal must be taken within fifteen (15) days from promulgation of the judgment or from notice of the final order appealed from. **This period for perfecting an appeal shall be suspended from the time a motion for new trial or reconsideration is filed until notice of the order overruling the motion has been served upon the accused or his counsel at which time the balance of the period begins to run.**

---

[14] *Phillips Seafood (Philippines) Corporation v. Board of Investments*, G.R. No. 175787, February 4, 2009, 578 SCRA 69, 76; *de la Cruz v. Ramiscal*, G.R. No. 137882, February 4, 2005, 450 SCRA 449, 457.

[15] Otherwise Known as the "Judiciary Reorganization Act of 1980."

In *Neypes,* the Court modified the rule in civil cases on the counting of the 15-day period within which to appeal. The Court categorically set a **fresh period of 15 days from a denial of a motion for reconsideration within which to appeal**, thus:

> The Supreme Court may promulgate procedural rules in all courts. It has the sole prerogative to amend, repeal or even establish new rules for a more simplified and inexpensive process, and the speedy disposition of cases. In the rules governing appeals to it and to the Court of Appeals, particularly Rules 42, 43 and 45, the Court allows extensions of time, based on justifiable and compelling reasons, for parties to file their appeals. These extensions may consist of 15 days or more.
>
> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
>
> Henceforth, **this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals and Rule 45 governing appeals by *certiorari* to the Supreme Court**. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.[16]

The Court also reiterated its ruling that it is the denial of the motion for reconsideration that constituted the final order which finally disposed of the issues involved in the case.

The *raison d'être* for the "fresh period rule" is to standardize the appeal period provided in the Rules and do away with the confusion as to when the 15-day appeal period should be counted. Thus, the 15-day period to appeal is no longer interrupted by the filing of a motion for new trial or motion for reconsideration;

---

[16] *Supra* note 5 at 643-645.

litigants today need not concern themselves with counting the balance of the 15-day period to appeal since the 15-day period is now counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.

While *Neypes* involved the period to appeal in civil cases, the Court's pronouncement of a "fresh period" to appeal should equally apply to the period for appeal in criminal cases under Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, for the following reasons:

First, BP 129, as amended, the substantive law on which the Rules of Court is based, makes no distinction between the periods to appeal in a civil case and in a criminal case. Section 39 of BP 129 categorically states that *"[t]he period for appeal from final orders, resolutions, awards, judgments, or decisions of any court* ***in all cases*** *shall be fifteen (15) days counted from the notice of the final order, resolution, award, judgment, or decision appealed from." Ubi lex non distinguit nec nos distinguere debemos.* When the law makes no distinction, we (this Court) also ought not to recognize any distinction.[17]

Second, the provisions of Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure, though differently worded, mean exactly the same. There is no substantial difference between the two provisions insofar as legal results are concerned – the appeal period stops running upon the filing of a motion for new trial or reconsideration and starts to run again upon receipt of the order denying said motion for new trial or reconsideration. It was this situation that *Neypes* addressed in civil cases. No reason exists why this situation in criminal cases cannot be similarly addressed.

---

[17] *BAYAN (Bagong Alyansang Makabayan) v. Exec. Sec. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, 484*; Pilar v. Commission on Elections*, G.R. No. 115245, July 11, 1995, 245 SCRA 759, 763; *Commissioner of Internal Revenue v. Commission on Audit*, G.R. No. 101976, January 29, 1993, 218 SCRA 203, 214-215.

Third, while the Court did not consider in *Neypes* the ordinary appeal period in criminal cases under Section 6, Rule 122 of the Revised Rules of Criminal Procedure since it involved a purely civil case, it did include Rule 42 of the 1997 Rules of Civil Procedure on petitions for review from the RTCs to the Court of Appeals (CA), and Rule 45 of the 1997 Rules of Civil Procedure governing appeals by *certiorari* to this Court, both of which also apply to appeals in criminal cases, as provided by Section 3 of Rule 122 of the Revised Rules of Criminal Procedure, thus:

> SEC. 3. *How appeal taken.* — x x x
>
> (b) The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.
>
> x x x x x x x x x
>
> Except as provided in the last paragraph of Section 13, Rule 124, all other appeals to the Supreme Court shall be by petition for review on *certiorari* under Rule 45.

Clearly, if the modes of appeal to the CA (in cases where the RTC exercised its appellate jurisdiction) and to this Court in civil and criminal cases are the same, no cogent reason exists why the periods to appeal from the RTC (in the exercise of its original jurisdiction) to the CA in civil and criminal cases under Section 3 of Rule 41 of the 1997 Rules of Civil Procedure and Section 6 of Rule 122 of the Revised Rules of Criminal Procedure should be treated differently.

Were we to strictly interpret the "fresh period rule" in *Neypes* and make it applicable only to the period to appeal in civil cases, we shall effectively foster and encourage an absurd situation where a litigant in a civil case will have a better right to appeal than an accused in a criminal case – a situation that gives undue favor to civil litigants and unjustly discriminates against the accused-appellants. It suggests a *double standard of treatment* when we favor a situation where property interests are at stake, as against a situation where liberty stands to be prejudiced. We must emphatically reject this double and unequal standard for

being contrary to reason. Over time, courts have recognized with almost pedantic adherence that what is contrary to reason is not allowed in law – *Quod est inconveniens, aut contra rationem non permissum est in lege.*[18]

Thus, we agree with the OSG's view that if a delay in the filing of an appeal may be excused on grounds of substantial justice in civil actions, with more reason should the same treatment be accorded to the accused in seeking the review on appeal of a criminal case where no less than the liberty of the accused is at stake. The concern and the protection we must extend to matters of liberty cannot be overstated.

In light of these legal realities, we hold that the petitioner seasonably filed her notice of appeal on November 16, 2005, within the fresh period of 15 days, counted from November 3, 2005, the date of receipt of notice denying her motion for new trial.

WHEREFORE, the petition for prohibition is hereby *GRANTED*. Respondent Judge Rosa Samson-Tatad is *DIRECTED* to *CEASE* and *DESIST* from further exercising jurisdiction over the prosecution's motions to dismiss appeal and for execution of the decision. The respondent Judge is also *DIRECTED* to give due course to the petitioner's appeal in Criminal Case No. Q-01-105698, and to elevate the records of the case to the Court of Appeals for review of the appealed decision on the merits.

No pronouncement as to costs.

SO ORDERED.

Carpio Morales, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

---

[18] *Republic of the Philippines, represented by the Commissioner of Customs v. Unimex Micro-Electronics GMBH,* G.R. Nos. 166309-10, March 9, 2007, 518 SCRA 19, 33; *Republic v. Court of Appeals,* G.R. No. 108926, July 12, 1996, 258 SCRA 712, 723.

THIRD DIVISION

[G. R. No. 172321. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO DADULLA *y* CAPANAS,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE VICTIM'S UNWAVERING TESTIMONIAL ACCOUNT OF THE BESTIALITY OF HER OWN FATHER TOWARDS HER REFLECTED HER SINGULAR RELIABILITY.— To begin with, the finding and conclusion of the RTC that the totality of the evidence presented by the State painted a convincing tale of AAA's harrowing experience at the hands of the accused are well founded and supported by the records. Her unwavering testimonial account of the bestiality of her own father towards her reflected her singular reliability. The CA's holding that a woman would think twice before concocting a story of rape unless she was motivated by a desire to seek justice for the wrong committed against her was apt and valid. Indeed, her revelation of being sexually assaulted by her own father several times could only proceed from innate sincerity, and was entitled to credence in the absence of strong showing by the accused of grounds to disbelieve her. Also, her immediate willingness to report to and face the police investigation and to undergo the trouble and humiliation of a public trial was a badge of trustworthiness.

2. ID.; CRIMINAL PROCEDURE; DESIGNATION OF OFFENSE; THE FAILURE TO ALLEGE THE QUALIFYING CIRCUMSTANCE OF RELATIONSHIP IN THE INFORMATION PRECLUDED A FINDING OF QUALIFIED RAPE AGAINST THE ACCUSED.— The failure to allege the qualifying circumstance of relationship in the information in Criminal Case No. 98-2304-MK precluded a finding of qualified rape against the accused. Section 8, Rule 110 of the *Rules of Court* has expressly required that qualifying and aggravating circumstances be specifically alleged in the information. Due to such requirement being *pro reo*, the Court

has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (*i.e.*, the date of the effectivity of the 2000 revision of the *Rules of Criminal Procedure* that embodied the requirement). The term "aggravating circumstance" is strictly construed when the appreciation of the modifying circumstance can lead to the imposition of the maximum penalty of death. Consequently, the qualifying circumstance of relationship, even if established during trial, could not affect the criminal penalty of the accused by virtue of its non-allegation in the information. The accused could not be convicted of the graver offense of qualified rape, although proven, because relationship was neither alleged nor necessarily included in the information. Accordingly, the accused was properly convicted by the CA for simple rape and justly punished with *reclusion perpetua*.

3. CRIMINAL LAW; ACTS OF LASCIVIOUSNESS; COMMITTED IN CRIMINAL CASE NO. 98-2305-MK; THE EVIDENCE TO PROVE THAT A DEFINITE INTENT TO LIE WITH THE VICTIM MOTIVATED THE ACCUSED WAS PLAINLY WANTING.— It is notable that the RTC outrightly concluded that the crime committed on January 22, 1998 constituted attempted rape, after quoting the testimony of AAA and BBB. It offered no analysis or discussion of why the accused was criminally liable for attempted rape. The omission contravened Section 14, Article VIII of the *Constitution*, as reiterated in Section 1, Rule 120 of the *Rules of Court*, which enjoined that decisions should state clearly and distinctly the facts and the law on which they are based. Nonetheless, the omission did not invalidate or render ineffectual the conviction, for the CA in due course reformed the RTC's error. In its disquisition on why the accused should be held liable for acts of lasciviousness, instead of attempted rape. x x x According to *People v. Collado*, the difference between attempted rape and acts of lasciviousness lies in the intent of the perpetrator as deduced from his external acts. The intent referred to is the intent to lie with a woman. Attempted rape is committed when the "touching" of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness. Thus, the accused's act of opening the zipper and buttons of AAA's shorts, touching her, and trying to pull her from under the bed manifested lewd designs, not intent to

lie with her. The evidence to prove that a definite intent to lie with AAA motivated the accused was plainly wanting, therefore, rendering him guilty only of acts of lasciviousness in Criminal Case No. 98-2305-MK.

4. ID.; PENALTY; THE INDETERMINATE PENALTY IMPOSED BY THE TRIAL COURT IS ERRONEOUS FOR NOT BEING IN ACCORD WITH THE INDETERMINATE SENTENCE LAW.— The indeterminate penalty imposed by the RTC was erroneous for not being in accord with the *Indeterminate Sentence Law*. This impelled the CA to revise the indeterminate penalty, rationalizing: Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is *prision correccional*. We impose the penalty in its medium period, there being no aggravating or mitigating circumstance alleged and proved. Applying the Indeterminate Sentence Law, the proper penalty imposable is from six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum. We uphold the revision by the CA. The RTC fixed the minimum of the indeterminate penalty from within *prision correccional*, when Section 1 of the *Indeterminate Sentence Law* expressly required that the minimum "shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower is *arresto mayor*.

5. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; ESTABLISHED PRESENCE OF ANY AGGRAVATING CIRCUMSTANCE ENTITLES THE OFFENDED PARTY TO EXEMPLARY DAMAGES; CASE AT BAR.— Under Article 2230 of the *Civil Code*, the attendance of any aggravating circumstance (generic, qualifying, or attendant) entitles the offended party to recover exemplary damages. Here, relationship was the aggravating circumstance attendant in both cases. We need to award ₱30,000.00 as exemplary damages in rape and of ₱10,000.00 as exemplary damages in acts of lasciviousness. Although, as earlier mentioned, an aggravating circumstance not specifically alleged in the information (albeit established at trial) cannot be appreciated to increase the criminal liability of the accused, the established presence of one or two aggravating circumstances of *any kind or nature* entitles the offended party to exemplary damages under Article 2230 of the *Civil Code* because the requirement of specificity in the

information affected only the criminal liability of the accused, not his civil liability. The Court has well explained this in *People v. Catubig:* The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.**

6. ID.; ID.; ID.; ID.; RETROACTIVITY OF THE RULING IN *PEOPLE VS. CATUBIG*, UPHELD.— That *People v. Catubig* was subsequent to the dates of the commission of the crimes charged did not matter. Like any other judicial interpretation of an existing law, the ruling in *People v. Catubig* settled the circumstances when Article 2230 of the *Civil Code* applied, thereby reflecting the meaning and state of that legal provision. The retroactivity of the ruling *vis-à-vis* the accused could not be challenged or be barred by virtue of its being civil, not penal, in effect.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

A rapacious father who vented his lust on his own daughter without any qualms is allowed to suffer the lesser penalty because of the failure of the criminal information to aver his relationship with the victim. Even so, the Court condemns his most despicable crime.

The father is now before the Court to assail the decision promulgated on January 20, 2006 in C.A.-G.R. CR.-H.C. No. 01021, whereby the Court of Appeals (CA) pronounced him guilty beyond reasonable doubt of simple rape in Criminal Case No. 98-2304, imposing *reclusion perpetua*, and of acts of lasciviousness in Criminal Case No. 98-2305, thereby modifying the sentences handed down by the Regional Trial Court, Branch 272 (RTC), in Marikina City.[1]

The Charges

On January 28, 1998, the accused was charged in the RTC with rape and attempted rape through separate informations, as follows:

Criminal Case No. 98-2304-MK

That on or about the 15th day of January, 1998 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of threats, force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA,[2] against her will and consent.[3]

---

[1] *Rollo*, pp. 3-14; penned by Associate Justice Marina L. Buzon (retired), with Associate Justice Aurora Santiago-Lagman (retired) and Associate Justice Arcangelita Romilla-Lontok (retired), concurring.

[2] Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of* 2004), and its implementing rules, the real names of the victims, as well as those of their immediate families or household members, are withheld and instead fictitious initials are used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] CA *Rollo*, pp. 4-5.

Criminal Case No. 98-2305-MK

That on or about the 22nd day of January, 1998 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously try and attempt to have carnal knowledge of herein complainant one AAA, thus commencing the commission of the crime of rape directly by overt acts but did not perform all the acts of execution that could have produced the crime of rape by reason of cause or causes other than his own spontaneous desistance.[4]

Evidence of the Prosecution

In the evening of January 15, 1998, AAA, then sleeping in the bedroom that she and her five younger siblings shared with their father, was roused from sleep by someone undressing her.[5] It was her father. AAA resisted, but the accused, wielding a bladed weapon,[6] threatened to kill her if she shouted.[7] The accused then forcibly kissed her on the lips, mashed her breasts, touched her private parts, and had carnal knowledge of her. After her ordeal, she put on her garments and just cried.[8] She recalled that her father had first sexually abused her on February 14, 1992.[9]

On January 22, 1998, AAA was again roused from sleep by her father touching her body. Noticing that her shorts were already unzipped and unbuttoned, she zipped and buttoned them up and covered herself with a blanket. But her father pulled the blanket away and tried to unzip her shorts. However, she was able to go under the wooden bed to evade him. She resisted his attempts to pull her out from under the bed by firmly holding on to the bed. She told him that she would not get out from

---

[4] *Id*., pp. 6-7.

[5] TSN, June 3, 1998, p. 10.

[6] *Id*., p. 46.

[7] *Id*., p. 10.

[8] *Id*., pp. 11-18.

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

under the bed because what he was doing to her was bad.[10] Upon hearing her, he stopped and withdrew, telling her to leave the house. He then went to sleep.[11] In the meanwhile, BBB, AAA's younger sister, was awakened by what she thought was an argument between her father and AAA. She heard him tell AAA: *Tumigil ka na nang kaiiyak, wala ka nang pakinabang.* AAA just cried under the bed and did not say anything. BBB soon fell asleep,[12] but AAA could not sleep and remained under the bed until morning when the accused left to ply his jeepney route.[13]

Upon waking up, BBB saw her father as he was about to leave the house. She heard him telling AAA to leave the house.[14] As soon as he had left, BBB approached the crying AAA and asked what had happened to her. AAA related her ordeal and pleaded with BBB to help her.[15] Together, they went to their uncle, CCC, to report the incident. CCC queried AAA whether she wanted her father to be thrown in jail, and she replied in the affirmative. Thus, CCC requested his wife to accompany AAA to the *barangay* to file a complaint. Later, AAA and CCC's wife went to Camp Crame for the physical and genital examinations, which established that AAA had a deep healed hymenal laceration at 5:00 o'clock position.[16]

Evidence of the Defense

The accused denied molesting AAA. He narrated that on January 15, 1998, AAA and BBB left the house at around 6:30 p.m. to watch television elsewhere and returned only at around 11:00 p.m.; that on January 22, 1998, he scolded AAA for her failure to cook on time; that at around 4:00 a.m. of January 23,

---

[10] *Id.*, pp. 22-26.

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

[12] TSN, June 9, 1998, pp. 20-21.

[13] TSN, June 3, 1998, pp. 26-27.

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

[15] *Id.*, pp. 25-26.

[16] Exhibit Folder No. 2, Exhibits for the Plaintiff, marked as Exhibit B.

1998, he struck AAA's face with his fist (*dinunggol sa mukha*) and told her to leave the house because he was slighted by AAA's laughing instead of answering his query of whether she had understood why he had scolded her the previous night; and that AAA was no longer a virgin due to her having been raped by Joel Cloma in 1992, and by another man in 1993.[17]

The RTC Decision

On March 24, 1999, the RTC found the accused guilty of rape in Criminal Case No. 98-2304-MK, and imposed the death penalty, ordering him to pay to AAA ₱50,000.00 as civil indemnity and ₱20,000.00 as moral damages; and of attempted rape in Criminal Case No. 98-2305-MK, and imposed the indeterminate penalty of four years, nine months, and eleven days of *prision correccional*, as minimum, to five years, four months, and twenty days, as maximum, ordering him to pay to AAA ₱20,000.00 as moral damages.

The CA Decision

On appeal, the accused assigned the following errors, to wit:

I.

THE TRIAL COURT ERRED IN IMPOSING THE DEATH PENALTY IN CRIMINAL CASE NO. 98-2304 DESPITE THAT ACCUSED WAS NOT PROPERLY INFORMED OF THE NATURE AND CAUSE OF ACCUSATION AGAINST HIM WHICH IS IN VIOLATION OF HIS CONSTITUTIONAL RIGHT.

II.

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANT OF ATTEMPTED RAPE DOCKETED AS CRIMINAL CASE NO. 98-2305.

Nonetheless, the CA disposed in its decision promulgated on January 20, 2006:

WHEREFORE, the Decision appealed from is AFFIRMED with the following MODIFICATION:

---

[17] TSN, June 24, 1998, pp. 3-16.

In Criminal Case No. 98-2304-MK, accused-appellant Renato Dadulla *y* Capanas is found guilty beyond reasonable doubt of simple rape and is sentenced to suffer the penalty of *reclusion perpetua*. Accused-appellant is also ordered to pay AAA moral damages in the amount of ₱50,000.00, in addition to civil indemnity in the amount of ₱50,000.00.

In Criminal Case No. 98-2305-MK, accused-appellant Renato Dadulla *y* Capanas, is found guilty beyond reasonable doubt of the crime of acts of lasciviousness and is sentenced to suffer an indeterminate penalty of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, and to pay AAA the amount of ₱30,000.00 as moral damages.

SO ORDERED.

The CA held that the correct penalty in Criminal Case No. 98-2304-MK was *reclusion perpetua* because the accused was liable only for simple rape by virtue of the information not alleging any qualifying circumstances; and that in Criminal Case No. 98-2305-MK the accused was guilty only of acts of lasciviousness, not attempted rape, because his act of opening the zipper and buttons of AAA's shorts, touching her, and pulling her from under the bed constituted only acts of lasciviousness.

Ruling of the Court

We sustain the conviction but correct the award of civil liability.

I
Criminal Liabilities

The CA correctly determined the criminal liabilities in both cases.

To begin with, the finding and conclusion of the RTC that the totality of the evidence presented by the State painted a convincing tale of AAA's harrowing experience at the hands of the accused are well founded and supported by the records. Her unwavering testimonial account of the bestiality of her own father towards her reflected her singular reliability. The CA's holding that a woman would think twice before concocting a

story of rape unless she was motivated by a desire to seek justice for the wrong committed against her[18] was apt and valid. Indeed, her revelation of being sexually assaulted by her own father several times could only proceed from innate sincerity, and was entitled to credence in the absence of strong showing by the accused of grounds to disbelieve her. Also, her immediate willingness to report to and face the police investigation and to undergo the trouble and humiliation of a public trial was a badge of trustworthiness.

Secondly, the failure to allege the qualifying circumstance of relationship in the information in Criminal Case No. 98-2304-MK precluded a finding of qualified rape against the accused. Section 8,[19] Rule 110 of the *Rules of Court* has expressly required that qualifying and aggravating circumstances be specifically alleged in the information. Due to such requirement being *pro reo*, the Court has authorized its retroactive application in favor of even those charged with felonies committed prior to December 1, 2000 (*i.e.*, the date of the effectivity of the 2000 revision of the *Rules of Criminal Procedure* that embodied the requirement).[20]

The term "aggravating circumstance" is strictly construed when the appreciation of the modifying circumstance can lead to the imposition of the maximum penalty of death.[21] Consequently, the qualifying circumstance of relationship, even if established during trial, could not affect the criminal penalty of the accused by virtue of its non-allegation in the information. The accused could not be convicted of the graver offense of qualified rape, although proven, because relationship was

---

[18] *Rollo*, p. 11.

[19] Sec. 8. *Designation of the offense.* – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[20] *People v. Mondijar*, G.R. No. 141914, November 21, 2002, 392 SCRA 356; *People v. Marquez*, G.R. No. 136736, April 11, 2002, 380 SCRA 561.

[21] *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620, 640.

neither alleged nor necessarily included in the information.[22] Accordingly, the accused was properly convicted by the CA for simple rape and justly punished with *reclusion perpetua*.

Thirdly, it is notable that the RTC outrightly concluded that the crime committed on January 22, 1998 constituted attempted rape, after quoting the testimony of AAA and BBB. It offered no analysis or discussion of why the accused was criminally liable for attempted rape. The omission contravened Section 14,[23] Article VIII of the *Constitution*, as reiterated in Section 1,[24] Rule 120 of the *Rules of Court*, which enjoined that decisions should state clearly and distinctly the facts and the law on which they are based.[25]

Nonetheless, the omission did not invalidate or render ineffectual the conviction, for the CA in due course reformed the RTC's error. In its disquisition on why the accused should be held liable for acts of lasciviousness, instead of attempted rape, the CA explained the true nature of the crime of the accused thus:

We likewise agree with accused-appellant that the court *a quo* erred in convicting him of attempted rape in Criminal Case No. 98-2305-MK. In connection with the incident that transpired on January 22, 1998, Liza testified as follows:

---

[22] *People v. Flores, Jr.*, G. R. Nos. 128823-24, December 27, 2002, 394 SCRA 325, 333.

[23] Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

[24] Section 1. *Judgment; definition and form.* – Judgment is the adjudication by the court that the accused is guilty or not guilty of the offense charged and the imposition on him of the proper penalty and civil liability, if any. It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based. (1a).

[25] *People v. Ernas*, G.R. Nos. 137256-58, August 6, 2003, 408 SCRA 391; *People v. Bugarin*, G.R. Nos. 110817-22, June 13, 1997, 273 SCRA 384.

Pros. Dela Peña:

Q: While you were sleeping in the evening on January 22, 1998, do you recall of any instance (sic) or incident which awakened you?

Witness:

A: Yes, sir.

Q: Again Miss Witness, tell us this incident that you are referring to?

A: While I was sleeping, I was awakened that my zipper was already opened and my buttons were already loosened.

Q: And upon noticing that the zipper and the buttons of your short[s] are already loosened or opened, what did you do?

A: I zipped it again and unbuttoned it.

Q: Was your father there on that night?

A: Yes, sir.

Q: What about your brother and sisters?

A: They were already asleep.

Q: Like on January 15, 1998, you slept, on January 22, 1998, you slept side by side with your brothers and sisters and your father?

A: Yes, sir.

Q: Did you notice the presence of your father when you said you were awakened on that night?

A: Yes, sir.

Q: What was he doing?

A: He was sitting and touching me, sir.

Q: How far was he from you?

A: He was near me.

Q: And upon seeing your father near you and the button and zipper of your short[s] was open, what did you do?

A: I zipped and unbuttoned my short[s] and covered myself with blanket.

Q: Why did you cover yourself with blanket?

A: Because I do not want to see him beside me.

Q: Did you not ask your father to leave because you do not want to see him?

A: I told him.

Q: Did your father leave?

A: No, sir.

Q: Why don't you like your father beside you?

A: Because of these things he was doing to me.

Q: And after covering yourself with blanket, what transpired next?

A: He removed the blanket from me, sir.

Q: And after that, what happened?

A: He was forcibly opening my short[s].

Q: What did you do when your father was forcibly opening your short[s]?

A: I covered myself under the wooden bed.

Q: How wide is this wooden bed?

A: From that wall up to the rostrum.

Pros. Dela Peña:

About a distance of two meters in width. Why did you hide yourself under the wooden bed?

A: In order not to repeat what he was doing to me.

Q: After you hi[d] yourself under the wooden bed, what did your father did [sic] to you?

A: He held me on my hands and tried to pull me out under the wooden bed.

Q: And was your father able to pull you out under the wooden bed?

A: No sir.

The act of accused-appellant in opening the zipper and buttons of the shorts of Liza, touching her and pulling her when she hid under the bed showed that he employed force on Liza and was motivated by lewd designs. The word "lewd" is defined as obscene, lustful, indecent, and lecherous. It signifies that form of immorality which has relation to moral impurity; or that which is carried in a wanton manner. Thus, the crime committed by accused-appellant is merely acts of lasciviousness, which is included in rape. The elements of the crime of acts of lasciviousness are: (1) that the offender commits any act of lasciviousness or lewdness; (2) that it is done: (a) by using force and intimidation, or (b) when the offended party is deprived of reason or otherwise unconscious, or (c) when the offended party is under 12 years of age; and (3) that the offended party is another person of either sex.[26]

According to *People v. Collado*,[27] the difference between attempted rape and acts of lasciviousness lies in the intent of the perpetrator as deduced from his external acts. The intent referred to is the intent to lie with a woman.[28] Attempted rape is committed when the "touching" of the vagina by the penis is coupled with the intent to penetrate; otherwise, there can only be acts of lasciviousness.[29] Thus, the accused's act of opening the zipper and buttons of AAA's shorts, touching her, and trying to pull her from under the bed manifested lewd designs, not intent to lie with her. The evidence to prove that a definite intent to lie with AAA motivated the accused was plainly wanting, therefore, rendering him guilty only of acts of lasciviousness in Criminal Case No. 98-2305-MK.

---

[26] *Rollo*, pp. 12-15; bold underscoring is supplied for emphasis.

[27] G.R. Nos. 135667-70, March 1, 2001, 353 SCRA 381, 392.

[28] *People v. Mendoza*, G.R. Nos. 152589 and 152758, January 31, 2005, 450 SCRA 328, 333.

[29] *Supra*, note 28.

And, fourthly, the indeterminate penalty imposed by the RTC was erroneous for not being in accord with the *Indeterminate Sentence Law*. This impelled the CA to revise the indeterminate penalty, rationalizing:

> Under Article 336 of the Revised Penal Code, the penalty for acts of lasciviousness is *prision correccional*. We impose the penalty in its medium period, there being no aggravating or mitigating circumstance alleged and proved. Applying the Indeterminate Sentence Law, the proper penalty imposable is from six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum.[30]

We uphold the revision by the CA. The RTC fixed the minimum of the indeterminate penalty from within *prision correccional*, when Section 1[31] of the *Indeterminate Sentence Law* expressly required that the minimum "shall be within the range of the penalty next lower to that prescribed by the Code for the offense." The penalty next lower is *arresto mayor*.

II
Civil liability must be modified

Under Article 2230 of the *Civil Code*,[32] the attendance of any aggravating circumstance (generic, qualifying, or attendant) entitles the offended party to recover exemplary damages. Here,

---

[30] *Rollo*, p. 15.

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

[32] Article 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

relationship was the aggravating circumstance attendant in both cases. We need to award ₱30,000.00 as exemplary damages in rape and of ₱10,000.00 as exemplary damages in acts of lasciviousness.

Although, as earlier mentioned, an aggravating circumstance not specifically alleged in the information (albeit established at trial) cannot be appreciated to increase the criminal liability of the accused, the established presence of one or two aggravating circumstances of *any kind or nature* entitles the offended party to exemplary damages under Article 2230 of the *Civil Code* because the requirement of specificity in the information affected only the criminal liability of the accused, not his civil liability. The Court has well explained this in *People v. Catubig:*[33]

> The term "aggravating circumstances" used by the *Civil Code*, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. **Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the *Civil Code*.**

[33] G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635 (bold emphasis supplied).

That *People v. Catubig* was subsequent to the dates of the commission of the crimes charged did not matter. Like any other judicial interpretation of an existing law, the ruling in *People v. Catubig* settled the circumstances when Article 2230 of the *Civil Code* applied, thereby reflecting the meaning and state of that legal provision. The retroactivity of the ruling *vis-à-vis* the accused could not be challenged or be barred by virtue of its being civil, not penal, in effect.

WHEREFORE, the Decision promulgated on January 20, 2006 in CA-G.R. CR-H.C. No. 01021 is affirmed in all respects, subject to the modification that the civil liabilities include ₱30,000.00 as exemplary damages for the rape (Criminal Case No. 98-2034-MK), and ₱10,000.00 as exemplary damages for the acts of lasciviousness (Criminal Case No. 98-2035-MK).

SO ORDERED.

Carpio Morales (Chairperson), Brion, Peralta,[*] and *Villarama, Jr., JJ.,* concur.

[*] In lieu of Justice Maria Lourdes P.A. Sereno who is on leave per Office Order No. 944 dated February 9, 2011.

FIRST DIVISION

[G.R. No. 173349. February 9, 2011]

SAMUEL U. LEE and PAULINE LEE and ASIATRUST DEVELOPMENT BANK, INC., *petitioners, vs.* **BANGKOK BANK PUBLIC COMPANY, LIMITED,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); APPLICABLE SEC LAWS IN CASE AT BAR.— At the outset, it must be noted that at the time the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver was filed before the SEC on February 16, 1998 by MDEC, MHI, and three other corporations owned by the Lee family, *Batas Pambansa Blg.* (BP) 178 or the then Revised Securities Act was the primary governing law along with Presidential Decree No. (PD) 902-A, as amended, and the Corporation Code of the Philippines. Pertinently, among others, the SEC was also covered by the Investment House Law (PD 129), the Financing Company Act under Republic Act. No. (RA) 2626, the Foreign Investments Act (RA 7042), and the Liberalized Foreign Investments Act (RA 8179). And subsequent to the filing of the instant case, the Securitization Act of 2004 (RA 9267) and the Lending Company Regularization Act of 2007 (RA 9474) were also enacted. PD 902-A, however, was further amended by RA 8799 or the Securities Regulation Code, approved on July 19, 2000 by President Joseph Estrada. Under Sec. 5.2 of RA 8799, the SEC's original and exclusive jurisdiction over all cases enumerated under Sec. 5 of PD 902-A was transferred to the appropriate RTC. RA 8799, Sec. 5.2, however, expressly stated as an exception, that the "**[t]he Commission shall retain jurisdiction over pending suspension of payment/ rehabilitation cases filed as of 30 June 2000 until finally disposed**." Accordingly, the Consolidated Petition for the Declaration of a State of Suspension of Payments and for

Appointment of a Management Committee/Rehabilitation Receiver filed on February 16, 1998 by MDEC, MHI and three other corporations owned by the Lee family, remained under the jurisdiction of the SEC until finally disposed of pursuant to the last sentence of Sec. 5.2 of RA 8799.

2. ID.; ID.; PD 902-A; VESTED THE SEC WITH JURISDICTION ON PETITIONS FOR SUSPENSION OF PAYMENTS ONLY ON CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND NOT ON PRIVATE INDIVIDUALS.— The SEC's jurisdiction is evident from the statutorily vested power of jurisdiction, supervision and control by the SEC over all corporations, partnerships or associations, which are grantees of primary franchise, license or permit issued by the government to operate in the Philippines, and its then original and exclusive jurisdiction over petitions for suspension of payments of said entities. x x x It can be clearly gleaned from Secs. 3 and 5 of PD 902-A that in cases of petitions for the suspension of payments, the SEC has jurisdiction over corporations, partnerships and associations, which are grantees of primary franchise or license or permit issued by the government to operate in the Philippines, and their properties. And it is indubitably clear from the aforequoted Sec. 5(d) that only **corporations, partnerships and associations**—NOT private individuals—can file with the SEC, petitions for declaration in a state of suspension of payments. Thus, it logically follows that the SEC does not have jurisdiction to entertain petitions for suspension of payments filed by parties other than **corporations, partnerships or associations**. Indeed, settled is the rule that it is axiomatic that jurisdiction is the authority to hear and determine a cause, which is conferred by law and not by the policy of any court or agency.

3. ID.; ID.; ID.; PRIVATE INDIVIDUALS AND THEIR PRIVATELY OWNED PROPERTIES CANNOT BE PLACED UNDER THE JURISDICTION OF THE SEC IN A PETITION FOR SUSPENSION OF PAYMENTS.— In *Chung Ka Bio v. Intermediate Appellate Court*, this Court resolved in the negative the issue of whether private individuals can file with the SEC petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited

to "corporations, partnerships or associations." Besides, We pointed out that the SEC, being a mere administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a co-petitioner. We have said time and again that the SEC's "jurisdiction is limited only to corporations and corporate assets"; it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation's officers or sureties. We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*, *Modern Paper Products, Inc. v. Court of Appeals*, and *Union Bank of the Philippines v. Court of Appeals*. Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties. Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments. Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties. The RTC correctly grasped this point that the disposition of the subject properties did not violate the suspension order.

4. CIVIL LAW; CONTRACTS; THE PRESUMPTION OF FRAUD UNDER ARTICLE 1381 (3) OF THE CIVIL CODE, DOES NOT APPLY IN CASE AT BAR.— Under Art. 1381(3) of the Civil Code, contracts, which were "undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them," are rescissible. Art. 1387 of the Code states when an act is presumed to be fraudulent. x x x It is with regard to the foregoing provisions that the CA anchored its ruling of the existence of a presumption of fraud in the instant case. This presumption, however, finds no application to this case. The presumption of fraud established under Art. 1387 does not apply to registered lands IF "the **judgment or attachment** made is not also registered." In *Abaya v. Enriquez*, Abaya was able to obtain a judgment against Enriquez for a sum of money, and the judgment was partially unsatisfied after Enriquez made a partial payment. The judgment and the writ of execution, however, was never annotated on the titles of the registered lands owned by Enriquez. Subsequently, Enriquez sold the said lands. In an action for rescission instituted by Abaya, the Court ruled that the presumption of fraud does not apply as the judgment and the attachment have not been registered and annotated on the title. The Court held: Where the judgment rendered against the defendant x x x has not been entered in the records of the register of deeds, relative to an immovable belonging to the judgment debtor, the subsequent sale of said property by the latter, shall not be rescinded upon the ground of fraud, unless the complicity of the buyer in the fraud imputed to said vendor is established by other means than the presumption of fraud x x x. In this case, prior to the annotation of the REM on February 23, 1998, SBC was able to successfully acquire a writ of preliminary attachment in its favor against the spouses Lee on January 30, 1998 in a case for a sum of money for nonpayment of its obligation. Bangkok Bank alleges that because of this, the presumption of fraud under Art. 1387 of the Civil Code applies. But while a judgment was made against the spouses Lee in favor of SBC on January 30, 1998, this, however, was not annotated on the titles of the subject properties. In fact, there is no showing that the judgment has ever been annotated on the titles of the subject properties. As established in the facts, there were only two annotations at the back of the titles of the Antipolo properties: *first*, the REM

executed in favor of Asiatrust on February 23, 1998; and *second*, the writ of preliminary attachment in favor of Bangkok Bank on March 18, 1998. Considering that the earlier SBC judgment or attachment was not, and in fact never was, annotated on the titles of the subject Antipolo properties, prior to the execution of the REM, the presumption of fraud under Art. 1387 of the Code clearly cannot apply.

5. ID.; ID.; EVEN ASSUMING THAT ARTICLE 1387 OF THE CIVIL CODE APPLIES, THE EXECUTION OF A MORTGAGE IS NOT CONTEMPLATED WITHIN THE MEANING OF ALIENATION BY ONEROUS TITLE UNDER SAID PROVISION.— Under Art. 1387 of the Code, fraud is presumed only in **alienations** by onerous title of a person against whom a judgment or attachment has been issued. The term, alienation, connotes the "transfer of the property and possession of lands, tenements, or other things, from one person to another." This term is "particularly applied to **absolute conveyances** of real property" and must involve a "complete transfer from one person to another." A mortgage does not contemplate a transfer or an absolute conveyance of a real property. It is "an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt." When a debtor mortgages his property, he "merely subjects it to a **lien** but **ownership thereof is not parted with**." It is merely a lien that neither creates a title nor an estate. It is, therefore, certainly not the alienation by onerous title that is contemplated in Art. 1387 where fraud is to be presumed. In this very action, Bangkok Bank claims that when the spouses Lee executed the REM in favor of Asiatrust, the presumption of fraud under Art. 1387 became applicable. We hold in the negative. As We have plainly discussed, a mortgage is not that which is contemplated in the term "**alienation**" that would make the presumption of fraud under Art. 1387 apply. It requires a full and absolute conveyance or transfer of property from one person to another, such as that in the form of a sale. As elucidated earlier, a mortgage merely creates a lien on the property that would afford the mortgagee/creditor greater security in the obligation of the mortgagor/debtor. This being so, as the REM is not the alienation contemplated in Art. 1387 of the Code, the presumption of fraud cannot apply.

6. ID.; ID.; THE APPLICATION OF THE PRESUMPTION OF FRAUD UNDER ARTICLE 1387, IF APPLICABLE, COULD ONLY BE MADE TO APPLY TO PETITIONERS-SPOUSES AS THE PERSON AGAINST WHOM A JUDGMENT OR WRIT OF ATTACHMENT HAS BEEN ISSUED.— A careful reading of Art. 1387 of the Code *vis-à-vis* its Art. 1385 would plainly show that the presumption of fraud in case of alienations by onerous title only applies to the person who made such alienation, and against whom some judgment has been rendered in any instance or some writ of attachment has been issued. A third person is not and should not be automatically presumed to be in fraud or in collusion with the judgment debtor. In allowing rescission in case of an alienation by onerous title, the third person who received the property conveyed should likewise be a party to the fraud. As clarified by Art. 1385(2) of the Code, so long as the person who is in legal possession of the property did not act in bad faith, rescission cannot take place. Thus, in all instances, as to the third person in legal possession of the questioned property, good faith is presumed. Accordingly, it is upon the person who alleges bad faith or fraud that rests the burden of proof. Asiatrust, being a third person in good faith, should not be automatically presumed to have acted fraudulently by the mere execution of the REM over the subject Antipolo properties, there being no evidence of fraud or bad faith. Regrettably, in ratiocinating that fraud was committed by both the spouses Lee and Asiatrust, the CA merely anchored its holding on the presumption espoused under Art. 1387 of the Code, nothing more.

7. ID.; ID.; ALLEGED FRAUD NOT PROVED AND SUBSTANTIATED.— No deception could have been used by the spouses Lee in including in the list of properties, which they submitted to the SEC, the subject Antipolo properties. *First*, it is undisputed that the list of properties submitted by the Lee corporations to the SEC clearly indicated that the subject Antipolo properties have already been earmarked, or have already been serving as security, for its loan obligations with Asiatrust. *Second*, MDEC, through its counsel, truly believed in good faith that the inclusion of the spouses Lee's private properties in the list submitted to the SEC is valid and regular. As can be seen in the letter sent by the counsel of the Midas

Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Antipolo RTC on April 4, 1998, at the time when the subject Antipolo properties were being foreclosed by Asiatrust, its counsel vigorously countered the actions of Asiatrust and stated that the subject Antipolo properties cannot be foreclosed pursuant to the SEC Suspension Order. And as discussed *infra*, the alleged collusion between the spouses Lee and Asiatrust appears to be a mere figment of imagination.

8. ID.; ID.; HASTE ALONE IN THE FORECLOSURE OF THE MORTGAGE DOES NOT CONSTITUTE EXISTENCE OF FRAUD; THE TOTALITY OF CIRCUMSTANCES CLEARLY MANIFESTS THE WANT OF FRAUD AND BAD FAITH ON THE PART OF THE PARTIES TO THE REAL ESTATE MORTGAGE IN QUESTION.— Contracts in fraud of creditors are those executed with the **intention** to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence, a creditor may suffer some damage. More so it is, when the allegation involves not only fraud on the part of the debtor, but also that of another creditor. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to defeat creditors. Haste alone in the foreclosure of the mortgage does not constitute the existence of fraud. Considering that the totality of circumstances clearly manifests the want of fraud and bad faith on the part of the parties to the REM in question, consequently, the REM cannot be rescinded.

