
# PHILIPPINE REPORTS

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**VOLUME 659**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

FEBRUARY 21, 2011 TO MARCH 7, 2011

SUPREME COURT
MANILA
2014

*Prepared*
*by*

The Office of the Reporter
Supreme Court
Manila
2014


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# REPORT OF CASES

DETERMINED IN THE

## SUPREME COURT OF THE PHILIPPINES

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### SECOND DIVISION

[G.R. No. 181201. February 21, 2011]

**UNIVERSITY OF MINDANAO, INC., DR. GUILLERMO P. TORRES, JR., ATTY. VICTOR NICASIO P. TORRES, NANCY C. TE ENG FO, FE AZUCENA MARCELINO, EVANGELINE F. MAGALLANES, CARMENCITA E. VIDAMO, CARMICHAEL E. VIDAMO, ANTONIO M. PILPIL, SATURNINO PETALCORIN, REYNALDO M. PETALCORIN, LILIAN M. PETALCORIN-CASTILLO, MARY ANN M. PETALCORIN-RAS, VITALIANO MALAYO, JR., NERI FILIPINAS, NATIVIDAD MIRANDA, ANTONIO N. FERRER, JR.,** *petitioners, vs.* **COURT OF APPEALS and PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondents.*

### SYLLABUS

**1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; DENIAL THEREOF IS AN INTERLOCUTORY ORDER THAT CANNOT BE THE SUBJECT OF APPEAL; IT MAY BE ASSAILED BY *CERTIORARI* OR PROHIBITION ONLY, PRESENT GRAVE ABUSE OF DISCRETION.—** The denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by *certiorari*. It cannot be the subject of appeal, until a final judgment or order is rendered. An interlocutory order may be assailed by *certiorari*

or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by *certiorari* will not only delay the administration of justice, but will also unduly burden the courts. By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so 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.

**2. ID.; ID.; APPEAL TO THE COURT OF APPEALS; DOCKETING OF CASE; FAILURE TO FILE SEVEN COPIES OF THE APPROVED RECORD ON APPEAL IS NOT A GROUND FOR DISMISSAL OF APPEAL.—** Petitioners argue that the CA committed grave abuse of discretion when it did not dismiss the appeal of the PDIC when the latter failed to file seven copies of the approved record on appeal. Petitioners contend that such omission violated Section 4, Rule 44 of the Rules of Court. x x x Contrary to petitioners' assertion, a plain reading of Section 4, Rule 44 does not provide that non-submission of copies of the approved record on appeal is a ground to dismiss an appeal. Quite plainly, the rule only reads that should there be "any unauthorized alteration, omission or addition in the approved record of appeal," the same should be considered as a ground for dismissal. Petitioners' construction of the rules would unduly extend its meaning and application as there is no mention therein that non-submission of the required copies is a ground to dismiss an appeal. Moreover, Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Indeed, rules of procedure should be used to promote, not frustrate justice. x x x Moroever, this Court observes that the PDIC filed on July 15, 2005 its record on appeal and that the same was approved by the RTC in an Order dated May 25, 2006. The CA did not find the non-submission of the copies fatal to PDIC's appeal. In the same

vein, this Court finds no grave abuse of discretion on the part of the CA for choosing not to dismiss the appeal as it could just simply ask the PDIC to submit the required copies of the approved record on appeal. In any case, it bears to stress that *certiorari* will not issue to correct errors of procedure.