9. ID.; ID.; NO COLLUSION BETWEEN PETITIONERS-SPOUSES AND THE BANK.— There was no collusion between the spouses Lee and Asiatrust. Besides the fact that individually, fraud was not sufficiently and convincingly established on the part of the spouses Lee and Asiatrust, Bangkok Bank's allegation of collusion between them was likewise unsubstantiated and therefore untenable. *First*, even after the subject Antipolo properties were foreclosed by Asiatrust, Asiatrust sought the recovery of the deficiency amounting to at least PhP 14,800,000. And until the filing of the memoranda by the parties before this Court, the said action

remains pending before the CA. *Second*, Asiatrust filed a criminal case against Samuel for violation of BP 22. At the time of the filing of the petition for review, the case was still pending before the Metropolitan Trial Court of Quezon City. Later, at the time of the filing of the spouses Lee's Memorandum, it was indicated that it has already been dismissed. *Third*, contrary to the CA's appreciation of the facts, the letter sent by Atty. Macam, counsel of the Midas Group of Companies, actually strengthens the proof that no collusion existed between the parties. Acting on the interest of MDEC, Atty. Macam sent a letter to the Clerk of Court and the *Ex-Officio* Sheriff of the Antipolo RTC, arguing that the subject Antipolo properties cannot be foreclosed as they are the subject of an existing SEC Suspension Order. In fact, counsel for MDEC alleged that the foreclosure sale was illegal. On the other hand, when the *Ex-Officio* Sheriff presented a copy of the letter to Asiatrust and asked the latter to comment, Asiatrust categorically stated that the subject properties could not be made a subject of the SEC Suspension Order, they being properties of the spouses Lee, natural persons outside the jurisdiction of the SEC. In fact, it was Bangkok Bank's sole witness, Capalaran, who firmly agreed that, indeed, the subject properties are not covered by the Suspension Order that is why Bangkok Bank, too, filed an action against the spouses Lee on March 12, 1998 and sought the attachment of the said properties. With all the foregoing facts strongly established, We confirm the absence of fraud, bad faith, and collusion between the spouses Lee and Asiatrust.

10. ID.; ID.; THE REQUISITE GOOD FAITH ON THE PART OF THE THIRD PERSON AND FRAUD, NECESSARY FOR AN ACTION TO RESCIND UNDER ARTICLE 1381 OF THE CIVIL CODE, WERE NOT COMPLIED WITH.— In *Siguan v. Lim*, this Court held that in an action to rescind under Art. 1381, the following requisites must exist: The action to rescind contracts in fraud of creditors is known as *accion pauliana.* For this action to prosper, the following requisites must be present: (1) the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; (2) the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; (3) the creditor has no other legal remedy to satisfy his claim; **(4) the act being impugned is fraudulent;**

(5) the third person who received the property conveyed, if it is by onerous title, has been an accomplice in the fraud. Considering the discussions previously expounded, the extant records show that the fourth and fifth requisites enumerated above are absent.

11. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; REDEMPTION OF REAL PROPERTY SOLD; REDEMPTION PERIOD HAS ALREADY ELAPSED IN CASE AT BAR.— Under Sec. 27, Rule 39 of the Rules of Court, it is clear that Bangkok Bank, as an attaching creditor, has the right to redeem the subject Antipolo properties that were foreclosed by Asiatrust. In determining the period within which to redeem the foreclosed Antipolo properties in the present case, RA 337 or the *General Banking Act* finds application. Pertinently, its Sec. 78 states: **Sec. 78.** x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, **within one year after the sale of the real estate** as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. In this case, the auction sale took place on April 15, 1998 and was registered with the RD on April 21, 1998. Subsequently, on April 30, 1999, a date already and certainly beyond the one-year redemption period provided by law, new titles were issued in favor of Asiatrust. Apparently, Bangkok Bank chose not to exercise its right of redemption over the subject Antipolo

properties. Even as a general rule, "[t]he period of redemption is not tolled by the filing of a complaint or petition for annulment of the mortgage and the foreclosure sale conducted pursuant to the said mortgage," Bangkok Bank, however, filed its action for rescission way beyond the expiration of the said redemption period on July 20, 1999. After the expiration of the redemption period, Asiatrust as purchaser, therefore, became the absolute owner of the subject properties, and whose rights necessarily include the right to be in the legal possession of the properties.

APPEARANCES OF COUNSEL

Carillo & Tantuan for Samuel U. Lee.
NC San Juan & Associates for Asiatrust Dev't. Bank., Inc.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari* under Rule 45, petitioners assail the March 15, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 79362, which reversed and set aside the April 21, 2003 Decision[2] of the Regional Trial Court (RTC), Branch 73 in Antipolo City, in Civil Case No. 99-5388, entitled *Bangkok Bank Public Company Limited v. Spouses Samuel U. Lee and Pauline Lee and Asiatrust Development Bank* for the Rescission of Real Estate Mortgage (REM), Annulment of Foreclosure Sale, Cancellation of Titles and Damages. They assail also the June 29, 2006 CA Resolution denying their motion for reconsideration.

---

[1] *Rollo*, pp. 79-90. Penned by Associate Justice Eliezer R. De Los Santos and concurred in by Associate Justices Jose C. Reyes, Jr. and Arturo G. Tayag.

[2] *Id.* at 91-101. Penned by Judge Mauricio M. Rivera.

The Facts

Midas Diversified Export Corporation (MDEC) and Manila Home Textile, Inc. (MHI) entered into two separate Credit Line Agreements (CLAs) with Respondent Bangkok Bank Public Company, Limited (Bangkok Bank) on November 29, 1995 and April 17, 1996, respectively.[3] MDEC and MHI are owned and controlled by the Lee family: Thelma U. Lee, Maybelle L. Lim, Daniel U. Lee and Samuel U. Lee (Samuel).[4] Both corporations have interlocking directors and management led by the Lee family; and engaged in the manufacturing and export of garments, ladies' bags and apparel.

Bangkok Bank required guarantees from the Lee family for the two CLAs. Consequently, the Lee family executed guarantees in favor of Bangkok Bank on December 1, 1995 for the CLA for MDEC and on April 17, 1996 for the CLA of MHI. Under the guarantees, the Lee family irrevocably and unconditionally guaranteed, as principal debtors, the payment of any and all indebtedness of MDEC and MHI with Bangkok Bank.[5] Prior to the granting of the CLAs, Bangkok Bank conducted a property check on the Lee family and required Samuel to submit a list of his properties. Bangkok Bank, however, did not require the setting aside, as collateral, of any particular property to answer for any future unpaid obligation.[6] Subsequently, MDEC and MHI made several availments from the CLAs. In time, the advances, which MDEC and MHI had taken out from the CLAs, amounted to three million dollars (USD 3,000,000).[7]

On July 25, 1996, MDEC was likewise granted a loan facility by Asiatrust Development Bank, Inc. (Asiatrust).[8] This facility had an available credit line of forty million pesos (PhP 40,000,000)

---

[3] *Id.* at 10, 33.

[4] *Id.* at 91.

[5] *Id.* at 34.

[6] *Id.* at 96.

[7] *Id.* at 10, 33-34.

[8] *Id.* at 97-98.

for letters of credit, advances on bills and export packing; and a separate credit line of two million dollars (USD 2,000,000) for bills purchase.[9]

In the meantime, in May 1997, Samuel bought several parcels of land in Cupang, Antipolo, and later entered into a joint venture with Louisville Realty and Development Corporation to develop the properties into a residential subdivision, called Louisville Subdivision.[10] These properties in Cupang, Antipolo are the subject properties in the instant case (Antipolo properties) and are covered by Transfer Certificate of Title (TCT) Nos. 329663 to 329511 of the Registry of Deeds of Rizal in Marikina City (RD).[11]

Throughout 1997, MDEC availed itself of the omnibus credit line granted by Asiatrust on three occasions: ten million pesos (PhP 10,000,000) to mature on July 15, 1997; eleven million pesos (PhP 11,000,000) to mature on February 6, 1998; and another ten million pesos (PhP 10,000,000) to mature on February 20, 1998. In the same year, particularly in August 1997, when MDEC had defaulted in the payment of its loan that matured on July 15, 1997, Asiatrust initiated negotiations with MDEC and required the Lee family to provide additional collateral that would secure the loan. In December 1997, the negotiation was concluded when Asiatrust had agreed to Samuel's proposition that he would mortgage the subject Antipolo properties to secure the loan, and therefore execute a REM over the properties.[12] While the titles of the Antipolo properties had been delivered by Samuel to Asiatrust and the REM had been executed in January 1998, spouses Samuel and Pauline Lee (spouses Lee) were requested to sign a new deed of mortgage on February 23, 1998, and, thus, it was only on that date that the said mortgage was actually notarized, registered, and annotated at the back of the titles.[13]

---

[9] *Id.* at 97.

[10] *Id.* at 94.

[11] *Id.* at 93.

[12] *Id.* at 97.

[13] *Id.* at 92-93.

Similarly, MDEC and MHI initially had made payments with their CLAs until they defaulted and incurred aggregate obligations to Bangkok Bank in the amount of USD 1,998,554.60 for MDEC and USD 800,000 for MHI.[14] Similarly, the Lee corporations defaulted in their obligations with other creditors. For example, Security Bank Corporation (SBC) filed a case against the Lee family for a sum of money resulting from the nonpayment of obligations before the RTC, Branch 132 in Makati City, entitled *Security Bank Corporation v. Duty Free Superstore, Inc., Daniel U. Lee, Samuel U. Lee and Jacqueline M. Lee*, docketed as Civil Case No. 98-196. On January 30, 1998, the RTC in Civil Case No. 98-196 issued a Writ of Preliminary Attachment in favor of SBC, granting attachment of the defendants' real and personal properties.[15] The writ, however, was neither registered nor annotated on the titles of the subject Antipolo properties at the RD.

On February 16, 1998, MDEC, MHI, and three other corporations owned by the Lee family filed before the Securities and Exchange Commission (SEC) a Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver.[16] Said petition acknowledged, among others, MDEC and MHI's indebtedness with Bangkok Bank, and admitted that matured and maturing obligations could not be met due to liquidity problems. The petition likewise had a list of creditors to whom the corporations remain indebted, which included Asiatrust.[17] The petition stated that the Lee family and their corporations had more than sufficient properties to cover all liabilities to their creditors; and presented a list of all their properties including the subject properties located in Antipolo, Rizal. Notably, the list of properties attached to the petition indicated that the subject Antipolo properties of the spouses Lee had already been

[14] *Id.* at 95.

[15] *Id.* at 80.

[16] *Id.* at 95.

[17] *Id.* at 81.

earmarked, or that they had already served as security, for MDEC's unpaid obligation with Asiatrust.[18]

On February 20, 1998, the SEC issued a Suspension Order enjoining the Lee corporations from disposing of their property in any manner except in the ordinary course of business, and from making any payments outside the legitimate expenses of their business during the pendency of the petition.[19]

On March 12, 1998, Bangkok Bank instituted an action before the RTC, Branch 141 in Makati City to recover the loans extended to MDEC and MHI under the guarantees, docketed as Civil Case No. 98-628.[20] Bangkok Bank's application for the issuance of a writ of preliminary attachment was granted through the Orders dated March 17 and 18, 1998, covering the properties of the Lee family in Antipolo, Cavite, Quezon City, and Baguio, among others.[21]

While enforcing the writs of preliminary attachment, Bangkok Bank discovered that the spouses Lee had executed a REM over the subject Antipolo properties in favor of Asiatrust; and that the REM had previously been annotated on the titles.[22] Thus, the writs of preliminary attachment were also inscribed at the back of the TCTs covering the subject Antipolo properties, next to the annotation of the REM.

With MDEC still unable to make payments on its defaulting loans with Asiatrust, the latter foreclosed the subject mortgaged Antipolo properties. On April 15, 1998, Asiatrust won as the highest bidder at the auction sale, purchasing the said properties for PhP 20,864,735.[23] Thereafter, Asiatrust still filed an action against MDEC and the spouses Lee to collect the deficiency

---

[18] *Id.* at 15, 94.

[19] *Id.* at 92.

[20] *Id.* at 36-37, 92.

[21] *Id.* at 37, 92, 96.

[22] *Id.* at 37, 92.

[23] *Id.* at 93.

amounting to at least PhP 14,800,000. Up until the filing of the memoranda by the parties before this Court, the said action remained pending before the CA.[24]

Subsequently, the sale was registered on April 21, 1998.[25] Believing the REM and the foreclosure sale to be fraudulent, Bangkok Bank did not redeem the subject properties. As there had been no effort to redeem the properties, consequently, the TCTs covering the subject properties were consolidated in the name of Asiatrust on April 30, 1999, and 120 new titles were issued in the name of Asiatrust without the annotation of the writs of preliminary attachment, which were deemed canceled.[26]

Among the 120 titles foreclosed by Asiatrust in Louisville Subdivision in Antipolo, only 12 properties were sold for a maximum price of PhP 250,000 for a house and lot, and 108 titles remained. Asiatrust was still unable to sell them and convert them into cash. From then on, Asiatrust maintained security services and paid the real estate taxes of the subject Antipolo properties, among others.

On July 20, 1999, Bangkok Bank filed the instant case before the RTC, Branch 73 in Antipolo City, docketed as Civil Case No. 99-5388 for the rescission of the REM over the subject properties, annulment of the April 15, 1998 foreclosure sale, cancellation of the new TCTs issued in favor of Asiatrust, and damages amounting to PhP 600,000. In its action, Bangkok Bank alleged, among others, that the presumption of fraud under Article 1387 of the Civil Code applies, considering that a writ of preliminary attachment was issued in January 1998 in favor of SBC against Samuel. It also claimed that collusion and fraud transpired between the spouses Lee and Asiatrust in the execution of the REM. On August 5, 1999, Bangkok Bank amended its complaint to implead the RD.

---

[24] In *Asiatrust Bank v. Midas Diversified Export Corporation, Samuel U. Lee, et al.*, CA-G.R. CV No. 80862, Memorandum for Spouses Lee, p. 11.

[25] *Rollo*, p. 93.

[26] *Id.* at 93, 96.

Meanwhile, on March 23, 2000, the RTC, Branch 141 in Makati City in Civil Case No. 98-628 rendered a Partial Decision in favor of Bangkok Bank, ordering the Lee family, pursuant to the guarantees, to pay USD 1,998,554.60 for the CLA of MDEC and USD 800,000 for the CLA of MHI, with the corresponding 12% interest per annum from the date of the filing of the complaint, *i.e.*, on March 12, 1998, until fully paid.

But Bangkok Bank had only levied on the execution of the partial decision, some old equipment, office fixtures and furniture, garments, textiles, and other small production equipment with an approximate aggregate value of PhP 600,000.[27] Considering the total liabilities of the Lee family to Bangkok Bank, the levied properties were insufficient to satisfy the partial judgment in Civil Case No. 98-628.

The Ruling of the RTC

After due hearing with the parties presenting their evidence, on April 21, 2003, the RTC rendered a Decision dismissing the case, the *fallo* reading:

> WHEREFORE, premises considered, the instant case is hereby DISMISSED for lack of merit.
>
> No findings as to the counterclaim of the defendants for insufficiency of evidence to support the claim.
>
> SO ORDERED.[28]

In dismissing the instant case, the trial court found no concrete proof of the alleged fraud committed by the Lee family and Asiatrust, more so, that of a collusion or conspiracy between them. Consequently, it ruled that Art. 1381(3) of the Civil Code does not apply. Moreover, it noted that Bangkok Bank has not proved that it cannot in any manner collect its claims from the Lee family. For one, it held that Bangkok Bank chose not to exercise its right of redemption over the subject properties; for another, the subject properties were not the only properties of

---

[27] *Id.* at 83.

[28] *Id.* at 101.

the Lee family as admitted by Bangkok Bank's sole witness, Susan Capalaran.

The RTC explained that a mortgage contract is an onerous undertaking to secure payment of an obligation and cannot be considered as a gratuitous alienation; thus, Art. 1387 of the Civil Code does not apply.[29] Finally, it held that neither fraud nor a violation of the SEC suspension order can result from the execution of the REM and the foreclosure of the subject properties, because according to the testimony of Bangkok Bank's sole witness, the subject properties are not covered by the SEC Suspension Order for which reason Bangkok Bank filed an action to attach them. As the subject properties are not covered by the SEC Suspension Order, the RTC held that there is nothing that precludes the spouses Lee from mortgaging them to Asiatrust.[30]

The Ruling of the CA

Aggrieved, Bangkok Bank appealed the trial court's decision before the CA; and on March 15, 2006, the appellate court rendered the assailed decision, which granted the appeal, and reversed and set aside the RTC decision. The decretal portion reads:

> WHEREFORE, premises considered, the instant appeal is hereby GRANTED. The assailed Decision dated April 21, 2003 of the trial court is REVERSED and SET ASIDE. A new judgment is rendered ordering the:
>
> 1. Rescission of the Real Estate Mortgage over Appellees-spouses Lee's Antipolo properties in favor of appellee Asiatrust;
> 2. Annulment of the Foreclosure Sale conducted on April 15, 1998;
> 3. Cancellation of the Transfer Certificate of Titles in the name of Asiatrust; and
> 4. Reversion of the titles in favor of appellees-spouses Lee.

---

[29] *Id.* at 100.

[30] *Id.* at 101.

No costs.

SO ORDERED.[31]

In reversing and setting aside the RTC decision, the CA held as crucial the Letter dated April 4, 1998 sent by the counsel of the Midas Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the trial court relative to the extra-judicial foreclosure of the REM scheduled on April 15, 1998. The letter assailed said proceeding as bereft of legal and factual bases in the light of the February 20, 1998 Suspension Order of the SEC.[32] It held that the present counsel of petitioner-spouses Lee cannot take a 360-degree turn as regards their predecessor's position, for Bangkok Bank merely adopted petitioners' earlier stance. Thus, the CA ruled that petitioner-spouses Lee are in estoppel *in pais*, under Art. 1431 of the Civil Code and Section 2(a) of Rule 131 of the Revised Rules on Evidence.

The CA found that the subject Antipolo properties, though personal assets of the spouses Lee, are covered by the February 20, 1998 Suspension Order of the SEC, since they are included in the list submitted to SEC by the Lee family; and that Samuel is a guarantor of the loans incurred by MDEC and MHI from Bangkok Bank. It ruled that Samuel, being a guarantor, is jointly and severally liable to Bangkok Bank for the corporate debts of MDEC and MHI, as he divested himself from the protection of the limited liability doctrine, which, the CA held, was shown (1) through the inclusion of the said subject Antipolo properties in the list submitted to the SEC; and (2) by Samuel, through the guarantees that he executed, thus voluntarily binding himself to the payment of the loans incurred from Bangkok Bank.

The CA also rejected petitioners' claim that the subject properties were allotted to Asiatrust. It reasoned that if the subject properties were indeed allotted to Asiatrust, then these would not have been included in the list of properties submitted

---

[31] *Id.* at 89-90.

[32] *Id.* at 84.

to the SEC. It added that the absence of any encumbrance annotated on the TCTs or any document appurtenant to it prior to the January 30, 1998 writ of preliminary attachment issued in Civil Case No. 98-196 and the February 20, 1998 Suspension Order further belies petitioners' claim. The CA held that fraud was perpetrated through the REM executed and registered on February 23, 1998 pursuant to the presumption in the second paragraph of Art. 1387 of the Civil Code, which provides that "alienations by onerous title are also presumed fraudulent when made by persons against whom x x x some writ of attachment has been issued." Consequently, the spouses Lee filed the instant petition.

The Issues

I.

Whether or not Bangkok Bank can maintain an action to rescind the REM on the subject Antipolo properties despite its failure to exhaust all legal remedies to satisfy its claim.

II.

Whether or not properties owned by private individuals should be covered by a suspension order issued by the SEC in an action for suspension of payments.

III.

Whether or not a surety or guarantor is guilty of defrauding creditors for executing a REM in favor of one creditor prior to the filing of a Petition for Suspension of Payments.[33]

The Court's Ruling

The core issue is whether the February 23, 1998 REM executed over the subject Antipolo properties and the April 15, 1998 foreclosure sale were committed in fraud of petitioners' other creditors, and, as a consequence of such fraud, the questioned mortgage could, therefore, be rescinded. Petitioners allege that no fraud exists.

The petition is meritorious.

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

Prevailing and applicable SEC laws

At the outset, it must be noted that at the time the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver was filed before the SEC on February 16, 1998 by MDEC, MHI, and three other corporations owned by the Lee family, *Batas Pambansa Blg.* (BP) 178 or the then Revised Securities Act was the primary governing law along with Presidential Decree No. (PD) 902-A, as amended, and the Corporation Code of the Philippines. Pertinently, among others, the SEC was also covered by the Investment House Law (PD 129), the Financing Company Act under Republic Act. No. (RA) 2626, the Foreign Investments Act (RA 7042), and the Liberalized Foreign Investments Act (RA 8179). And subsequent to the filing of the instant case, the Securitization Act of 2004 (RA 9267) and the Lending Company Regularization Act of 2007 (RA 9474) were also enacted.

PD 902-A,[34] however, was further amended by RA 8799 or the Securities Regulation Code, approved on July 19, 2000 by President Joseph Estrada.[35] Under Sec. 5.2 of RA 8799,[36] the SEC's original and exclusive jurisdiction over all cases enumerated

---

[34] Reorganization of the Securities and Exchange Commission with Additional Power and Placing the Said Agency under the Administrative Supervision of the Office of the President (March 11, 1976).

[35] It became effective on August 8, 2000, 15 days after its publication on July 24, 2000 in a newspaper of general circulation.

[36] Sec. 5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided,* That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

under Sec. 5 of PD 902-A[37] was transferred to the appropriate RTC. RA 8799, Sec. 5.2, however, expressly stated as an exception, that the "**[t]he Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed**." Accordingly, the Consolidated Petition for the Declaration of a State of Suspension of Payments and for Appointment of a Management Committee/Rehabilitation Receiver filed on February 16, 1998 by MDEC, MHI and three other corporations owned by the Lee family, remained under the jurisdiction of the SEC until finally disposed of pursuant to the last sentence of Sec. 5.2 of RA 8799.

The subject properties are not under the purview of the SEC Suspension Order

Pivotal to the resolution of the instant case is whether the subject properties owned by the spouses Lee were subject to the February 20, 1998 SEC Suspension Order. On the one hand, the CA held and found these to be subject to the Suspension Order. The RTC, on the other hand, found contrariwise in that the assailed REM and foreclosure sale did not violate the SEC Suspension Order.

---

[37] Section 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

A review of the applicable laws and existing jurisprudence would show that the subject properties owned by the spouses Lee were not subject to the February 20, 1998 SEC Suspension Order.

PD 902-A vested the SEC with jurisdiction on petitions for suspension of payments only on corporations, partnerships and associations; not on individual persons

The SEC's jurisdiction is evident from the statutorily vested power of jurisdiction, supervision and control by the SEC over all corporations, partnerships or associations, which are grantees of primary franchise, license or permit issued by the government to operate in the Philippines, and its then original and exclusive jurisdiction over petitions for suspension of payments of said entities. Secs. 3 and 5 of PD 902-A pertinently provides, thus:

> Sec. 3. The Commission shall have absolute jurisdiction, supervision and control over all **corporations, partnerships or associations**, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military.
>
> Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall **have original and exclusive jurisdiction to hear and decide cases involving:**
>
> x x x x x x x x x
>
> (d) **Petitions of corporations, partnerships or associations to be declared in the state of suspension of payments in cases where the corporation, partnership or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due** or in cases where the corporation, partnership or association has no sufficient assets to cover its liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree. (Emphasis Ours.)

It can be clearly gleaned from the above provisions that in cases of petitions for the suspension of payments, the SEC has jurisdiction over corporations, partnerships and associations, which are grantees of primary franchise or license or permit issued by the government to operate in the Philippines, and their properties. And it is indubitably clear from the aforequoted Sec. 5(d) that only **corporations, partnerships and associations** —NOT private individuals—can file with the SEC, petitions for declaration in a state of suspension of payments. Thus, it logically follows that the SEC does not have jurisdiction to entertain petitions for suspension of payments filed by parties other than **corporations, partnerships or associations**. Indeed, settled is the rule that it is axiomatic that jurisdiction is the authority to hear and determine a cause, which is conferred by law and not by the policy of any court or agency.[38]

Private individuals and their privately owned properties cannot be placed under the jurisdiction of the SEC in a petition for suspension of payments

In *Chung Ka Bio v. Intermediate Appellate Court*,[39] this Court resolved in the negative the issue of whether private individuals can file with the SEC petitions for declaration in a state of suspension of payments. We held that Sec. 5(d) of PD 902-A clearly does not allow a mere individual to file the petition, which is limited to "corporations, partnerships or associations." Besides, We pointed out that the SEC, being a mere administrative agency, is a tribunal of limited jurisdiction and, as such, can only exercise those powers, which are specifically granted to them by their enabling statutes. We, thus, concluded that where no authority is granted to hear petitions of individuals for suspension of payments, such petitions are beyond the competence of the SEC. In short, the SEC has no jurisdiction over private individuals relative to any petition for suspension of payments, whether the private individual is a petitioner or a

---

[38] *Cayabyab v. De Aquino*, G.R. No. 159974, September 5, 2007, 532 SCRA 353; *Heirs of Florencio Adolfo v. Cabral*, G.R. No. 164934, August 14, 2007, 530 SCRA 111.

[39] G.R. No. 71837, July 26, 1988, 163 SCRA 534.

co-petitioner. We have said time and again that the SEC's "jurisdiction is limited only to corporations and corporate assets"; it has no jurisdiction over the properties of private individuals or natural persons, even if they are the corporation's officers or sureties.[40] We have, thus, consistently applied this ruling to the subsequent *Ong v. Philippine Commercial International Bank*,[41] *Modern Paper Products, Inc. v. Court of Appeals*,[42] and *Union Bank of the Philippines v. Court of Appeals*.[43]

Here, it is undisputed that the petition for suspension of payments was collectively filed by the five corporations owned by the Lee family. It is likewise undisputed that together with the consolidated petition is a list of properties, which included the subject Antipolo properties owned by Samuel and Pauline Lee. The fact, however, that the subject properties were included in the list submitted to the SEC does not confer jurisdiction on the SEC over such properties. It is apparent that even if the members of the Lee family are joined as co-petitioners with the five corporations, still, this could not confer jurisdiction on the SEC over the Lee family members—as private individuals—nor could this affect their privately owned properties.

Further, the fact that the debts of MDEC and MHI to Bangkok Bank are secured by the Lee family through the guarantees will not likewise put the Lee family and their privately owned properties under the jurisdiction of the SEC through the consolidated petition for suspension of payments.

Therefore, the February 20, 1998 Suspension Order issued by the SEC did not and could not have included the subject properties. The RTC correctly grasped this point that the disposition of the subject properties did not violate the suspension order.

---

[40] *Ong v. Philippine Commercial International Bank*, G.R. No. 160466, January 17, 2005, 448 SCRA 705, 710.

[41] *Id.*

[42] G.R. No. 127166, March 2, 1998, 286 SCRA 749.

[43] G.R. No. 131729, May 19, 1998, 290 SCRA 198.

Bangkok Bank cannot take both opposing stances

Certainly, Bangkok Bank cannot take opposite positions at the same time. On the one hand, it instituted Civil Case No. 98-628 before the RTC, Branch 141 in Makati City on March 12, 1998—almost a month after the filing of the consolidated petition before the SEC and the issuance of the February 20, 1998 Suspension Order in order to recover the loans extended to MDEC and MHI under the guarantees. In it, Bangkok Bank contended that the subject lots were not part of the properties under the jurisdiction of the SEC in the case for suspension of payments. But, on the other hand, Bangkok Bank claims that the Antipolo properties are subject to the February 20, 1998 SEC Suspension Order, and, therefore, cannot be mortgaged by the spouses Lee to Asiatrust. By saying that the subject Antipolo properties are not under the jurisdiction of the SEC that is hearing the consolidated petition for suspension of payments, it necessarily follows that the same properties could not be subject to the SEC Suspension Order. This admission is also very clear in the statement made by Bangkok Bank's sole witness, Susan Capalaran:[44]

> Q: In other words, by your filing of an action in Makati on March 12, 1998, you are in effect saying that the properties owned by the individual stockholders are not covered by the Suspension Order of the Securities and Exchange Commission?
>
> Susan Capalaran: Yes.

The allegations of fraud in the instant petition

At the heart of the present controversy is the allegation of fraud by Bangkok Bank against the spouses Lee and Asiatrust. It is in this regard that the issue of fraud shall be examined here in detail. Preliminary matters, such as the applicable laws and their interpretation, shall first be explained. And subsequently, in order to fully appreciate the allegations of fraud by Bangkok

---

[44] *Rollo*, p. 16; TSN, November 27, 2000, p. 21.

Bank, they shall be discussed in three parts: (1) the existence of fraud on the part of the spouses Lee; (2) the existence of fraud on the part of Asiatrust; and separately, (3) the existence of collusion on the part of the spouses Lee and Asiatrust. It is imperative to expound on these points separately in order to illustrate that the mere existence of fraud on the part of one party, *i.e.*, the spouses Lee (against whom some judgment or some writ of attachment has been issued),[45] does not necessarily result in the rescission of a supposed alienation, if there is any.

The presumption of fraud under Art. 1387 of the Civil Code does not apply in the present case

Under Art. 1381(3) of the Civil Code, contracts, which were "undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them," are rescissible. Art. 1387 of the Code states when an act is presumed to be fraudulent, thus:

> Art. 1387. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.
>
> Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.
>
> In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence.

It is with regard to the foregoing provisions that the CA anchored its ruling of the existence of a presumption of fraud in the instant case. This presumption, however, finds no application to this case.

The presumption of fraud established under Art. 1387 does not apply to registered lands IF "the **judgment or attachment**

---

[45] *See* CIVIL CODE, Art. 1387(2).

made is not also registered."[46] In *Abaya v. Enriquez*,[47] Abaya was able to obtain a judgment against Enriquez for a sum of money, and the judgment was partially unsatisfied after Enriquez made a partial payment. The judgment and the writ of execution, however, was never annotated on the titles of the registered lands owned by Enriquez.[48] Subsequently, Enriquez sold the said lands. In an action for rescission instituted by Abaya, the Court ruled that the presumption of fraud does not apply as the judgment and the attachment have not been registered and annotated on the title.[49] The Court held:

> Where the judgment rendered against the defendant x x x has not been entered in the records of the register of deeds, relative to an immovable belonging to the judgment debtor, the subsequent sale of said property by the latter, shall not be rescinded upon the ground of fraud, unless the complicity of the buyer in the fraud imputed to said vendor is established by other means than the presumption of fraud x x x.[50]

In this case, prior to the annotation of the REM on February 23, 1998, SBC was able to successfully acquire a writ of preliminary attachment in its favor against the spouses Lee on January 30, 1998 in a case for a sum of money for nonpayment of its obligation. Bangkok Bank alleges that because of this, the presumption of fraud under Art. 1387 of the Civil Code applies. But while a judgment was made against the spouses Lee in favor of SBC on January 30, 1998, this, however, was not annotated on the titles of the subject properties. In fact, there is no showing that the judgment has ever been annotated on the titles of the subject properties. As established in the facts, there were only two annotations at the back of the titles of the Antipolo properties:

---

[46] 4 E.L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 740 (4th ed., 2000).

[47] 101 Phil. 1210 (1957).

[48] 4 E.L. Paras, *supra* note 46, at 740-41; citing *Abaya v. Enriquez, supra* note 47.

[49] *Id.* See also *Orsal v. Alisbo*, 106 Phil. 655, 660 (1959).

[50] *Abaya v. Enriquez, supra* note 47.

first, the REM executed in favor of Asiatrust on February 23, 1998; and *second*, the writ of preliminary attachment in favor of Bangkok Bank on March 18, 1998. Considering that the earlier SBC judgment or attachment was not, and in fact never was, annotated on the titles of the subject Antipolo properties, prior to the execution of the REM, the presumption of fraud under Art. 1387 of the Code clearly cannot apply.

Even assuming that Art. 1387 of the Code applies, the execution of a mortgage is not contemplated within the meaning of alienation by onerous title under the said provision

Under Art. 1387 of the Code, fraud is presumed only in **alienations** by onerous title of a person against whom a judgment or attachment has been issued. The term, alienation, connotes the "transfer of the property and possession of lands, tenements, or other things, from one person to another."[51] This term is "particularly applied to **absolute conveyances** of real property" and must involve a "complete transfer from one person to another."[52] A mortgage does not contemplate a transfer or an absolute conveyance of a real property.[53] It is "an interest in land created by a written instrument providing security for the performance of a duty or the payment of a debt."[54] When a debtor mortgages his property, he "merely subjects it to a **lien** but **ownership thereof is not parted with**."[55] It is merely a lien that neither creates a title nor an estate.[56] It is, therefore, certainly not the alienation by onerous title that is contemplated in Art. 1387 where fraud is to be presumed.

In this very action, Bangkok Bank claims that when the spouses Lee executed the REM in favor of Asiatrust, the presumption

---

[51] *BLACK'S LAW DICTIONARY* 72 (6th centennial ed.).

[52] *Id.* (Emphasis Ours.)

[53] H.S. De Leon, *COMMENTS AND CASES ON CREDIT TRANSACTIONS* 413-414 (2002).

[54] *BLACK'S LAW DICTIONARY, supra* note 51, at 1009.

[55] H.S. De Leon, *supra* note 53, at 415. (Emphasis Ours.)

[56] *BLACK'S LAW DICTIONARY, supra* note 51, at 1009-1010.

of fraud under Art. 1387 became applicable. We hold in the negative. As We have plainly discussed, a mortgage is not that which is contemplated in the term "**alienation**" that would make the presumption of fraud under Art. 1387 apply. It requires a full and absolute conveyance or transfer of property from one person to another, such as that in the form of a sale. As elucidated earlier, a mortgage merely creates a lien on the property that would afford the mortgagee/creditor greater security in the obligation of the mortgagor/debtor. This being so, as the REM is not the alienation contemplated in Art. 1387 of the Code, the presumption of fraud cannot apply.

In any case, the application of the presumption of fraud under Art. 1387, if applicable, could only be made to apply to the spouses Lee as the person against whom a judgment or writ of attachment has been issued; not to Asiatrust

A careful reading of Art. 1387 of the Code *vis-à-vis* its Art. 1385 would plainly show that the presumption of fraud in case of alienations by onerous title only applies to the person who made such alienation, and against whom some judgment has been rendered in any instance or some writ of attachment has been issued. A third person is not and should not be automatically presumed to be in fraud or in collusion with the judgment debtor. In allowing rescission in case of an alienation by onerous title, the third person who received the property conveyed should likewise be a party to the fraud.[57] As clarified by Art. 1385(2) of the Code, so long as the person who is in legal possession of the property did not act in bad faith, rescission cannot take place. Thus, in all instances, as to the third person in legal possession of the questioned property, good faith is presumed. Accordingly, it is upon the person who alleges bad faith or fraud that rests the burden of proof.[58]

---

[57] 4 A.M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES* 576 & 589 (2002).

[58] *Balbuena v. Sabay*, G.R. No. 154720, September 4, 2009, 598 SCRA 215, 227; *Coastal Pacific Trading, Inc. v. Southern Rolling Mills, Co., Inc.*, G.R. No. 118692, July 28, 2006, 497 SCRA 11, 39.

Asiatrust, being a third person in good faith, should not be automatically presumed to have acted fraudulently by the mere execution of the REM over the subject Antipolo properties, there being no evidence of fraud or bad faith. Regrettably, in ratiocinating that fraud was committed by both the spouses Lee and Asiatrust, the CA merely anchored its holding on the presumption espoused under Art. 1387 of the Code,[59] nothing more.

The alleged fraud on the part of the spouses Lee was not proved and substantiated

It appears that the argument of Bangkok Bank on the existence of fraud on the part of the spouses Lee[60] revolves around the application of the presumption of fraud under Art. 1387 of the Code.[61] Bangkok Bank failed to substantiate its allegations by presenting clear and convincing proof that the spouses Lee indeed committed fraud in mortgaging the subject properties to Asiatrust, and instead anchored its existence of the presumption under Art. 1387. This cannot stand before this Court.

On the contrary, the spouses Lee proved the absence of fraud on their part. During trial, the spouses Lee and Asiatrust were able to substantially establish that, indeed, a loan agreement has been existing between them since 1996 and that MDEC made use of it on several occasions in 1997. It has likewise been established that, as MDEC defaulted in its payment of the loan that matured in 1997, the parties began negotiations as to how MDEC could secure the loans. It was concluded in December 1997 upon Samuel's proposal that his Antipolo properties be used to secure MDEC's loans by means of a mortgage. This settlement has been agreed upon even before any action was filed against the Lee corporations in 1998. These facts have been established during trial without any controversy.

---

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

[60] As persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued under Art. 1387, paragraph 2 of the Civil Code.

[61] *Rollo*, pp. 19-21.

No deception could have been used by the spouses Lee in including in the list of properties, which they submitted to the SEC, the subject Antipolo properties. *First*, it is undisputed that the list of properties submitted by the Lee corporations to the SEC clearly indicated that the subject Antipolo properties have already been earmarked, or have already been serving as security, for its loan obligations with Asiatrust. *Second*, MDEC, through its counsel, truly believed in good faith that the inclusion of the spouses Lee's private properties in the list submitted to the SEC is valid and regular. As can be seen in the letter sent by the counsel of the Midas Group of Companies to the Office of the Clerk of Court and *Ex-Officio* Sheriff of the Antipolo RTC on April 4, 1998, at the time when the subject Antipolo properties were being foreclosed by Asiatrust, its counsel vigorously countered the actions of Asiatrust and stated that the subject Antipolo properties cannot be foreclosed pursuant to the SEC Suspension Order.[62] And as discussed *infra*, the alleged collusion between the spouses Lee and Asiatrust appears to be a mere figment of imagination.

In any case, the facts show no presence of fraud on the part of Asiatrust; therefore, the REM was not a sham

Even pushing further to say that the REM was executed by the spouses Lee to defraud creditors, the REM cannot be rescinded and shall, therefore, stand, as Asiatrust—the third party, in favor of which the REM was executed, and which subsequently foreclosed the subject properties—acted in good faith and without any badge of fraud. As a general rule, whether the person, against whom a judgment was made or some writ of attachment was issued, acted **with or without fraud**, so long as the third person who is in legal possession of the property in question did not act with fraud and in bad faith, an action for rescission cannot prosper. Art. 1385 of the Civil Code explicitly states this, thus:

Art. 1385. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits,

[62] *Id.* at 6-9, 98.

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. (Emphasis Ours.)

As to who or which entity is in legal possession of a property, the registration in the Registry of Deeds of the subject property under the name of a third person indicates the legal possession of that person.[63] In this case, Asiatrust is in the legal possession of the subject Antipolo properties after the titles under the name of Spouses Lee have been canceled, and new TCTs have been issued on April 20, 1999, under the name of Asiatrust. What is more, 12 title out of the 120 titles in the Antipolo properties in question have already been sold to different persons, which make them in legal possession of the properties. It is, thus, established that Asiatrust and the 12 other unnamed persons are in legal possession of the subject Antipolo properties; and it is imperative to prove that they legally took possession of them in good faith and without any badge of fraud.

Now, as to whether Asiatrust acted with fraud or bad faith, Bangkok Bank failed to present any clear and convincing evidence that would ascertain its existence.

Contracts in fraud of creditors are those executed with the **intention** to prejudice the rights of creditors. They should not be confused with those entered into without such mal-intent, even if, as a direct consequence, a creditor may suffer some damage. More so it is, when the allegation involves not only fraud on the part of the debtor, but also that of another creditor. In determining whether or not a certain conveying contract is fraudulent, what comes to mind first is the question of whether the conveyance was a *bona fide* transaction or a trick and contrivance to defeat creditors.[64] Haste alone in the foreclosure

---

[63] 4 E.L. Paras, *supra* note 46, at 731.

[64] 4 A.M. Tolentino, *supra* note 57, at 575-576.

of the mortgage does not constitute the existence of fraud. Considering that the totality of circumstances clearly manifests the want of fraud and bad faith on the part of the parties to the REM in question, consequently, the REM cannot be rescinded.

In this case, it is clearly established that there was a *bona fide* transaction between the spouses Lee and Asiatrust that necessitated the negotiations resulting from the former's default in the payment of its obligations; and which brought about the execution of the REM to secure their pre-existing obligations. Particularly on the part of Asiatrust, the testimonies of Shirley Benedicto, its Vice-President, who was part of the bank's account management group tasked to ensure the proper management of loans from its inception up to its collection, and of Atty. Neriza San Juan, the bank's former Vice-President, and Head of its Credit Support Services and Legal Services Groups, amply proved the existence of good faith and dismissed the allegation of fraud. Asiatrust was able to establish (1) the existence of a loan agreement through a loan facility/credit line between Asiatrust and MDEC since July 25, 1996, which was guaranteed by the Lee family, including Samuel; (2) the advances made by MDEC throughout 1997, which amounted to an aggregate sum of PhP 31,000,000; (3) the default in payment of MDEC on its maturing loans; and (4) the negotiations, which took place between Asiatrust and Samuel on behalf of MDEC that led, in December 1997, to the agreement for Samuel to mortgage the subject Antipolo properties to secure the defaulting loan and the loans, which were yet to mature.[65] And as the last advances made by MDEC matured on February 20, 1998, it was just timely and appropriate for Asiatrust to foreclose the subject properties on April 15, 1998 in order to ensure that it is paid of the obligations, which MDEC owed to it. In this case, Asiatrust was left with only one clear and practicable means by which it could be paid of MDEC's obligations, *i.e.*, by foreclosing the mortgaged properties. After all, "[t]he only right of a mortgagee in case of non-payment of a debt secured by mortgage would be to foreclose the mortgage

[65] *Rollo*, pp. 97-99.

and have the encumbered property sold to satisfy the outstanding indebtedness."[66]

Conversely, Asiatrust did not sleep on its rights as a mortgage creditor of MDEC by foreclosing the mortgage on the spouses Lee's Antipolo properties. On the contrary, it is odd but worth noting that Bangkok Bank never acted on its rights as creditor at the soonest possible time. It could have asserted it rights as creditor at the time when the Lee family's corporations started to default in their payments of the loans as early as October 1997.[67] When Bangkok Bank finally instituted an action against the Lee family on March 12, 1998 to collect the outstanding obligations of MDEC and MHI, a writ of preliminary attachment was issued by the Makati RTC in the same month covering the properties of the Lee family, including the subject Antipolo properties. And while enforcing the said writ, Bangkok Bank discovered the existing REM that had already been annotated on the titles of the subject Antipolo properties. But Bangkok Bank did nothing upon its knowledge and discovery. Worse, even at the time of the foreclosure and the redemption period, or until April 30, 1999, Bangkok Bank likewise did not act on the alleged fraudulent execution of the REM; nor did it redeem the subject properties. Rather, it was only on July 20, 1999 that Bangkok Bank seems to have belatedly realized that the subject Antipolo properties could properly be another means by which it could be paid of the defaulting obligations of MDEC and MHI. Interestingly, even on the elevation of this case to Us, Bangkok Bank's counsel had to move for four extensions, totaling to 52 days within which to file a comment on the instant petition, and has been warned for it.[68] Asiatrust cannot be faulted for acting with prudence, in good faith, and without any badge of fraud in the creation of the REM and in the foreclosure of the mortgage to ensure the satisfaction of the debts owed to it

---

[66] H.S. De Leon, *supra* note 53, at 414; citing *Guanzon v. Argel*, G.R. No. L-27706, June 16, 1970, 33 SCRA 474.

[67] *Rollo*, p. 95.

[68] *Id.* at 134.

by MDEC. Bangkok Bank should have likewise done so at the earliest possible opportunity.

Furthermore, Asiatrust, in good faith, conducted the necessary diligence and meticulousness expected of it. During cross-examination, Atty. San Juan established that when the spouses Lee offered the subject Antipolo properties as collateral, Asiatrust had them appraised and required the spouses Lee to submit a photocopy of the titles, location map, and the relevant tax declarations, which was forwarded to its Appraisal Team. She further explained that credit investigation is a continuing annual process since the bank considers the market information in connection with the account of the borrower.[69] Indeed:

> The mortgagee has a right to rely in good faith on what appears on the certificate of title of the mortgagor to the property given as security and in the absence of anything to excite suspicion, he is under no obligation to look beyond the certificate and investigate the title of the mortgagor appearing on the fact of the certificate. Accordingly, the right or lien of an innocent mortgagee for value upon the mortgaged property must be respected and protected, even if the mortgagor obtained his title through fraud. The remedy of the persons prejudiced is to bring an action for damages against the person who caused the fraud x x x.[70]

There was no collusion between the spouses Lee and Asiatrust

Besides the fact that individually, fraud was not sufficiently and convincingly established on the part of the spouses Lee and Asiatrust, Bangkok Bank's allegation of collusion between them was likewise unsubstantiated and therefore untenable.

First, even after the subject Antipolo properties were foreclosed by Asiatrust, Asiatrust sought the recovery of the deficiency amounting to at least PhP 14,800,000. And until the filing of

---

[69] *Id.* at 99.

[70] H.S. De Leon, *supra* note 53, at 411-412; citing *Cebu International Finance Corporation v. Court of Appeals*, G.R. No. 107554, February 13, 1997, 268 SCRA 178; and *Philippine National Bank v. Court of Appeals*, G.R. No. L-43972, July 24, 1990, 187 SCRA 735.

the memoranda by the parties before this Court, the said action remains pending before the CA.[71]

Second, Asiatrust filed a criminal case against Samuel for violation of BP 22.[72] At the time of the filing of the petition for review, the case was still pending before the Metropolitan Trial Court of Quezon City.[73] Later, at the time of the filing of the spouses Lee's Memorandum, it was indicated that it has already been dismissed.

Third, contrary to the CA's appreciation of the facts,[74] the letter sent by Atty. Macam, counsel of the Midas Group of Companies, actually strengthens the proof that no collusion existed between the parties. Acting on the interest of MDEC, Atty. Macam sent a letter to the Clerk of Court and the *Ex-Officio* Sheriff of the Antipolo RTC, arguing that the subject Antipolo properties cannot be foreclosed as they are the subject of an existing SEC Suspension Order.[75] In fact, counsel for MDEC alleged that the foreclosure sale was illegal.[76] On the other hand, when the *Ex-Officio* Sheriff presented a copy of the letter to Asiatrust and asked the latter to comment, Asiatrust categorically stated that the subject properties could not be made a subject of the SEC Suspension Order, they being properties of the spouses Lee, natural persons outside the jurisdiction of the SEC.[77] In fact, it was Bangkok Bank's sole witness, Capalaran, who firmly agreed that, indeed, the subject properties are not covered by the Suspension Order that is why Bangkok Bank,

---

[71] *Rollo*, p. 17; in *Asiatrust Bank v. Midas Diversified Export Corporation, Samuel U. Lee, et al.*, CA-G.R. CV No. 80862, Memorandum for Spouses Lee, p. 11.

[72] *People of the Philippines v. Samuel U. Lee*, Criminal Case Nos. 51833-35, Memorandum for Spouses Lee, p. 11.

[73] *Rollo*, p. 18.

[74] *Id.* at 84-87.

[75] *Id.* at 84-86.

[76] *Id.* at 86.

[77] *Id.* at 98-99.

too, filed an action against the spouses Lee on March 12, 1998 and sought the attachment of the said properties.[78]

With all the foregoing facts strongly established, We confirm the absence of fraud, bad faith, and collusion between the spouses Lee and Asiatrust.

The requisite (1) good faith on the part of the third person and (2) fraud, necessary for an action to rescind under Art. 1381 of the Civil Code, were not complied with

In *Siguan v. Lim*,[79] this Court held that in an action to rescind under Art. 1381, the following requisites must exist:

> The action to rescind contracts in fraud of creditors is known as *accion pauliana*. For this action to prosper, the following requisites must be present: (1) the plaintiff asking for rescission has a credit prior to the alienation, although demandable later; (2) the debtor has made a subsequent contract conveying a patrimonial benefit to a third person; (3) the creditor has no other legal remedy to satisfy his claim; **(4) the act being impugned is fraudulent; (5) the third person who received the property conveyed, if it is by onerous title, has been an accomplice in the fraud**. (Emphasis Ours; citations omitted.)

Considering the discussions previously expounded, the extant records show that the fourth and fifth requisites enumerated above are absent.

As between Asiatrust and Bangkok Bank, the former has a better right over the subject Antipolo properties, it being the first to annotate its lien on the titles of the properties

It is evidently a well-settled and elementary principle that the rights of the first mortgage creditor or mortgagee over the mortgaged properties are superior to those of a subsequent attaching creditor and other junior mortgagees.[80]

---

[78] *Id.* at 16; TSN, November 27, 2000, p. 21.

[79] G.R. No. 134685, November 19, 1999, 318 SCRA 725, 735.

[80] *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103*, G.R. No. 160236, October 16, 2009, 604 SCRA, 73, 104; *Cabral*

In this case, it is a fact that the REM was annotated on the titles of the subject Antipolo properties ahead of the writs of preliminary attachment issued in favor of Bangkok Bank. In fact, it was admitted by Bangkok Bank that it only knew of the existing mortgage that has already been annotated at the back of the subject titles when it sought the annotation of the writs of preliminary attachment.[81] Therefore, as between Asiatrust as mortgage creditor and Bangkok Bank as attaching creditor, it is apparent that the former has a superior right over the latter.

Besides, "as between two persons who both stand to suffer loss, the possessor of the property should be preferred in that possession, the ownership having been transferred by delivery."[82] In this case, Asiatrust, being the entity with legal possession of the subject Antipolo properties, should be preferred in that possession. In addition, 12 of the titles in question have already been sold to 12 different persons, whose identities have not been introduced in the instant case and who have not been impleaded as parties. As these persons have been in legal possession of the said properties and are in good faith, their ownership and possession, should not be disturbed.

The redemption period has already lapsed

Sec. 27, Rule 39 of the Rules of Court states the persons who may redeem a real property sold, thus:

Sec. 27. Who may redeem real property so sold.

Real property sold as provided in the last preceding section, or any part thereof sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

---

v. Evangelista, 139 Phil. 300, 306-307 (1969); H.S. De Leon, *supra* note 53, at 414; citing *Rizal Commercial Banking Corporation v. Court of Appeals*, G.R. Nos. 128833-34, April 20, 1998, 289 SCRA 292; *Marcaida v. Pigtain*, 101 Phil. 1110, 1115-1116 (1957); *Benedicto v. F.M. Yap Tico & Co.*, 46 Phil. 753, 757 (1923).

[81] *Rollo*, p. 92.

[82] 4 A.M. Tolentino, *supra* note 57, at 589.

(a) The judgment obligor, or his successor in interest in the whole or any part of the property;

(b) A **creditor having a lien by virtue of an attachment**, judgment or mortgage on the property sold, or on some part thereof, subsequent to the lien under which the property was sold. Such redeeming creditor is termed a redemptioner. (Emphasis Ours.)

From the foregoing rule, it is clear that Bangkok Bank, as an attaching creditor, has the right to redeem the subject Antipolo properties that were foreclosed by Asiatrust.[83]

In determining the period within which to redeem the foreclosed Antipolo properties in the present case, RA 337 or the *General Banking Act*[84] finds application. Pertinently, its Sec. 78 states:

Sec. 78. x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking, or credit institution, within the purview of this Act, shall have the right, **within one year after the sale of the real estate** as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, with interest thereon at the rate specified in the mortgage, and all the costs and other judicial expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. However, the purchaser at the auction sale concerned shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. (Emphasis Ours.)

In this case, the auction sale took place on April 15, 1998 and was registered with the RD on April 21, 1998. Subsequently,

---

[83] *Cayton v. Zeonnix Trading Corporation*, G.R. No. 169541, October 9, 2009, 603 SCRA 141, 151.

[84] An Act Regulating Banks and Banking Institutions and for Other Purposes (1948); cited in *Spouses Benedict and Maricel Dy Tecklo v. Rural Bank of Pamplona, Inc.*, G.R. No. 171201, June 18, 2010.

on April 30, 1999, a date already and certainly beyond the one-year redemption period provided by law, new titles were issued in favor of Asiatrust.[85] Apparently, Bangkok Bank chose not to exercise its right of redemption over the subject Antipolo properties.

Even as a general rule, "[t]he period of redemption is not tolled by the filing of a complaint or petition for annulment of the mortgage and the foreclosure sale conducted pursuant to the said mortgage,"[86] Bangkok Bank, however, filed its action for rescission way beyond the expiration of the said redemption period on July 20, 1999. After the expiration of the redemption period, Asiatrust as purchaser, therefore, became the absolute owner of the subject properties, and whose rights necessarily include the right to be in the legal possession of the properties.[87]

As a final note, in ruling for Bangkok Bank, the CA strangely did not even delve upon any fact that could have ascertained the allegation of fraud from which Bangkok Bank based its arguments. Quite the opposite, the RTC discussed in detail the facts and testimonies presented by the parties, upon which its finding of the absence of fraud was based. Indeed, factual findings by the trial court are afforded great weight by this Court especially when supported by substantial evidence on record.[88]

---

[85] *Rollo,* p. 93.

[86] *Heirs of Estelita Burgos-Lipat v. Heirs of Eugenio D. Trinidad*, G.R. No. 185644, March 2, 2010, 614 SCRA 94, 97-99; citing *Landrito, Jr. v. Court of Appeals*, G.R. No. 133079, August 9, 2005, 466 SCRA 107, 118.

[87] *Spouses Salvador F. De Vera and Feliza V. De Vera v. Agloro*, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 213-14; 3 O.M. Herrera, *REMEDIAL LAW* 373 (1999); citing *Banco Filipino Savings and Mortgage Bank v. Intermediate Appellate Court*, G.R. No. 68878, April 8, 1986, 142 SCRA 44, 48.

[88] *Allied Banking Corporation v. South Pacific Sugar Corporation*, G.R. No. 163692, February 4, 2008, 543 SCRA 585, 595; *Valgosons Reality, Inc. v. Court of Appeals*, G.R. No. 126233, September 11, 1998, 295 SCRA 449, 461; citing *Tan Chun Suy v. CA*, G.R. No. 93640, January 7, 1994, 229 SCRA 151.

While prejudice to Bangkok Bank ultimately resulted in the series of inopportune events that led to the present case, it cannot be denied that no clear, satisfactory and convincing evidence was presented to show fraud on the part of both the spouses Lee and Asiatrust. Nor was bad faith on the part of Asiatrust and the 12 other subsequent purchasers established. Accordingly, the REM annotated on the titles of the subject Antipolo properties and the subsequent foreclosure of the same properties cannot and should not be rescinded.

WHEREFORE, premises considered, the petition is hereby *GRANTED*. Accordingly, the CA's March 15, 2006 Decision and June 29, 2006 Resolution in CA-G.R. CV No. 79362 are *REVERSED* and *SET ASIDE*. The RTC's April 21, 2003 Decision in Civil Case No. 99-5388 is hereby *REINSTATED*.

No pronouncement as to costs.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 174730-37. February 9, 2011]

ROSALIO S. GALEOS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 174845-52. February 9, 2011]

PAULINO S. ONG, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; FALSIFICATION OF PUBLIC DOCUMENT; ELEMENTS.— The elements of falsification [under Article 171, paragraph 4 of the Revised Penal Code] are as follows: (a) the offender makes in a public document untruthful statements in a narration of facts; (b) he has a legal obligation to disclose the truth of the facts narrated by him; and (c) the facts narrated by him are absolutely false. In addition to the afore-cited elements, it must also be proven that the public officer or employee had taken advantage of his official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies. Likewise, in falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.

2. ID.; ID.; ID.; ID.; CONCLUSION OF LAW AND NARRATION OF FACTS, DISTINGUISHED.— A conclusion of law is a determination by a judge or ruling authority regarding the law that applies in a particular case. It is opposed to a finding of fact, which interprets the factual circumstances to which the law is to be applied. A narration of facts is merely an account or description of the particulars of an event or occurrence.

3. ID.; ID.; ID.; ID.; INFORMATION ON WHETHER A GOVERNMENT EMPLOYEE HAS RELATIVES IN THE GOVERNMENT SERVICE QUALIFIES AS A NARRATION OF FACTS.— The question of whether or not persons are related to each other by consanguinity or affinity within the fourth degree is one of fact. Contrary to petitioners' assertion, statements concerning relationship may be proved as to its truth or falsity, and thus do not amount to expression of opinion. When a government employee is required to disclose his relatives in the government service, such information elicited therefore qualifies as a narration of facts contemplated under Article 171 (4) of the Revised Penal Code, as amended. Further, it bears to stress that the untruthful statements on relationship have no relevance to the employee's *eligibility* for the position but pertains rather to *prohibition* or restriction **imposed by law** on the appointing power.

4. ID.; ID.; ID.; ID.; ID.; WITHHOLDING INFORMATION ON RELATIVES IN THE GOVERNMENT SERVICE IN THE STATEMENT OF ASSETS, LIABILITIES, AND NET WORTH (SALN) CONSTITUTES FALSIFICATION OF PUBLIC DOCUMENTS; REASON.— Since petitioner Galeos answered "No" to the question in his 1993 SALN if he has relatives in the government service within the fourth degree of consanguinity, he made an untruthful statement therein as in fact he was related to Ong, who was then the municipal mayor, within the fourth degree of consanguinity, he and Ong being first cousins (their mothers are sisters). As to his 1994, 1995 and 1996 SALN, Galeos left in blank the boxes for the answer to the similar query. In *Dela Cruz v. Mudlong,* it was held that one is guilty of falsification in the accomplishment of his information and personal data sheet if he withholds material facts which would have affected the approval of his appointment and/or promotion to a government position. By withholding information on his relative/s in the government service as required in the SALN, Galeos was guilty of falsification considering that the disclosure of such relationship with then Municipal Mayor Ong would have resulted in the disapproval of his permanent appointment pursuant to Article 168 (j) (Appointments), Rule XXII of the *Rules and Regulations Implementing the Local Government Code of 1991* (R.A. No. 7160). x x x Section 7 (e), Rule V of the Implementing

Rules of Book V, Executive Order No. 292 otherwise known as the Administrative Code of 1987, provides that the CSC shall disapprove the appointment of a person who "has been issued such appointment in violation of existing Civil Service Law, rules and regulations." Among the prohibited appointments enumerated in CSC Memorandum Circular No. 38, series of 1993 are appointments in the LGUs of persons who are related to the appointing or recommending authority within the fourth civil degree of consanguinity.

5. ID.; ID.; ID.; ID.; LEGAL OBLIGATION, DEFINED; DOCUMENTS REQUIRED BY LAW TO BE FILED BY GOVERNMENT EMPLOYEES.— "Legal obligation" means that there is a law requiring the disclosure of the truth of the facts narrated. Permanent employees employed by local government units are required to file the following: (a) sworn statement of assets, liabilities and net worth (SALN); (b) lists of relatives within the fourth civil degree of consanguinity or affinity in government service; (c) financial and business interests; and (d) personal data sheets as required by law. A similar requirement is imposed by Section 8 (B) of Republic Act No. 6713 otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees.*

6. ID.; ID.; ID.; WHEN COMMITTED BY A MAYOR THROUGH CONSPIRACY; DEFENSE OF GOOD FAITH OR LACK OF KNOWLEDGE OF THEIR RELATIONSHIP, NOT GIVEN WEIGHT.— The same thing can be said of Ong, whose [Ong's] unbelievable claim that he had no knowledge that a first cousin (Galeos) was working in the municipal government and appointed by him to a permanent position during his incumbency, was correctly disregarded by the Sandiganbayan. It was simply unthinkable that as a resident of Naga, Cebu since birth and a politician at that, he was all the time unaware that he himself appointed to permanent positions the son of his mother's sister (Galeos) and the husband of his first cousin (Rivera). Indeed, the reality of local politics and Filipino culture renders his defense of good faith (lack of knowledge of their relationship) unavailing. Despite his knowledge of the falsity of the statement in the subject SALN, Ong still administered the oath to Galeos and Rivera who made the false statement under oath. The Sandiganbayan thus did not err in finding that

Ong connived with Galeos and Rivera in making it appear in their SALN that they have no relative within the fourth degree of consanguinity/affinity in the government service. Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime, as it can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime. In this case, Ong administered the oaths to Galeos and Rivera in the subject SALN not just once, but three times, a clear manifestation that he concurred with the making of the untruthful statement therein concerning relatives in the government service.

7. ID.; ID.; ID.; ID.; FALSIFICATION BY MAKING UNTRUTHFUL STATEMENTS IN THE CERTIFICATION, COMMITTED; LOCAL CHIEF EXECUTIVES ARE BOUND BY THE PROHIBITION ON NEPOTISTIC APPOINTMENTS.— As chief executive and the proper appointing authority, Ong is deemed to have issued the certification recommending to the CSC approval of Galeos' appointment although he admitted only the authenticity and due execution of Exhibit "I". Since Ong was duty bound to observe the prohibition on nepotistic appointments, his certification stating compliance with Section 79 of R.A. No. 7160 constitutes a solemn affirmation of the fact that *the appointee is not related to* ***him*** *within the fourth civil degree of consanguinity or affinity*. Having executed the certification despite his knowledge that he and Rivera were related to each other within the fourth degree of affinity, as in fact Rivera was his cousin-in-law because the mother of Rivera's wife is the sister of Ong's mother, Ong was guilty of falsification of public document by making untruthful statement in a narration of facts. He also took advantage of his official position as the appointing authority who, under the Civil Service rules, is required to issue such certification.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuna & Sepulveda for Paulino S. Ong.
Yap Gonzales & Associates for Rosalio S. Galeos.
The Solicitor General for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

The consolidated petitions at bar seek to reverse and set aside the Decision[1] promulgated on August 18, 2005 by the Sandiganbayan convicting petitioners Paulino S. Ong (Ong) of eight counts and Rosalio S. Galeos (Galeos) of four counts of falsification of public documents under Article 171, paragraph 4 of the Revised Penal Code, as amended.

The facts are as follows:

Ong was appointed Officer-in-Charge (OIC)-Mayor of the Municipality of Naga, Cebu on April 16, 1986. He was elected Mayor of the same municipality in 1988 and served as such until 1998.[2]

On June 1, 1994, Ong extended permanent appointments to Galeos and Federico T. Rivera (Rivera) for the positions of Construction and Maintenance Man and Plumber I, respectively, in the Office of the Municipal Engineer.[3] Prior to their permanent appointment, Galeos and Rivera were casual employees of the municipal government.

In their individual Statement of Assets, Liabilities and Net Worth (SALN) for the year 1993, Galeos answered "No" to the question: "To the best of your knowledge, are you related within the fourth degree of consanguinity or of affinity to anyone working in the government?" while Rivera indicated "n/a" on the space for the list of the names of relatives referred to in the said query.[4] The boxes for "Yes" and "No" to the said query

---

[1] *Rollo* (G.R. Nos. 174730-35), pp. 51-73. Penned by Associate Justice Diosdado M. Peralta (now a Member of this Court) and concurred in by Associate Justices Teresita J. Leonardo-De Castro (also now a Member of this Court) and Efren N. Dela Cruz.

[2] TSN, May 9, 2002, pp. 41-42, 62.

[3] Exhibits "J" and "K", folder of exhibits.

[4] Exhibits "A" and "B", *id.*

were left in blank by Galeos in his 1994 and 1995 SALN.[5] Rivera in his 1995 SALN answered "No" to the question on relatives in government.[6] In their 1996 SALN, both Galeos and Rivera also did not fill up the boxes indicating their answers to the same query.[7] Ong's signature appears in all the foregoing documents as the person who administered the oath when Galeos and Rivera executed the foregoing documents.

In a letter-certification dated June 1, 1994 addressed to Ms. Benita O. Santos, Regional Director, Civil Service Commission (CSC), Regional Office 7, Cebu City, it was attested that:

> This is to certify that pursuant to the provisions of R.A. 7160, otherwise known as the Local Government Code of 1991, all restrictions/requirements relative to creation of positions, hiring and issuance of appointments, Section 325 on the limitations for personal services in the total/supplemental appropriation of a local government unit; salary rates; abolition and creation of positions, *etc*.; Section 76, organizational structure and staffing pattern; **Section 79 on nepotism**; Section 80, posting of vacancy and personnel selection board; Section 81 on compensation, *etc.* have been duly complied with in the issuance of this appointment.
>
> This is to certify further that the **faithful observance of these restrictions/requirements was made in accordance with the requirements of the Civil Service Commission** before the appointment was submitted for review and action.[8] (Emphasis supplied.)

The above certification was signed by Ong and HR Officer-Designate Editha C. Garcia.

On October 1, 1998, the members of the *Sangguniang Bayan* of Naga, Cebu filed a letter-complaint[9] before the Office of the Ombudsman (OMB)-Visayas against Ong (then incumbent Vice-

---

[5] Exhibits "C" and "F", *id.*

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

[7] Exhibits "E" and "G", *id.*

[8] Exhibit "I", *id.*

[9] Records, Vol. I, pp. 13-16.

Mayor of Naga), Galeos and Rivera for dishonesty, nepotism, violation of the Code of Conduct and Ethical Standards for Public Officials and Employees and Anti-Graft and Corrupt Practices Act, and for the crime of falsification of public documents.

On August 11, 2000, Ombudsman Aniano Desierto approved the recommendation of OIC-Deputy Ombudsman for the Visayas that criminal charges be filed against Ong, Galeos and Rivera for falsification of public documents under Article 171 of the Revised Penal Code, as amended, in connection with the Certification dated June 1, 1994 issued by Ong and the false statements in the 1993, 1995 and 1996 SALN of Rivera and the 1993, 1994, 1995 and 1996 SALN of Galeos.[10]

On August 16, 2000, the following Informations[11] were filed against the petitioners:

Criminal Case No. 26181

That on or about the 14th day of February, 1994, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Rosalio S. Galeos] accused, public officers, being the former Municipal Mayor and Construction and Maintenance Man of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In the Government Service, as of December 31, 1993,** filed by accused **Rosalio S. Galeos** and subscribed and sworn to before accused **Paulino S. Ong**, wherein accused **made it appear therein that they are not related within the fourth degree of consanguinity or affinity thereby making untruthful statements in a narration of fact**s, when in truth and in fact, accused very well k[n]ew that they are related with each other, since accused Rosalio S. Galeos is related to accused Paulino S. Ong within the fourth degree of consanguinity, **the mother**

[10] *Id.* at 5-12.

[11] Separate folders.

of accused Rosalio S. Galeos [being] **the sister of the mother of accused Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26182

That on or about the 15th day of February 1994, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Federico T. Rivera] accused, public officers, being the former Municipal Mayor and Plumber I of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In the Government Service as of December 31, 1993**, filed by accused **Federico T. Rivera** and subscribed and sworn to before accused **Paulino S. Ong,** wherein accused Federico T. Rivera **made it appear therein that he has no relatives within the fourth degree of consanguinity or affinity working in the government, thereby making untruthful statements in a narration of facts**, when in truth and in fact, as accused very well knew that they are related with each other, since accused Federico T. Rivera is related to accused Paulino S. Ong within the fourth degree of affinity, **the mother of Federico T. Rivera's wife being the sister of the mother of Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26183

That on or about the 1st day of February, 1996, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Rosalio S. Galeos] accused, public officers, being the former Municipal Mayor and Construction and Maintenance Man of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets**

and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In the Government Service, as of December 31, 1995, filed by accused **Rosalio S. Galeos** and subscribed and sworn to before accused **Paulino S. Ong**, **wherein accused made it appear therein that they are not related within the fourth degree of consanguinity or affinity thereby making false statements in a narration of facts**, when in truth and in fact, as accused very well k[n]ew that they are related with each other, since accused Rosalio S. Galeos is related to accused Paulino S. Ong within the fourth degree of consanguinity, **the mother of accused Rosalio S. Galeos being the sister of the mother of accused Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26184

That on or about the 1st day of February 1996, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Federico T. Rivera] accused, public officers, being the former Municipal Mayor and Plumber I of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In The Government Service, [a]s of December 31, 1995**, filed by accused **Federico T. Rivera** and subscribed and sworn to before accused **Paulino S. Ong, wherein accused Federico T. Rivera made it appear therein that he has no relatives within the fourth degree of consanguinity or affinity working in the government, thereby making untruthful statements in a narration of facts,** when in truth and in fact, as accused very well knew that they are related with each other, since accused Federico T. Rivera is related to accused Paulino S. Ong within the fourth degree of affinity, **the mother of Federico T. Rivera's wife being the sister of the mother of Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26185

That on or about the 5th day of February 1997, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Federico T. Rivera] accused, public officers, being the former Municipal Mayor and Plumber I of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In The Government Service, [a]s of December 31, 1996**, filed by accused **Federico T. Rivera** and subscribed and sworn to before accused **Paulino S. Ong**, **wherein accused Federico T. Rivera made it appear therein that he has no relatives within the fourth degree of consanguinity or affinity working in the government, thereby making untruthful statements in a narration of facts,** when in truth and in fact, as accused very well knew that they are related with each other, since accused Federico T. Rivera is related to accused Paulino S. Ong **within the fourth degree of affinity**, **the mother of Federico T. Rivera's wife being the sister of the mother of Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26186

That on or about the 3rd day of March, 1995, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Rosalio S. Galeos] accused, public officers, being the former Municipal Mayor and Construction and Maintenance Man of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In the Government Services, as of December 31, 1994**, filed by accused **Rosalio S. Galeos** and subscribed and sworn to before accused **Paulino S. Ong**,

wherein accused **made it appear therein that they are not related within the fourth degree of consanguinity or affinity thereby making untruthful statements in a narration of facts**, when in truth and in fact, as accused very well k[n]ew that they are related with each other, since accused Rosalio S. Galeos is related to accused Paulino S. Ong, within the fourth degree of consanguinity, **the mother of accused Rosalio S. Galeos being the sister of the mother of accused Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26187

That on or about the 11th day of March, 1997, in the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named [Paulino S. Ong and Rosalio S. Galeos] accused, public officers, being the former Municipal Mayor and Construction and Maintenance Man of the Office of the Municipal Engineer, Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, conniving and confederating, together and mutually helping with each other, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Sworn Statement of Assets and Liabilities, Disclosure of Business Interests and Financial Connections and Identification of Relatives In the Government Service, as of December 31, 1996**, filed by accused **Rosalio S. Galeos** and subscribed and sworn to before accused **Paulino S. Ong**, wherein accused **made it appear therein that they are not related within the fourth degree of consanguinity or affinity thereby making untruthful statements in a narration of facts,** when in truth and in fact, as accused very well k[n]ew that they are related with each other, since accused Rosalio S. Galeos is related to accused Paulino S. Ong within the fourth degree of consanguinity, **the mother of accused Rosalio S. Galeos being the sister of the mother of accused Paulino S. Ong.**

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26188

That on or about the 1st day of June, 1994, at the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the former Mayor of the Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, with deliberate

intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Certification** in the form of a letter addressed to Mrs. Benita O. Santos, then Regional Director of the Civil Service Commission (CSC)-Region VII, Cebu City **dated June 1, 1994, a requirement in the approval of an appointment, certifying therein that there was a faithful compliance of the requirement/restriction provided under the Civil Service Laws and Rules in the appointment of Rosalio S. Galeos,** as Construction and Maintenance Man of the Office of the Municipal Engineer, Naga, Cebu, thereby **making untruthful statements in a narration of facts,** when in truth and in fact as **accused very well knew that the appointment of Rosalio S. Galeos was nepotic being made in violation of the Civil Service Rules and Laws on Nepotism,** as Rosalio S. Galeos is related to accused within the fourth degree of consanguinity, since **the mother of Rosalio S. Galeos is the sister of the mother of accused,** which Certification caused the approval of the appointment of Rosalio S. Galeos, to the detriment of public interest.

CONTRARY TO LAW. (Emphasis supplied.)

Criminal Case No. 26189

That on or about the 1st day of June, 1994, at the Municipality of Naga, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being the former Mayor of the Municipality of Naga, Cebu, in such capacity and committing the offense in relation to office, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of a **Certification** in the form of a letter addressed to Mrs. Benita O. Santos, then Regional Director of the Civil Service Commission (CSC), Region VII, Cebu City, **dated June 1, 1994, a requirement in the approval of an appointment, certifying therein that there was a faithful compliance of the requirement/restriction provided under the Civil Service Laws and Rules in the appointment of Federico T. Rivera,** a Plumber I of the Office of the Municipal Engineer, Naga, Cebu, **thereby making untruthful statements in a narration of facts,** when in truth and in fact as accused very well knew that **the appointment of Federico T. Rivera was nepotic being made in violation of the Civil Service Rules and Laws on Nepotism,** as Federico T. Rivera is related to accused within the fourth degree of affinity, since **the mother of Federico T. Rivera's wife is the sister of the mother of accused, which**

certification caused the approval of the appointment of Federico T. Rivera, to the detriment of public interest.

CONTRARY TO LAW. (Emphasis supplied.)

Under the Joint Stipulation of Facts submitted to the court *a quo*, the accused made the following admissions: (1) Ong was the Municipal Mayor of Cebu at all times relevant to these cases; (2) Ong is related to Galeos, within the fourth degree of consanguinity as his mother is the sister of Galeos' mother, and to Rivera within the fourth degree of affinity as his mother is the sister of the mother of Rivera's wife; and (3) Galeos and Rivera were employed as Construction and Maintenance Man and Plumber I, respectively, in the Municipal Government of Naga, Cebu at all times relevant to these cases. Ong likewise admitted the genuineness and due execution of the documentary exhibits presented by the prosecutor (copies of SALNs and Certification dated June 1, 1994) except for Exhibit "H" (Certification dated June 1, 1994 offered by the prosecution as "allegedly supporting the appointment of Rosalio S. Galeos"[12]).[13]

As lone witness for the prosecution, Esperidion R. Canoneo testified that he has been a resident of Pangdan, Naga, Cebu since 1930 and claimed to be friends with Ong, Galeos and Rivera. He knows the mother of Galeos, Pining Suarez or Peñaranda Suarez. But when the prosecutor mentioned "Bining Suarez," Canoneo stated that Bining Suarez is the mother of Galeos and that Bining Suarez is the same person as "Bernardita Suarez." Ong is related to Galeos because Ong's mother, Conchita Suarez, and Galeos' mother, Bernardita Suarez, are sisters. As to Rivera, his wife Kensiana,[14] is the daughter of Mercedes Suarez who is also a sister of Conchita Suarez. He knew the Suarez sisters because they were the neighbors of his grandmother whom he frequently visited when he was still studying.[15]

---

[12] Records, Vol. 1, p. 181.

[13] *Id.* at 202-204.

[14] "Quinciana" in some parts of the TSN.

[15] TSN, May 3, 2001, pp. 11-18.

Both Galeos and Rivera testified that they only provided the entries in their SALN but did not personally fill up the forms as these were already filled up by "people in the municipal hall" when they signed them.

Galeos, when shown his 1993 SALN,[16] confirmed his signature thereon. When he was asked if he understood the question "To the best of your knowledge, are you related within the fourth degree of consanguinity or affinity to anyone working in the government?" he answered in the negative. He claimed that the "X" mark corresponding to the answer "No" to said question, as well as the other entries in his SALN, were already filled up when he signed it. When shown his SALN for the years 1994, 1995 and 1996, Galeos reiterated that they were already filled up and he was only made to sign them by an employee of the municipal hall whom he only remembers by face. He also admitted that he carefully read the documents and all the entries therein were explained to him before he affixed his signature on the document. However, when asked whether he understands the term "fourth degree of consanguinity or affinity" stated in the SALNs, he answered in the negative.[17]

Rivera testified that he was not aware that his wife was a close relative of the Municipal Mayor because when he asked her, the latter told him that Ong was a distant relative of hers. Rivera added that it was not Ong who first appointed him as a casual employee but Ong's predecessor, Mayor Vicente Mendiola.[18]

On the part of Ong, he testified that at the time he was serving as Municipal Mayor of Naga, he did not know that he and Galeos are relatives, as in fact there are several persons with the surname "Galeos" in the municipality. He signed Galeos' 1993 SALN when it was presented to him by Galeos at his office. There were many of them who brought such documents and he would administer their oaths on what were written on their SALN, among

---

[16] Exhibit "A", folder of exhibits.

[17] TSN, May 9, 2002, pp. 22-32.

[18] *Id.* at 12-19.

them were Galeos and Rivera. He came to know of the defect in the employment of Galeos when the case was filed by his "political enemy" in the Ombudsman just after he was elected Vice-Mayor in 1998. As to Rivera, Ong claimed that he knows him as a casual employee of the previous administration. As successor of the former mayor, he had to re-appoint these casual employees and he delegated this matter to his subordinates. He maintained that his family was not very close to their other relatives because when he was not yet Mayor, he was doing business in Cebu and Manila. When queried by the court if he had known his relatives while he was campaigning considering that in the provinces even relatives within the 6th and 7th degree are still regarded as close relatives especially among politicians, Ong insisted that his style of campaigning was based only on his performance of duties and that he did not go from house to house. Ong admitted that he had been a resident of Naga, Cebu since birth. He could no longer recall those SALN of most of the employees whose oaths he had administered. He admitted that he was the one who appointed Galeos and Rivera to their permanent positions and signed their official appointment (Civil Service Form No. 33) but he was not aware at that time that he was related to them. It was only after the filing of the case that he came to know the wife of Rivera. As to the qualifications of these appointees, he no longer inquired about it and their appointments were no longer submitted to the Selection Board. When the appointment forms for Galeos and Rivera were brought to his office, the accompanying documents were attached thereto. Ong, however, admitted that before the permanent appointment is approved by the CSC, he issues a certification to the effect that all requirements of law and the CSC have been complied with.[19]

On August 18, 2005, the Sandiganbayan promulgated the assailed Decision convicting Ong, Galeos and Rivera, as follows:

WHEREFORE, judgment is hereby rendered on the following:

In Criminal Case No. 26181, judgment is hereby rendered finding accused Paulino S. Ong and Rosalio S. Galeos GUILTY beyond

[19] *Id.* at 33, 42-47, 50-59, 64-72.

reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26182, judgment is hereby rendered finding accused Paulino S. Ong and Federico T. Rivera GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26183, judgment is hereby rendered finding accused Paulino S. Ong and Rosalio S. Galeos GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26184, judgment is hereby rendered finding accused Paulino S. Ong and Federico T. Rivera GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the

maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26185, judgment is hereby rendered finding accused Paulino S. Ong and Federico T. Rivera GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26186, judgment is hereby rendered finding accused Paulino S. Ong and Rosalio S. Galeos GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26187, judgment is hereby rendered finding accused Paulino S. Ong and Rosalio S. Galeos GUILTY beyond reasonable doubt of the crime of Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, are hereby sentenced to each suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS, and ONE (1) DAY OF *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to each pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

In Criminal Case No. 26188, judgment is hereby rendered finding accused Paulino S. Ong NOT GUILTY for Violation of Article 171 of the Revised Penal Code for failure of the Prosecution to prove his guilt beyond reasonable doubt; and

In Criminal Case No. 26189, judgment is hereby rendered finding accused Paulino S. Ong GUILTY beyond reasonable doubt for Falsification of Public Document as defined in and penalized by Article 171 of the Revised Penal Code and, there being no modifying circumstances, is hereby sentenced to suffer an indeterminate penalty of imprisonment from TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY of *Prision Correccional* medium as the minimum penalty to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* medium as the maximum penalty and to pay a FINE of FIVE THOUSAND PESOS (₱5,000.00).

SO ORDERED.[20]

In its Resolution[21] dated August 28, 2006, the Sandiganbayan denied the motions for reconsideration of Ong and Galeos. However, in view of the death of Rivera on August 22, 2003 before the promulgation of the decision, the cases (Criminal Case Nos. 26182, 26184 and 26185) against him were dismissed.

In G.R. Nos. 174730-37, Galeos contends that the Sandiganbayan erred when:

1) . . . IT HELD THAT THE SUBJECT DOCUMENTARY EVIDENCE CONTAINED UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS.

2) . . . IT DID NOT CONSIDER PETITIONER'S VALID DEFENSE OF GOOD FAITH AND LACK OF INTENT TO COMMIT THE CRIMES IMPUTED.

3) . . . IT GAVE FULL CREDENCE TO THE TESTIMONY OF THE SOLE WITNESS FOR THE PROSECUTION.[22]

In support of his assigned errors, Galeos argues that he did not make untruthful or false statements in his SALN since a "statement" requires a positive averment and thus silence or non-disclosure cannot be considered one. And even if they are considered statements, Galeos contends that they were not made

---

[20] *Rollo* (G.R. Nos. 174730-37), pp. 69-72.

[21] *Id.* at 94-98.

[22] *Id.* at 25.

in a "narration of facts" and the least they could be considered are "conclusions of law." He also argues that the prosecution failed to adduce any evidence to support the finding that he was aware of their relationship at the time of the execution of the SALN. With the presence of good faith, Galeos avers that the fourth element of the crime – the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person – is missing. He also faults the Sandiganbayan for its heavy reliance on the uncorroborated testimony of the prosecution's sole witness despite the fact that there are aspects in his testimony that do not inspire belief.

On the other hand, in G.R. Nos. 174845-52, Ong argues that the Sandiganbayan erred when:

(a)

. . . IT HELD THAT THE SUBJECT DOCUMENTARY EVIDENCE CONTAINED UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS.

(b)

IN CRIMINAL CASES NOS. 26181-26187, [IT HELD] THAT A PERSON MERELY ADMINISTERING THE OATH IN A DOCUMENT IS GUILTY OF THE CRIME OF FALSIFICATION BY MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS.

(c)

. . . IN CRIMINAL CASE NO. 26189, … IT INFER[R]ED, DESPITE THE COMPLETE ABSENCE OF ANY RELEVANT AND MATERIAL EVIDENCE, THAT RESPONDENT'S EXHIBIT "I" (OR PETITIONER'S EXHIBIT "8") REFERS TO OR SUPPORTS THE APPOINTMENT OF FEDERICO T. RIVERA.[23]

Ong similarly argues that the subject SALN do not contain any untruthful statements containing a narration of facts and that there was no wrongful intent of injuring a third person at the time of the execution of the documents. He contends that

---

[23] *Rollo* (G.R. Nos. 174845-52), p. 18.

he cannot be held liable for falsification for merely administering the oath in a document since it is not among the legal obligations of an officer administering the oath to certify the truthfulness and/or veracity of the contents of the document. Neither can he be made liable for falsification regarding the letter-certification he issued since there was no evidence adduced that it was made to support Rivera's appointment.