**3. ID.; ID.; ID.; RECORD ON APPEAL; DISMISSAL OF APPEAL FOR FAILURE TO STATE MATERIAL DATES AND FAILURE TO INCLUDE A COPY OF THE RTC ORDER APPROVING THE RECORD OF APPEAL, DISCRETIONARY TO THE COURT OF APPEALS.—** Petitioners argue that the PDIC's record of appeal is defective for failure to state (1) when the notice of appeal was filed; (2) when the appellate court and docket fees were paid; and (3) when the record on appeal was filed. Moreover, petitioners argue that the PDIC did not include a copy of the May 25, 2006 RTC Order approving the Record of Appeal. Petitioners thus theorize that the PDIC violated Section 6, Rule 41 of the Rules of Court and that the same warrants dismissal under Section 1 (a) of Rule 50. x x x The findings of the CA that the PDIC substantially complied with the requirements for an appeal must be respected. There can be no grave abuse of discretion attributed to it more so since the grounds for dismissing an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. This can be gleaned from the very language of the Rules which uses the word *may* instead of *shall*. In *De Leon v. Court of Appeals*, we held that Section 1, Rule 50, which provides specific grounds for dismissal of appeal, manifestly "confers a power and does not impose a duty. Moreover, it is directory, not mandatory." With the exception of Section 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal. Based on the RTC's findings as well as its own independent assessment of the PDIC's appeal, it was discretionary on the CA whether or not to dismiss the appeal. In ruling to accept the PDIC's appeal, such action does not constitute capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

**4. ID.; ID.; APPEALS; DISMISSAL OF APPEAL ON PURELY TECHNICAL GROUNDS IS NOT ENCOURAGED.—** Time and again, this Court has ruled that dismissal of appeals on purely technical grounds is not encouraged. The rules of

procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. When a rigid application of the rules tends to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.

**APPEARANCES OF COUNSEL**

*Reymundo P.G. Villarica* for petitioners.
*Office of the General Counsel (PDIC)* for PDIC.

**D E C I S I O N**

**PERALTA, *J.*:**

Before this Court is a petition for *certiorari*,[1] under Rule 65 of the Rules of Court, seeking to set aside the July 6, 2007 Resolution[2] and October 24, 2007 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 00824.

The facts of the case are as follows:

On August 31, 1990, the Monetary Board (Board) issued a Resolution[4] ordering the closure of the Mindanao Savings and Loan Association (MSLA). The MSLA was placed under receivership with the president of the Philippine Deposit and Insurance Corporation (PDIC) appointed as its receiver.

On May 24, 1991, the Board issued Resolution No. 600[5] ordering the liquidation of the MSLA and designating the PDIC

[1] *Rollo*, pp. 4-46.

[2] Penned by Associate Justice Teresita Dy-Liacco Flores, with Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, concurring; *id.* at 53-55.

[3] *Id.* at 58-62.

[4] *Rollo*, p. 93.

[5] *Id.* at 94.

as its liquidator. Accordingly, the PDIC filed before the Regional Trial Court (RTC) of Davao City, Branch 12, a Petition[6] seeking from the said court assistance in the liquidation of the MSLA. On September 29, 1991, the trial court issued an Order[7] giving due course to PDIC's request for assistance.

On January 23, 1993, the RTC of Davao City issued an Order[8] reminding the PDIC to submit a liquidation plan approved by the Board. On February 3, 1993, the PDIC submitted a copy of the Master Liquidation Plan for all Banks[9] issued by the Board. On March 31, 1993, the trial court issued another Order[10] directing the PDIC to take appropriate steps to hasten the liquidation of the MSLA.

On June 18, 1993, the trial court issued an Order[11] directing the PDIC to take over and conduct an inventory of the assets, books, papers and properties of the MSLA. In addition, it directed the PDIC to cause to be published in a newspaper of general circulation a notice directing all claimants, depositors and creditors of the MSLA to file their respective claims.

On November 22, 1993, the PDIC submitted to the RTC a copy of the Master Liquidation Plan[12] for general application in the liquidation of all closed banking institutions.

On June 3, 1997, petitioner Atty. Reymundo Villarica (Villarica), one of the claimants of the MSLA, filed a motion to dismiss the PDIC's petition.[13] Villarica argued that the petition for liquidation should be dismissed because of the PDIC's failure to prosecute and/or to comply with the rules on liquidation of

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[6] *Id.* at 87-92.