In the Joint Memorandum filed by the Ombudsman through the Office of the Special Prosecutor of the Sandiganbayan, it was pointed out that Galeos categorically admitted during his testimony that before affixing his signature on the subject SALN, he carefully read its contents and the entries therein have been explained to him. Moreover, the admission made by Ong during the pre-trial under the joint stipulation of facts indicated no qualification at all that he became aware of his relationship with Galeos and Rivera only after the execution of the subject documents. The defense of lack of knowledge of a particular fact in issue, being a state of mind and therefore self-serving, it can be legally assumed that the admission of that particular fact without qualification reckons from the time the imputed act, to which the particular fact relates, was committed. As to mistaken reliance on the testimony of prosecution witness, the analysis and findings in the assailed decision do not show that such testimony was even taken into consideration in arriving at the conviction of petitioners.[24]

With respect to Ong's liability as conspirator in the execution of the SALN containing untruthful statements, the Special Prosecutor argues that as a general rule, it is not the duty of the administering officer to ascertain the truth of the statements found in a document. The reason for this is that the administering officer has no way of knowing if the facts stated therein are indeed truthful. However, when the facts laid out in the document *directly involves the administering officer*, then he has an opportunity to know of their truth or falsity. When an administering officer nevertheless administers the oath despite the false contents of the document, which are *known to him*

[24] *Rollo* (G.R. Nos. 174730-37), pp. 192-193, 203-207.

to be false, he is liable, not because he violated his duty as an administering officer, but because he participated in the falsification of a document.[25]

After a thorough review, we find the petitions unmeritorious.

Petitioners were charged with falsification of public document under Article 171, paragraph 4 of the Revised Penal Code, as amended, which states:

> 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;***
>
> x x x (Emphasis and italics supplied.)

The elements of falsification in the above provision are as follows:

(a) the offender makes in a public document untruthful statements in a narration of facts;

(b) he has a legal obligation to disclose the truth of the facts narrated by him; and

(c) the facts narrated by him are absolutely false.[26]

In addition to the afore-cited elements, it must also be proven that the public officer or employee had taken advantage of his

---

[25] *Id.* at 199-201.

[26] *Fullero v. People*, G.R. No. 170583, September 12, 2007, 533 SCRA 97, 114, citing *Santos v. Sandiganbayan*, G.R. Nos. 71523-25, December 8, 2000, 347 SCRA 386, 424.

official position in making the falsification. In falsification of public document, the offender is considered to have taken advantage of his official position when (1) he has the duty to make or prepare or otherwise to intervene in the preparation of a document; or (2) he has the official custody of the document which he falsifies.[27] Likewise, in falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person because in the falsification of a public document, what is punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed.[28]

Falsification of Public Document by making untruthful statements concerning relatives in the government service

All the elements of falsification of public documents by making untruthful statements have been established by the prosecution.

Petitioners argue that the statements "they are not related within the fourth civil degree of consanguinity or affinity" and "that Section 79 of the Local Government Code has been complied with in the issuance of the appointments" are not *a narration of facts* but a conclusion of law, as both require the application of the rules on relationship under the law of succession. Thus, they cite *People v. Tugbang*[29] where it was held that "a statement expressing an erroneous conclusion of law cannot be considered a falsification." Likewise, in *People*

---

[27] *Id.*, citing Luis B. Reyes, *THE REVISED PENAL CODE, CRIMINAL LAW* (14th Edition, Revised 1998), BOOK TWO, ARTS. 114-367, p. 216, *People v. Uy*, 101 Phil. 159, 163 (1957) and *United States v. Inosanto*, 20 Phil. 376, 378 (1911); *Adaza v. Sandiganbayan*, G.R. No. 154886, July 28, 2005, 464 SCRA 460, 478-479.

[28] *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 263, citing *Lastrilla v. Granda*, G.R. No. 160257, January 31, 2006, 481 SCRA 324, 345, *Lumancas v. Intas*, G.R. No. 133472, December 5, 2000, 347 SCRA 22, 33-34, further citing *People v. Po Giok To*, 96 Phil. 913, 918 (1955).

[29] G.R. No. 76212, April 26, 1991, 196 SCRA 341, 350.

v. Yanza,[30] it was held that when defendant certified that she was eligible for the position, she practically wrote a conclusion of law, which turned out to be incorrect or erroneous; hence, she may not be declared guilty of falsification because the law violated pertains to narration of facts.

We disagree.

A conclusion of law is a determination by a judge or ruling authority regarding the law that applies in a particular case. It is opposed to a finding of fact, which interprets the factual circumstances to which the law is to be applied.[31] A narration of facts is merely an account or description of the particulars of an event or occurrence.[32] We have held that a certification by accused officials in the Statement of Time Elapsed and Work Accomplished qualifies as a narration of facts as contemplated under Article 171 (4) of the Revised Penal Code, as it consisted not only of figures and numbers but also words were used therein giving an account of the status of the flood control project.[33]

In this case, the required disclosure or identification of relatives "within the fourth civil degree of consanguinity or affinity" in the SALN involves merely a *description* of such relationship; it does not call for an application of law in a particular set of facts. On the other hand, Articles 963 to 967 of the Civil Code simply explain the concept of proximity of relationship and what constitute direct and collateral lines in relation to the rules on succession. The question of whether or not persons are related to each other by consanguinity or affinity within the fourth degree is one of fact. Contrary to petitioners' assertion, statements concerning relationship may be proved as to its truth or falsity, and thus do not amount to expression of opinion. When a government employee is required to disclose his relatives in the government service, such information elicited therefore qualifies as a narration of facts

---

[30] 107 Phil. 888, 890-891 (1960).

[31] *http://definitions.uslegal.com/c/conclusion-of-law/.*

[32] *Bartolo v. Sandiganbayan, Second Division*, G.R. No. 172123, April 16, 2009, 585 SCRA 387, 394.

[33] *Id.*

contemplated under Article 171 (4) of the Revised Penal Code, as amended. Further, it bears to stress that the untruthful statements on relationship have no relevance to the employee's *eligibility* for the position but pertains rather to *prohibition* or restriction **imposed by law** on the appointing power.

Since petitioner Galeos answered "No" to the question in his 1993 SALN if he has relatives in the government service within the fourth degree of consanguinity, he made an untruthful statement therein as in fact he was related to Ong, who was then the municipal mayor, within the fourth degree of consanguinity, he and Ong being first cousins (their mothers are sisters). As to his 1994, 1995 and 1996 SALN, Galeos left in blank the boxes for the answer to the similar query. In *Dela Cruz v. Mudlong*,[34] it was held that one is guilty of falsification in the accomplishment of his information and personal data sheet if he withholds material facts which would have affected the approval of his appointment and/or promotion to a government position. By withholding information on his relative/s in the government service as required in the SALN, Galeos was guilty of falsification considering that the disclosure of such relationship with then Municipal Mayor Ong would have resulted in the disapproval of his permanent appointment pursuant to Article 168 (j) (Appointments), Rule XXII of the *Rules and Regulations Implementing the Local Government Code of 1991* (R.A. No. 7160), which provides:

> No person shall be appointed in the local government career service if he is related within the fourth civil degree of consanguinity or affinity to the appointing power or recommending authority.

Section 7 (e), Rule V of the Implementing Rules of Book V, Executive Order No. 292 otherwise known as the Administrative Code of 1987, provides that the CSC shall disapprove the appointment of a person who "has been issued such appointment in violation of existing Civil Service Law, rules and regulations." Among the prohibited appointments enumerated in CSC Memorandum Circular No. 38, series of 1993 are appointments in the LGUs of persons who are related to the appointing or

---

[34] Adm. Matter No. P-985, July 31, 1978, 84 SCRA 280.

recommending authority within the fourth civil degree of consanguinity.[35]

The Omnibus Rules on Appointments and Other Personnel Actions (CSC Memorandum Circular No. 40, series of 1998 dated December 14, 1998) contain a similar prohibition under Rule XIII, Section 9:

> SEC. 9. No appointment in the national, provincial, city or municipal governments or any branch or instrumentality thereof, including government owned or controlled corporations with original charters shall be made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office or of the person exercising immediate supervision over the appointee.
>
> Unless otherwise provided by law, the word "relative" and the members of the family referred to are those related within the third degree either of consanguinity or of affinity.
>
> **In the local government career service, the prohibition extends to the relatives of the appointing or recommending authority, within the fourth civil degree of consanguinity or affinity.**
>
> x x x x x x x x x
>
> The nepotism rule covers all kinds of appointments whether original, promotional, transfer and reemployment regardless of status including casuals and contractuals except consultants. (Emphasis supplied.)

The second element is likewise present. "Legal obligation" means that there is a law requiring the disclosure of the truth of the facts narrated.[36] Permanent employees employed by local government units are required to file the following: (a) sworn statement of assets, liabilities and net worth (SALN); (b) lists of relatives within the fourth civil degree of consanguinity or affinity in government service; (c) financial and business interests; and (d) personal data sheets as required by law.[37] A similar

---

[35] VII (Prohibitions on Appointments), 2(b).

[36] Luis B. Reyes, *THE REVISED PENAL CODE, BOOK TWO*, (17th Edition, Rev. 2008), p. 223.

[37] Art. 175, Rule XXII, Rules and Regulations Implementing the Local Government Code of 1991.

requirement is imposed by Section 8 (B) of Republic Act No. 6713 otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, thus:

(B) *Identification and disclosure of relatives.*[38] – It shall be the duty of every public official or employee to identify and disclose to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

Section 11 of the same law penalizes the violation of the above provision, either with imprisonment or fine, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office. Such violation if proven in a proper administrative proceeding shall also be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

The evidence on record clearly showed that Galeos' negative answer reflected in his SALN is absolutely false. During the trial, both Ong and Galeos admitted the fact that they are first cousins but denied having knowledge of such relationship at the time the subject documents were executed. The Sandiganbayan correctly rejected their defense of being unaware that they are related within the fourth degree of consanguinity. Given the Filipino cultural trait of valuing strong kinship and extended family ties, it was unlikely for Galeos who had been working for several years in the municipal government, not to have known of his close blood relation to Ong who was a prominent public figure having ran and won in the local elections four times (three terms as Mayor and as Vice-Mayor in the 1998 elections), after serving as OIC Mayor of the same municipality in 1986 until 1988.

---

[38] Sec. 3. x x x

x x x x x x x x x

(k) "Relatives" refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including *bilas, inso* and *balae*.

The same thing can be said of Ong, whose unbelievable claim that he had no knowledge that a first cousin (Galeos) was working in the municipal government and appointed by him to a permanent position during his incumbency, was correctly disregarded by the Sandiganbayan. It was simply unthinkable that as a resident of Naga, Cebu since birth and a politician at that, he was all the time unaware that he himself appointed to permanent positions the son of his mother's sister (Galeos) and the husband of his first cousin (Rivera). Indeed, the reality of local politics and Filipino culture renders his defense of good faith (lack of knowledge of their relationship) unavailing. Despite his knowledge of the falsity of the statement in the subject SALN, Ong still administered the oath to Galeos and Rivera who made the false statement under oath. The Sandiganbayan thus did not err in finding that Ong connived with Galeos and Rivera in making it appear in their SALN that they have no relative within the fourth degree of consanguinity/affinity in the government service.

Conspiracy need not be shown by direct proof of an agreement of the parties to commit the crime,[39] as it can be inferred from the acts of the accused which clearly manifest a concurrence of wills, a common intent or design to commit a crime.[40] In this case, Ong administered the oaths to Galeos and Rivera in the subject SALN not just once, but three times, a clear manifestation that he concurred with the making of the untruthful statement therein concerning relatives in the government service.

Falsification by making untruthful statements in the Certification re: compliance with the prohibition on nepotism

As chief executive and the proper appointing authority, Ong is deemed to have issued the certification recommending to the CSC approval of Galeos' appointment although he admitted

---

[39] *People v. Herida,* G.R. No. 127158, March 5, 2001, 353 SCRA 650, 659.

[40] *People v. Lenantud,* G.R. No. 128629, February 22, 2001, 352 SCRA 549, 563.

only the authenticity and due execution of Exhibit "I". Since Ong was duty bound to observe the prohibition on nepotistic appointments, his certification stating compliance with Section 79[41] of R.A. No. 7160 constitutes a solemn affirmation of the fact that *the appointee is not related to* ***him*** *within the fourth civil degree of consanguinity or affinity*. Having executed the certification despite his knowledge that he and Rivera were related to each other within the fourth degree of affinity, as in fact Rivera was his cousin-in-law because the mother of Rivera's wife is the sister of Ong's mother, Ong was guilty of falsification of public document by making untruthful statement in a narration of facts. He also took advantage of his official position as the appointing authority who, under the Civil Service rules, is required to issue such certification.

The importance of the certification submitted to the CSC by the proper appointing authority in the local government unit, regarding compliance with the prohibition against nepotism under R.A. No. 7160 cannot be overemphasized. Under Section 67, Book V, Chapter 10 of the Administrative Code of 1987, a head of office or appointing official who issues an appointment or employs any person in violation of Civil Service Law and Rules or who commits fraud, deceit or intentional misrepresentation of material facts concerning other civil service matters, or anyone who violates, refuses or neglects to comply with any of such provisions or rules, may be held criminally liable. In *Civil Service Commission v. Dacoycoy*,[42] we held that mere issuance of appointment in favor of a relative within the third degree of consanguinity or affinity is sufficient to constitute a violation of the law. Although herein petitioners were prosecuted for the criminal offense of falsification of public document, it becomes obvious that the requirement of disclosure of relationship to

---

[41] **Sec. 79.** *Limitation on Appointments.* - No person shall be appointed in the career service of the local government if he is related within the fourth civil degree of consanguinity or affinity to the appointing or recommending authority.

[42] G.R. No. 135805, April 29, 1999, 306 SCRA 425, 435.

the appointing power in the local government units simply aims to ensure strict enforcement of the prohibition against nepotism.

Relevant then is our pronouncement in *Dacoycoy*:

> Nepotism is one pernicious evil impeding the civil service and the efficiency of its personnel. In Debulgado, we stressed that "[T]the basic purpose or objective of the prohibition against nepotism also strongly indicates that the prohibition was intended to be a comprehensive one." "The Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive." If not within the exceptions, it is a form of corruption that must be nipped in the bud or abated whenever or wherever it raises its ugly head. As we said in an earlier case "what we need now is not only to punish the wrongdoers or reward the 'outstanding' civil servants, but also to plug the hidden gaps and potholes of corruption as well as **to insist on strict compliance with existing legal procedures in order to abate any occasion for graft or circumvention of the law**."[43] (Emphasis supplied.)

The prosecution having established with moral certainty the guilt of petitioners for falsification of public documents under Article 171 (4) of the Revised Penal Code, as amended, we find no legal ground to reverse petitioners' conviction.

WHEREFORE, the petitions are *DENIED*. The Decision dated August 18, 2005 of the Sandiganbayan in Criminal Case Nos. 26181-26187 and 26189 is *AFFIRMED*.

With costs against the petitioners.

SO ORDERED.

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

---

[43] *Id.* at 438-439.

[*] Designated additional member per Special Order No. 944-A dated February 9, 2011.

THIRD DIVISION

[G.R. No. 177145. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY TORIAGA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; DEFENSE OF CONSENSUAL INTERCOURSE; MUST BE CORROBORATED.— [T]he defense of consensual sexual intercourse, like the sweetheart defense, demands corroboration. Yet, Toriaga offered no corroboration, thereby exposing his belatedly offered defense as a self-serving after-thought resorted to after his original defenses of denial and *alibi* had failed to ensure his acquittal by the CA. Thus, his new defense deserved scant consideration.

2. ID.; ID.; ID.; MULTIPLE STAB WOUNDS SUSTAINED BY THE VICTIM NEGATED THE CLAIM OF CONSENSUAL INTERCOURSE.— [T]he physical evidence spoke more vividly than the testimony of the victim, whose multiple injuries confirmed the use of brutal force and violence in her rape. Also, the multiple stab wounds she sustained negated his claim of consensual sexual intercourse.

3. ID.; ID.; PENALTY IF RAPE IS COMMITTED WITH THE USE OF A DEADLY WEAPON.— [T]he RTC and the CA correctly determined the penalty of *reclusion perpetua* as imposable. The information alleged the use of a bladed weapon in the commission of the rape. Article 335 of the *Revised Penal Code* provides that whenever the crime of rape is committed with use of a deadly weapon the imposable penalty is *reclusion perpetua* to death. The Prosecution established that the accused wielded an icepick to intimidate her into submission and later to assault AAA with intent to kill her to seal her mouth forever. Under Article 63, 2, *Revised Penal Code*, where the prescribed penalties of *reclusion perpetua* and death, and there are neither mitigating nor aggravating circumstances present or attendant, like herein, the lesser penalty of *reclusion perpetua* is imposable.

4. ID.; ID.; ID.; CIVIL LIABILITIES.— [W]e will not disturb the awards of ₱50,000.00 as civil indemnity and ₱75,000.00 as moral damages, but we add the amount of ₱30,000.00 as exemplary damages by reason of the established presence of the qualifying circumstance of use of a deadly weapon. Under Art. 2230 of the *Civil Code*, AAA was entitled to recover exemplary damages.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BERSAMIN, *J.*:

Joey Toriaga appeals the decision promulgated on November 17, 2006 in CA-G.R. CR-HC No. 01617,[1] whereby the Court of Appeals (CA) affirmed his conviction for raping AAA[2] under the decision dated February 26, 2002 rendered by the Regional Trial Court (RTC), Branch 128 in Caloocan City.[3]

Toriaga was no trivial stranger to AAA and her family. Her father was Toriaga's close friend and "drinking buddy," and CCC, AAA's aunt, regarded Toriaga as a trusted employee in her *balut* selling business. CCC even furnished Toriaga a sleeping area inside her house. At the time material to this case, AAA was a 13-year old lass.[4] She happened to be alone in keeping watch of the house of CCC in the early evening of November 26, 1995 while CCC and her family went to church for mass. At

---

[1] *Rollo*, pp. 3-18; penned by Associate Andres B. Reyes, Jr. (now Presiding Justice), with Associate Justices Hakim S. Abdulwahid and Mariflor P. Punzalan-Castillo, concurring.

[2] The real name of the victim is withheld pursuant to Republic Act No. 7610 and R.A. No. 9262. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Records, pp. 194-198.

[4] *Id.*, p. 153.

around then, Toriaga and AAA's father were drinking at the latter's house, which was only about 20 meters away from CCC's house. Then, feeling already drunk, Toriaga returned to CCC's house. Hearing him knocking at around 7o'clock p.m. AAA opened the door and let him in. She then casually went up to the second floor to watch television. Later, AAA went downstairs, and saw Toriaga opening his folding bed and switching off the lights. Thinking that Toriaga was going to bed, she sat on the stairs. But she was not prepared for what happened next, because Toriaga grabbed and poked an icepick at her neck and dragged her downstairs. Holding the icepick to her neck, he ordered her to strip naked and to lie on the folding bed. Out of fear she complied. He undressed himself and mounted her. He inserted his penis into her vagina. She felt the penetration. He was on top for about 10 minutes, stopping only because she pretended losing consciousness. He lifted her and brought her upstairs, covering her mouth with a pillow. When she felt the icepick being pressed into her stomach, she fought and parried the blow, thereby preventing the icepick from penetrating her flesh. To protect herself, she turned face down, but he stabbed her back with the icepick. Although she was in pain, she kept silent and still, which made him stop stabbing her, probably believing that she was already dead. She soon heard him washing his hands downstairs. But just when she tried to rise, she heard him coming back. She thus laid down again and pretended to be asleep. Satisfied that she had not moved, he went out of the house and closed the door. She then crawled to the window and shouted for help. Several neighbors responded and rushed her to the hospital for medical treatment.

The medico-legal findings disclosed her injuries, to wit:

Wound, sutured, roughly elliptical, with contused edges, 0.5 cm. nape.

Wounds, sutured, roughly elliptical with contused edges, posterior chest, right side; 0.7 cm., infrascapular area, 5.5 cms. from the posterior median line; 0.6 cm. infrascapular area, 4.5 cms. from the posterior median line; 0.7 cm., infrascpular area, along paravertebral line, 4.0 cms. from the posterior median line; 0.6 cm. infrascapular area, along midscapular line, 6.5 cms., from the posterior median

line; 0.7 cm., infrascapular area, 4.3 cms., from the posterior median line; 0.6 cm., area just above the right buttocks, along posterior axillary line, 9.5 cms., from the posterior median line.

Wounds, roughly elliptical with contused edges: 0.3 cm., right hypochondrium, abdomen with a curvilinear reddish abrasion measuring 6.5 cms.; 0.5 cm., intergluteal area, along posterior median line; 0.5 cm., outer upper quadrant, right buttocks, 10.0 cms. from the posterior median line.

GENITAL EXAMINATIONS:

Pubic hair, fine, scanty. Labia majora, coaptated. Labia minora, coaptated. Fourchette, with a superficial laceration, edges still bleeding. Vestibule, congested with a contusion at the left lateral portion. Hymen, short, thick, intact. Hymenal orifice, admits a tube measuring 2.0 cms. in diameter with moderate resistance. Vaginal walls, tight. Rugosities, prominent.[5]

On November 28, 1995, the following information for rape was filed in the RTC, *viz*:

That on or about the 26th day of November, 1995 at Kalookan City, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of threat and intimidation by using a bladed weapon (knife) employed upon the person of 13-year old AAA, did then and there willfully, unlawfully and feloniously lie and have sexual intercourse with said AAA, against her will and without her consent.

Contrary to law.[6]

A separate information for frustrated homicide was also filed.

Initially, the RTC consolidated the two cases, and Toriaga pleaded *not guilty* to both charges on January 17, 1996. In view of his intervening conviction for frustrated homicide, however, only the charge for rape remained. During the presentation of evidence for the accused, he moved to be allowed to change his plea to *guilty*. Thus, upon re-arraignment, he pleaded *guilty* to the information for rape. But he withdrew his

[5] Records, p. 151.

[6] *Id.*, p. 1.

plea on November 20, 2000 upon being apprised of the imposable penalty and the consequences of the plea.

Toriaga denied raping AAA, claiming that he returned to CCC's house and slept. He insisted that BBB had instigated AAA to charge him with rape and to testify against him due to a previous misunderstanding between them.

On February 26, 2002, the RTC convicted Toriaga, *viz*:

> WHEREFORE, in view of all the foregoing, this Court finds the accused Joey Toriaga guilty beyond reasonable doubt of the crime of Rape and hereby sentenced him to suffer imprisonment of *Reclusion perpetua* and all the accessory penalties attached thereto. He is further adjudged to pay the victim the sum of ₱50,000.00 as civil indemnity and the amount of ₱75,000.00 as for moral damages with no subsidiary imprisonment in case of insolvency.
>
> Considering that the accused is already serving sentence at the New Bilibid Prisons for having been convicted for the crime of Frustrated Homicide in another case, furnish the Director of the New Bilibid Prisons copy of this Decision, for the proper imposition of his sentence in this case.
>
> SO ORDERED.[7]

Thus, Toriaga appealed to this Court, which, on September 6, 2004, transferred the records to the CA for intermediate review, conformably with *People v. Mateo*.[8]

In the CA, Toriaga changed his defense of denial and *alibi* for the first time to the affirmative defense of consensual sexual intercourse with AAA, whom he insisted had undressed herself freely and did not shout when the incident was taking place. He contended that he was liable only for qualified seduction because he was a domestic within the contemplation of the law.

In its decision, the CA rejected his contentions, because, *firstly*, he was found not to have been charged with the custody or authority over the minor victim; *secondly*, AAA was not a

---

[7] Records, p. 198.

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

member of the household of CCC, nor was he a member of the victim's household; and *thirdly*, the complaint for rape neither averred nor embodied the elements of seduction. Consequently, the CA affirmed the conviction for rape.

In his appeal, Toriaga's main argument of consensual sexual intercourse rested on the failure of AAA to shout during the rape and on her failure to escape when he momentarily left her and while he was busy undressing himself. He insisted that the proximity of the houses in the neighborhood should have emboldened her to put up some resistance had the sexual encounter been forced. Her demeanor was inconsistent with that of an ordinary Filipina whose instincts dictated that she summoned every ounce of her strength and courage to thwart any attempt to defile her virtue.

The appeal fails.

Firstly, the defense of consensual sexual intercourse, like the sweetheart defense, demands corroboration. Yet, Toriaga offered no corroboration, thereby exposing his belatedly offered defense as a self-serving after-thought resorted to after his original defenses of denial and *alibi* had failed to ensure his acquittal by the CA. Thus, his new defense deserved scant consideration.

Secondly, the physical evidence spoke more vividly than the testimony of the victim, whose multiple injuries confirmed the use of brutal force and violence in her rape. Also, the multiple stab wounds she sustained negated his claim of consensual sexual intercourse.

Third, the CA's rejection of Toriaga's contention of being liable only for qualified seduction was correct. Indeed, the information did not allege the presence of the elements of qualified seduction, to wit: (*a*) that AAA was a virgin; (*b*) that she was over 12 and under 18 years of age; (*c*) that he had sexual intercourse with her; and (*d*) that there was abuse of authority, or of confidence, or of relationship.

Fourthly, the RTC and the CA correctly determined the penalty of *reclusion perpetua* as imposable. The information alleged

the use of a bladed weapon in the commission of the rape. Article 335 of the *Revised Penal Code* provides that whenever the crime of rape is committed with use of a deadly weapon the imposable penalty is *reclusion perpetua* to death. The Prosecution established that the accused wielded an icepick to intimidate her into submission and later to assault AAA with intent to kill her to seal her mouth forever. Under Article 63, 2, *Revised Penal Code*, where the prescribed penalties of *reclusion perpetua* and death, and there are neither mitigating nor aggravating circumstances present or attendant, like herein, the lesser penalty of *reclusion perpetua* is imposable.

And, fifthly, we will not disturb the awards of ₱50,000.00 as civil indemnity and ₱75,000.00 as moral damages, but we add the amount of ₱30,000.00 as exemplary damages by reason of the established presence of the qualifying circumstance of use of a deadly weapon. Under Art. 2230 of the *Civil Code,* AAA was entitled to recover exemplary damages.[9]

WHEREFORE, we affirm the decision promulgated on November 17, 2006 in C.A.-G.R. CR-HC No. 01617 in all respects, with the modification that **JOEY TORIAGA** is ordered to pay the victim the further sum of ₱30,000.00 as exemplary damages.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Peralta,[*] *and Villarama, Jr., JJ.,* concur.

---

[9] *People v. Catubig,* G.R. No. 137842, August 23, 2001, 363 SCRA 621, 635.

[*] In lieu of Justice Maria Lourdes P.A. Sereno who is on leave per Office Order No. 944 dated February 9, 2011.

SECOND DIVISION

[G.R. No. 177407. February 9, 2011]

RICO ROMMEL ATIENZA, *petitioner, vs.* **BOARD OF MEDICINE and EDITHA SIOSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY TO ASSAIL INTERLOCUTORY ORDERS OF THE BOARD OF MEDICINE (BOM).— Petitioner is correct when he asserts that a petition for *certiorari* is the proper remedy to assail the Orders of the BOM, admitting in evidence the exhibits of Editha. As the assailed Orders were interlocutory, these cannot be the subject of an appeal separate from the judgment that completely or finally disposes of the case. At that stage, where there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, the only and remaining remedy left to petitioner is a petition for *certiorari* under Rule 65 of the Rules of Court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

2. ID.; ID.; ID.; WRIT OF *CERTIORARI* WILL NOT BE ISSUED ABSENT A SHOWING OF GRAVE ABUSE OF DISCRETION.— [T]he writ of *certiorari* will not issue absent a showing that the BOM has acted without or in excess of jurisdiction or with grave abuse of discretion. Embedded in the CA's finding that the BOM did not exceed its jurisdiction or act in grave abuse of discretion is the issue of whether the exhibits of Editha contained in her Formal Offer of Documentary Evidence are inadmissible.

3. ID.; EVIDENCE; STRICT ENFORCEMENT OF THE RULES ON EVIDENCE; WHEN EXCUSED.— [I]t is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies such as the BOM. Although trial courts are enjoined to observe strict enforcement of the rules of evidence, in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that: [I]t is the safest policy to be liberal, not rejecting

them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.

4. ID.; ID.; ADMISSIBILITY OF EVIDENCE AND PROBATIVE WEIGHT OF EVIDENCE, DISTINGUISHED.— [W]e emphasize the distinction between the admissibility of evidence and the probative weight to be accorded the same pieces of evidence. *PNOC Shipping and Transport Corporation v. Court of Appeals* teaches: Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.

5. ID.; ID.; JUDICIAL NOTICE; THE ISSUE OF WHETHER THE KIDNEYS WERE BOTH IN THEIR PROPER ANATOMICAL LOCATIONS IS COVERED BY THE MANDATORY JUDICIAL NOTICE.— The fact sought to be established by the admission of Editha's exhibits, that her "kidneys were both in their proper anatomical locations at the time" of her operation, need not be proved as it is covered by mandatory judicial notice. Unquestionably, the rules of evidence are merely the means for ascertaining the truth respecting a matter of fact. Thus, they likewise provide for some facts which are established and need not be proved, such as those covered by judicial notice, both mandatory and discretionary. Laws of nature involving the physical sciences, specifically biology, include the structural make-up and composition of living things such as human beings. In this case, we may take judicial notice that Editha's kidneys before, and at the time of, her operation, as with most human beings, were in their proper anatomical locations.

APPEARANCES OF COUNSEL

CVCLAW Center for petitioner.
The Solicitor General for public respondent.
Arsenio C. Pascual, Jr. for private respondent.

D E C I S I O N

NACHURA, *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated September 22, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 87755. The CA dismissed the petition for *certiorari* filed by petitioner Rico Rommel Atienza (Atienza), which, in turn, assailed the Orders[2] issued by public respondent Board of Medicine (BOM) in Administrative Case No. 1882.

The facts, fairly summarized by the appellate court, follow.

Due to her lumbar pains, private respondent Editha Sioson went to Rizal Medical Center (RMC) for check-up on February 4, 1995. Sometime in 1999, due to the same problem, she was referred to Dr. Pedro Lantin III of RMC who, accordingly, ordered several diagnostic laboratory tests. The tests revealed that her right kidney is normal. It was ascertained, however, that her left kidney is non-functioning and non-visualizing. Thus, she underwent kidney operation in September, 1999.

On February 18, 2000, private respondent's husband, Romeo Sioson (as complainant), filed a complaint for gross negligence and/or incompetence before the [BOM] against the doctors who allegedly participated in the fateful kidney operation, namely: Dr. Judd dela Vega, Dr. Pedro Lantin, III, Dr. Gerardo Antonio Florendo and petitioner Rico Rommel Atienza.

It was alleged in the complaint that the gross negligence and/or incompetence committed by the said doctors, including petitioner, consists of the removal of private respondent's fully functional right kidney, instead of the left non-functioning and non-visualizing kidney.

The complaint was heard by the [BOM]. After complainant Romeo Sioson presented his evidence, private respondent Editha Sioson, also named as complainant there, filed her formal offer of documentary

---

[1] Penned by Presiding Justice Ruben T. Reyes (a retired member of this Court), with Associate Justices Juan Q. Enrique, Jr. and Vicente S.E. Veloso, concurring; *rollo*, pp. 95-106.

[2] Dated May 26, 2004 and October 8, 2004, respectively; *id.* at 408-411.

evidence. Attached to the formal offer of documentary evidence are her Exhibits "A" to "D", which she offered for the purpose of proving that her kidneys were both in their proper anatomical locations at the time she was operated. She described her exhibits, as follows:

> "EXHIBIT 'A' – the certified photocopy of the X-ray Request form dated December 12, 1996, which is also marked as Annex '2' as it was actually originally the Annex to x x x Dr. Pedro Lantin, III's counter affidavit filed with the City Prosecutor of Pasig City in connection with the criminal complaint filed by [Romeo Sioson] with the said office, on which are handwritten entries which are the interpretation of the results of the ultrasound examination. Incidentally, this exhibit happens to be the same as or identical to the certified photocopy of the document marked as Annex '2' to the Counter-Affidavit dated March 15, 2000, filed by x x x Dr. Pedro Lantin, III, on May 4, 2000, with this Honorable Board in answer to this complaint;
>
> "EXHIBIT 'B' – the certified photo copy of the X-ray request form dated January 30, 1997, which is also marked as Annex '3' as it was actually likewise originally an Annex to x x x Dr. Pedro Lantin, III's counter-affidavit filed with the Office of the City Prosecutor of Pasig City in connection with the criminal complaint filed by the herein complainant with the said office, on which are handwritten entries which are the interpretation of the results of the examination. Incidentally, this exhibit happens to be also the same as or identical to the certified photo copy of the document marked as Annex '3' which is likewise dated January 30, 1997, which is appended as such Annex '3' to the counter-affidavit dated March 15, 2000, filed by x x x Dr. Pedro Lantin, III on May 4, 2000, with this Honorable Board in answer to this complaint.
>
> "EXHIBIT 'C' – the certified photocopy of the X-ray request form dated March 16, 1996, which is also marked as Annex '4', on which are handwritten entries which are the interpretation of the results of the examination.
>
> "EXHIBIT 'D' – the certified photocopy of the X-ray request form dated May 20, 1999, which is also marked as Annex '16', on which are handwritten entries which are the interpretation of the results of the examination. Incidentally, this exhibit appears to be the draft of the typewritten final report of the same examination which is the document appended as Annexes

> '4' and '1' respectively to the counter-affidavits filed by x x x Dr. Judd dela Vega and Dr. Pedro Lantin, III in answer to the complaint. In the case of Dr. dela Vega however, the document which is marked as Annex '4' is not a certified photocopy, while in the case of Dr. Lantin, the document marked as Annex '1' is a certified photocopy. Both documents are of the same date and typewritten contents are the same as that which are written on Exhibit 'D'.

Petitioner filed his comments/objections to private respondent's [Editha Sioson's] formal offer of exhibits. He alleged that said exhibits are inadmissible because the same are mere photocopies, not properly identified and authenticated, and intended to establish matters which are hearsay. He added that the exhibits are incompetent to prove the purpose for which they are offered.

Dispositions of the Board of Medicine

The formal offer of documentary exhibits of private respondent [Editha Sioson] was admitted by the [BOM] per its Order dated May 26, 2004. It reads:

> "The Formal Offer of Documentary Evidence of [Romeo Sioson], the Comments/Objections of [herein petitioner] Atienza, [therein respondents] De la Vega and Lantin, and the Manifestation of [therein] respondent Florendo are hereby ADMITTED by the [BOM] for whatever purpose they may serve in the resolution of this case.
>
> "Let the hearing be set on July 19, 2004 all at 1:30 p.m. for the reception of the evidence of the respondents.
>
> "SO ORDERED."

Petitioner moved for reconsideration of the abovementioned Order basically on the same reasons stated in his comment/objections to the formal offer of exhibits.

The [BOM] denied the motion for reconsideration of petitioner in its Order dated October 8, 2004. It concluded that it should first admit the evidence being offered so that it can determine its probative value when it decides the case. According to the Board, it can determine whether the evidence is relevant or not if it will take a look at it through the process of admission. x x x.[3]

---

[3] *Id*. at 95-99.

Disagreeing with the BOM, and as previously adverted to, Atienza filed a petition for *certiorari* with the CA, assailing the BOM's Orders which admitted Editha Sioson's (Editha's) Formal Offer of Documentary Evidence. The CA dismissed the petition for *certiorari* for lack of merit.

Hence, this recourse positing the following issues:

I. PROCEDURAL ISSUE:

WHETHER PETITIONER ATIENZA AVAILED OF THE PROPER REMEDY WHEN HE FILED THE PETITION FOR *CERTIORARI* DATED 06 DECEMBER 2004 WITH THE COURT OF APPEALS UNDER RULE 65 OF THE RULES OF COURT TO ASSAIL THE ORDERS DATED 26 MAY 2004 AND 08 OCTOBER 2004 OF RESPONDENT BOARD.

II. SUBSTANTIVE ISSUE:

WHETHER THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR AND DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT UPHELD THE ADMISSION OF INCOMPETENT AND INADMISSIBLE EVIDENCE BY RESPONDENT BOARD, WHICH CAN RESULT IN THE DEPRIVATION OF PROFESSIONAL LICENSE – A PROPERTY RIGHT OR ONE'S LIVELIHOOD.[4]

We find no reason to depart from the ruling of the CA.

Petitioner is correct when he asserts that a petition for *certiorari* is the proper remedy to assail the Orders of the BOM, admitting in evidence the exhibits of Editha. As the assailed Orders were interlocutory, these cannot be the subject of an appeal separate from the judgment that completely or finally disposes of the case.[5] At that stage, where there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, the only and remaining remedy left to petitioner is a petition for

---

[4] *Id*. at 677-678.

[5] *Raymundo v. Isagon Vda. de Suarez*, G.R. No. 149017, November 28, 2008, 572 SCRA 384, 403-404.

certiorari under Rule 65 of the Rules of Court on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

However, the writ of *certiorari* will not issue absent a showing that the BOM has acted without or in excess of jurisdiction or with grave abuse of discretion. Embedded in the CA's finding that the BOM did not exceed its jurisdiction or act in grave abuse of discretion is the issue of whether the exhibits of Editha contained in her Formal Offer of Documentary Evidence are inadmissible.

Petitioner argues that the exhibits formally offered in evidence by Editha: (1) violate the best evidence rule; (2) have not been properly identified and authenticated; (3) are completely hearsay; and (4) are incompetent to prove their purpose. Thus, petitioner contends that the exhibits are inadmissible evidence.

We disagree.

To begin with, it is well-settled that the rules of evidence are not strictly applied in proceedings before administrative bodies such as the BOM.[6] Although trial courts are enjoined to observe strict enforcement of the rules of evidence,[7] in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that:

> [I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.[8]

---

[6] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 845-846 (2003).

[7] Francisco, *EVIDENCE RULES* 128-134 (3rd ed. 1996), p. 9.

[8] *Id.*, citing *People v. Jaca, et al.*, 106 Phil. 572, 575 (1959).

From the foregoing, we emphasize the distinction between the admissibility of evidence and the probative weight to be accorded the same pieces of evidence. *PNOC Shipping and Transport Corporation v. Court of Appeals*[9] teaches:

> Admissibility of evidence refers to the question of whether or not the circumstance (or evidence) is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.

Second, petitioner's insistence that the admission of Editha's exhibits violated his substantive rights leading to the loss of his medical license is misplaced. Petitioner mistakenly relies on Section 20, Article I of the Professional Regulation Commission Rules of Procedure, which reads:

> Section 20. Administrative investigation shall be conducted in accordance with these Rules. The Rules of Court shall only apply in these proceedings by analogy or on a suppletory character and whenever practicable and convenient. Technical errors in the admission of evidence which do not prejudice the substantive rights of either party shall not vitiate the proceedings.[10]

As pointed out by the appellate court, the admission of the exhibits did not prejudice the substantive rights of petitioner because, at any rate, the fact sought to be proved thereby, that the two kidneys of Editha were in their proper anatomical locations at the time she was operated on, is presumed under Section 3, Rule 131 of the Rules of Court:

> Sec. 3. *Disputable presumptions*. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
>
> x x x x x x x x x
>
> (y) That things have happened according to the ordinary course of nature and the ordinary habits of life.

---

[9] 358 Phil. 38, 59 (1998).

[10] *Rollo*, p. 101.

The exhibits are certified photocopies of X-ray Request Forms dated December 12, 1996, January 30, 1997, March 16, 1996, and May 20, 1999, filed in connection with Editha's medical case. The documents contain handwritten entries interpreting the results of the examination. These exhibits were actually attached as annexes to Dr. Pedro Lantin III's counter affidavit filed with the Office of the City Prosecutor of Pasig City, which was investigating the criminal complaint for negligence filed by Editha against the doctors of Rizal Medical Center (RMC) who handled her surgical procedure. To lay the predicate for her case, Editha offered the exhibits in evidence to prove that her "kidneys were both in their proper anatomical locations at the time" of her operation.

The fact sought to be established by the admission of Editha's exhibits, that her "kidneys were both in their proper anatomical locations at the time" of her operation, need not be proved as it is covered by mandatory judicial notice.[11]

Unquestionably, the rules of evidence are merely the means for ascertaining the truth respecting a matter of fact.[12] Thus, they likewise provide for some facts which are established and need not be proved, such as those covered by judicial notice, both mandatory and discretionary.[13] Laws of nature involving the physical sciences, specifically biology,[14] include the structural

---

[11] RULES OF COURT, Rule 129, Sec. 1.

SECTION 1. *Judicial notice, when mandatory*. – A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of the legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

[12] RULES OF COURT, Rule 128, Sec. 1.

[13] RULES OF COURT, Rule 129, Sec. 2.

SEC. 2. *Judicial notice, when discretionary*. – A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions.

[14] Science of life, definition of *Webster's Third New International Dictionary*.

make-up and composition of living things such as human beings. In this case, we may take judicial notice that Editha's kidneys before, and at the time of, her operation, as with most human beings, were in their proper anatomical locations.

Third, contrary to the assertion of petitioner, the best evidence rule is inapplicable. Section 3 of Rule 130 provides:

1. Best Evidence Rule

Sec. 3. *Original document must be produced; exceptions*. – When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The subject of inquiry in this case is whether respondent doctors before the BOM are liable for gross negligence in removing the right functioning kidney of Editha instead of the left non-functioning kidney, not the proper anatomical locations of Editha's kidneys. As previously discussed, the proper anatomical locations of Editha's kidneys at the time of her operation at the RMC may be established not only through the exhibits offered in evidence.

Finally, these exhibits do not constitute hearsay evidence of the anatomical locations of Editha's kidneys. To further drive home the point, the anatomical positions, whether left or right, of Editha's kidneys, and the removal of one or both, may still

be established through a belated ultrasound or x-ray of her abdominal area.

In fact, the introduction of secondary evidence, such as copies of the exhibits, is allowed.[15] Witness Dr. Nancy Aquino testified that the Records Office of RMC no longer had the originals of the exhibits "because [it] transferred from the previous building, x x x to the new building."[16] Ultimately, since the originals cannot be produced, the BOM properly admitted Editha's formal offer of evidence and, thereafter, the BOM shall determine the probative value thereof when it decides the case.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 87755 is *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Peralta, del Castillo,[*] *Villarama, Jr.,*[**] and *Mendoza, JJ.*, concur.

---

[15] RULES OF COURT, Rule 130, Sec. 5.

[16] TSN, July 17, 2003; *rollo*, pp. 347-348.

[*] Additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated August 2, 2010.

[**] Additional member in lieu of Associate Justice Roberto A. Abad per Raffle dated August 2, 2010.

THIRD DIVISION

[G.R. No. 179476. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUEL TUY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT.— [T]he findings of the RTC are accorded the highest degree of respect, especially if adopted and confirmed by the CA, because of the first-hand opportunity of the trial judge to observe the demeanor of the witnesses when they testified at trial; such findings are final and conclusive and may not be reviewed on appeal unless there is clear misapprehension of facts. Here, there was no showing that the RTC and the CA erred in appreciating the worth of Severino's eyewitness testimony.

2. ID.; ID.; DEFENSE OF ALIBI, REJECTED IN VIEW OF FAILURE TO PROVE PHYSICAL IMPOSSIBLITY TO BE AT THE CRIME SCENE.— [T]he CA and the RTC rejected the *alibi* of Tuy. We agree with their rejection. To begin with, his absence from the scene of the murder was not firmly established considering that he admitted that he could navigate the distance between Brgy. Olango (where he was supposed to be) and Brgy. Bani (where the crime was committed) in an hour by paddle boat and in less than that time by motorized *banca*. Also, eyewitness Severino positively identified him as having hacked his father. The failure of Tuy to prove the physical impossibility of his presence at the crime scene negated his *alibi.*

3. CRIMINAL LAW; MURDER; CIVIL LIABILITY.— On the civil liability, we *increase* the civil indemnity and the moral damages from ₱50,000.00 to ₱75,000.00, and *add* exemplary damages of ₱30,000.00 in order to accord with current jurisprudence to the effect that damages in such amounts are granted whenever the accused is adjudged guilty of a crime covered by Republic Act No. 7659 like murder.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

BERSAMIN, *J.*:

Together with Ramon Salcedo, Jr. and Raul Salcedo, who have remained at large, appellant Ruel Tuy was charged with murder in the Regional Trial Court in Calabanga, Camarines Sur (RTC) for the killing of Orlando Barrameda in the afternoon of October 11, 2001 in Brgy.Bani, Tinambac, Camarines Sur, under the following information:

> That on or about 4:00 o'clock in the afternoon of October 11, 2001 at Bani, Tinambac, Camarines Sur, Philippines and within the jurisdiction of the Honorable Court, the said accused with intent to kill and while armed with firearms and a bolo and with conspiracy between and among themselves, did then and there, willfully, unlawfully and feloniously attack, assault and harm one Orlando Barrameda thereby inflicting mortal wounds on the different part of his body which caused his instantaneous death, to the damage of his heirs in such amount as maybe duly proven in court.
>
> Attendant during the commission of the crime is treachery because the accused took advantage of their superior strength, with arms and employed means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.
>
> Further, the offended party was at the time of the crime the incumbent *barangay* captain of the place where the incident happened.
>
> ACTS CONTRARY TO LAW.[1]

Upon arraignment, the accused-appellant pleaded not guilty to the charge of murder. Thereafter, trial on the merits ensued.

---

[1] Records, p. 1.

For the Prosecution, Severino Barrameda (Severino), the son of the victim, declared that he had witnessed the Salcedos shooting and Tuy hacking his father. The medico-legal evidence presented through Dr. Salvador Betito, Jr. (Betito), who had conducted the autopsy, established that the victim had sustained five hack wounds and two gunshot wounds. Betito concluded that the cause of death was rapid external and internal hemorrhage secondary to multiple gunshot wounds and hack wounds.

In his defense, Tuy denied his participation in the crime and claimed that he was processing copra at the time of the killing in Sitio Olango, Brgy. Bani Tinambac, Camarines Sur. His brother Ramil Tuy corroborated him.

On February 22, 2006, the RTC rendered its decision convicting Tuy of murder, and archiving the case as against the Salcedos. The RTC based its judgment on the eyewitness testimony of Severino and on the testimony of Dr. Betito. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of the accused Ruel Tuy beyond reasonable doubt, he is hereby found guilty of the crime of Murder as charged. He is hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay the heirs of Orlando Barrameda the amount of ₱50,000 as civil indemnity; ₱50,000 as moral damages; ₱38,000 as actual damages and to pay the costs. He is likewise meted the accessory penalty as provided for under the Revised Penal Code.
>
> x x x x x x x x x
>
> SO ORDERED.[2]

On appeal, the Court of Appeals (CA) affirmed the conviction,[3] rejecting Tuy's defenses of denial and *alibi*. It ruled that it was still physically possible for him to come from Brgy. Olango and be at the seashore of Brgy. Bani, Tinambac, Camarines

---

[2] CA *Rollo*, pp. 65-66.

[3] *Rollo*, pp. 2-12; penned by Associate Justice Romeo F. Barza, with Associate Justice Mariano C. Del Castillo (now a Member of the Court) and Associate Justice Arcangelita M. Romilla-Lontok (retired) concurring.

Sur where the killing happened. The decretal portion of the decision reads:

> WHEREFORE, the assailed Decision of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur in Criminal Case No. 02-697 dated 22 February 2006 is AFFIRMED.
>
> SO ORDERED.[4]

Tuy now insists to us that the CA committed reversible error in affirming his conviction.

We affirm the decision of the CA.

Firstly, the findings of the RTC are accorded the highest degree of respect, especially if adopted and confirmed by the CA, because of the first-hand opportunity of the trial judge to observe the demeanor of the witnesses when they testified at trial; such findings are final and conclusive and may not be reviewed on appeal unless there is clear misapprehension of facts.[5] Here, there was no showing that the RTC and the CA erred in appreciating the worth of Severino's eyewitness testimony.

Secondly, the CA and the RTC rejected the *alibi* of Tuy. We agree with their rejection. To begin with, his absence from the scene of the murder was not firmly established considering that he admitted that he could navigate the distance between Brgy. Olango (where he was supposed to be) and Brgy. Bani (where the crime was committed) in an hour by paddle boat and in less than that time by motorized *banca*. Also, eyewitness Severino positively identified him as having hacked his father.[6]

---

[4] *Id.*, pp. 11-12.

[5] *Garong v. People*, G.R. No. 148971, November 29, 2006, 508 SCRA 446, 455; *Lubos v. Galupo*, G.R. No. 139136, January 16, 2002, 373 SCRA 618, 622; *Montecillo v. Reynes*, G.R. No. 138018, July 26, 2002, 385 SCRA 244, 255.

[6] *People v. Malones*, G.R. No. 124388-90, March 11, 2004, 425 SCRA 318, 338.

The failure of Tuy to prove the physical impossibility of his presence at the crime scene negated his *alibi*.[7]

And, thirdly, the medico-legal evidence indicating that the victim sustained several hack wounds entirely corroborated Severino's recollection on the hacking.

On the civil liability, we *increase* the civil indemnity and the moral damages from ₱50,000.00 to ₱75,000.00, and *add* exemplary damages of ₱30,000.00 in order to accord with current jurisprudence to the effect that damages in such amounts are granted whenever the accused is adjudged guilty of a crime covered by Republic Act No. 7659 like murder.[8]

WHEREFORE, the Court affirms the decision promulgated on April 25, 2007 finding **RUEL TUY** guilty beyond reasonable doubt of murder, subject to the modification that the civil indemnity is ₱75,000.00; the moral damages is ₱75,000.00; and the exemplary damages is ₱30,000.00.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Peralta,[*] and *Villarama, Jr., JJ.,* concur.

---

[7] *People v. Bracamonte*, G.R. No. 95939, June 17, 1996, 257 SCRA 380, 384.

[8] *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[*] In lieu of Justice Maria Lourdes P.A. Sereno who is on leave per Office Order No. 944 dated February 9, 2011.

SECOND DIVISION

[G.R. No. 179641. February 9, 2011]

DOLORITA C. BEATINGO, *petitioner, vs.* **LILIA BU GASIS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; CLIENT IS BOUND BY THE NEGLIGENCE OF HER COUNSEL.— [P]etitioner's counsel was negligent in failing to file the required brief not only within 45 days from receipt of the notice but also within the extended period of ninety (90) days granted by the appellate court. He, however, explains that he could not comply with the court's directive because he had to attend to other cases that he considered more important and urgent than the instant case. Regrettably, such excuse is unacceptable. An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. Failure to file brief certainly constitutes inexcusable negligence, more so if the delay results in the dismissal of the appeal. Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill, and competence, regardless of its importance, whether he accepts it for a fee or for free. Unfortunately, petitioner is bound by the negligence of her counsel.

2. REMEDIAL LAW; APPEALS; APPEAL BRIEF; EFFECT OF FAILURE TO FILE APPELLANT'S BRIEF.— The failure to file the Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. It is true that it is not the ministerial duty of the CA to dismiss the appeal. The appellate court has the discretion to do so, and such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.

3. ID.; ID.; APPELLATE COURT'S DISMISSAL OF THE APPEAL FOR LATE FILING, UPHELD.— [W]e find no reason to disturb the appellate court's exercise of sound discretion in

dismissing the appeal. We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of law. The Court cannot say that the issues being raised by petitioner are of such importance that would justify the appellate court to exempt her from the general rule, and give due course to her appeal despite the late filing of her Appellant's Brief.

4. CIVIL LAW; SALES; DOUBLE SALE; WHEN THE TWO SALES WERE NOT REGISTERED, THE PARTY WHO FIRST TOOK POSSESSION OF THE SUBJECT PROPERTY IN GOOD FAITH HAS A BETTER RIGHT.— The present controversy is a clear case of double sale, where the seller sold one property to different buyers, first to petitioner and later to respondent. In determining who has a better right, the guidelines set forth in Article 1544 of the Civil Code apply. x x x Admittedly, the two sales were not registered with the Registry of Property. Since there was no inscription, the next question is who, between petitioner and respondent, first took possession of the subject property in good faith. As aptly held by the trial court, it was respondent who took possession of the subject property and, therefore, has a better right.

5. ID.; ID.; ID.; EXECUTION OF PUBLIC DOCUMENT GIVES RISE TO A *PRIMA FACIE* PRESUMPTION OF DELIVERY BUT IT IS DEEMED NEGATED BY THE FAILURE OF THE VENDEE TO TAKE ACTUAL POSSESSION OF THE LAND.— [T]he execution of a public instrument shall be equivalent to the delivery of the thing that is the object of the contract. However, the Court has held that the execution of a public instrument gives rise only to a *prima facie* presumption of delivery. It is deemed negated by the failure of the vendee to take actual possession of the land sold.

APPEARANCES OF COUNSEL

Defensor Teodosio Daquilanea Ventilacion & Averia Law Offices for petitioner.

Jagna-an Belloga Agot & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Court of Appeals[1] (CA) Resolutions dated June 27, 2007[2] and August 13, 2007[3] in CA-G.R. CEB-CV No. 01624.

This petition stemmed from the following facts:

Petitioner Dolorita Beatingo filed a Complaint for *Annulment and Cancellation of Sale, Reconveyance, Delivery of Title and Damages*[4] against respondent Lilia Bu Gasis before the Regional Trial Court (RTC) of Iloilo City. The case was raffled to Branch 31 and docketed as Civil Case No. 00-26171.

Petitioner alleged that, on May 19, 1998, she bought a piece of land, denominated as Lot No. 7219 (hereafter referred to as the subject property), from Flora G. Gasis (Flora). The subject property was registered in the name of Flora's predecessor-in-interest. The sale was evidenced by a notarized Deed of Absolute Sale. On October 18, 1999, petitioner went to the Register of Deeds to have the sale registered. She, however, failed to obtain registration as she could not produce the owner's duplicate certificate of title. She, thus, filed a petition for the issuance of the owner's duplicate certificate of title but was opposed by respondent, claiming that she was in possession of the Original Certificate of Title (OCT) as she purchased the subject property from Flora on January 27, 1999, as evidenced by a Deed of Sale. This prompted petitioner to file the Complaint, insisting that she is the rightful owner of the subject property. She also maintained that respondent had been keeping the OCT despite

---

[1] Cebu City Station.

[2] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Antonio L. Villamor and Stephen C. Cruz, concurring; *rollo*, pp. 125-126.

[3] *Id*. at 214-215.

[4] *Id*. at 48-53.

knowledge that petitioner is the rightful owner. She further accused respondent of inducing Flora to violate the contract with her, which caused her damage, prejudice, mental anguish, and serious anxiety.[5]

On the other hand, respondent claimed that she purchased the subject property from Flora without knowledge of the prior sale of the same subject property to petitioner, which makes her an innocent purchaser for value. Respondent denied having induced Flora to violate her contract with petitioner as she never knew the existence of the alleged first contract. Lastly, respondent declared that, upon payment of the purchase price, she immediately occupied the subject property and enjoyed its produce.

On December 29, 2005, the RTC rendered a decision,[6] the dispositive portion of which reads:

> WHEREFORE, on the basis of the testimonial and documentary evidence, the court finds that preponderant evidence has been established by the defendant as against the plaintiff, hence, JUDGMENT is therefore rendered in favor of the defendant.
>
> Consequently, the complaint is DISMISSED and the defendant is hereby declared to be the lawful owner of the property in question. Further the plaintiff is hereby ordered to pay the defendant ₱30,000.00 in attorney's fees, litigation expenses of ₱10,000.00 and the costs of the suit.
>
> SO ORDERED.[7]

The RTC considered the controversy as one of double sale and, in resolving the issues raised by the parties, it applied the rules laid down in Article 1544 of the Civil Code. As opposed to petitioner's admission that she did not pay the purchase price in full and that she did not acquire possession of the subject property because of the presence of tenants on it, the court gave more weight to respondent's evidence showing that she

---

[5] *Id*. at 72-74.

[6] Penned by Judge Rene S. Hortillo; *id*. at 72-86.

[7] *Id*. at 85-86.

immediately acquired possession of the subject property and enjoyed its produce upon full payment of the purchase price. Since the two sales – that of petitioner and that of respondent – were not registered with the Registry of Property, the RTC held that whoever was in possession had the better right. Hence, it decided in favor of respondent.

Aggrieved, petitioner filed a Motion for New Trial and Reconsideration[8] on the ground that she was in possession of the subject property actually and constructively. The motion, however, was denied by the RTC in an Order[9] dated April 5, 2006.

Undaunted, petitioner elevated the matter to the CA via a Notice of Appeal. On December 20, 2006, the CA required petitioner to file an Appellant's Brief within forty-five (45) days from receipt of the notice.[10]

However, due to pressures of work in equally important cases with other clients, counsel for petitioner requested for an extension of ninety (90) days within which to file the brief.[11]

In a Resolution dated March 9, 2007, the CA granted the motion. The Resolution is quoted below for easy reference:

> As prayed for, the plaintiff-appellant is hereby granted the maximum extension of ninety (90) days from 19 February 2007 or until 20 May 2007, within which to file an Appellant's Brief.[12]

Instead of filing the Appellant's Brief within the extended period, petitioner twice moved for extension of time to file the brief, covering an additional period of sixty (60) days for the same reasons as those raised in the first motion for extension.[13]

---

[8] *Id.* at 87-107.

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

[10] *Id.* at 113.

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

[12] *Id.* at 117.

[13] *Id.* at 118-123.

In a Resolution[14] dated June 27, 2007, the CA denied the motions for extension to file brief. Thus, for failure to file the Appellant's Brief, the appellate court dismissed the appeal. In a Resolution[15] dated August 13, 2007, the CA denied petitioner's motion for reconsideration.

Hence, the instant petition on the following grounds:

A. THE RESPONDENT COURT OF APPEALS ERRED IN NOT REVIEWING ON THE MERITS THE APPEAL OF THE PETITIONER, CONSIDERING THAT, THE DECISION OF THE REGIONAL TRIAL COURT OF ILOILO IS SO HORENDOUSLY WRONG WHEN THE SAID COURT DECIDED IN FAVOR OF THE PRIVATE RESPONDENT, WHICH IF NOT REVIEWED, OR REVERSED, WILL CAUSE INJUSTICE TO TRIUMPH AS AGAINST WHAT IS RIGHT AND LEGAL, SACRIFICING SUBSTANTIAL JUSTICE IN FAVOR OF TECHNICALITIES, CONSIDERING THAT:

a. Petitioner was the first buyer of the property while the private respondent is only the second buyer;

b. It is petitioner who is in possession of the said property and that;

c. Private respondent was not able to have her own deed of sale registered with the Register of Deeds;

B. THE RESPONDENT COURT OF APPEALS SHOULD HAVE EXERCISED ITS DISCRETION, IN FAVOR OF SUBSTANTIAL JUSTICE, BY ADMITTING THE APPELLANT'S BRIEF OF THE PETITIONER TAKING INTO CONSIDERATION THAT PETITIONER IN GOOD FAITH HAS FILED THE NEEDED MOTIONS FOR EXTENSIONS (sic) TO FILE BRIEF, AND THE BRIEF WAS IN FACT FILED WITHIN THE PERIOD OF THE REQUESTED EXTENSIONS.[16]

Petitioner insists that the appeal should not have been dismissed because her failure to file the Appellant's Brief was not deliberate and intended for delay. She claims that prior to the expiration

---

[14] *Supra* note 2.

[15] *Supra* note 3.

[16] *Rollo*, p. 21.

of the 90-day extension within which to file the brief, she again asked for two more extensions. She explains that the counsel could not prepare the Appellant's Brief because the law firm was swamped with numerous cases and election related problems which needed his attention.

We find petitioner's arguments bereft of merit.

Section 7, Rule 44 of the Rules of Court provides:

> Sec. 7. *Appellant's Brief*. – It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

In a Resolution dated December 20, 2006, the CA required petitioner to file the Appellant's Brief. The notice was received by petitioner on January 5, 2007. However, instead of filing the required brief, petitioner requested for additional time to prepare "due to pressures of work in equally important cases, plus court appearances, preparation of memoranda, conference with other clients." The CA granted the request and specifically stated that the same was the ***maximum extension***. This notwithstanding, instead of complying with the court's directive, petitioner again filed two motions for extension, for a total period of sixty (60) days. This time, the CA denied the motions and eventually dismissed the appeal in accordance with Section 1(e),[17] Rule 50 of the Rules of Court.

Evidently, petitioner's counsel was negligent in failing to file the required brief not only within 45 days from receipt of the notice but also within the extended period of ninety (90) days

---

[17] Section 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

granted by the appellate court. He, however, explains that he could not comply with the court's directive because he had to attend to other cases that he considered more important and urgent than the instant case. Regrettably, such excuse is unacceptable.[18] An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. Failure to file brief certainly constitutes inexcusable negligence, more so if the delay results in the dismissal of the appeal.[19] Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill, and competence, regardless of its importance, whether he accepts it for a fee or for free.[20] Unfortunately, petitioner is bound by the negligence of her counsel.

The failure to file the Appellant's Brief, though not jurisdictional, results in the abandonment of the appeal which may be the cause for its dismissal. It is true that it is not the ministerial duty of the CA to dismiss the appeal. The appellate court has the discretion to do so, and such discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[21]

The question of whether or not to sustain the dismissal of an appeal due to petitioner's failure to file the Appellant's Brief had been raised before this Court in a number of cases. In some of these cases, we relaxed the Rules and allowed the belated filing of the Appellant's Brief. In other cases, however, we applied the Rules strictly and considered the appeal abandoned, which thus resulted in its eventual dismissal. In

---

[18] *Jetri Construction Corporation v. Bank of the Philippine Islands*, G.R. No. 171687, June 8, 2007, 524 SCRA 522, 530.

[19] *Barbuco v. Atty. Beltran*, 479 Phil. 692, 696 (2004).

[20] *Id.* at 697.

[21] *Government of the Kingdom of Belgium v. Court of Appeals*, G.R. No. 164150, April 14, 2008, 551 SCRA 223, 241, citing *Carco Motor Sales, Inc. v. Court of Appeals*, No. L-44609, August 31, 1977, 78 SCRA 526.

Government of the Kingdom of Belgium v. Court of Appeals,[22] we revisited the cases which we previously decided and laid down the following guidelines in confronting the issue of non-filing of the Appellant's Brief:

(1) The general rule is for the Court of Appeals to dismiss an appeal when no appellant's brief is filed within the reglementary period prescribed by the rules;

(2) The power conferred upon the Court of Appeals to dismiss an appeal is discretionary and directory and not ministerial or mandatory;

(3) The failure of an appellant to file his brief within the reglementary period does not have the effect of causing the automatic dismissal of the appeal;

(4) In case of late filing, the appellate court has the power to still allow the appeal; however, for the proper exercise of the court's leniency[,] it is imperative that:

(a) the circumstances obtaining warrant the court's liberality;
(b) that strong considerations of equity justify an exception to the procedural rule in the interest of substantial justice;
(c) no material injury has been suffered by the appellee by the delay;
(d) there is no contention that the appellee's cause was prejudiced;
(e) at least there is no motion to dismiss filed.

(5) In case of delay, the lapse must be for a reasonable period; and

(6) Inadvertence of counsel cannot be considered as an adequate excuse as to call for the appellate court's indulgence except:

(a) where the reckless or gross negligence of counsel deprives the client of due process of law;
(b) when application of the rule will result in outright deprivation of the client's liberty or property; or
(c) where the interests of justice so require.

---

[22] *Supra*, at 241-242.

In this case, we find no reason to disturb the appellate court's exercise of sound discretion in dismissing the appeal. We must emphasize that the right to appeal is not a natural right but a statutory privilege, and it may be exercised only in the manner and in accordance with the provisions of law.[23] The Court cannot say that the issues being raised by petitioner are of such importance that would justify the appellate court to exempt her from the general rule, and give due course to her appeal despite the late filing of her Appellant's Brief.[24]

Nevertheless, in our desire to put an end to the present controversy, we have carefully perused the records of this case and reached the conclusion that the decision dated December 29, 2005 of the RTC is in perfect harmony with law and jurisprudence.[25]

The present controversy is a clear case of double sale, where the seller sold one property to different buyers, first to petitioner and later to respondent. In determining who has a better right, the guidelines set forth in Article 1544 of the Civil Code apply. Article 1544 states:

> Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.
>
> Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.
>
> Should there be no inscription, the ownership shall pertain to the person who in good faith was first in possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

---

[23] *Cariño v. Espinoza*, G.R. No. 166036, June 19, 2009, 590 SCRA 43, 48.

[24] *Government of the Kingdom of Belgium v. Court of Appeals*, *supra* note 21, at 242.

[25] See *Jetri Construction Corporation v. Bank of the Philippine Islands*, *supra* note 18, at 530.

Admittedly, the two sales were not registered with the Registry of Property. Since there was no inscription, the next question is who, between petitioner and respondent, first took possession of the subject property in good faith. As aptly held by the trial court, it was respondent who took possession of the subject property and, therefore, has a better right.

Petitioner insists that, upon the execution of the public instrument (the notarized deed of sale), she already acquired possession thereof, and thus, considering that the execution thereof took place ahead of the actual possession by respondent of the subject property, she has a better right.

We do not agree.

Indeed, the execution of a public instrument shall be equivalent to the delivery of the thing that is the object of the contract. However, the Court has held that the execution of a public instrument gives rise only to a *prima facie* presumption of delivery. It is deemed negated by the failure of the vendee to take actual possession of the land sold.[26]

In this case, though the sale was evidenced by a notarized deed of sale, petitioner admitted that she refused to make full payment on the subject property and take actual possession thereof because of the presence of tenants on the subject property. Clearly, petitioner had not taken possession of the subject property or exercised acts of dominion over it despite her assertion that she was the lawful owner thereof.[27]

Respondent, on the other hand, showed that she purchased the subject property without knowledge that it had been earlier sold by Flora to petitioner. She had reason to believe that there was no defect in her title since the owner's duplicate copy of the OCT was delivered to her by the seller upon full payment of the purchase price. She then took possession of the subject

---

[26] *Ten Forty Realty and Development Corporation v. Cruz*, 457 Phil. 603, 615 (2003).

[27] See *San Lorenzo Development Corporation v. Court of Appeals*, 490 Phil. 7 (2005).

property and exercised acts of ownership by collecting rentals from the tenants who were occupying it.

Hence, the RTC is correct in declaring that respondent has a better right to the subject property.

WHEREFORE, premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Resolutions dated June 27, 2007 and August 13, 2007 in CA-G.R. CEB-CV No. 01624 are *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 180462. February 9, 2011]

SOUTH PACIFIC SUGAR CORPORATION and SOUTH EAST ASIA SUGAR MILL CORPORATION, *petitioners, vs.* **COURT OF APPEALS and SUGAR REGULATORY ADMINISTRATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE; THE DEPUTIZED COUNSEL OF SUGAR REGULATORY ADMINISTRATION (SRA) MAY FILE A NOTICE OF APPEAL; RULING IN *NATIONAL POWER CORPORATION V. VINE DEVELOPMENT CORPORATION,* APPLIED.— Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 authorizes the OSG to represent the SRA, a government agency established pursuant to Executive Order No. 18, Series of 1986, in any litigation,

proceeding, investigation, or matter requiring the services of lawyers. x x x The OSG is empowered to deputize legal officers of government departments, bureaus, agencies, and offices in cases involving their respective offices. x x x In *National Power Corporation v. Vine Development Corporation*, this Court ruled that the deputization by the OSG of NAPOCOR counsels in cases involving the NAPOCOR included the authority to file a notice of appeal. The Court explained that the OSG could have withdrawn the appeal if it believed that the appeal would not advance the government's cause. The Court held that even if the deputized NAPOCOR counsel had no authority to file a notice of appeal, the defect was cured by the OSG's subsequent manifestation that the deputized NAPOCOR counsel had authority to file a notice of appeal. x x x In the present case, records show that both the OSG and the deputized SRA counsel were served copies of the RTC decision subject of the appeal. Thus, what applies is *National Power Corporation v. Vine Development Corporation.* Applying here the doctrine laid down in the said case, deputized SRA counsel Atty. Labay is, without a doubt, authorized to file a notice of appeal.

2. ID.; ID.; ID.; DEFECT IN THE AUTHORITY OF THE DEPUTIZED SRA COUNSEL, WHEN CURED.— Assuming Atty. Labay had no authority to file a notice of appeal, such defect was cured when the OSG subsequently filed its opposition to the motion to expunge the notice of appeal. As the OSG explained, its reservation to "approve the withdrawal of the case, the non-appeal, or other actions which appear to compromise the interest of the government" was meant to protect the interest of the government in case the deputized SRA counsel acted in any manner prejudicial to government. Obviously, what required the approval of the OSG was the non-appeal, not the appeal, of a decision adverse to government.

3. ID.; ID.; EXECUTIVE ORDER (EO) No. 87 (FACILITATING SUGAR IMPORTATION BY THE PRIVATE SECTOR); THE PROVISION ON FORFEITURE OF THE 25% OF THE CONVERSION FEE UNDER THE BIDDING RULES, DECLARED VALID.— The Bidding Rules passed through a consultative process actively participated by various government agencies and their counterpart in the private

sector: the Department of Agriculture, the National Economic Development Authority, the Department of Trade and Industry, the Department of Finance, the Sugar Regulatory Administration, and a representative each from the sugar planters' group and the sugar millers' group. We find nothing in the forfeiture provision of the Bidding Rules that is contrary to law, morals, good customs, public order, or public policy. On the contrary, the forfeiture provision fully supports government efforts to aid the country's ailing sugar industry. Conversion fees, including those that are forfeited under paragraph G.1 of the Bidding Rules, are automatically remitted to the Bureau of Treasury and go directly to the Agricultural Competitiveness Enhancement Fund. It is unrefuted that the sugar corporations failed in their contractual undertaking to import the remaining 27,000 metric tons of sugar specified in their sugar import allocation. Applying paragraph G.1 of the Bidding Rules, such failure is subject to forfeiture of the 25% of the conversion fee the sugar corporations paid as part of their contractual undertaking.

APPEARANCES OF COUNSEL

Solis Medina Limpingco & Fajardo for petitioners.
The Solicitor General for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] of the 6 November 2007 Decision[2] of the Court of Appeals in CA-G.R. SP No. 100571, which set aside the 26 June 2007, 6 August 2007, and 31 August 2007 Orders[3] as well as the 6 September 2007 Writ

[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 49-66. Penned by then Associate Justice Martin S. Villarama, Jr., now a Member of this Court, with Associate Justices Noel G. Tijam and Sesinando E. Villon, concurring.

[3] *Id.* at 102-103, 104-105, and 106.

of Execution and the 12 September 2007 Amended Writ of Execution of the Regional Trial Court (Branch 77) of Quezon City in Civil Case No. Q-02-46236.

The Facts

In 1999, the government projected a shortage of some 500,000 metric tons of sugar due to the effects of El Niño and La Niña phenomena. To fill the expected shortage and to ensure stable sugar prices, then President Joseph Ejercito Estrada issued Executive Order No. 87, Series of 1999 (EO 87),[4] facilitating sugar importation by the private sector.

Section 2 of EO 87 created a Committee on Sugar Conversion/ Auction to determine procedures for sugar importation as well as for collection and remittance of conversion fee.

Under Section 3 of EO 87, sugar conversion is by auction and is subject to conversion fee to be remitted by respondent Sugar Regulatory Administration (SRA) to the Bureau of Treasury.

On 3 May 1999, the Committee on Sugar Conversion/Auction issued the Bidding Rules providing guidelines for sugar importation. Under the Bidding Rules, the importer pays 25% of the conversion fee within three working days from receipt of notice of the bid award and the 75% balance upon arrival of the imported sugar.

The Bidding Rules also provide that if the importer fails to make the importation or if the imported sugar fails to arrive on or before the set arrival date, 25% of the conversion fee is forfeited in favor of the SRA, to wit:

G. Forfeiture of Conversion Fee

G.1 **In case of failure of the importer to make the importation or for the imported sugar to arrive in the Philippines on or before the Arrival Date, the 25% of Conversion Fee Bid already paid shall be forfeited in favor of the SRA** and the imported sugar shall not be classified as "B" (domestic sugar) unless, upon application with the SRA and without objection of the Committee, the SRA allows

[4] Effective 1 April 1999.

such conversion after payment by the importer of 100% of the Conversion Fee applicable to the shipment.[5] (Emphasis supplied)

The SRA forthwith authorized the importation of 300,000 metric tons of sugar, to be made in three tranches, as follows:

Tranche	Volume	Arrival Date
1st	100,000MT	15 May-15 June 1999
2nd	100,000MT	15 June-July 15 1999
3rd	100,000MT	15 July-15 August 1999[6]

The Committee on Sugar Conversion/Auction caused the publication of the invitation to bid. Several sugar importers submitted sealed bid tenders. Petitioners Southeast Asia Sugar Mill Corporation (Sugar Mill) and South Pacific Sugar Corporation (Pacific Sugar) emerged as winning bidders for the 1st, 2nd, and 3rd tranches.

For the 3rd tranche, Sugar Mill submitted the winning bid of ₱286.80 per 50 kilogram for 10,000 metric tons of sugar, while Pacific Sugar submitted the winning bid of ₱285.99 per 50 kilogram for 20,000 metric tons of sugar, for a combined total volume of 30,000 metric tons of sugar.

Pursuant to the Bidding Rules, Sugar Mill paid 25% of the conversion fee amounting to ₱14,340,000.00, while Pacific Sugar paid 25% of the conversion fee amounting to ₱28,599,000.00.

As it turned out, Sugar Mill and Pacific Sugar (sugar corporations) delivered only 10% of their sugar import allocation, or a total of only 3,000 metric tons of sugar. They requested the SRA to cancel the remaining 27,000 metric tons of sugar import allocation blaming sharp decline in sugar prices. The sugar corporations sought immediate reimbursement of the corresponding 25% of the conversion fee amounting to ₱38,637,000.00.

---

[5] *Rollo*, p. 50.

[6] *Id.* at 68.

The SRA informed the sugar corporations that the conversion fee would be forfeited pursuant to paragraph G.1 of the Bidding Rules. The SRA also notified the sugar corporations that the authority to reconsider their request for reimbursement was vested with the Committee on Sugar Conversion/Auction.

On 26 February 2002, the sugar corporations filed a complaint for breach of contract and damages in the Regional Trial Court (Branch 77) of Quezon City, docketed as Civil Case No. Q-02-46236.

In its notice of appearance,[7] the Office of the Solicitor General (OSG) deputized Atty. Raul Labay of the SRA's legal department to assist the OSG in this case, thus:

> Please be informed that Atty. Raul M. Labay has been authorized to appear in this case, and therefore, should also be furnished with notices of hearings, orders, resolutions, decisions, and other processes. However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interests of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.[8]

The Ruling of the RTC

The RTC held that paragraph G.1 of the Bidding Rules contemplated delay in the arrival of imported sugar, not cancellation of sugar importation. It concluded that the forfeiture provision did not apply to the sugar corporations which merely cancelled the sugar importation. In its 19 December 2006 Decision,[9] the RTC ruled, thus:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, ORDERING the defendant Sugar Regulatory Administration to pay plaintiffs the amount of ₱38,637,000.00 as reimbursement of 25% of the conversion fee they paid in 1999.

---

[7] *Id.* at 110-111. Dated 17 March 2003.

[8] *Id.* at 110.

[9] *Id.* at 67-76.

The claim for legal interests, compensatory damages, exemplary damages, and attorney's fees is hereby DENIED.

SO ORDERED.[10]

On 5 January 2007, the OSG received its copy of the RTC Decision.[11] On 24 January 2007, the deputized SRA counsel, Atty. Raul Labay, received his own copy of the Decision and filed a notice of appeal on 7 February 2007.[12]

The sugar corporations moved to expunge the notice of appeal on the ground that only the OSG, as the principal counsel, can decide whether an appeal should be made. The sugar corporations stressed that a lawyer deputized by the OSG has no authority to decide whether an appeal should be made.

The OSG filed its opposition[13] to the motion to expunge the notice of appeal. The OSG pointed out that in its notice of appearance,[14] it authorized SRA counsel Atty. Labay to assist the OSG in this case.

In its 26 June 2007 Order, the RTC granted the motion to expunge the notice of appeal. The OSG moved for reconsideration stressing that the OSG ratified Atty. Labay's filing of a notice of appeal. The RTC, in its 6 August 2007 Order, denied the OSG's motion for reconsideration.

In its 31 August 2007 Order, the RTC granted the sugar corporations' motion for execution, to wit:

WHEREFORE, premises considered, the plaintiffs' motion for execution is hereby granted. Accordingly, issue a writ of execution for the enforcement of the decision rendered in this case.

SO ORDERED.[15]

---

[10] *Id.* at 76.

[11] *Id.* at 91.

[12] *Id.* at 52.

[13] *Id.* at 93-100.

[14] *Id.* at 95.

[15] *Id.* at 106.

Accordingly, the RTC issued on 6 September 2007 a Writ of Execution and on 12 September 2007 an Amended Writ of Execution.

Aggrieved, the SRA filed in the Court of Appeals a petition for *certiorari* under Rule 65 seeking to set aside the RTC's 26 June 2007, 6 August 2007, and 31 August 2007 Orders as well as the 6 September 2007 Writ of Execution and the 12 September 2007 Amended Writ of Execution.

The Ruling of the Court of Appeals

The Court of Appeals held that the deputized SRA counsel had authority to file a notice of appeal. The appellate court thus directed the RTC to give due course to the appeal that Atty. Labay timely filed. The decretal part of its 6 November 2007 Decision reads:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The Orders dated June 26, 2007, August 6, 2007, and August 31, 2007, as well as the Writ of Execution dated September 6, 2007 and Amended Writ of Execution dated September 12, 2007 issued in Civil Case No. Q-02-46236 of the Regional Trial Court of Quezon City, Branch 77 are hereby all ANNULLED and SET ASIDE. Said court is hereby DIRECTED to GIVE DUE COURSE to the Notice of Appeal dated February 7, 2007 filed by Atty. Raul M. Labay in behalf of petitioner Sugar Regulatory Administration.
>
> No pronouncement as to costs.
>
> SO ORDERED.[16]

Dissatisfied with the decision of the Court of Appeals, the sugar corporations filed in this Court a petition for review on *certiorari*.

The Issues

The issues are (1) whether a deputized SRA counsel may file a notice of appeal and (2) whether the sugar corporations are entitled to reimbursement of ₱38,637,000.00 in conversion fee.

---

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

The Court's Ruling

The petition lacks merit.

The sugar corporations contend that the deputized SRA counsel, Atty. Labay, was not authorized to file a notice of appeal; that the OSG, as the principal counsel, had the sole authority to file a notice of appeal; that *certiorari* may not be interposed as a substitute for the lost remedy of appeal; and that the subject conversion fee amounting to ₱38,637,000.00 remained as private funds in view of its summary forfeiture and as such, it could not be deemed part of public funds.

The OSG counters that assuming Atty. Labay had no authority to file the notice of appeal, the defect was cured when the OSG subsequently filed its opposition to the sugar corporations' motion to expunge the notice of appeal. The OSG claims that if the denial of the appeal is sustained, the SRA would no longer have a remedy to assail the RTC decision adjudging it liable to reimburse the sugar corporations ₱38,637,000.00 in conversion fee despite the admitted failure of the sugar corporations to comply with their contractual undertaking to import sugar.

The deputized SRA counsel may file a notice of appeal.

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987[17] authorizes the OSG to represent the SRA, a government agency established pursuant to Executive Order No. 18, Series of 1986,[18] in any litigation, proceeding, investigation, or matter requiring the services of lawyers. It provides:

SEC. 35. *Powers and Functions*. – **The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers.** When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall

[17] Otherwise known as Executive Order No. 292.

[18] Creating a Sugar Regulatory Administration. Effective 28 May 1986.

constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. (Emphasis supplied)

The OSG is empowered to deputize legal officers of government departments, bureaus, agencies, and offices in cases involving their respective offices. Paragraph 8 of the same section reads:

(8) **Deputize legal officers of government departments, bureaus, agencies, and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices**, brought before the courts and exercise supervision and control over such legal officers with respect to such cases. (Emphasis supplied)

In *National Power Corporation v. Vine Development Corporation*,[19] this Court ruled that the deputization by the OSG of NAPOCOR counsels in cases involving the NAPOCOR included the authority to file a notice of appeal. The Court explained that the OSG could have withdrawn the appeal if it believed that the appeal would not advance the government's cause. The Court held that even if the deputized NAPOCOR counsel had no authority to file a notice of appeal, the defect was cured by the OSG's subsequent manifestation that the deputized NAPOCOR counsel had authority to file a notice of appeal.

The sugar corporations' reliance on another NAPOCOR case, *National Power Corporation v. NLRC*,[20] is misplaced. There, service of the decision was never made on the OSG, the principal counsel for NAPOCOR. Only the deputized NAPOCOR counsel was served a copy of the decision. Hence, the Court held that the period to appeal the decision did not commence to run. The Court explained that service of the decision on the deputized NAPOCOR counsel was insufficient and not binding on the OSG. This was why the Court stated in that case that the deputized NAPOCOR counsel had no authority to decide whether an appeal should be made.

---

[19] 394 Phil. 76 (2000).

[20] 339 Phil. 89 (1997).

Noteworthy, in *National Power Corporation v. Vine Development Corporation,* both the OSG and the deputized NAPOCOR counsel were served copies of the decision subject of the appeal. In *National Power Corporation v. NLRC,* only the deputized NAPOCOR counsel was furnished a copy of the appealed decision. Hence, the differing rulings by this Court.

In the present case, records show that both the OSG and the deputized SRA counsel were served copies of the RTC decision subject of the appeal. Thus, what applies is *National Power Corporation v. Vine Development Corporation.* Applying here the doctrine laid down in the said case, deputized SRA counsel Atty. Labay is, without a doubt, authorized to file a notice of appeal.

Assuming Atty. Labay had no authority to file a notice of appeal, such defect was cured when the OSG subsequently filed its opposition to the motion to expunge the notice of appeal. As the OSG explained, its reservation[21] to "approve the withdrawal of the case, the non-appeal, or other actions which appear to compromise the interest of the government" was meant to protect the interest of the government in case the deputized SRA counsel acted in any manner prejudicial to government. Obviously, what required the approval of the OSG was the non-appeal, not the appeal, of a decision adverse to government.

We hold that the RTC should have given due course to the notice of appeal that Atty. Labay timely filed. Thus, the 19 December 2006 Decision of the RTC in Civil Case No. Q-02-46236 cannot be deemed to have attained finality.

The next logical step is to remand the case to the RTC. However, a remand would only delay the resolution of this case and frustrate the ends of justice. As a rule, remand is avoided in the following instances: (a) where the ends of justice would not be served; (b) where public interest demands an early disposition of the case; or (c) where the trial court already

[21] In its Notice of Appearance dated 17 March 2003.

received all the evidence presented by both parties, and the Supreme Court is in a position, based upon said evidence, to decide the case on its merits.[22] All three conditions are present here.