[7] *Id.* at 95.

[8] *Id.* at 96.

[9] *Id.* at 98-110.

[10] *Id.* at 111.

[11] *Id.* at 112.

[12] *Id.* at 115-123.

[13] Records, Volume II, pp. 206-208.

a bank, the PDIC's failure to comply with the lawful orders of the RTC, and the PDIC's unexplained delay in the liquidation of the MSLA.

On September 30, 1997, acting on Villarica's motion to dismiss, the RTC issued an Order[14] directing the PDIC to submit a liquidation plan and for it to show its compliance with the requirements in the liquidation of a closed bank.

Thereafter, on July 1, 2003, the PDIC filed with the RTC a Motion for Approval of Partial Project of Distribution.[15] In said motion, the PDIC classified, among others, the claims of the Bureau of Internal Revenue (BIR), Social Security System (SSS), PAG-IBIG and the National Home Mortgage and Finance Corporation (NHMFC), under the category of trust funds.[16]

An Opposition[17] was filed by petitioners-stockholders Dolores P. Torres,[18] Dr. Guillermo P. Torres, University of Mindanao, Inc., Antonio M. Pilpil, Nancy C. Te Eng Fo, Fe Azucena Marcelino and Evangeline F. Magallanes against the PDIC's motion. In said Opposition, the petitioners-stockholders of the MSLA argued that the motion for the approval of the partial project of distribution was improper and that the PDIC should, instead, submit a project of distribution in compliance with its earlier master liquidation plan.

On June 27, 2004, a Motion to Join as Claimants-Stockholders[19] was filed by petitioners-stockholders Saturnino Petalcorin, Reynaldo M. Petalcorin, Lilian M. Petalcorin-Castillo, Mary Ann M. Petalcorin-Ras, Neri Filipinas, Vitaliano Malayo, Jr., Natividad Miranda and Antonio Ferrer, Jr. On April 19,

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[14] *Rollo*, pp. 125-126.

[15] *Id.* at 154-169.

[16] See Schedule of Trust Funds; records, p. 985.

[17] *Rollo*, pp. 206-212.

[18] Substituted by Atty. Victor Nicasio Torres and Dr. Guillermo P. Torres; See *rollo*, pp. 361-364.

[19] *Rollo*, pp. 221-223.

2004, another Motion to Join as Claimants-Stockholders[20] was filed by petitioners-stockholders Carmencita E. Vidamo and Carmichael E. Vidamo.

On November 5, 2003, the RTC issued an Order[21] directing the PDIC to settle the claims of Mr. Felix Gonzales (Gonzales),[22] the labor claims of the former employees of the MSLA,[23] and the claim of the NHMFC.[24] All of these were uncontested by the PDIC.

On April 20, 2005, the RTC issued a Resolution[25] terminating the liquidation proceedings, the dispositive portion of which reads:

> WHEREFORE, premises considered, this liquidation proceeding is hereby terminated, dismissing the same for petitioner PDIC's failure to comply with the jurisdictional or mandatory requirements of inventory and publication, as well as the orders of this Court; ordering petitioner to pay the approved claims and the trust funds, and to deliver to MSLA and claimants-stockholders, all remaining MSLA funds, assets, properties and books, *etc*., in its possession for their disposition and distribution in the winding up of MSLA's affairs for its dissolution pursuant to law.
>
> SO ORDERED.[26]

Aggrieved by the said Resolution, the PDIC filed a Notice of Appeal[27] with the RTC. The Bangko Sentral ng Pilipinas (BSP) also filed a Notice of Appeal.[28]

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[20] *Id.* at 225-226.

[21] Records, p. 1137.

[22] Based on the Decision of RTC, Branch 8, Davao City in "*Felix Gonzales vs. D.S. Homes, Inc. Mindanao Savings and Loan Association and Francisco Villamor*"; Docketed as Civil Case No. 20, 168-90; Amounting to ₱965,924. 43.