The sugar corporations are not entitled to reimbursement of 25% of the conversion fee amounting to ₱38,637,000.00.

Section 2 of EO 87 granted the Committee on Sugar Conversion/Auction power to promulgate rules governing sugar importation by the private sector. It provides:

> SEC. 2. *Committee on Sugar Conversion/Auction*. – There is hereby created a Committee on Sugar Conversion/Auction which shall be headed by the DA, with the following as members: NEDA, DTI, DOF, SRA, and a representative each from the sugar planters' group and the sugar millers' group. The Committee is hereby authorized **to determine the parameters and procedures on the importation of sugar by the private sector**, and the collection and remittance of the fee for the conversion of sugar from "C" (reserve sugar) to "B" (domestic sugar). (Emphasis supplied)

Pursuant to this authority, the Committee issued the Bidding Rules subject of the controversy, **paragraph G.1 of which provides that if the importer fails to make the importation, 25% of the conversion fee shall be forfeited in favor of the SRA**, thus:

> G. Forfeiture of Conversion Fee
>
> G.1 **In case of failure of the importer to make the importation** or for the imported sugar to arrive in the Philippines on or before the Arrival Date, **the 25% of Conversion Fee Bid already paid shall be forfeited in favor of the SRA** and the imported sugar shall not be classified as "B" (domestic sugar) unless, upon application with the SRA and without objection of the Committee, the SRA allows such conversion after payment by the importer of 100% of the Conversion Fee applicable to the shipment.[23] (Emphasis supplied)

---

[22] *Dela Peña v. Court of Appeals*, G.R. No. 177828, 13 February 2009, 579 SCRA 396.

[23] *Rollo*, p. 50.

In joining the bid for sugar importation, the sugar corporations are deemed to have assented to the Bidding Rules, including the forfeiture provision under paragraph G.1. The Bidding Rules bind the sugar corporations. The latter cannot rely on the lame excuse that they are not aware of the forfeiture provision.

At the trial, Teresita Tan testified that the Bidding Rules were duly published in a newspaper of general circulation.[24] Vicente Cenzon, a sugar importer who participated in the bidding for the 3rd tranche, testified that he attended the pre-bid conference where the Bidding Rules were discussed and copies of the same were distributed to all the bidders.[25]

On the other hand, all that the sugar corporations managed to come up with was the self-serving testimony of its witness, Daniel Fajardo, that the sugar corporations were not informed of the forfeiture provision in the Bidding Rules.[26]

The Bidding Rules passed through a consultative process actively participated by various government agencies and their counterpart in the private sector: the Department of Agriculture, the National Economic Development Authority, the Department of Trade and Industry, the Department of Finance, the Sugar Regulatory Administration, and a representative each from the sugar planters' group and the sugar millers' group.[27]

We find nothing in the forfeiture provision of the Bidding Rules that is contrary to law, morals, good customs, public order, or public policy. On the contrary, the forfeiture provision

---

[24] *Id.* at 73.

[25] *Id.* at 71.

[26] *Id.* at 73.

[27] Section 2, EO 87.

SEC. 2. *Committee on Sugar Conversion/Auction.* – There is hereby created a Committee on Sugar Conversion/Auction which shall be headed by the DA, with the following as members: NEDA, DTI, DOF, SRA, and representative each from the sugar planters' group and the sugar millers' group. The Committee is hereby authorized to determine the parameters and procedures on the importation of sugar by the private sector, and the collection and remittance of the fee for the conversion of sugar from "C" to "B".

fully supports government efforts to aid the country's ailing sugar industry. Conversion fees, including those that are forfeited under paragraph G.1 of the Bidding Rules, are automatically remitted to the Bureau of Treasury and go directly to the Agricultural Competitiveness Enhancement Fund.[28]

It is unrefuted that the sugar corporations failed in their contractual undertaking to import the remaining 27,000 metric tons of sugar specified in their sugar import allocation. Applying paragraph G.1 of the Bidding Rules, such failure is subject to forfeiture of the 25% of the conversion fee the sugar corporations paid as part of their contractual undertaking.

The RTC gravely erred in ordering the SRA to return the forfeited conversion fee to the sugar corporations. Its strained interpretation that paragraph G.1 of the Bidding Rules contemplates cases of delay in the arrival of imported sugar but not cases of cancellation of sugar importation defies logic and the express provision of paragraph G.1. If delay in the arrival of imported sugar is subject to forfeiture of 25% of the conversion fee, with more reason is outright failure to import sugar, by cancelling the sugar importation altogether, subject to forfeiture of the 25% of the conversion fee.

Plainly and expressly, paragraph G.1 identifies two situations which would bring about the forfeiture of 25% of the conversion fee: (1) **when the importer fails to make the importation** or (2) when the imported sugar fails to arrive in the Philippines on or before the set arrival date. It is wrong for the RTC to interpret the forfeiture provision in a way departing from its plain and express language.

Where the language of a rule is clear, it is the duty of the court to enforce it according to the plain meaning of the word. There is no occasion to resort to other means of interpretation.[29]

---

[28] Section 3, EO 87.

SEC. 3. *Conduct of Auction for Sugar Conversion*. – x x x The "Conversion Fee" shall be remitted to the Bureau of Treasury and may be used to pay the arrears of government in the Agricultural Competitiveness Enhancement Fund.

[29] *Del Mar v. PAGCOR*, 411 Phil. 430 (2001).

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 6 November 2007 Decision of the Court of Appeals in CA-G.R. SP No. 100571, which set aside the 26 June 2007, 6 August 2007, and 31 August 2007 Orders as well as the 6 September 2007 Writ of Execution and the 12 September 2007 Amended Writ of Execution of the Regional Trial Court (Branch 77) of Quezon City in Civil Case No. Q-02-46236. Further, the 19 December 2006 Decision of the Regional Trial Court (Branch 77) of Quezon City in Civil Case No. Q-02-46236 is *SET ASIDE*.

Costs against petitioners.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 182521. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ERNESTO FRAGANTE *y* AYUDA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS; SUFFICIENTLY ESTABLISHED.— The prosecution sufficiently established appellant's guilt beyond reasonable doubt for the crime of rape. Article 335 of the Revised Penal Code provides: Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances: 1. By using force or intimidation; 2. When the woman is deprived of reason or otherwise unconscious; and 3. When the woman is under twelve years of age or is demented. As correctly found by the Court of Appeals, all the essential elements of rape are

present in this case. The evidence on record clearly proves that appellant had carnal knowledge of his own minor daughter AAA.

2. ID.; ID.; ID.; ID.; IN INCESTUOUS RAPE, MORAL ASCENDANCY OF THE FATHER OVER THE DAUGHTER-VICTIM SUBSTITUES FOR FORCE OR INTIMIDATION.— It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent. In *People v. Orillosa*, we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires. When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation. The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim. In this case, AAA's testimony clearly showed how appellant took advantage of his relationship with and his moral ascendancy over his minor daughter when he had carnal knowledge of her. As found by the Court of Appeals, appellant instilled fear on AAA's mind every time he sexually molested her.

3. ID.; ID.; ID.; CLAIM OF RAPE CORROBORATED BY MEDICAL FINDINGS.— We likewise find appellant's claim that the medical findings do not support the charge of rape untenable. Aside from AAA's positive, straightforward, and credible testimony, the prosecution presented the medical certificate issued by Dr. Bernadette Madrid and the latter's testimony which corroborate AAA's claim that appellant raped her.

4. ID.; ID.; ID.; DELAY IN REPORTING THE RAPE INCIDENT DOES NOT AFFECT CREDIBILITY OF THE MINOR-VICTIM.— The Court is not impressed with appellant's claim that AAA's failure to immediately report the incidents to the proper authorities affected her credibility. Delay could be attributed to the victim's tender age and the appellant's threats.

A rape victim's actions are oftentimes influenced by fear, rather than reason. In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.

5. ID.; ID.; ID.; PENALTY.— For appellant's guilt for the crime of rape committed against his own minor daughter AAA, we sustain the penalty of *reclusion perpetua* imposed on appellant. While the Court of Appeals correctly reduced the penalty of death to *reclusion perpetua*, the Court of Appeals failed to indicate that the reduction of the penalty to *reclusion perpetua* is without eligibility for parole in accordance with Sections 2 and 3 of Republic Act No. 9346.

6. ID.; ID.; ID.; CIVIL LIABILITIES.— As regards appellant's civil liability, we affirm the award of moral damages and civil indemnity, which are automatically granted without need of proof or pleading, each in the sum of ₱75,000. However, we increase the award of exemplary damages from ₱25,000 to ₱30,000 consistent with prevailing jurisprudence.

7. ID.; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. 7610); ELEMENTS OF SEXUAL ABUSE, PRESENT.— As correctly found by the Court of Appeals, all the elements of sexual abuse under Section 5, Article III of RA 7610 are present here. First, appellant's repeated touching, fondling, and sucking of AAA's breasts and inserting his finger into AAA's vagina with lewd designs undoubtedly constitute lascivious conduct under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610. x x x Second, appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse. x x x Third, AAA is below 18 years old at the time of the commission of the offense, based on her testimony which was corroborated by her Birth Certificate presented during the trial. x x x Since all three elements of the crime were present, the conviction of appellant for acts of lasciviousness was proper.

8. ID.; ID.; ACTS OF LASCIVIOUSNESS; DATE AND TIME OF COMMISSION ARE NOT MATERIAL INGREDIENTS OF

THE OFFENSE.— As to the alleged failure of the prosecution to establish with particularity the date of the commission of the acts of lasciviousness, suffice it to state that the date and time of the commission of the offense are not material ingredients of such crime.

9. ID.; ID.; ID.; RELATIONSHIP, CONSIDERED AS AGGRAVATING; PENALTY.— [T]he alternative circumstance of relationship under Article 15 of the Revised Penal Code should be considered against appellant. In *People v. Fetalino*, the Court held that, "in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating." In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that the complainant is his daughter. In the instant case, the informations expressly state that AAA is appellant's daughter, and appellant openly admitted this fact. Accordingly, we modify the penalty imposed in Criminal Case Nos. 98-657 and 98-659. Section 5, Article III of Republic Act No. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua.* Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period – *reclusion perpetua*. Besides, Section 31 of Republic Act No. 7610 expressly provides that "The penalty provided herein shall be imposed in its maximum period when the perpetrator is [a] x x x parent, x x x. In *People v. Montinola* and *People v. Sumingwa*, where the accused is the biological father of the minor victim, the Court appreciated the presence of the aggravating circumstance of relationship and accordingly imposed the penalty of *reclusion perpetua*. Thus, appellant herein is sentenced to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. 98-657 and 98-659.

10. ID.; ID.; ID.; PENALTY WHERE THE VICTIM WAS UNDER TWELVE AT THE TIME OF THE COMMISSION OF ACTS OF LASCIVIOUSNESS.— In Criminal Case Nos. 98-651,98-653, 98-654, 98-655, and 98-656, where AAA was still below 12 years old at the time of the commission of the acts of lasciviousness, the imposable penalty is *reclusion temporal* in its medium period in accordance with Section 5(b), Article III of Republic Act No. 7610. This provision specifically states

"[t]hat the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period." Considering the presence of the aggravating circumstance of relationship, as explained, the penalty shall be imposed in its maximum period. In *People v. Velasquez*, which involved a two year old child sexually abused by her grandfather, the Court imposed the indeterminate sentence of 12 years and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum. Accordingly, appellant herein is sentenced to suffer the indeterminate penalty of 12 years and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum.

11. ID.; ID.; ID.; CIVIL LIABILITIES— [W]e modify the amount of moral damages and fine awarded by the Court of Appeals. We reduce the amount of moral damages from ₱50,000 to ₱15,000 and the amount of fine from ₱30,000 to ₱15,000 for each of the seven (7) counts of acts of lasciviousness. In addition, we award civil indemnity in the amount of ₱20,000, and exemplary damages in the sum of ₱15,000, in view of the presence of the aggravating circumstance of relationship, for each of the seven (7) counts of acts of lasciviousness.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

On appeal is the 28 September 2007 Decision[1] of the Court of Appeals in CA-G.R. CR H.C. No. 01980, affirming with modification the 4 July 2003 Decision[2] of the Regional Trial

[1] *Rollo*, pp. 2-39. Penned by Associate Justice Enrico A. Lanzanas with Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente concurring.

[2] CA *rollo*, pp. 47-66. Penned by Judge Helen Bautista-Ricafort.

Court, Parañaque City, Branch 260, convicting appellant Ernesto Fragante *y* Ayuda of nine (9) counts of acts of lasciviousness and one (1) count of rape, all committed against his minor daughter, AAA.[3]

The Facts

In ten (10) Informations filed on 14 July 1998, appellant was charged with nine (9) counts of acts of lasciviousness and one (1) count of rape all committed against his own minor daughter AAA. The Informations[4] read:

CRIMINAL CASE NO. 98-651 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That in between the period of April-May 1993, in Parañaque, Metro Manila, and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breast of [AAA].

CRIMINAL CASE NO. 98 – 652 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in May 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

---

[3] The real name of the private complainant is withheld per Republic Act (R.A.) No. 7610 (*Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act*); R.A. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and A.M. No. 04-10-11-SC effective 15 November 2004 (*Rule on Violence Against Women and Their Children*). See *People v. Cabalquinto*, G.R. No. 167693, 19 September 2006, 502 SCRA 419, 421-423.

[4] Records, pp. 5-6, 13-14, 19-20, 29-30, 39-40, 47-48, 57-58, 67-68, 75-76, 84-85.

CRIMINAL CASE NO. 98 – 653 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in June 1993 until August 1993, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then ten (10) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) the breasts of [AAA], touched (sic) and inserted (sic) his finger into the vagina of said minor-victim.

CRIMINAL CASE NO. 98 – 654 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period of October to December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled *(sic)* and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 – 655 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in December 1993 at Shaolin Chinese Restaurant located at Sucat Road, Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously fondled (sic) and sucked the breasts of [AAA], and thereafter touched the vagina of said minor-victim.

CRIMINAL CASE NO. 98 – 656 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in January 1994 to August 1994, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then eleven (11) year old biological daughter, [AAA], and

with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 – 657 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in between the period commencing in August 1994 until September 1995, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then twelve (12) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 – 658 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 – 659 for Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in (sic) October 25, 1997, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above-named accused, by taking advantage of his then fifteen (15) year old biological daughter, [AAA], and with lewd designs, did then willfully, unlawfully and feloniously touched (sic) and sucked (sic) the breasts of [AAA], licked (sic) her vagina and inserted (sic) his finger into the private part of said minor-victim.

CRIMINAL CASE NO. 98 – 660 for Violation of Article 335 of the RPC, as amended, in relation to Section 5(b), Art. III of R.A. 7610, committed as follows:

That sometime in September 1995, in Parañaque, Metro Manila and within the jurisdiction of this Honorable Court, above named accused, by taking advantage of his then thirteen (13) year old biological daughter [AAA], and with lewd designs, did then willfully, unlawfully and feloniously, lie and had carnal knowledge with the said minor victim, against her will.[5]

The Court of Appeals narrated the facts as follows:

Ernesto A. Fragante (Ernesto hereafter) married CCC on October 6, 1975, in Sta. Cruz Manila, and such marriage was ratified on December 7, 1995 celebrated in San Sebastian Parish Church. That union, produced three offsprings. [AAA], the victim herein, is their third child. She was born on August 23, 1982. x x x

Sometime in April 1993 to May 1993, three or four months before her eleventh (11) birthday, [AAA] woke up one early morning to prepare for the driving lessons which her father Ernesto, promised to teach them that day. [AAA] was the first to wake up. She was in her room when her father entered and lay on her bed. He then asked [AAA] to lie beside him to which [AAA] obeyed. While lying beside her, Ernesto was talking to her about a lot of things, and as he talked he started to fondle her breast and suck her nipples.

x x x x x x x x x

The incident was repeated sometime between June 1993 and August 1993. Ernesto told [AAA] to get inside his room, then he would lock the door. Once inside the room, he would scold [AAA] for reasons unknown to her. When she would start to cry, her father would start to touch her breast, then he would suck her nipples while he was rubbing her vagina.

On two occasions, between October 1993 and December 1993, at Shaolin Chinese Restaurant located in Sucat, Parañaque, which the Fragante family owned, there was a small back room used as an office which later was converted into a room where they could rest. [AAA] was told by her father to rest in that room and once inside, while talking to her, he covered the windows with manila paper. He lay down beside her in the folding bed. He fondled her breast, squeezed them and then later inserted his hand under her shirt as he pull it up and put his mouth on her breast to suck it alternately. He started

[5] *Rollo,* pp. 2-7.

stroking her genitals with her shorts on. She did not do anything as she was in shock at that time.

In December 1993, [AAA] and her father bought food from Jollibee. She was instructed to eat it at the back room of their Shaolin Chinese Restaurant so that other employees would not see it. After eating, Ernesto asked her to lie down in the folding bed and he again lay down beside her and massaged her breast and sucked her nipples while continuously rubbing her vagina by inserting his hand inside her shorts.

Sometime in January 1994, around 10 o'clock in the evening, while [AAA] was sleeping in another room, Ernesto entered her room. He lay beside her, and started sucking her breast. He removed her shorts and then touched her vagina. He then inserted his finger inside her vagina.

In August-September 1994, she was around twelve (12) years old, Ernesto molested her again inside his room, by massaging her private parts and sucking her nipples while continuously rubbing her vagina and afterwards inserting his finger inside it.

In September 1995, at the age of thirteen (13), [AAA] was raped by her father Ernesto. She was told to get inside his room and was scolded by him before she was made to lie down in his bed. Her shirt was removed, and her breast and vagina were fondled by him. Thereafter, he sucked her nipples while continuously touching her vagina. He removed her shorts and panty, then spreaded her legs and inserted his penis in her vagina. She struggled and begged him to remove his penis. She said she could not recall the exact details of what her father was doing. He stayed on top of her despite her pleas. x x x

Ernesto was not able to find time to molest [AAA] in September 1995-1996, because he was hardly home and was busy with his bookstore business in Visayas and Mindanao.

x x x x x x x x x

In the evening of October 25, 1997, Irma, together with their brother Marco accompanied their mother Gaudencia to a wake of their mother's friend. [AAA] wanted to go with them but she was left home alone with Ernesto who refused to allow [AAA] to go with them. x x x

x x x x x x x x x

Her father started massaging her breast and [AAA] removed his hands and stood up but she was bitten and pushed towards the bed. Her father strangled her and asked whether she preferred to be strangled first and she answered no. He started touching her private parts again and this time she continued warding off his hands and when she heard their car entering their garage, she told her father that her mother had arrive. That was the only time she was allowed to leave but was stopped by her father and warned not tell her mother what happened.

x x x They later proceeded to the NBI, Taft Ave. Manila to report the incidents and where [AAA] executed her complaint-affidavit. Her mother and siblings also executed their affidavits.[6]

x x x x x x x x x

During arraignment on April 26, 1999, the accused entered separate pleas of "Not Guilty" to all the crimes charged.

Joint trial ensued thereafter.

Prosecution presented the following witnesses: [AAA], BBB, CCC, and Dr. Bernadette Madrid. The defense presented Ernesto Fragante as the sole witness.[7]

The Ruling of the Trial Court

On 4 July 2003, the trial court rendered a Decision convicting appellant for the crimes charged. The dispositive portion of the trial court's decision reads:

WHEREFORE, after careful perusal of the evidence presented, this Court finds as follows: for (sic)

Criminal Case No. 98-651 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

---

[6] CA *rollo*, pp. 218-223.

[7] *Id.* at 214.

Criminal Case No. 98-652 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-653 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-654 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-655 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-656 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of *reclusion temporal* of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-657 For Violation of Art. 336 of the RPC, as amended, in relation to Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of

reclusion temporal of FOURTEEN (14) YEARS EIGHT (8) MONTHS and ONE (1) DAY to FIFTEEN (15) YEARS SIX (6) MONTHS and TWENTY (20) DAYS.

Criminal Case No. 98-658 for Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS and ONE (1) DAY to SIX (6) YEARS.

Criminal Case No. 98-659 for Section 5(b), Art. III of RA 7610 finds the accused Ernesto Ayuda Fragante GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to suffer an imprisonment of SIX (6) MONTHS and ONE (1) DAY to SIX (6) YEARS.

Criminal Case No. 98-660 for RAPE this court finds the accused ERNESTO AYUDA FRAGANTE GUILTY BEYOND REASONABLE DOUBT and is hereby sentenced to DEATH. He is ordered to pay the complainant ₱50,000.00 as civil liability and ₱50,000.00 as moral damages.

SO ORDERED.[8]

The Ruling of the Court of Appeals

The Court of Appeals found appellant guilty beyond reasonable doubt for the crimes charged. In upholding appellant's conviction, the Court of Appeals gave credence to AAA's testimony narrating how appellant sexually abused her repeatedly. The Court of Appeals junked appellant's contentions that (1) AAA's testimony lacked specific details such as the actual date of commission of the acts of lasciviousness, and was inconsistent with respect to the charge of rape; (2) AAA was ill motivated in filing the criminal complaints; (3) the charge of rape was unsubstantiated by medical findings; and (4) the delay in reporting the incidents to the proper authorities renders the charges dubious.

On 28 September 2007, the Court of Appeals rendered a Decision the dispositive portion of which reads:

[8] *Id.* at 62-64.

WHEREFORE, the decision of the Regional Trial Court, of Parañaque City, Branch 260, dated July 4, 2003 is AFFIRMED with MODIFICATION as follows:

(1) In Criminal Cases Nos. 98-651, 98-652, 98-653, 98-654, 98-655, 98-656, 98-657, accused-appellant Ernesto A. Fragante is hereby sentenced to suffer Indeterminate Penalty, the minimum of which is fourteen (14) years and eight (8) months of *reclusion temporal* minimum and the maximum of which is seventeen (17) years and four (4) months of *reclusion temporal* medium, for acts of lasciviousness under ***Article III, Section 5 (b) of Republic Act No. 7610,*** and is also ordered to pay [AAA] the amount of ₱50,000.00 as moral damages for each count of acts of lasciviousness;

(2) In pursuant with ***Section 31(f), Article XII, of Republic Act No. 7610***, a **FINE** in the amount of Thirty Thousand (Php30,000.00) Pesos for each count of the nine (9) counts of lascivious conduct is hereby imposed;

(3) The penalty imposed in Criminal Case No. 98-658 and Criminal Case No. 98-659 by the trial court is hereby ***AFFIRMED without modification***;

(4) In Criminal Case No. 98-660, the penalty imposed is hereby reduced to *reclusion perpetua* by virtue of R.A. No. 9346, which prohibits the imposition of death penalty.

(5) In view of the jurisprudential trend, the amount of moral damages for Criminal Case No. 98-660 is hereby **INCREASED** to Seventy Five Thousand (Php 75,000.00) Pesos and the civil indemnity is likewise increased to Seventy Five Thousand (Php 75,000.00) and an additional amount of Twenty Five Thousand (Php 25,000.00) as exemplary damages.

SO ORDERED.[9]

The Issue

The sole issue in this case is whether the Court of Appeals erred in affirming appellant's conviction for nine (9) counts of acts of lasciviousness and one (1) count of rape.

---

[9] *Id.* at 244-245.

The Ruling of this Court

We sustain appellant's conviction for seven (7) counts of acts of lasciviousness and one (1) count of rape. We acquit appellant for two (2) counts of acts of lasciviousness on the ground of reasonable doubt.

Criminal Case No. 98-660 for Rape

Appellant contends that the Court of Appeals erred in convicting him for the crime of rape since the prosecution failed to overthrow the presumption of innocence. Appellant alleges that (1) AAA's testimony was full of inconsistencies and improbabilities which cast serious doubts on the truthfulness of her account; (2) the medical findings do not support the charge of rape; (3) AAA's delayed reporting of the incident renders the charges dubious; and (4) AAA and her mother harbored a grudge against appellant.[10]

We are not persuaded. The prosecution sufficiently established appellant's guilt beyond reasonable doubt for the crime of rape.

Article 335 of the Revised Penal Code[11] provides:

Art. 335. *When and how rape is committed.* - Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;

2. When the woman is deprived of reason or otherwise unconscious; and

3. When the woman is under twelve years of age or is demented.

As correctly found by the Court of Appeals, all the essential elements of rape are present in this case. The evidence on record clearly proves that appellant had carnal knowledge of his own minor daughter AAA.

---

[10] CA *rollo*, pp. 119, 121, 122, 124.

[11] As amended by Republic Act No. 7659 (AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AND FOR OTHER PURPOSES).

We reject appellant's contention that AAA's testimony was full of inconsistencies. On the contrary, AAA's testimony that she was raped by appellant was very consistent and straightforward. Notably, appellant did not point out the supposed inconsistencies, and proceeded in arguing that his moral ascendancy over his daughter was insufficient to intimidate AAA.

It must be stressed that the gravamen of rape is sexual congress with a woman by force and without consent.[12] In *People v. Orillosa*,[13] we held that actual force or intimidation need not be employed in incestuous rape of a minor because the moral and physical dominion of the father is sufficient to cow the victim into submission to his beastly desires.[14] When a father commits the odious crime of rape against his own daughter, his moral ascendancy or influence over the latter substitutes for violence and intimidation.[15] The absence of violence or offer of resistance would not affect the outcome of the case because the overpowering and overbearing moral influence of the father over his daughter takes the place of violence and offer of resistance required in rape cases committed by an accused who did not have blood relationship with the victim.[16]

In this case, AAA's testimony clearly showed how appellant took advantage of his relationship with and his moral ascendancy over his minor daughter when he had carnal knowledge of her. As found by the Court of Appeals, appellant instilled fear on AAA's mind every time he sexually molested her, thus:

> [AAA] also admitted that after accused-appellant has started sexually molesting her until she was raped, she was so frightened of him. In fact she could not tell her mother of her ordeal, mindful of the serious threats on her life and of the chaos it would cause their family.[17]

---

[12] *People v. Lolos*, G.R. No. 189092, 19 August 2010.

[13] G.R. Nos. 148716-18, 7 July 2004, 433 SCRA 689, 698.

[14] *Id.*

[15] *People v. Maglente*, G.R. No. 179712, 27 June 2008, 556 SCRA 447, 461-462.

[16] *Id.* at 462.

[17] CA *rollo*, pp. 238-239.

We likewise find appellant's claim that the medical findings do not support the charge of rape untenable. Aside from AAA's positive, straightforward, and credible testimony, the prosecution presented the medical certificate issued by Dr. Bernadette Madrid[18] and the latter's testimony which corroborate AAA's claim that appellant raped her.

The Court is not impressed with appellant's claim that AAA's failure to immediately report the incidents to the proper authorities affected her credibility.[19] Delay could be attributed to the victim's tender age and the appellant's threats.[20] A rape victim's actions are oftentimes influenced by fear, rather than reason.[21] In incestuous rape, this fear is magnified because the victim usually lives under the same roof as the perpetrator or is at any rate subject to his dominance because of their blood relationship.[22]

We also find appellant's imputation of ill-motive on the part of the victim, including his wife and AAA's sister, in filing the criminal charges devoid of merit. Suffice it to state that the resentment angle, even if true, does not prove any ill motive on AAA's part to falsely accuse appellant of rape or necessarily detract from her credibility as witness.[23] Motives, such as those arising from family feuds, resentment, or revenge, have not prevented the Court from giving, if proper, full credence to the testimony of minor complainants who remained consistent throughout their direct and cross-examinations.[24]

---

[18] Records, p. 457.

[19] *People v. Montinola*, G.R. No. 178061, 31 January 2008, 543 SCRA 412, 424.

[20] *People v. Maglente*, *supra* note 15 at 467.

[21] *Id*.

[22] *Id*.

[23] *People v. Anguac*, G.R. No. 176744, 5 June 2009, 588 SCRA 716, 723.

[24] *Id.* at 723, citing *People v. Alejo*, G.R. No. 149370, 23 September 2002, 411 SCRA 563, 573 and *People v. Rata*, G.R. Nos. 145523-24, 11 December 2003, 418 SCRA 237, 248-249.

For appellant's guilt for the crime of rape committed against his own minor daughter AAA, we sustain the penalty of *reclusion perpetua* imposed on appellant. While the Court of Appeals correctly reduced the penalty of death[25] to *reclusion perpetua*, the Court of Appeals failed to indicate that the reduction of the penalty to *reclusion perpetua* is without eligibility for parole in accordance with Sections 2 and 3 of Republic Act No. 9346.[26]

As regards appellant's civil liability, we affirm the award of moral damages and civil indemnity, which are automatically granted without need of proof or pleading,[27] each in the sum of ₱75,000. However, we increase the award of exemplary

---

[25] Pursuant to Article 335 of the Revised Penal Code, as amended by Republic Act No. 7659 (AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES).

Section 11. Article 335 of the same Code is hereby amended to read as follows:

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

1. when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

[26] *People v. Garbida*, G.R. No. 188569, 13 July 2010. Republic Act No. 9346 (AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES) provides:

SEC. 2. In lieu of the death penalty, the following shall be imposed.

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

[27] *People v. Mejia*, G.R. No. 185723, 4 August 2009, 595 SCRA 356, 376.

damages from ₱25,000 to ₱30,000 consistent with prevailing jurisprudence.[28]

Criminal Case Nos. 98-651, 98-652, 98-653, 98-654, 98-655, 98-656, 98-657, 98-658, and 98-659 for Acts of Lasciviousness

Appellant argues that the Court of Appeals erred in convicting him for nine counts of acts of lasciviousness since the prosecution failed to establish with particularity the date of the commission of the offense. Appellant contends that AAA's testimony was a "sweeping generalization of the crimes committed."[29] According to appellant, AAA's statement "that the said acts were allegedly committed so many times on certain occasions is clearly inadequate and grossly insufficient" to sustain a conviction.[30]

We are not convinced.

Appellant was charged with violation of Article 336 of the Revised Penal Code, as amended, in relation to Section 5(b), Article III of Republic Act No. 7610. These provisions state:

Art. 336. *Acts of lasciviousness.* — Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by *prision correccional.*

Section 5. *Child Prostitution and Other Sexual Abuse*. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

---

[28] *People v. Documento,* G.R. No. 188706, 17 March 2010, 615 SCRA 610, 618.

[29] CA *rollo,* p. 117.

[30] *Id.*

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period; x x x

The elements of sexual abuse under Section 5, Article III of Republic Act No. 7610 are as follows:

1. The accused commits the act of sexual intercourse or lascivious conduct.
2. The said act is performed with a child exploited in prostitution or subjected to sexual abuse.
3. The child, whether male or female, is below 18 years of age.[31]

As correctly found by the Court of Appeals, all the elements of sexual abuse under Section 5, Article III of RA 7610 are present here.

First, appellant's repeated touching, fondling, and sucking of AAA's breasts and inserting his finger into AAA's vagina with lewd designs undoubtedly constitute lascivious conduct under Section 2(h) of the Implementing Rules and Regulations of Republic Act No. 7610, to wit:

(h) "Lascivious conduct" means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality,

---

[31] *People v. Abello*, G.R. No. 151952, 25 March 2009, 582 SCRA 378, 394, citing *People v. Larin*, G.R. No. 128777, 7 October 1998, 297 SCRA 309, 318; *Amployo v. People*, G.R. No. 157718, 26 April 2005, 457 SCRA 282, 295; *Olivarez v. Court of Appeals*, G.R. No. 163866, 29 July 2005, 465 SCRA 465, 473; and *Malto v. People*, G.R. No. 164733, 21 September 2007, 533 SCRA 643.

masturbation, lascivious exhibition of the genitals or public area of a person.

Second, appellant, as a father having moral ascendancy over his daughter, coerced AAA to engage in lascivious conduct, which is within the purview of sexual abuse. In *People v. Larin*,[32] we held:

> A child is deemed exploited in prostitution or subjected to other sexual abuse, when the child indulges in sexual intercourse or lascivious conduct (a) for money, profit, or any other consideration; or (b) under the coercion or influence of any adult, syndicate or group.

Third, AAA is below 18 years old at the time of the commission of the offense, based on her testimony which was corroborated by her Birth Certificate[33] presented during the trial. Section 3(a), Article I of Republic Act No. 7610 provides:

> SECTION 3. *Definition of Terms*. –
>
> (a) "Children" refers [to] persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

Since all three elements of the crime were present, the conviction of appellant for acts of lasciviousness was proper.

As to the alleged failure of the prosecution to establish with particularity the date of the commission of the acts of lasciviousness, suffice it to state that the date and time of the commission of the offense are not material ingredients of such crime. Section 11, Rule 110 of the Rules of Court provides:

> Sec. 11. Time of the commission of the offense. — It is not necessary to state in the complaint or information the precise time at which the offense was committed except when time is a material ingredient

---

[32] 357 Phil. 987 (1998).

[33] Records, p. 445.

of the offense, but the act may be alleged to have been committed at any time as to the actual date at which the offense was committed as the information or complaint will permit.

In *People v. Losano*,[34] the Court held:

> Thus, as early as 1903, this Court has ruled that while the complaint must allege a specific time and place when and where the offense was committed, the proof need not correspond to this allegation, unless the time and place is material and of the essence of the offense as necessary ingredient in its description. Evidence so presented is admissible and sufficient if it shows 1) that the crime was committed at any time within the period of the statute of limitations; and 2) before or after the time stated in the complaint or indictment and before the action is commenced.

We agree with the Court of Appeals in debunking appellant's claim that AAA's testimony was overly generalized and lacked specific details on when appellant sexually abused the victim. The records are replete with details on when and how appellant sexually abused her. AAA testified that appellant habitually molested her whenever he had the opportunity to do so, to wit:

> Atty. Rosanna Elepaño-Balauag:
>
> How many times[,] because the witness answered that his father was sexually abusing her.
>
> Court:
>
> Witness may answer.
>
> Atty. Rosanna Elepaño-Balauag:
>
> How many times if you remember?
>
> A: Many times.
>
> x x x x x x x x x
>
> Q: When was (sic) [did] the incident happened?
> A: *Sa bahay po namin at madaling araw po iyon dahil nagpapaturo kami ng driving at ako po iyong unang nagising at sabi ko nga po magdriving na turuan niya akong magmaneho*

[34] 369 Phil. 966, 978 (1999).

at tapos po pinahiga niya ako sa tabi nya at tapos po kinausap po niya ako at habang kinakausap niya ako, he started touching my private parts and later on he sucked my nipple, mam.

Q: What else did he do?
A: That's all mam.

Q: And what happened after that?
A: He did you (sic) it again, mam.

x x x x x x x x x

Q: What she did you to? [sic]
A: *Ganoon pa rin po, he sucked my breast at tapos po niyon, papasukin niya ako sa kanyang room at ila-lock niya iyong pinto; minsan po naman, pagagalitan niya ako na walang kabagay bagay at hindi ko naman po alam kung ano iyon; ganoon po lagi, hinawakan niya iyong breast, papagalitan ako, iyon paulit ulit na lang po, mam.*

Q: After he scolded you what happened next?
A: *Iyon pag umiiyak na po ako, uumpisahan po niyang hawakan muli iyong mga private parts.*

x x x x x x x x x

Q: And after that incident what transpired next?
A: *Paulit ulit po niyang ginagawa, lagi po niya akong hinhahawakan* (sic) *ang breast ko at vagina and then nira-rub po nang kamay niya.*[35]

However, in Criminal Case Nos. 98-652 and 98-658, we agree with the Office of the Solicitor General, representing the People, that the prosecution failed to prove appellant's guilt for acts of lasciviousness beyond reasonable doubt. While AAA testified that appellant habitually molested her, there was no specific evidence supporting the charge that appellant committed acts of lasciviousness in May 1993 and September 1997, or on or about those dates. Hence, we find appellant not guilty for two counts of acts of lasciviousness (Criminal Case Nos. 98-652 and 98-658) on the ground of reasonable doubt.

As regards the other criminal cases for acts of lasciviousness, where appellant's guilt was proved beyond reasonable doubt,

[35] CA *rollo*, pp. 228-229.

we affirm appellant's conviction. In these cases, the alternative circumstance of relationship under Article 15 of the Revised Penal Code should be considered against appellant.[36] In *People v. Fetalino,*[37] the Court held that, "in crimes against chastity, like acts of lasciviousness, relationship is considered aggravating." In that case, the Court considered relationship as an aggravating circumstance since the informations mentioned, and the accused admitted, that the complainant is his daughter.

In the instant case, the informations expressly state that AAA is appellant's daughter, and appellant openly admitted this fact.[38] Accordingly, we modify the penalty imposed in Criminal Case Nos. 98-657 and 98-659. Section 5, Article III of Republic Act No. 7610 prescribes the penalty of *reclusion temporal* in its medium period to *reclusion perpetua*.[39] Since there is an aggravating circumstance and no mitigating circumstance, the penalty shall be applied in its maximum period – *reclusion perpetua*.[40] Besides, Section 31 of Republic Act No. 7610 expressly provides that "The penalty provided herein shall be imposed in its maximum period when the perpetrator is [a] x x x parent, x x x. In *People v. Montinola*[41] and *People v. Sumingwa*,[42] where the accused is the biological father of the minor victim,[43]

---

[36] *People v. Montinola, supra* note 19 at 432.

[37] G.R. No. 174472, 19 June 2007, 525 SCRA 170, 195.

[38] TSN (Ernesto Fragante), 18 March 2003, p. 6.

[39] In *People v. Leonardo*, G.R. No. 181036, 6 July 2010, the Court explained the range of the penalty prescribed under Section 5, Article III of Republic Act No. 7610, thus:

The minimum, medium and maximum term of the [prescribed penalty] is as follows: minimum – 14 years, 8 months and 1 day to 17 years and 4 months; medium – 17 years, 4 months and 1 day to 20 years; and maximum – *reclusion perpetua*.

[40] *People v. Montinola, supra* note 19 at 433; *People v. Sumingwa*, G.R. No. 183619, 13 October 2009, 603 SCRA 638, 661.

[41] *People v. Montinola, supra* note 19 at 433.

[42] G.R. No. 183619, 13 October 2009, 603 SCRA 638, 655-656.

[43] The victim in *Montinola* was 14 years old while the victim in *Sumingwa* was 15 years old at the time of the commission of the offense.

the Court appreciated the presence of the aggravating circumstance of relationship and accordingly imposed the penalty of *reclusion perpetua*. Thus, appellant herein is sentenced to suffer the penalty of *reclusion perpetua* in Criminal Case Nos. 98-657 and 98-659.

In Criminal Case Nos. 98-651,[44] 98-653,[45] 98-654,[46] 98-655,[47] and 98-656,[48] where AAA was still below 12 years old at the time of the commission of the acts of lasciviousness, the imposable penalty is *reclusion temporal* in its medium period in accordance with Section 5(b), Article III of Republic Act No. 7610. This provision specifically states "[t]hat the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period."[49] Considering the presence of the aggravating circumstance of relationship, as explained, the penalty shall be imposed in its maximum period. In *People v. Velasquez*,[50] which involved a two year old child

---

[44] AAA was only ten (10) years old at the time of the commission of the crime.

[45] AAA was only ten (10) years old at the time of the commission of the crime.

[46] AAA was only eleven (11) years old at the time of the commission of the crime.

[47] AAA was only eleven (11) years old at the time of the commission of the crime.

[48] AAA was only eleven (11) years old at the time of the commission of the crime.

[49] See *Dulla v. Court of Appeals*, G.R. No. 123164, 18 February 2000, 326 SCRA 32, 48, where the Court stated:

> The penalty for acts of lasciviousness under Art. III, 5(b) of R.A. No. 7610 is *reclusion temporal* in its medium period, the range of which is from 14 years, 8 months and 1 day to 17 years and 4 months. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances, the maximum term of the sentence to be imposed shall be taken from the medium period of the imposable penalty, which is *reclusion temporal* medium, the range of which is from 15 years, 6 months and 20 days to 16 years, 5 months and 9 days, while the minimum term shall be taken from the penalty next lower in degree, which is *reclusion temporal* minimum, the range of which is from 12 years and 1 day to 14 years and 8 months.

[50] G.R. Nos. 132635 & 143872-75, 21 February 2001, 352 SCRA 455, 478. The Court stated:

sexually abused by her grandfather, the Court imposed the indeterminate sentence of 12 years and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum. Accordingly, appellant herein is sentenced to suffer the indeterminate penalty of 12 years and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum.

Also, we modify the amount of moral damages and fine awarded by the Court of Appeals. We reduce the amount of moral damages from ₱50,000 to ₱15,000 and the amount of fine from ₱30,000 to ₱15,000 for each of the seven (7) counts of acts of lasciviousness.[51] In addition, we award civil indemnity in the amount of ₱20,000, and exemplary damages in the sum of ₱15,000, in view of the presence of the aggravating circumstance of relationship,[52] for each of the seven (7) counts of acts of lasciviousness.

WHEREFORE, we *AFFIRM* the 28 September 2007 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01980 with *MODIFICATIONS.* We find appellant Ernesto Fragante *y* Ayuda:

1. *GUILTY* of *RAPE* in Criminal Case No. 98-660. He is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages.

---

x x x Aira is a two-year old child. The penalty imposable for acts of lasciviousness against children under 12 years of age should be that provided by R.A. 7610, which is *reclusion temporal* in its medium period. Accused-appellant is Aira's grandfather. His relationship to his victim aggravates the crime, and, as provided by R.A. 7610, Section 31, the penalty shall be imposed in the maximum period when the perpetrator is an ascendant, parent, guardian, stepparent or collateral relative within the second degree of consanguinity or affinity. Hence, the maximum period of *reclusion temporal* medium should be imposed. Applying the provisions of the Indeterminate Sentence Law, the minimum of the penalty to be imposed should be *reclusion temporal* minimum.