[23] Amounting to ₱2,965,834.25.

[24] Amounting to ₱15,120.38.

[25] *Rollo*, pp. 231-240.

[26] *Id.* at 239-240.

[27] *Id.* at 241-242.

[28] Records, p. 1802.

On July 4, 2005, the PDIC filed a Motion for Extension to File Record on Appeal.[29] The same was granted by the RTC in an Order[30] dated June 23, 2005.

On July 15, 2005, the PDIC filed its Record on Appeal.[31]

Oppositions were then filed.

On July 25, 2005, the RTC issued an Order[32] denying BSP's Notice of Appeal, the pertinent portion of which reads:

xxx xxx xxx

Considering that petitioner Philippine Deposit Insurance Corporation has already filed its Record on Appeal, the appeal of the Bangko Sentral ng Pilipinas has become unnecessary. The claimants of the Mindanao Savings and Loan Association, Inc. are, therefore, correct that the Notice of Appeal of the Bangko Sentral ng Pilipinas should no longer be allowed.

WHEREFORE, the notice of appeal of the Bangko Sentral ng Pilipinas is hereby denied admission.[33]

On May 25, 2006, the RTC issued another Order[34] approving PDIC's record of appeal, the pertinent portion of which reads:

Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law, and taking into consideration the Comment/ Opposition, Amended Comment, Supplemental to Amended Comment/ Opposition to Petitioner's Notice of Appeal and Record on Appeal filed by Plaintiff-Claimant, thereto, and the Reply and Rejoinder to Petitioner's Reply, the Court hereby resolves to approve the said Record on Appeal.

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[29] *Id.* at 1804-1808.

[30] *Id.* at 1822.

[31] See Records, Volume I, with Annexes.

[32] CA *rollo*, pp. 528-529.

[33] *Id.* at 528.

[34] *Rollo*, pp. 494-495.

WHEREFORE, let the Record on Appeal, together with the transcript of stenographic notes of the proceedings in this case, be forwarded to the Honorable Court of Appeals, Cagayan de Oro City.

SO ORDERED.[35]

On September 14, 2006, the Chief of the Judicial Records Division of the CA issued a Notice[36] that the records of the case are "now complete and are at the disposal in the Judicial Records Division for preparation of the required briefs." Accordingly, the PDIC was ordered to file its Appellant's Brief.

On November 3, 2006, the PDIC filed a Motion for Extension to File Appellant's Brief.[37]

On November 16, 2006, petitioners-claimants-stockholders (petitioners) filed a Motion to Dismiss the Appeal.[38] Petitioners argued that PDIC's appeal should be dismissed for its failure to comply with the mandatory or jurisdictional requirement of filing with the Clerk of Court seven (7) legible copies of the approved Record on Appeal, pursuant to Section 4,[39] Rule 44 and Section 1(d),[40] Rule 50 of the 1997 Rules of Civil Procedure.

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[35] *Id.* at 494.

[36] *Id.* at 249.

[37] *Id.* at 250-252.

[38] *Id.* at 253-256.

[39] SEC. 4. *Docketing of case.* – Upon receiving the original record or the record on appeal and the accompanying documents and exhibits transmitted by the lower court, as well as the proof of payment of the docket and other lawful fees, the clerk of court of the Court of Appeals shall docket the case and notify the parties thereof.

Within ten (10) days from receipt of said notice, the appellant, in appeals by record on appeal, shall file with the clerk of court seven (7) clearly legible copies of the approved record on appeal, together with the proof of service of two (2) copies thereof upon the appellee.

Any unauthorized alteration, omission or addition in the approved record on appeal shall be a ground for dismissal of the appeal.