[51] *People v. Montinola, supra* note 19 at 433; *People v. Sumingwa*, G.R. No. 183619, 13 October 2009, 603 SCRA 638, 661.

[52] *Flordeliz v. People*, G.R. No. 186441, 3 March 2010, 614 SCRA 225, 243.

2. *GUILTY* of *ACTS OF LASCIVIOUSNESS* in Criminal Case Nos. 98-657 and 98-659, with relationship as an aggravating circumstance. He is sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay AAA (1) moral damages of ₱15,000; (2) a fine of ₱15,000; (3) civil indemnity of ₱20,000; and (4) exemplary damages of ₱15,000 for each count.

3. *GUILTY* of *ACTS OF LASCIVIOUSNESS* in Criminal Case Nos. 98-651, 98-653, 98-654, 98-655, and 98-656, with relationship as an aggravating circumstance. He is sentenced to suffer the indeterminate penalty of 12 years and 1 day of *reclusion temporal* as minimum to 17 years of *reclusion temporal* as maximum and ordered to pay AAA (1) moral damages of ₱15,000; (2) a fine of ₱15,000; (3) civil indemnity of ₱20,000; and (4) exemplary damages of ₱15,000 for each count.

4. *NOT GUILTY* of *ACTS OF LASCIVIOUSNESS* in Criminal Case Nos. 98-652 and 98-658 on the ground of reasonable doubt.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.,* concur.

[*] Designated additional member per Raffle dated 9 February 2011.

SPECIAL FIRST DIVISION

[G.R. No. 183628. February 9, 2011]

DANIEL T. SO, *petitioner, vs.* **FOOD FEST LAND, INC.,** *respondent.*

[G.R. No. 183670. February 9, 2011]

FOOD FEST LAND, INC., *petitioner, vs.* **DANIEL T. SO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS, CONSTRUCTION OF; GENERAL RULE; WHERE THERE IS CONFLICT BETWEEN THE *FALLO* AND THE BODY, THE *FALLO* CONTROLS.— The general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing.

2. ID.; ID.; ID.; EXCEPTION, APPLIED; WHERE THERE IS MISTAKE IN THE *FALLO* OF THE DECISION, THE BODY WILL PREVAIL.— [W]here the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail. Given the above-quoted portion of the Decision *vis-à-vis* the above quoted Lease Contract between the parties, it should be Food Fest Land, Inc., as lessee, not So, the lessor, who should be **ORDERED** to pay attorney's fees as stipulated in the contract.

APPEARANCES OF COUNSEL

Benjamin S. Pacio, Jr. for Daniel So.
Santiago & Santiago for Food Fest Land, Inc.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For resolution is the Motion for Reconsideration and Clarification of Daniel T. So (So) from the Court's Decision of April 14, 2010 in these consolidated cases which disposed as follows:

> WHEREFORE, the Court of Appeals Decision of April 18, 2008 is **AFFIRMED** with **MODIFICATION**.
>
> Food Fest is ORDERED to pay So liquidated damages in the amount equivalent to 25% of the total sum due and demandable. Further, So is ORDERED to pay attorney's fees in the amount equivalent to 25% of the total sum due and demandable. In all other respects, the decision is **AFFIRMED**.
>
> SO ORDERED. (emphasis in the original; underscoring supplied)

After passing on the arguments raised in the Motion for Reconsideration, the Court finds no cogent reason to disturb the Court's Decision.

Clarification is in order, however, respecting the second paragraph of the above-quoted *dispositive portion* of the Decision which ordered So to pay attorney's fees in the amount equivalent to 25% of the total sum due and demandable. The relevant portion of this Court's Decision – basis of the order reads:

> This Court notes that the appellate court did not award liquidated damages in contravention of the contract. As for the appellate court's award of ₱20,000.00 as attorney's fees, the contractual stipulation should prevail. (underscoring supplied)

The relevant portion of the Lease Contract between So and Food Fest provides:

> 23.1. Should LESSOR[-So] be compelled to seek judicial relief against LESSEE the latter shall, in addition to any other claim for damages pay as liquidated damages to LESSOR[-So] an amount equivalent to twenty-five percent (25%) of the amount due, but in no case less than ₱500.00: and an attorney's fee in the amount

equivalent to 25% of the amount claimed but in no case less than ₱3,000.00 as well as all expenses of litigation.[1] (underscoring supplied)

The general rule is that where there is a conflict between the dispositive portion or the *fallo* and the body of the decision, the *fallo* controls. This rule rests on the theory that the *fallo* is the final order while the opinion in the body is merely a statement ordering nothing. However, where the inevitable conclusion from the body of the decision is so clear as to show that there was a mistake in the dispositive portion, the body of the decision will prevail.[2]

Given the above-quoted portion of the Decision *vis-à-vis* the above quoted Lease Contract between the parties, it should be Food Fest Land, Inc., as lessee, not So, the lessor, who should be **ORDERED** to pay attorney's fees as stipulated in the contract.

WHEREFORE, the dispositive portion of the Court's Decision of April 14, 2010 is *AMENDED* to read as follows:

WHEREFORE, the Court of Appeals Decision of April 18, 2008 is *AFFIRMED* with *MODIFICATION.*

Food Fest is *ORDERED* to pay So liquidated damages in the amount equivalent to 25% of the total sum due and demandable. Further, Food Fest is *ORDERED* to pay So attorney's fees in the amount equivalent to 25% of the total sum due and demandable. In all other respects, the decision is *AFFIRMED.*

SO ORDERED.

SO ORDERED.

Leonardo-de Castro, Peralta,[*] *Bersamin,* and *Villarama, Jr., JJ.,* concur.

---

[1] CA *rollo,* p. 42.

[2] *Asian Center for Career and Employment System and Services, Inc. v. NLRC,* G.R. No. 131656, October 12, 1998, 297 SCRA 727.

[*] Per Raffle dated June 2, 2010.

FIRST DIVISION

[G.R. No. 184215. February 9, 2011]

OCEANEERING CONTRACTORS (PHILS), INC., *petitioner, vs.* **NESTOR N. BARRETTO, doing business as N.N.B. LIGHTERAGE,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; NATURE.— In finding Oceaneering's petition impressed with partial merit, uppermost in our mind is the fact that actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended. Pertaining as they do to such injuries or losses that are actually sustained and susceptible of measurement, they are intended to put the injured party in the position in which he was before he was injured.

2. ID.; ID.; ID.; HOW PROVED.— [T]he rule is long and well settled that there must be pleading and proof of actual damages suffered for the same to be recovered. In addition to the fact that the amount of loss must be capable of proof, it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. The burden of proof of the damage suffered is, consequently, imposed on the party claiming the same who should adduce the best evidence available in support thereof, like sales and delivery receipts, cash and check vouchers and other pieces of documentary evidence of the same nature. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.

3. ID.; ID.; ATTORNEY'S FEES; AWARD THEREOF, NOT PROPER WHERE THERE WAS NO SUFFICIENT SHOWING OF BAD FAITH.— For lack of sufficient showing

of bad faith on the part of Barretto, we find that the CA, finally, erred in granting Oceaneering's claim for attorney's fees, albeit in the much reduced sum of ₱30,000.00. In the absence of stipulation, after all, the rule is settled that there can be no recovery of attorney's fees and expenses of litigation other than judicial costs except in the instances enumerated under Article 2208 of the *Civil Code*. Being the exception rather than the rule, attorney's fees are not awarded every time a party prevails in a suit, in view of the policy that no premium should be placed on the right to litigate. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where, as here, no sufficient showing of bad faith can be reflected in the party' s persistence in a case other than an erroneous conviction of the righteousness of his cause.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Nestor E. Nicolas & Adriano I. Gaddi for respondent.

D E C I S I O N

PEREZ, *J.*:

The requirements for an award of actual damages are central to this petition for review filed under Rule 45 of the *1997 Rules of Civil Procedure*, primarily assailing the Decision dated 12 December 2007 rendered by the then Special Third Division of the Court of Appeals (CA) in CA-G.R. CV No. 87168,[1] the dispositive portion of which states:

WHEREFORE, premises considered, the instant appeal is PARTIALLY GRANTED. The decision dated 27 December 2005 and order dated 28 April 2006 of the Regional Trial Court of Las Piñas, City, Branch 255, to the extent that it dismissed the counterclaims of defendant-appellant, are hereby reversed and set aside. Plaintiff-appellee is ordered to pay defendant-appellant the

[1] CA *rollo*, CV No. 87168, pp. 165-183.

amount of ₱306,000.00 as actual damages and ₱30,000.00 as attorney's fees.

SO ORDERED.[2]

The Facts

Doing business under the name and style of *N.N. B. Lighterage*, respondent Nestor N. Barretto (Barretto) is the owner of the Barge "Antonieta"[3] which was last licensed and permitted to engage in coastwise trading for a period of one year expiring on 21 August 1998.[4] On 27 November 1997, Barretto and petitioner *Oceaneering Contractors (Phils.), Inc.* (Oceaneering) entered into a Time Charter Agreement whereby, for the contract price of ₱306,000.00,[5] the latter hired the aforesaid barge for a renewable period of thirty calendar days, for the purpose of transporting construction materials from Manila to Ayungon, Negros Oriental.[6] Brokered by freelance ship broker Manuel Velasco,[7] the agreement included Oceaneering's acknowledgment of the seaworthiness of the barge as well as the following stipulations, to wit:

"a) [Barreto] shall be responsible for the salaries, subsistence, SSS premium, medical, workmen's compensation contribution and other legal expenses of the crew;

b) [Oceaneering] shall be responsible for all port charges, insurance of all equipments, cargo loaded to the above mentioned deck barge against all risks (Total or Partial), or theft, security and stevedoring during loading and unloading operations and all other expenses pertinent to the assessment, fines and forfeiture for any violation that may be imposed in relation to the operation of the barge;

---

[2] *Id.* at 183.

[3] Exhibit "A", Records, Civil Case No. 87168, p. 199.

[4] Exhibit "C", *id.* at 201.

[5] Exhibit "2", *id.* at 448.

[6] Exhibits "E" to "E-2", *id.* at 203-205.

[7] TSN, 20 April 2001, pp. 5-6.

x x x x x x x x x

(f) Delivery and re-delivery be made in Pasig River, Metro Manila;

(g) Damage to deck barge caused by carelessness or negligence of stevedores hired by [Oceaneering] will be [Oceaneering's] liability. Upon clear findings by owners or barge patron of any damages to the barge that will endanger its seaworth(i)ness and stability, such damage/s shall be repaired first before loading and leaving port. Under such conditions, the Barge Patron has the right to refuse loading and/or leaving port;

x x x x x x x x x

(i) [Barreto] reserves the right to stop, abort and deviate any voyage in case of imminent danger to the crew and/or vessel that may be occasioned by any storm, typhoon, tidal wave or any similar events."[8]

In accordance with the agreement, Oceaneering's hired stevedores who loaded the barge with pipe piles, steel bollards, concrete mixers, gravel, sand, cement and other construction materials in the presence of and under the direct supervision of the broker Manuel Velasco and Barretto's Bargemen.[9] In addition to the polythene ropes with which they were lashed, the cargoes were secured by steel stanchions which Oceaneering caused to be welded on the port and starboard sides of the barge.[10] On 3 December 1997, the barge eventually left Manila for Negros Oriental, towed by the tug-boat "Ayalit" which, for said purpose, was likewise chartered by Oceaneering from *Lea Mer Industries, Inc*.[11] On 5 December 1997, however, Barretto's Bargeman, Eddie La Chica, executed a Marine Protest,[12] reporting the following circumstances under which the barge reportedly capsized in the vicinity of Cape Santiago, Batangas, *viz*.:

---

[8] Records, pp. 204-205.

[9] TSN, 27 March 2003, pp. 18-24.

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

[11] Exhibit "3", Records, Civil Case No. 87168, p. 449.

[12] Exhibit "F", *id.* at 206.

That on or about 1635 December 3, 1997, Barge 'Antonieta' departed Pico de Loro, Pasig River and towed by Tug-Boat 'Ayalit' bound for Ayungon, Negros Oriental with cargo onboard steel pipes and various construction materials. While underway on or about 0245 December 4, 1997 encountered rough sea at the vicinity of Cape Santiago, Batangas and ma(d)e the barge x x x roll and pitch which caused the steel pipes and various construction materials to shift on the starboardside causing the breakdown of the steel stanch(i)ons welded on the deck of the barge leaving holes on the deck that cause(d) water to enter the hold.

That on or about 1529 December 5, 199[7], with the continuous entrance of sea water on the hold, the barge totally capsized touch(ed) bottom.

On 9 December 1997, Barretto apprised Oceaneering of the supposed fact that the mishap was caused by the incompetence and negligence of the latter's personnel in loading the cargo and that it was going to proceed with the salvage, refloating and repair of the barge.[13] In turn contending that the barge tilted because of the water which seeped through a hole in its hull, Oceaneering caused its counsel to serve Barretto a letter dated 12 March 1998, demanding the return of the unused portion of the charter payment amounting to ₱224,400.00 as well as the expenses in the sum of ₱125,000.00 it purportedly incurred in salvaging its construction materials.[14] In a letter dated 25 March 1998, however, Barretto's counsel informed Oceaneering that its unused charter payment was withheld by his client who was likewise seeking reimbursement for the ₱836,425.00 he expended in salvaging, refloating and repairing the barge.[15] In response to Barretto's 29 June 1998 formal demand for the payment of the same expenses,[16] Oceaneering reiterated its demand for the return of the unused charter payment and the reimbursement of its salvaging expenses as aforesaid.[17]

---

[13] Exhibit "21", *id.* at 465.

[14] Exhibit "23", *id.* at 468-469.

[15] Exhibit "22", *id.* at 466-467.

[16] Exhibit "M", *id.* at 215.

[17] Exhibit "25", *id.* at 471.

On 6 October 1998, Barretto commenced the instant suit with the filing of his complaint for damages against Oceaneering, which was docketed as Civil Case No. LP-98-0244 before Branch 255 of the Regional Trial Court (RTC) of Las Piñas City. Contending that the accident was attributable to the incompetence and negligence which attended the loading of the cargo by Oceaneering's hired employees, Barretto sought indemnities for expenses incurred and lost income in the aggregate sum of ₱2,750,792.50 and attorney's fees equivalent to 25% of said sum.[18] Specifically denying the material allegations of the foregoing complaint in its 26 January 1999 answer, Oceaneering, on the other hand, averred that the accident was caused by the negligence of Barretto's employees and the dilapidated hull of the barge which rendered it unseaworthy. As a consequence, Oceaneering prayed for the grant of its counterclaims for the value of its cargo in the sum of ₱4,055,700.00, salvaging expenses in the sum of ₱125,000.00, exemplary damages, attorney's fees and litigation expenses.[19]

The issues thus joined and the mandatory pre-trial conference subsequently terminated upon the agreement of the parties,[20] the RTC proceeded to try the case on the merits. In support of his complaint, Barretto took the witness stand to prove the seaworthiness of the barge as well as the alleged negligent loading of the cargo by Oceaneering's employees.[21] Barretto also presented the following witnesses: (a) Toribio Barretto II, Vice President for Operations of *N.B.B. Lighterage*, who primarily testified on the effort exerted to salvage the barge;[22] and, (b) Manuel Velasco, who testified on his participation in the execution of the Time Charter Agreement as well as the circumstances before and after the sinking of the barge.[23] By

[18] *Id.* at 1-26.

[19] *Id.* at 51-59.

[20] *Id.* at 104.

[21] TSN, 10 December 1999; 12 January, 2001; 4 April 2000; 1 September 2000.

[22] TSN, 8 December 2000.

[23] TSN, 20 April 2001.

way of defense evidence, Oceaneering in turn presented the testimonies of the following witnesses: (a) Engr. Wenifredo Oracion, its Operation's Manager, to prove, among other matters, the value of the cargo and the salvage operation it conducted in the premises;[24] and, (b) Maria Flores Escaño, Accounting Staff at Castillo Laman Tan Pantaleon and San Jose Law Offices, to prove its claim for attorney's fees and litigation expenses.[25]

To disprove the rough sea supposedly encountered by the barge as well as the negligence imputed against its employees, Oceaneering further adduced the testimonies of the following witnesses: (a) Rosa Barba, a Senior Weather Specialist at the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA);[26] (b) Cmdr. Herbert Catapang, Officer-in-Charge of the Hydrographic Division at the National Mapping Resource Information Authority (NAMRIA);[27] and, (c) Engr. Carlos Gigante, a freelance marine surveyor and licensed naval architect.[28] Recalled as a rebuttal witness, Toribio Barretto II, in turn, asserted that the hull of the barge was not damaged and that the sinking of said vessel was attributable to the improper loading of Oceaneering's construction materials.[29] Upon the formal offer respectively made by the parties, the pieces of documentary evidence identified and marked in the course of the testimonies of the above named witnesses[30] were, accordingly, admitted by the RTC.[31]

On 27 December 2005, the RTC rendered a decision, dismissing both Barretto's complaint and Oceaneering's counterclaims for lack of merit. While finding that Barretto failed to adduce sufficient

---

[24] TSN, 24 October 2002; 27 March 2003; 8 May 2003.

[25] TSN, 15 May 2003.

[26] TSN, 3 July 2003.

[27] TSN, 14 August 2003.

[28] TSN, 28 August 2003.

[29] TSN, 4 December 2003.

[30] Records, Civil Case No. 87168, pp. 195-217; 434-506; 539-543.

[31] *Id.* at 229; 512; 553; 560-561.

and convincing evidence to prove that the accident was due to the negligence of Oceaneering's employees, the RTC nevertheless brushed aside the latter's claim that the barge was not seaworthy as acknowledged in the Time Charter Agreement. Alongside its claim for reimbursement of the sums expended for the salvage operation it conducted which was denied for lack of evidence to prove the same, Oceaneering's claim for the value of its cargo was likewise denied on the ground, among other matters, that the same was not included in the demand letters it served Barretto; and, that it has no one but itself to blame for failing to insure its cargo against all risks, as provided in the parties' agreement. With its claims for exemplary damages and attorney's fees further denied for lack of showing of bad faith on the part of Barretto,[32] Oceaneering filed the motion for partial reconsideration of the foregoing decision[33] which was denied for lack of merit in the RTC's 28 April 2006 order.[34]

Dissatisfied, Oceaneering perfected its appeal from the aforesaid 27 December 2005 decision on the ground that the RTC reversibly erred in not finding that the accident was caused by the unseaworthy condition of the barge and in denying its counterclaims for actual and exemplary damages as well as attorney's fees and litigation expenses. Docketed before the CA as CA-G.R. CV No. 87168,[35] the appeal was partially granted in the herein assailed 12 December 2007 decision upon the finding, among others, that the agreement executed by the parties, by its express terms, was a time charter where the possession and control of the barge was retained by Barretto; that the latter is, therefore, a common carrier legally charged with extraordinary diligence in the vigilance over the goods transported by him; and, that the sinking of the vessel created a presumption of negligence and/or unseaworthiness which Barretto failed to overcome and gave rise to his liability for

---

[32] *Id.* at 635-663.

[33] *Id.* at 668-679.

[34] *Id.* at 686-689.

[35] CA *rollo*, CV No. 87168, pp. 40-82.

Oceaneering's lost cargo despite the latter's failure to insure the same. Applying the rule, however, that actual damages should be proved with a reasonable degree of certainty, the CA denied Oceaneering's claim for the value of its lost cargo and merely ordered the refund of the ₱306,000.00 it paid for the time charter, with indemnity for attorney's fees in the sum of ₱30,000.[36]

Alongside that interposed by Barretto, the motion for reconsideration of the foregoing decision filed by Oceaneering's[37] was denied for lack of merit in the CA's resolution dated 11 August 2008,[38] hence, this petition.

The Issues

Oceaneering urges the reversal of the assailed 12 December 2007 decision and 11 August 2008 resolution on the ground that the CA erred in the following wise:

I. IN HOLDING THAT THERE WERE NO VALID DOCUMENTS SHOWING THE REAL VALUE OF THE MATERIALS LOST AND THOSE ACTUALLY RECOVERED.

II. IN DENYING OCEANEERING'S COUNTERCLAIMS FOR ACTUAL DAMAGES AMOUNTING TO (A) ₱3,704,700.00 REPRESENTING THE VALUE OF THE MATERIALS IT LOST DUE TO THE SINKING OF [BARRETO'S] BARGE; AND (b) ₱125,000.00 REPRESENTING THE EXPENSES IT INCURRED FOR SALVAGING ITS CARGO.

III. IN AWARDING OCEANEERING'S COUNTERCLAIM FOR ATTORNEY'S FEES IN THE REDUCED AMOUNT OF ₱30,000.00 ONLY.[39]

The Court's Ruling

We find the modification of the assailed decision in order.

---

[36] *Id.* at 165-183.

[37] *Id.* at 185-203.

[38] *Id.* at 227-230.

[39] *Rollo*, p. 18.

Oceaneering argues that, having determined Barretto's liability for presumed negligence as a common carrier, the CA erred in disallowing its counterclaims for the value of the construction materials which were lost as a consequence of the sinking of the barge. Alongside the testimony elicited from its Operation's Manager, Engr. Winifredo Oracion, Oceaneering calls attention to the same witness' inventory which pegged the value of said construction materials at ₱4,055,700.00, as well as the various sales receipts, order slips, cash vouchers and invoices which were formally offered before and admitted in evidence by the RTC. Considering that it was able to salvage only nine steel pipes amounting to ₱351,000.00, Oceaneering insists that it should be indemnified the sum of ₱3,703,700.00 for the value of the lost cargo, with legal interest at 12% per annum, from the date of demand until fully paid. In addition, Oceaneering maintains that Barretto should be held liable to refund the ₱306,000.00 it paid as consideration for the Time Charter Agreement and to pay the ₱125,000.00 it incurred by way of salvaging expenses as well as its claim for attorney's fees in the sum of ₱750,000.00.

In finding Oceaneering's petition impressed with partial merit, uppermost in our mind is the fact that actual or compensatory damages are those damages which the injured party is entitled to recover for the wrong done and injuries received when none were intended.[40] Pertaining as they do to such injuries or losses that are actually sustained and susceptible of measurement,[41] they are intended to put the injured party in the position in which he was before he was injured.[42] Insofar as actual or compensatory damages are concerned, Article 2199 of the *Civil Code of the Philippines* provides as follows:

---

[40] *Empire East Land Holdings, Inc. vs. Capitol Industrial Construction Groups, Inc.*, 566 SCRA 473, 485.

[41] *Spouses Ong vs. Court of Appeals*, 361 Phil. 338, 353 (1999).

[42] *Filipinas (Pre-Fab Bldg.) Systems, Inc. vs. MRT Development Corporation*, G.R. Nos. 167829-30, 13 November 2007, 537 SCRA 609, 640, citing *Development Bank of the Philippines v. Court of Appeals*, G.R. No. L-11053, 16 October 1996, 249 SCRA 331.

"Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages."

Conformably with the foregoing provision, the rule is long and well settled that there must be pleading and proof of actual damages suffered for the same to be recovered.[43] In addition to the fact that the amount of loss must be capable of proof, it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[44] The burden of proof of the damage suffered is, consequently, imposed on the party claiming the same[45] who should adduce the best evidence available in support thereof, like sales and delivery receipts, cash and check vouchers and other pieces of documentary evidence of the same nature. In the absence of corroborative evidence, it has been held that self-serving statements of account are not sufficient basis for an award of actual damages.[46] Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof,[47] courts are, likewise, required to state the factual bases of the award.[48]

Applying the just discussed principles to the case at bench, we find that Oceaneering correctly fault the CA for not granting its claim for actual damages or, more specifically, the portions

---

[43] *Canada vs. All Commodities Marketing Corporation*, G.R. No. 146141, 17 October 2008, 569 SCRA 321, 329.

[44] *Manila Electric Corporation vs. T.E.A.M. Electronics Corporation*, G.R. No. 131723, 13 December 2007, 540 SCRA 62, 79.

[45] *Luxuria Homes, Inc. vs. Court of Appeals*, 361 Phil. 989, 1001-1002, (1999).

[46] *MCC Industrial Sales Corporation vs. Ssangayong Corporation*, G.R. No. 153051, 18 October 2007, 536 SCRA 408, 467-468.

[47] *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, G.R. Nos. 169408 & 170144, 30 April 2008, 553 SCRA 541, 567 .

[48] *Santiago vs. Court of Appeals*, G.R. No. 127440, 26 January 2007, 513 SCRA 69, 86.

thereof which were duly pleaded and adequately proved before the RTC. While concededly not included in the demand letters dated 12 March 1998[49] and 13 July 1998[50] Oceaneering served Barretto, the former's counterclaims for the value of its lost cargo in the sum of ₱4,055,700.00 and salvaging expenses in the sum of ₱125,000.00 were distinctly pleaded and prayed for in the 26 January 1999 answer it filed *a quo*.[51] Rather than the entire ₱4,055,700.00 worth of construction materials reflected in the inventory[52] which Engr. Oracion claims to have prepared on 29 November 1997, based on the delivery and official receipts from Oceaneering's suppliers,[53] we are, however, inclined to grant only the following items which were duly proved by the vouchers and receipts on record, *viz.*: (a) ₱1,720,850.00 worth of spiral welded pipes with coal tar epoxy procured on 22 November 1997;[54] (b) ₱629,640.00 worth of spiral welded steel pipes procured on 28 October 1997;[55] (c) ₱155,500.00 worth of various stainless steel materials procured on 27 November 1997;[56] (d) ₱66,750.00 worth of gaskets and shackles procured on 20 November 1997;[57] and, (e) ₱4,880.00 worth of anchor bolt procured on 27 November 1997.[58]

The foregoing sums all add up to of ₱2,577,620.00 from which should be deducted the sum of ₱351,000.00 representing the value of the nine steel pipes salvaged by Oceaneering, or a total of ₱2,226,620.00 in actual damages representing the value of the latter's lost cargo. Excluded from the computation are

---

[49] Exhibit "23", Records, Civil Case No. 87168, pp. 468-469.

[50] Exhibit "25", *id.* at 471.

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

[52] Exhibit "5", *id.* at 451.

[53] TSN, 27 March 2003, pp. 7-8.

[54] Exhibits "5" and "6", Records, Civil Case No. 87168, pp. 451-452.

[55] Exhibit "10", *id.* at 454.

[56] Exhibits "11" and "12", *id.* at 455-456.

[57] Exhibit "15", *id.* at 458.

[58] Exhibits "16" and "17", *id.* at 459.

the following items which, on account of the dates of their procurement, could not have possibly been included in the 29 November 1997 inventory prepared by Engr. Oracion, to wit: (a) ₱1,129,640.00 worth of WO#1995 and PO#OCPI-060-97 procured on 9 December 1997;[59] and, (b) ₱128,000.00 worth of bollard procured on 16 December 1997.[60] Likewise excluded are the anchor bolt with nut Oceaneering claims to have procured for an unspecified amount on 3 November 1997[61] and the ₱109,018.50 worth of Petron oil it procured on 28 November 1997[62] which does not fit into the categories of lost cargo and/or salvaging expenses for which it interposed counterclaims *a quo*. Although included in its demand letters as aforesaid and pleaded in its answer, Oceaneering's claim for salvaging expenses in the sum of ₱125,000.00 cannot, likewise, be granted for lack of credible evidence to support the same.

Tested alongside the twin requirements of pleading and proof for the grant of actual damages, on the other hand, we find that the CA also erred in awarding the full amount of ₱306,000.00 in favor of Oceaneering, as and by way of refund of the consideration it paid Barretto for the Time Charter Agreement. Aside from not being clearly pleaded in the answer it filed *a quo*, said refund was claimed in Oceaneering's demand letters only to the extent of the unused charter payment in the reduced sum of ₱224,400.00[63] which, to our mind, should be the correct measure of the award. Having breached an obligation which did not constitute a loan or forbearance of money, moreover, Barretto can only be held liable for interest at the rate of 6% per annum on said amount as well as the ₱2,226,620.00 value of the lost cargo instead of the 12% urged by Oceaneering. Although the lost cargo was not included in the demand letters the latter served the former, said interest rate of 6% per annum

---

[59] Exhibits "8" and "9", *id.* at 453.

[60] Exhibits "13" and "14", *id.* at 457, Exhibit "27"; *id.* at 472.

[61] Exhibit "28", *id.* at 473.

[62] Exhibit "29" and submarkings, *id.* at 474-475.

[63] Exhibit "25", *id.* at 471.

shall be imposed from the time of the filing of the complaint which is equivalent to a judicial demand.[64] Upon the finality of this decision, said sums shall earn a further interest of 12% per annum until full payment in accordance with the following pronouncements handed down in *Eastern Shipping Lines, Inc. vs. Court of Appeals*,[65] to wit:

"2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the *discretion of the court* at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit."

For lack of sufficient showing of bad faith on the part of Barretto, we find that the CA, finally, erred in granting Oceaneering's claim for attorney's fees, albeit in the much reduced sum of ₱30,000.00. In the absence of stipulation, after all, the rule is settled that there can be no recovery of attorney's fees and expenses of litigation other than judicial costs except in the instances enumerated under Article 2208 of the *Civil*

---

[64] *Philippine Airlines vs. Court of Appeals*, G.R. No. L-46558, 31 July 1981, 106 SCRA, 391, 412.

[65] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97.

Code.[66] Being the exception rather than the rule,[67] attorney's fees are not awarded every time a party prevails in a suit,[68] in view of the policy that no premium should be placed on the right to litigate.[69] Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still attorney's fees may not be awarded where, as here, no sufficient showing of bad faith can be reflected in the party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[70]

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED* and the assailed 12 December 2007 Decision is, accordingly, *MODIFIED:* (a) to *GRANT* Oceaneering's claim for the value of its lost cargo in the sum of ₱2,226,620.00 with 6% interest per annum computed from the filing of the complaint and to earn further interest at the rate of 12% per annum from finality of the decision until full payment; (b) to *REDUCE* the refund of the consideration for the Time Charter Agreement from ₱306,000.00 to ₱224,400.00, with 6% interest per annum computed from 12 March 1998, likewise to earn further interest at the rate of 12% per annum from finality of this decision; and, (c) to *DELETE* the CA's award of salvaging expenses and attorney's fees, for lack of factual and legal basis. The rest is *AFFIRMED in toto*.

SO ORDERED.

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

---

[66] *Scott Consultants & Resource Development Corporation, Inc. vs. CA*, 312 Phil. 466, 480 (1995).

[67] *Philippine National Bank vs. Court of Appeals*, 326 Phil. 504, 518-519 (1996).

[68] *Philippine Phosphate Fertilizer Corporation vs. Kamalig Resources, Inc.*, G.R. No. 165608, 13 December 2007, 540 SCRA 139, 159.

[69] *Frias vs. San Diego-Sison*, G.R. No. 155223, 3 April 2007, 520 SCRA 244, 259-260.

[70] *Felsan Realty & Development Corporation vs. Commonwealth of Australia*, G.R. No. 169656, 11 October 2007, 535 SCRA 618, 632.

FIRST DIVISION

[G.R. No. 188608. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO MORALES *y* FLORES *alias* "Ronnie," and RODOLFO FLORES *y* MANGYAN *alias* "Roding,"** *defendants-appellants.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. 6425, AS AMENDED BY R.A. 7659); ILLEGAL SALE OF DRUGS; ELEMENTS, ESTABLISHED.— From his testimony, it can be culled that PO1 Alano gave ₱3,000.00 to Roding in exchange for the green plastic sachet handed to PO1 Alano by Ronnie. His testimony was corroborated by PO1 Buenafe, who in turn, was able to eventually recover the marked money from Roding. Upon examination by the forensic chemist, it was proven that the green plastic bag bought from appellants contains *marijuana*. Verily, all the elements of the sale of illegal drugs were established.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES RELATING TO THE TIME OF SURVEILLANCE ARE NOT MATERIAL TO ESTABLISH THE ELEMENTS OF ILLEGAL SALE OF DRUGS.— The inconsistencies or contradictions pointed by appellants relating to the time of surveillance are not material to establish the elements of the crime committed. They are certainly not sufficient to overturn their conviction. Time and again, this Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.

3. ID.; ID.; ID.; FACTUAL FINDINGS OF THE TRIAL COURT ON CREDIBILITY, ACCORDED RESPECT.— This Court likewise sustains the findings of the trial court on the credibility of these prosecution witnesses. In cases involving violations of the Dangerous Drugs Law, appellate courts tend to rely heavily on the trial court's assessment of the credibility of witnesses,

because the latter had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Hence, its factual findings are accorded great 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.

4. ID.; ID.; ID.; ABSENCE OF ILL MOTIVE TO FALSELY TESTIFY.— Appellants failed to adduce any ill or improper motive on the part of the NARCOM operatives. In fact, Roding admitted that it was his first time to meet them and neither does he have any misunderstanding with them. Absent any clear and convincing evidence that the NARCOM operatives had ill or improper motive to falsely testify against appellants, their testimonies regarding the facts and circumstances surrounding the buy-bust operation must be accorded full faith and credit.

5. CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. 6425, AS AMENDED BY R.A. 7659); ILLEGAL SALE OF DRUGS; CRUCIAL LINKS IN THE CHAIN OF CUSTODY, SUFFICIENTLY PROVED.— PO1 Alano accounted for the crucial links in the chain of custody of the *marijuana*. It can be recalled that the green plastic bag containing *marijuana* placed inside two (2) envelopes was handed to him by Ronnie. After arresting appellants, PO1 Alano and the rest of the NARCOM operatives immediately brought appellants and the seized *marijuana* to Fort Bonifacio. Upon reaching the camp, PO1 Alano placed his initials on each envelope and turned them over to P/Supt. Pepito Dumantay (P/Supt. Dumantay). Together with PO1 Buenafe and P/Supt Dumantay, PO1 Alano brought the *marijuana* to the PNP Crime Laboratory. The forensic chemist examined the very same specimen brought to her, and in her findings, she confirmed it to be positive for *marijuana*. The prosecution indeed sufficiently proved that that the chain of custody of the *marijuana* was never broken from the time PO1 Alano received the *marijuana* from Ronnie up to the moment it was presented in court as evidence.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for defendants-appellants.

D E C I S I O N

PEREZ, *J.*:

On appeal is the Decision[1] dated 26 November 2008 of the Court of Appeals in CA-G.R. CR-H.C. No. 02844, affirming with modification the Decision[2] of the Regional Trial Court (RTC), Branch 213 of Mandaluyong City in Criminal Case No. MC-98-746-D-H, finding appellants Ronaldo Morales *y* Flores (Ronnie) and Rodolfo Flores *y* Mangyan (Roding) guilty of illegal sale of *marijuana*.

Appellants were charged in an Amended Information dated 9 October 1998, stating as follows:

> That on or about the 18th day of August, 1998, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the [appellants], not having been lawfully authorized to possess or otherwise use any prohibited drug, conspiring and confederating with each other, with [MORALES] being the seller and [FLORES] receiver of the purchase money and from whom the said purchase money was recovered, in the amount of ₱200, did, then, and there willfully, unlawfully, feloniously and knowing[ly] sell and deliver and distribute 635.5 grams and 152.8 grams of *marijuana* fruiting tops with a total weight of 788.3 grams respectively to PO1 Walter Alano, a police-poseur buyer, which were found positive to the test for *marijuana* fruiting tops, for the amount of ₱200, in ₱100 peso bills with Serial Nos. NR-699933 and LU-631498, a prohibited drug, without the corresponding license and prescription.[3]

Appellants entered a not guilty plea upon arraignment. During the pre-trial conference, the parties stipulated on the identity of the accused; that they were arrested at *Barangay* Mauway, Mandaluyong City, and that the arresting officers were PO1

---

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring. *Rollo*, pp. 2-17.

[2] Presided by Judge Carlos A. Valenzuela. CA *rollo*, pp. 23-39.

[3] Records, p. 135.

Gilbert Buenafe (PO1 Buenafe) and PO1 Walter Alano (PO1 Alano).[4] Thereafter, trial ensued.

The prosecution's version of the facts is as follow:

Acting on a tip from an informant that there is rampant selling of illegal drugs in Antipolo Street, *Barangay* Mauway, Mandaluyong City, the Chief of the Metro South Narcotics Office in Taguig ordered a buy-bust operation against appellants on 18 August 1998. The team, headed by SPO2 Dante Rebolado (SP02 Rebolado), was composed of five (5) to six (6) members. PO1 Alano was the designated *poseur*-buyer while PO1 Buenafe acted as back-up.[5] Two (2) pieces of ₱100.00 peso bills with Serial No. NR-699933 and No. LU-631498 were prepared, along with 23 cut-out money-sized papers or "boodle money."[6] The initials "WAA" were marked on the two (2) ₱100.00 peso bills.[7]

After the briefing, the team proceeded to 338 Antipolo Street. PO1 Buenafe positioned himself inside a vehicle, which was parked five (5) meters away from the target house.[8] PO1 Alano and the informant was approached by a man who identified himself as Roding, and the latter invited them to go inside the house where they were met by Ronnie. The informant then ordered one (1) kilo of *marijuana* from Ronnie for ₱3,000.00. Ronnie ordered Roding to get the money from PO1 Alano while he went inside a room. A few seconds later, Ronnie went out of the room and handed PO1 Alano a green transparent plastic bag containing two (2) brown folded envelopes, the contents of which are bricks of dried *marijuana*. Immediately after verifying the contents as *marijuana*, PO1 Alano introduced himself as a police officer and arrested Ronnie.[9] Roding was able to go out of the house but he was later on arrested by PO1 Buenafe, who

---

[4] *Id*. at 172.

[5] TSN, 4 July 2001, pp. 5-6.

[6] *Id*. at 16.

[7] TSN, 27 January 2004, p. 8.

[8] TSN, 4 July 2001, p. 8.

[9] TSN, 27 January 2004, pp. 11-15.

responded to the scene when he noticed a commotion outside the target house.[10] The boodle money was seized from Roding. Appellants were brought to the South Metro Narcotics District Office in Fort Bonifacio.[11]

While at the police station, PO1 Alano placed his initials on each of the brown envelopes containing the *marijuana* before bringing it to the Philippine National Police (PNP) Crime Laboratory.[12] Police Senior Inspector Grace Eustaquio examined the specimens brought to her and she prepared Physical Sciences Report No. D-2350-98 confirming that the specimens were found positive for *marijuana*.[13]

The defense belied the allegations that there was a buy-bust operation conducted wherein they were caught red-handed selling *marijuana*.

Roding, a tricycle driver, testified that he went to Calbayog Street in Mandaluyong City to see his niece, who happens to be his tricycle operator, because he wanted to get money to buy spare parts for his tricycle. While he was waiting for his niece to arrive, he went to the store of Ronnie to buy cigarettes. Suddenly, a group of men who introduced themselves as Narcotics Command (NARCOM) operatives arrived and asked for Ronnie. Ronnie came forward and was handcuffed. Roding was also invited to go with the NARCOM operatives for questioning. When Roding refused, he was forced to board a vehicle and was brought along to Fort Bonifacio. While inside the vehicle, Roding was forced to admit that he was with Ronnie selling prohibited drugs.[14]

Ronnie stated that while he was manning his store, three (3) cars stopped in front of the store and around seven (7) NARCOM operatives alighted from the cars. Ronnie was then frisked and

---

[10] TSN, 4 July 2001, p. 12.

[11] *Id*. at 17.

[12] TSN, 27 January 2004, pp. 14-16.

[13] Records, p. 16.

[14] TSN, 15 June 2006, pp. 3-6.

arrested. Some of the NARCOM operatives searched his house. It was then at that moment when Roding came by his store to buy cigarettes. Roding was likewise arrested.[15]

On cross-examination, Ronnie claimed that he knew Roding only two (2) days before they were arrested or on 16 August 1998[16] while Roding apparently came to know Ronnie as early as November 1997.[17]

In finding appellant guilty, the RTC held that the prosecution clearly established that there was a lawful buy-bust operation conducted by operatives of NARCOM and the appellants were lawfully arrested upon the consummation of the sale transaction of *marijuana*. The dispositive portion of said decision reads:

> WHEREFORE, foregoing premises considered, this Court finds accused RONALDO MORALES *y* FLORES *alias* "Ronnie" and RODOLFO FLORES *y* MANGYAN *alias* "Roding" both GUILTY for violation of Section 4, Article II in relation to Section 21, Article IV of Republic Act No. 6425, as amended, and both accused RONALDO MORALES *y* FLORES and RODOLFO FLORES *y* MANGYAN are hereby sentenced to suffer the penalty of imprisonment for TWENTY (20) YEARS AND ONE (1) DAY to FORTY (40) YEARS of *reclusion perpetua* considering that the death penalty can no longer be imposed in accordance with Republic Act No. 9346 which abolished the imposition of the death penalty.
>
> The green transparent plastic bag containing two (2) brown folded envelopes which further contained 635.5 grams and 152.8 grams of *marijuana* fruiting tops, respectively, with a total weight of 788.3 grams and the two (2) pieces of ₱100.00 peso bills one with Serial No. NR699933 x x x and NU631498 x x x, and the eight (8) pieces of cut-out money-sized papers or "boodle money" x x x and fifteen (15) pieces of cut-out money-sized papers or "boodle money" x x x are hereby forfeited in favor of the government and the same will be disposed of in accordance with law.

---

[15] TSN, 30 October 2006, pp. 3-5.

[16] TSN, 13 February 2007, p. 3.

[17] TSN, 10 July 2006, p. 4.

Finally, the period of detention of accused Rodolfo Flores *y* Mangyan at the Mandaluyong City Jail is hereby fully credited to his account.[18]

On 20 June 2007 appellant appealed to the Court of Appeals *via* a notice of appeal.[19] On 26 November 2008, the Court of Appeals rendered judgment affirming with modification the RTC's decision in Criminal Case No. MC-98-746-D-H. The Court of Appeals gave weight to the testimony of the *poseur-buyer* which revealed material details of the buy-bust operations. In imposing the penalty of *reclusion perpetua* and ordering the payment of ₱500,000.00 each as fine, the Court of Appeals took into consideration that amount of *marijuana* sold pursuant to Section 4, in relation to Section 20 of Republic Act No. 6425, as amended by Republic Act No. 7659 which provides:

> Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs.* - The penalty of *reclusion perpetua* to death and a fine from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions.
>
> x x x x x x x x x
>
> *Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or instrument of the Crime.* — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be Applied if the dangerous drugs involved is in any of the following quantities:
>
> x x x x x x x x x
>
> 5. 750 grams or more of indian hemp or marijuana;

Undaunted, appellant filed a notice of appeal before this Court. On 17 August 2009, this Court required the parties to simultaneously file their supplemental briefs.[20] Both parties

---

[18] CA *rollo*, p. 39.

[19] *Id.* at 40.

[20] *Rollo*, p. 24.

manifested their intention not to file any supplemental brief since all the issues and arguments have already been raised in their respective Briefs.[21]

Appellants maintain their innocence while the Office of the Solicitor-General supports their conviction.

The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the 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*.[22]

PO1 Alano, who acted as the *poseur*-buyer, recounted the sale of *marijuana* which led to the arrest of appellants, thus:

Q: When *alias* Roding approached your group, what did he tell you if any?

A: He said, "*pare, tuloy kayo, pinapapasok kayo ni Ronnie.*"

Q: What was your response to that invitation of *alias* Ronnie?

A: We entered to their house together with *alias* Roding and we were met by *alias* Ronnie.

Q: When you met by *alias* Ronnie, what happened next if any?

A: We have short conversation ma'am.

Q: What was the conversation all about?

A: Our confidential informant introduced me to *alias* Ronnie, he said, "*pare, si Pareng Teng, meron ba tayo jan*"?

---

[21] *Id.* at 45-46 and 49-50.

[22] *Quinicot v. People*, G.R. No. 179700, 22 June 2009, 590 SCRA 458, 476 citing *People v. Adam*, 459 Phil. 676, 684 (2003), *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198; *People v. Capalad*, G.R. No. 184174, 7 April 2009, 584 SCRA 717, 729 citing *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627-628, 638; *People v. Macatingag*, G.R. No. 181037, 19 January 2009, 576 SCRA 354, 361-362.

Q: When the confidential informant introduced you to *alias* Ronnie, what happened next if any?

A: Ronnie said, "*ilan*?"

Q: To whom did he address the question?

A: To us ma'am.

Q: And what was your reply to that question?

A: I answered, "one kilo."

Q: One kilo of what?

A: One kilo of dried marijuana leaves ma'am.

COURT:

Q: Did you tell him one kilo of dried marijuana leaves?

A: I said only one kilo your honor.

FISCAL:

Q: When you told *alias* Ronnie, one kilo, what was his reply?

A: He said, "*ang dami*."

Q: And what was your counter reply to that?

A: I said, "*magkano ba*?" and he said "*tatlong libo*."

Q: What transpired next after you talked about one kilo of marijuana and Three thousand pesos?

A: And then, *alias* Ronnie went inside the room, but before that, he ordered *alias* Roding to get the money from me.

Q: Before *alias* Ronnie entered the room, directed *alias* Roding to get the money from you?

A: Yes ma'am.

Q: What did you do?

A: I gave the buy-bust money to one *alias* Roding ma'am.

Q: And what about *alias* Ronnie, how long did he stay inside the room?

A: Few minutes only, more or less seconds ma'am.

Q: When *alias* Ronnie went out of the room, what happened next if any?

A: He handed to me the transparent plastic bag containing two (2) folded envelopes.

Q: What is the color of that plastic bag?

A: Transparent green plastic bag ma'am.

Q: How about the envelopes?

A: Two (2) brown envelopes ma'am.

x x x x x x x x x

FISCAL:

Q: May I go back to that matter, Mr. Witness, you handed the 3000 pesos to *alias* Roding?

A: Yes ma'am.

Q: and this transparent plastic bag containing two (2) brown envelopes of dried marijuana leaves were handed to you by *alias* Ronnie?

A: Yes ma'am.

Q: On that particular point, what did you do?

A: *Alias* Ronnie handed to me the plastic bag containing two brown envelopes and I opened it and I found dried marijuana leaves in it.

Q: What did you do with the items?

A: I smell it ma'am.

Q: And what else if any did you do?

A: Afterwhich I identified myself as police officer. I introduced myself to *alias* Ronnie and *alias* Roding ma'am.

Q: What did you tell them if any?

A: That I am affecting the arrest on *alias* Ronnie and apprised them of their constitutional rights.[23]

[23] TSN, 27 January 2004, pp. 11-15.

From his testimony, it can be culled that PO1 Alano gave ₱3,000.00 to Roding in exchange for the green plastic sachet handed to PO1 Alano by Ronnie. His testimony was corroborated by PO1 Buenafe, who in turn, was able to eventually recover the marked money from Roding. Upon examination by the forensic chemist, it was proven that the green plastic bag bought from appellants contains *marijuana*. Verily, all the elements of the sale of illegal drugs were established.

Appellants zero in on the apparent inconsistencies in the testimonies of PO1 Alano and PO1 Buenafe with respect to the time when they conducted the surveillance to discredit the prosecution witnesses. PO1 Alano claimed that the surveillance was conducted between 12:00 p.m. to 1:30 p.m., but earlier he stated that they left the office at 12:00 p.m. and arrived at the target area at 1:30 p.m. Appellants argue that it would have been impossible for a surveillance to have been conducted considering the statements of these witnesses.[24]

The inconsistencies or contradictions pointed by appellants relating to the time of surveillance are not material to establish the elements of the crime committed. They are certainly not sufficient to overturn their conviction. Time and again, this Court has ruled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.[25]

This Court likewise sustains the findings of the trial court on the credibility of these prosecution witnesses. In cases involving violations of the Dangerous Drugs Law, appellate courts tend to rely heavily on the trial court's assessment of the credibility of witnesses, because the latter had the unique opportunity, denied to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and

---

[24] CA *rollo*, p. 63.

[25] *People v. Cruz*, G.R. No. 185381, 16 December 2009, 608 SCRA 350, 364 citing *People v. Gonzales*, 430 Phil. 504, 514 (2002); *People v. Uy*, 392 Phil. 773, 786-787 (2000); *People v. Guiara*, G.R. No. 186497, 17 September 2009, 600 SCRA 310, 327.

cross-examination. Hence, its factual findings are accorded great 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.[26]

In recognition of the credibility of these witnesses, the presumption that police officers have performed their duties in good faith is correctly applied in this case. Appellants failed to adduce any ill or improper motive on the part of the NARCOM operatives. In fact, Roding admitted that it was his first time to meet them and neither does he have any misunderstanding with them.[27] Absent any clear and convincing evidence that the NARCOM operatives had ill or improper motive to falsely testify against appellants, their testimonies regarding the facts and circumstances surrounding the buy-bust operation must be accorded full faith and credit.[28]

Appellants also assert that the police officers failed to establish the chain of custody of the *marijuana*, considering that PO1 Alano categorically admitted that the *marijuana* was only marked at their office.[29]

In *People v. Resurreccion*,[30] this Court reiterates that failure to immediately mark seized drugs will not automatically impair the integrity of chain of custody as long as the integrity and the evidentiary value of the seized items have been preserved, as these would be utilized in the determination of the guilt or innocence of the accused.[31]

PO1 Alano accounted for the crucial links in the chain of custody of the *marijuana*. It can be recalled that the green

---

[26] *People v. De Mesa*, G.R. No. 188570, 6 July 2010 citing *People v. Almendras*, 449 Phil. 587, 604 (2003).

[27] TSN, 10 July 2006, p. 10.

[28] *People v. Villanueva, Jr.*, G.R. No. 187152, 22 July 2009, 593 SCRA 623, 545.

[29] CA *rollo*, p. 65.

[30] G.R. No. 186380, 12 October 2009, 603 SCRA 510.

[31] *Id.* at 518-519.

plastic bag containing *marijuana* placed inside two (2) envelopes was handed to him by Ronnie. After arresting appellants, PO1 Alano and the rest of the NARCOM operatives immediately brought appellants and the seized *marijuana* to Fort Bonifacio.[32] Upon reaching the camp, PO1 Alano placed his initials on each envelope and turned them over to P/Supt. Pepito Dumantay (P/Supt. Dumantay). Together with PO1 Buenafe and P/Supt Dumantay, PO1 Alano brought the *marijuana* to the PNP Crime Laboratory.[33] The forensic chemist examined the very same specimen brought to her, and in her findings, she confirmed it to be positive for *marijuana*.

The prosecution indeed sufficiently proved that that the chain of custody of the *marijuana* was never broken from the time PO1 Alano received the *marijuana* from Ronnie up to the moment it was presented in court as evidence.

We quote with approval the ruling of the appellate court in this matter:

> As borne out by the extant evidence, after the conclusion of the entrapment operation, the buy-bust team, together with appellants, proceeded to their headquarters at Fort Bonifacio. Thereat, PO1 Alano marked with his initials the two (2) brown envelopes containing the *marijuana* and then turned over custody of the same to the Chief of their unit, P.Supt. Pepito Dumantay. The latter in turn prepared a request for laboratory examination thereof, describing them in the request as ". . . two (2) folden brown envelopes, each containing suspected dried *marijuana* flowering tops, marked WAA/8/18/98." The qualitative examination of the specimen conducted by forensic chemist S/Insp. Grace M. Eustaquio yielded positive results for *marijuana*.[34]

All told, the prosecution has proven beyond reasonable doubt that appellants were caught *in flagrante delicto* selling *marijuana*.

---

[32] TSN, 4 July 2001, p. 33

[33] TSN, 27 January 2004, pp. 14-16.

[34] *Rollo*, pp. 13-14.

WHEREFORE, the Decision dated 26 September 2008 of the Court of Appeals in CA G.R. CR-H.C. No. 02844 finding appellants Ronaldo Morales *y* Flores (Ronnie) and Rodolfo Flores *y* Mangyan (Roding) *GUILTY* beyond reasonable doubt of the crime charged in Criminal Case No. MC-98-746-D-H, for violation of Section 4, Article II in relation to Section 21, Article IV of Republic Act No. 6425, as amended, is *AFFIRMED.*

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 189580. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALVIN DEL ROSARIO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS AND CONCLUSIONS OF THE TRIAL COURT, ACCORDED RESPECT.— The age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they testify. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the CA affirms the said findings,

and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.

2. ID.; ID.; ID.; ILL MOTIVE OF WITNESSES, NOT ESTABLISHED.— The alleged improper motive on the part of Angelita and Salvador remains purely speculative, as no evidence was offered to establish that such a relationship affected their objectivity. In *People v. Daraman*, we had occasion to state that it would be unnatural for relatives of the victim, who seek justice, to impute the crime to an innocent person, and thereby allow the real culprit to escape prosecution. Indubitably, the imputation of ill motive against Angelita and Salvador is not a viable defense.

3. ID.; ID.; POSITIVE IDENTIFICATION, GIVEN MORE EVIDENTIARY WEIGHT THAN BARE DENIAL.— As against the positive identification by Angelita and Salvador, appellant's bare denial carries no evidentiary weight or probative value, especially so because he opted not to present any evidence to prove his defense. As explained by this Court in *People v. Lovedorial*: It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law.

4. ID.; ID.; ADMISSIONS; ADMISSIBLE IN EVIDENCE IN THE ABSENCE OF OBJECTION PROPERLY MADE.— Records show that, when Ruel testified on the alleged admission, appellant did not raise any objection. It is a rule of evidence that any objection against the admission of any piece of evidence must be made at the proper time, and that if not so made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of evidence is, or may be, inferred. Therefore, the RTC cannot be faulted for admitting the testimony of Ruel.

5. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, PRESENT.— That treachery or *alevosia* was present is incontrovertible. The essence of this qualifying circumstance is the sudden and unexpected attack by the assailant on an unsuspecting victim, depriving the latter of any real chance to defend himself. It is employed to ensure the commission of the crime without the concomitant risk to the aggressor. Concededly, appellant's attack, coming from behind, on the unarmed Edwin, was sudden, unprovoked, unexpected, and deliberate. Edwin was in no position and without any means to defend himself. By all indications, Edwin was left with no opportunity to evade the knife thrusts, to defend himself, or to retaliate. In sum, the finding of treachery stands.

6. ID.; REVISED PENAL CODE; MURDER; PENALTY.— Under Article 248 of the Revised Penal Code (RPC), as amended, the penalty imposed for the crime of murder is *reclusion perpetua* to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua*, pursuant to Article 63, paragraph 2, of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Edwin is, therefore, correct.

7. ID.; ID.; ID.; CIVIL INDEMNITY AND MORAL DAMAGES, AWARDED.— In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime, and proof of an accused's responsibility therefor. Similarly, moral damages are awarded in view of the violent death of the victim, and these do not require any allegation or proof of The emotional sufferings of the heirs. We, therefore, sustain the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the heirs of Edwin.

8. ID.; ID.; ID.; TEMPERATE DAMAGES OF ₱25,000.00, AWARDED IN LIEU OF LESSER AMOUNT OF ACTUAL DAMAGES.— As to actual damages, the official receipts that Angelita presented showed expenses that amounted to ₱17,258.00. However, we have held that when actual damages proven by receipts amount to less than ₱25,000.00, the award of temperate damages amounting to ₱25,000.00 is justified, in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair to the heirs of the victim who tried but succeeded only in proving

actual damages of less than ₱25,000.00. They would be in a worse situation than another who might have presented no receipts at all, but is entitled to ₱25,000.00 temperate damages. Thus, considering that expenses in the amount of ₱17,258.00 were proven by Edwin's heirs, an award of ₱25,000.00 as temperate damages, in lieu of this lesser amount of actual damages, is proper.

9. ID.; ID.; ID.; EXEMPLARY DAMAGES, AWARDED IN VIEW OF THE PRESENCE OF AN AGGRAVATING CIRCUMSTANCE.— [W]e include an award of exemplary damages in favor of the heirs of Edwin. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code. The award of ₱30,000.00 as exemplary damages is, therefore, proper under current jurisprudence.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

NACHURA, *J.*:

On appeal is the July 23, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 03020, which affirmed the decision[2] rendered by Branch 65 of the Regional Trial Court (RTC) of Bulan, Sorsogon, finding appellant Alvin del Rosario guilty beyond reasonable doubt of murder.

In an Information[3] dated January 11, 2005, appellant was charged with murder, committed as follows:

---

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Jose Catral Mendoza (now a member of this Court) and Antonio L. Villamor, concurring; *rollo*, pp. 2-11.

[2] Records, pp. 145-155.

[3] *Id.* at 1.

That on December 20, 2004 at about 9:00 o'clock in the evening [in] Brgy. G. del Pilar, municipality of Bulan, province of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a knife, with intent to kill and taking advantage of night time, with treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously, attack, assault and stab one **EDWIN GELUA** thereby inflicting upon him mortal wounds on the stomach which caused his death, to the damage and prejudice of his legal heirs.

CONTRARY TO LAW.

When arraigned, appellant pleaded not guilty. Trial on the merits ensued.

The prosecution presented four (4) witnesses, namely: Angelita Gelua (Angelita), Edwin Gelua's (Edwin's) wife; Dr. Andrew A. de Castro (Dr. De Castro), Edwin's attending physician; Salvador Gelua (Salvador); and Ruel Garlan (Ruel).

Angelita testified that, on December 20, 2004, at about 9:00 p.m., Edwin had a drinking spree with Salvador and Samson Gepiga at their home in Barangay G. del Pilar, Bulan, Sorsogon. At some point during the said spree, Edwin went out of the house to answer the call of nature. Angelita was standing by the main door while Edwin urinated when appellant suddenly appeared and stabbed Edwin with a machete. She immediately brought Edwin to Bulan Municipal Hospital; and then transferred him to Sorsogon Provincial Hospital, where Edwin died.[4]

Dr. De Castro found the cause of death as "*cardio-respiratory arrest, stab wound, and hypovolemic shock*."[5] He explained that Edwin sustained a stab wound *"on the right upper quadrant with laceration, the part of the intestine coming out,"* and damaged the following abdominal organs, *i.e.*, *"perforated lesser curvature of [the] stomach was thru and thru; perforated second part of [the] duodenum, thru and thru; lacerated middle colic artery behind the stomach with extensive bleeding; lacerated mesenteric*

---

[4] TSN, June 21, 2005, pp. 3-5, 7.

[5] Records, p. 8.

vessels; and perforated ileum, thru and thru."[6] Dr. De Castro opined that, based on the location of the stab wound, the victim was in front of the assailant – face to face with the latter when attacked. However, it was also possible that the assailant was at the back of the victim by "*hitting the anterior part from behind holding the patient.*"[7]

Salvador corroborated the testimony of Angelita. He testified that, on December 20, 2004, at around 9:00 p.m., he was having a drinking spree with Edwin at the latter's house. Edwin went out of the house to urinate. Moments later, he heard Edwin shouting, crying for help. He rushed outside and saw Edwin holding his stomach, apparently stabbed. He saw appellant holding a knife and who ran away upon seeing him. They hurriedly brought Edwin to the hospital.[8]

Ruel, on the other hand, stated that Angelita informed him of the stabbing incident. He went to the house of appellant after the incident. Initially, appellant denied that he stabbed Edwin; later, however, appellant admitted that he was Edwin's assailant, and surrendered to him the bladed weapon which was allegedly used in the stabbing. He then brought appellant to the Bulan Police Station.[9]

For his part, appellant invoked his constitutional right to remain silent. He refused to present any witness in support of his denial, despite numerous opportunities given him. He decided to simply forego with the presentation of his evidence.

On August 27, 2007, the RTC rendered a guilty verdict, *viz.*:

WHEREFORE, premises considered, accused **Alvin del Rosario** having been found guilty beyond reasonable doubt of the crime of **Murder,** defined and penalized under Article 248 of the Revised Penal Code as amended by RA 7659, is hereby sentenced to suffer the single and indivisible penalty of ***Reclusion***

---

[6] *Id.* at 66; TSN, November 8, 2005, p. 5.

[7] TSN, November 8, 2005, p. 7.

[8] TSN, January 17, 2006, pp. 1-3.

[9] TSN, February 14, 2006, pp. 1-3.

Perpetua (regardless of [the] presence of any mitigating or aggravating circumstances, Art. 63, R.P.C.) and to indemnify the heirs of deceased Edwin Gelua in the amount of Php17,258.00 as actual and compensatory damages; Php50,000.00 as civil indemnity for his death and another Php50,000.00 as moral damages; and to pay the costs.

The period of preventive imprisonment already served by the accused shall be credited in the service of his sentence pursuant to Article 29 of the same Code.

SO ORDERED.[10]

Appellant filed an appeal before the CA, assigning in his brief the following errors allegedly committed by the trial court:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING UNDUE WEIGHT AND CREDENCE TO THE HIGHLY IMPROBABLE AND UNRELIABLE ACCOUNT OF PROSECUTION EYEWITNESSES ANGELITA AND SALVADOR GELUA.

II

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

III

THE TRIAL COURT GRAVELY ERRED IN ADMITTING IN EVIDENCE THE ACCUSED-APPELLANT'S ALLEGED ADMISSION AND TURNING OVER OF THE MURDER WEAPON WITHOUT THE ASSISTANCE OF COUNSEL.[11]

The Office of the Solicitor General (OSG) also filed its brief,[12] asserting that appellant's guilt was proved beyond reasonable doubt.

---

[10] *Supra* note 2, at 155.

[11] CA *rollo*, pp. 45, 51.

[12] *Id*. at 73-83.

On July 23, 2009, the CA rendered the now challenged Decision, affirming appellant's conviction:

> WHEREFORE, in view of the foregoing, the appealed decision of the RTC of Bulan, Sorsogon, Branch 65 dated August 27, 2007 is hereby **AFFIRMED *IN TOTO***.
>
> SO ORDERED.[13]

Appellant is now before this Court, submitting for resolution the same matters argued before the CA. Through his Manifestation and Motion in Lieu of Supplemental Brief,[14] appellant stated that he would not file a Supplemental Brief and, in lieu thereof, he would adopt the Appellant's Brief he had filed before the appellate court. The OSG likewise manifested that it was no longer filing a Supplemental Brief.[15]

Appellant insists that the prosecution failed to prove his guilt beyond reasonable doubt. He asserts that the pieces of evidence of the prosecution, specifically, the testimonies of Angelita and Salvador, do not bear the earmarks of truth, candor, and spontaneity. He argues that the trial court should not have taken at face value the testimonies of these witnesses because they may be impelled by improper motives, being the wife and the cousin of the victim. Appellant, therefore, faults the RTC and the CA for giving credence to the prosecution's evidence.

Indubitably, the issues raised by appellant hinge on the credibility of the prosecution witnesses.

The age-old rule is that the task of assigning values to the testimonies of witnesses and weighing their credibility is best left to the trial court which forms first-hand impressions as witnesses testify before it. It is thus no surprise that findings and conclusions of trial courts on the credibility of witnesses enjoy, as a rule, a badge of respect, for trial courts have the advantage of observing the demeanor of witnesses as they

---

[13] *Supra* note 1, at 10.

[14] *Rollo*, pp. 26-28.

[15] *Id*. at 22-25.

testify.[16] Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by this Court, particularly when the CA affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.[17]

In this case, we find no reason to depart from this rule. Appellant failed to convince us that the RTC and the CA overlooked certain facts and circumstances which, if considered, might affect the result of the case.

The witnesses for the People – Angelita and Salvador – were consistent in the identification of appellant as Edwin's assailant. Appellant was directly identified by these witnesses as the one who stabbed and killed Edwin.

Angelita saw the stabbing of Edwin, and was categorical and frank in her testimony. From her direct and straightforward testimony, there is no doubt as to the identity of the culprit (appellant), who suddenly emerged while Edwin was urinating and stabbed the latter.[18]

The alleged improper motive on the part of Angelita and Salvador remains purely speculative, as no evidence was offered to establish that such a relationship affected their objectivity. In *People v. Daraman*,[19] we had occasion to state that it would be unnatural for relatives of the victim, who seek justice, to impute the crime to an innocent person, and thereby allow the real culprit to escape prosecution. Indubitably, the imputation of ill motive against Angelita and Salvador is not a viable defense.

---

[16] *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784, 794-795.

[17] *People v. Molina,* G.R. No. 184173, March 13, 2009, 581 SCRA 519, 535-536.

[18] TSN, June 21, 2005, pp. 3-5; TSN, September 6, 2005, 4-6.

[19] 355 Phil. 454, 473 (1998).

As against the positive identification by Angelita and Salvador, appellant's bare denial carries no evidentiary weight or probative value, especially so because he opted not to present any evidence to prove his defense. As explained by this Court in *People v. Lovedorial*:[20]

> It is a well-settled rule that positive identification of the accused, where categorical and consistent and without any showing of ill motive on the part of the eyewitness testifying on the matter, prevails over alibi and denial which if not substantiated by clear and convincing evidence are negative and self-serving evidence undeserving of weight in law (*People vs. Enriquez*, 292 SCRA 656 [1998]). In this case, Emelita positively and categorically identified accused-appellant as the person she saw outside the window of their house immediately after she heard the gunshot. She also testified that accused-appellant was toting a handgun at that time. Despite relentless cross-examination, she never wavered in the material details of her testimony.
>
> Emelita's testimony as to accused-appellant's culpability is damning. It need not be emphasized that Emelita had no improper motive to testify against accused-appellant, it being unnatural for one interested in vindicating the crime to accuse somebody other than the real culprit (*People vs. Salvame*, 270 SCRA 766 [1997]). Emelita's identification of accused-appellant, likewise, draws strength from the rule that family members who have witnessed the killing of their loved one usually strive to remember the faces of the assailants (*People vs. Cawaling*, 293 SCRA 267 [1998]).

Appellant also faults the RTC for admitting in evidence and for giving credence to the testimony of Ruel. He insists that his alleged admission that he was Edwin's assailant cannot be considered as evidence against him without violating his constitutional right to counsel.

The argument is specious.

Records show that, when Ruel testified on the alleged admission, appellant did not raise any objection. It is a rule of evidence that any objection against the admission of any piece of evidence must be made at the proper time, and that if not so

---

[20] 402 Phil. 446, 457-458 (2001).

made it will be understood to have been waived. The proper time to make a protest or objection is when, from the question addressed to the witness, or from the answer thereto, or from the presentation of the proof, the inadmissibility of evidence is, or may be, inferred.[21] Therefore, the RTC cannot be faulted for admitting the testimony of Ruel.

In any event, appellant's conviction was not based on his alleged admission or confession, but, primarily, on the positive and credible testimonies of Angelita and Salvador. Hence, we agree with the OSG that the circumstances surrounding appellant's alleged admission of the crime are inconsequential.

Appellant next argues that he should be made liable for homicide only. He claims that treachery did not attend the killing of Edwin.

That treachery or *alevosia* was present is incontrovertible. The essence of this qualifying circumstance is the sudden and unexpected attack by the assailant on an unsuspecting victim, depriving the latter of any real chance to defend himself. It is employed to ensure the commission of the crime without the concomitant risk to the aggressor.[22]

Concededly, appellant's attack, coming from behind, on the unarmed Edwin, was sudden, unprovoked, unexpected, and deliberate. Edwin was in no position and without any means to defend himself. By all indications, Edwin was left with no opportunity to evade the knife thrusts, to defend himself, or to retaliate. In sum, the finding of treachery stands.

Under Article 248[23] of the Revised Penal Code (RPC), as amended, the penalty imposed for the crime of murder is

---

[21] *People v. Mariño*, 215 Phil. 527, 532 (1984).

[22] *People v. Glino*, G.R. No. 173793, December 4, 2007, 539 SCRA 432, 456-457.

[23] Art. 248. *Murder*. - Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, x x x.

reclusion perpetua to death. There being no aggravating or mitigating circumstance, the penalty imposed on appellant is *reclusion perpetua*, pursuant to Article 63, paragraph 2,[24] of the RPC. The prison term imposed by the trial court and affirmed by the CA for the death of Edwin is, therefore, correct.

As to the damages awarded, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[25]

In murder, the grant of civil indemnity, which has been fixed by jurisprudence at ₱50,000.00, requires no proof other than the fact of death as a result of the crime, and proof of an accused's responsibility therefor. Similarly, moral damages are awarded in view of the violent death of the victim, and these do not require any allegation or proof of the emotional sufferings of the heirs.[26] We, therefore, sustain the awards of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages to the heirs of Edwin.

As to actual damages, the official receipts that Angelita presented showed expenses that amounted to ₱17,258.00. However, we have held that when actual damages proven by receipts amount to less than ₱25,000.00, the award of temperate damages amounting to ₱25,000.00 is justified, in lieu of actual damages for a lesser amount. This is based on the sound reasoning that it would be anomalous and unfair to the heirs of the victim who tried but succeeded only in proving actual damages of less than ₱25,000.00. They would be in a worse situation than another who might have presented no receipts at all, but is entitled to

---

[24] Art. 63. *Rules for the application of indivisible penalties*. - x x x.

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

[25] *People v. Molina*, *supra* note 17, at 542.

[26] *People v. Hernando*, G.R. No. 186493, November 25, 2009, 605 SCRA 741, 754.

₱25,000.00 temperate damages.[27] Thus, considering that expenses in the amount of ₱17,258.00 were proven by Edwin's heirs, an award of ₱25,000.00 as temperate damages, in lieu of this lesser amount of actual damages, is proper.

Likewise, we include an award of exemplary damages in favor of the heirs of Edwin. An aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230[28] of the Civil Code. The award of ₱30,000.00 as exemplary damages is, therefore, proper under current jurisprudence.[29]

WHEREFORE, the appeal is *DISMISSED*. The assailed Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 03020 is *AFFIRMED* with *MODIFICATIONS*. Appellant Alvin del Rosario is found *GUILTY* beyond reasonable doubt of *MURDER*, and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellant is also ordered to pay the heirs of Edwin Gelua the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

---

[27] *People v. Lacaden, supra* note 16, at 804-805.

[28] Art. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[29] See *People v. Lacaden, supra* note 16, at 805; *People v. Del Prado*, G.R. No. 187074, October 13, 2009, 603 SCRA 662, 680.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated February 17, 2010.

SECOND DIVISION

[G.R. No. 191061. February 9, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROSELLE SANTIAGO *y* PABALINAS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; RIGHT TO QUESTION THE LEGALITY THEREOF, WHEN DEEMED WAIVED.— Roselle claims that the police did not make a valid arrest in her case since they arrested her without proper warrant and did not apprise her of the rights of a person taken into custody as the Constitution and R.A. 7438 provide. But Roselle raised this issue only during appeal, not before she was arraigned. For this reason, she should be deemed to have waived any question as to the legality of her arrest.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE SEIZED ITEMS IS FATAL.— Esguerra testified that he seized a heat-sealed sachet of white substance from Roselle and marked the sachet with "*RPS*" right in her presence. He claimed that he then immediately submitted the specimen to the police crime laboratory for examination. But the request for laboratory exam reveals that it was not Esguerra who delivered the specimen to the crime laboratory. It appears that Esguerra gave it to a certain SPO3 Puno who in turn forwarded it to a certain PO2 Santos. No testimony covers the movement of the specimen among these other persons. Consequently, the prosecution was unable to establish the chain of custody of the seized item and its preservation from possible tampering. x x x What is more, the prosecution failed to account for the whereabouts of the seized specimen after the crime laboratory conducted its tests. This omission is fatal since the chain of custody should be established from the time the seized drugs were confiscated and eventually marked until the same is presented during trial.

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

The Facts and the Case

The public prosecutor of Makati charged the accused Roselle Santiago *y* Pabalinas *alias Tisay* (Roselle) with violation of Section 5 of Republic Act (R.A.) 9165[1] before the Regional Trial Court (RTC) of Makati City in Criminal Case 05-792. Roselle was also charged with violation of Section 15 of the same law in Criminal Case 05-1101.[2]

Initially, Roselle pleaded not guilty in Criminal Case 05-1101 (violation of Section 15) but she later changed her plea to guilty[3] and was so found by the court. The latter, however, deferred her sentencing until the termination of the case for violation of Section 5.

The parties stipulated at the pre-trial (1) that PO3 Leo Gabang investigated the case; (2) that, although the latter prepared the investigation report, he had no personal knowledge of what happened; (3) that the police made a request, through P/Supt. Marietto Mendoza, for laboratory examination; (4) that P/Insp. Richard Allan Mangalip, a forensic chemist of the Philippine National Police (PNP) Crime Laboratory, examined the submitted specimen, not knowing from whom the same was taken; (5)

---

[1] Also known as the *Comprehensive Dangerous Drugs Act of 2002*.

[2] Criminal Cases 05-792 and 05-1101 were tried jointly with Criminal Case 05-793 entitled "*People v. Marilou Sapico y Pili and Betsyrose Cabase y Saguirre*" for violation of Section 12 of R.A. 9165 and Criminal Cases 05-1102 to 05-1103 entitled "*People v. Marilou Sapico y Pili*" and "*People v. Betsyrose Cabase y Saguirre*," respectively for violation of Section 15 of the same law.

[3] Records, Vol. I, pp. 54-57.

that the PNP Crime Laboratory Office issued Physical Science Report D-090-05S; and (6) that the forensic chemist was qualified. With these stipulations, the prosecution dispensed with Mangalip's testimony.[4]

PO1 Voltaire Esguerra (Esguerra) testified that on April 4, 2005, they received information that Roselle was selling illegal drugs at her house at Pipit Extension, *Barangay* Rizal, Makati City. Esguerra conducted a test buy and received from her one heat-sealed transparent plastic sachet that presumably contained *shabu*. When he returned to his office, Esguerra marked the sachet with "*@ Tisay*" then sent it to the laboratory for testing.[5] Before receiving the results of the test buy, an asset told the police that Roselle was going to leave her house, prompting Esguerra's team to conduct a buy-bust operation.

Esguerra met Roselle again and told her that it was he who bought *shabu* from her earlier that day. She thus let him enter the front yard of her house where he told her that he wanted to buy another pack for ₱300.00. Roselle took his marked money and entered the house. While waiting and looking in, Esguerra spotted two women[6] inside using *shabu* with the asset by their side, apparently waiting for his turn. Subsequently, Roselle returned with one heat-sealed transparent plastic sachet presumably containing *shabu*. Upon receipt of the sachet, Esguerra signaled his team. They arrested Roselle and appraised her of her rights. Esguerra immediately marked the sachet with "*RPS*."

After returning to the station, he turned over Roselle and the seized sachet to the investigator. When the contents of the first and second sachets (with "*@ Tisay*" and "RPS" markings) were examined, these were confirmed to be *Methylamphetamine Hydrochloride* (*shabu*). A confirmatory test also found Roselle positive for the use of *shabu*.

---

[4] Pre-trial Order dated June 28, 2005, *id.* at 43-46.

[5] *See* Request for Laboratory Experiment, *id.* at 223.

[6] Later identified as Marilou Sapico and Betsyrose Cabase.

For her defense, Roselle denies that she sold *shabu* to Esguerra. She claims that the case was a product of a mistaken identity, as she was not known as *Tisay* in the area but Roselle. She narrated how she was forcibly taken from her house and into custody.

In its decision dated June 11, 2008, the RTC found Roselle guilty of violation of Section 5, Article II of R.A. 9165, and sentenced her to life imprisonment and to pay a fine of ₱500,000.00. The RTC also sentenced her to undergo rehabilitation for not less than six months at a government drug rehabilitation center subject to the provisions of R.A. 9165 for her violation of Section 15, Article II of R.A. 9165.

Roselle appealed from both judgments to the Court of Appeals (CA) in CA-G.R. CR-HC 03451 but the latter court affirmed the two convictions. She looks for her acquittal from this Court.

The Issues Presented to the Court

The issues presented to the Court are (1) whether or not the police conducted a valid arrest in Roselle's case; and (2) whether or not the CA erred in affirming the RTC's finding that the prosecution evidence established her guilt of the offense charged beyond reasonable doubt.

The Court's Ruling

One. Roselle claims that the police did not make a valid arrest in her case since they arrested her without proper warrant and did not apprise her of the rights of a person taken into custody as the Constitution and R.A. 7438 provide.[7] But Roselle raised this issue only during appeal, not before she was arraigned. For this reason, she should be deemed to have waived any question as to the legality of her arrest.[8]

---

[7] *An Act Defining Certain Rights of Persons Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers, and providing Penalties for violations thereof.*

[8] *Rebellion v. People of the Philippines*, G.R. No. 175700, July 5, 2010.

Two. Although the prosecution established through Esguerra the acts constituting the crime[9] charged in the drug-pushing case (Section 5), it failed to provide proper identity of the allegedly prohibited substance that the police seized from Roselle.

Esguerra testified that he seized a heat-sealed sachet of white substance from Roselle and marked the sachet with "*RPS*" right in her presence. He claimed that he then immediately submitted the specimen to the police crime laboratory for examination. But the request for laboratory exam reveals that it was not Esguerra who delivered the specimen to the crime laboratory.[10] It appears that Esguerra gave it to a certain SPO3 Puno who in turn forwarded it to a certain PO2 Santos. No testimony covers the movement of the specimen among these other persons. Consequently, the prosecution was unable to establish the chain of custody of the seized item and its preservation from possible tampering.

Since the seized substance was heat-sealed in plastic sachet and properly marked by the officer who seized the same, it would have also been sufficient, despite intervening changes in its custody and possession, if the prosecution had presented the forensic chemist to attest to the fact a) that the sachet of substance was handed to him for examination in the same condition that Esguerra last held it: still heat-sealed, marked, and not tampered with; b) that he (the chemist) opened the sachet and examined its content; c) that he afterwards resealed the sachet and what is left of its content and placed his own marking on the cover; and d) that the specimen remained in the same condition when it is being presented in court. In this way, the court would have been assured of the integrity of the specimen as presented before it. If the finding of the chemist is challenged, there may be opportunity for the court to require a retest so long as sufficient remnants of the same are left.

---

[9] (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. *See People v. Pagaduan*, G.R. No. 179029, August 12, 2010.

[10] Request for Laboratory Examination, records, Vol. I, p. 226.

What is more, the prosecution failed to account for the whereabouts of the seized specimen after the crime laboratory conducted its tests. This omission is fatal since the chain of custody should be established from the time the seized drugs were confiscated and eventually marked until the same is presented during trial.[11]

Taking into account the above reasons, the Court finds it difficult to sustain the conviction of Roselle for violation of Section 5. The presumption of her innocence of the charge must prevail.

As for the other offense, her violation of Section 15 (Use of Illegal Drugs), it is curious that the CA still entertained her appeal from it despite the fact that she pleaded guilty to the charge and did not ask the trial court to allow her to change her plea. At any rate, since she had been under detention at the Correctional Institute for Women since 2005 and presumably deprived of the use of illegal substance during her entire stay there, she should be deemed to have served the mandatory rehabilitation period that the RTC imposed on her.

WHEREFORE, for failure of the prosecution to prove her guilt beyond reasonable doubt of the alleged violation of Section 5 of R.A. 9165, the Court *REVERSES* the decision of the Court of Appeals in CA-G.R. CR-HC 03451 dated October 30, 2009 and *ACQUITS* the accused Roselle Santiago *y* Pabalinas of the charge against her for that crime.

The Court *DIRECTS* the warden of the Correctional Institute for Women to release the accused from custody immediately upon receipt of this decision unless she is validly detained for some other reason.

SO ORDERED.

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

---

[11] *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762, 777.

INDEX

INDEX

IMPEACHMENT

Concept — Not intended by the Constitution to be the totality of the administrative actions or remedies that the public or the court may take against an erring justice of the Court. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Brion, J., separate concurring opinion*) p. 11

— That impeachment addresses only serious offenses committed by impeachable officers cannot imply that the Constitution condones misdemeanors and misconduct that are not of equal gravity. *(Id.)*

— The sole means of removal but not the sole means of disciplining members of the Supreme Court. *(Id.)*

Proceedings— Impeachment by Congress takes the place of administrative disciplinary proceedings against impeachable officers as there is no other authority that can administratively discipline impeachable officers. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Carpio, J., dissenting opinion*) p. 11

— Impeachment proceeding is not a criminal proceeding. *(Id.)*

— The House of Representatives shall have the exclusive power to initiate all cases of impeachment and the Senate shall have the sole power to try and decide cases of impeachment. *(Id.)*

INTELLECTUAL PROPERTY CODE OF THE PHILIPPINES (R.A. NO. 8293)

Copyright — Works of the government are not subjects of copyright and failure to make the proper attribution of a work of the government is not actionable. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Carpio, J., dissenting opinion*) p. 11

— Once the Court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases, where facts are substantially the same, regardless of whether the parties or property are the same. *(Id.)*

STATUTE OF FRAUDS

Application — The statute applies only to executory and not to completed, executed, or partially consummated contracts. (*Vda. de*Ouano *vs*. Rep. of the Phils., G.R. No. 168770, Feb. 09, 2011) p. 391

SUPREME COURT

Disciplinary authority over courts and personnel — Does not include Supreme Court Justices. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Carpio, J., dissenting opinion*) p. 11

— Includes administrative authority to investigate and discipline its members for official infractions that do not constitute impeachable offenses. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Abad, J., separate concurring opinion*) p. 11

— Power of the Supreme Court to take cognizance of complaints against its incumbent members is circumscribed by the principle of constitutional law on impeachable officers in terms of grounds and penalties. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Carpio Morales, J., separate dissenting opinion*) p. 11

Members of the Supreme Court — May be removed only by impeachment. (In the Matter of the Charges of Plagiarism, etc., Against Associate Justice Mariano C. Del Castillo, A.M. No. 10-7-17-SC, Feb. 08, 2011; *Brion, J., separate concurring opinion*) p. 11

— Stands in the absence of ill-motive to testify against the accused. (People *vs*. Del Rosario, G.R. No. 189580, Feb. 09, 2011) p. 635

(People *vs.* Morales, G.R. No. 188608, Feb. 09, 2011) p. 622

— The selective consideration of the witness' training as a security guard to the sequence of events that transpired can only invite suspicions as to his credibility. (Lumanog *vs*. People, G.R. No. 182555, Feb. 08, 2011; *Abad, J., dissenting opinion*) p. 246

— The victim's unwavering testimonial account of the bestiality of her own father towards her reflected her singular reliability. (People *vs*. Dadulla, G.R. No. 172321, Feb. 09, 2011) p. 442

CITATION

Page

I. LOCAL CASES

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

Page

II. FOREIGN CASES

Page

REFERENCES

I. LOCAL AUTHORITIES

A. CONSTITUTION

B. STATUTES

Page

Page

Page

Page

Page

C. OTHERS

Page

D. BOOKS
(Local)

Page

II. FOREIGN AUTHORITIES

BOOKS