[40] SEC. 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:

On December 18, 2006, the PDIC filed a Second Motion for Extension of Time to File Appellant's Brief.[41]

Thereafter, petitioners filed a Comment[42] raising other grounds in support of the dismissal of the appeal of the PDIC. Petitioners argued that the PDIC's Record on Appeal failed to show on its face the timely perfection of the appeal in violation of Section 1(a), Rule 50, for failure to state: (1) the timely filing of Notice of Appeal; (2) the timely filing of the appeal bond/ fees; and (3) the timely filing of the Record on Appeal. Moreover, petitioners contended that the Notice of Appeal violated Section 1(b), Rule 50 of the Rules of Court, because it failed to state: (1) the timely filing of the Notice of Appeal; (2) the timely payment of the appeal bond/fees; (3) the timely filing of the Record on Appeal; (4) the appellees; and (5) the appellate court of appeal.

On February 1, 2007, the PDIC filed its Appellant's Brief.

On July 6, 2007, the CA issued a Resolution denying petitioners' motion to dismiss the appeal, the dispositive portion of which reads:

> WHEREFORE, claimants-appellees are granted a period of fifteen (15) days from receipt of this Resolution within which to file Appellees' Brief as they have prayed for in their Motion for Leave to File Appellees' Brief dated 24 April 2007.
>
> SO ORDERED.[43]

Aggrieved, petitioners filed a Motion for Reconsideration,[44] which was, however, denied by the CA in a Resolution dated October 24, 2007.

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xxx xxx xxx

(d) Unauthorized alterations, omissions or additions in the approved record on appeal as provided in Section 4 of Rule 44.

[41] *Rollo*, pp. 257-258.

[42] *Id.* at 260-269.

[43] *Id.* at 55.

[44] *Id.* at 345-347.

Hence, herein petition, with petitioners raising the following issues for this Court's resolution, to wit:

I.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISREGARDING PETITIONERS' MOTION TO DISMISS APPEAL BASED ON RESPONDENT PDIC'S DELIBERATE REFUSAL TO COMPLY WITH SEC. 4, RULE 44 OF THE 1997 RULES OF CIVIL PROCEDURE, OFFERING NO EXCUSE OR JUSTIFICATION WHATSOEVER FOR FAILING TO DO SO, BUT DEFIANTLY IGNORING SUCH COMPLIANCE AS IF THIS MANDATORY RULE WAS INCONSEQUENTIAL;

II.

THE HON. RESPONDENT COURT OF APPEALS ACTED WITH GROSS ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN REFUSING TO DISMISS THE APPEAL WHEN RESPONDENT PDIC'S NOTICE OF APPEAL IS PATENTLY DEFECTIVE FOR FAILURE TO COMPLY WITH SEC. 5, RULE 41 OF 1997 RULES OF CIVIL PROCEDURE VIOLATING SEC. 1(b) OF RULE 50 OF THE SAID RULES, AND RENDERING THE HON. RESPONDENT COURT WITHOUT JURISDICTION TO TAKE COGNIZANCE OF THE APPEAL IN VIEW OF THE INVALID NOTICE OF APPEAL-WARRANTING DISMISSAL OF THE APPEAL;

III.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GROSS ABUSE OF DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN DENYING DISMISSAL OF THE APPEAL, FINDING RESPONDENT PDIC'S RECORD ON APPEAL TO HAVE INCLUDED THE DATA SHOWING ITS TIMELY PERFECTION REQUIRED UNDER SEC. 6, RULE 41 OF THE 1997 RULES OF CIVIL PROCEDURE, WHEN SAID RECORD ON APPEAL CLEARLY DOES NOT SHOW ON ITS FACE ITS TIMELY PERFECTION, WARRANTING ITS DISMISSAL PURSUANT TO SEC. 1 (a) RULE 50 OF THE SAID 1997 RULES AND APPLICABLE JURISPRUDENCE.

IV.

THE HON. RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO EXCESS [OR]

LACK OF JURISDICTION IN APPLYING THE RULING IN THE CASE OF *PRUDENTIAL BANK VS. BUSINESS ASSISTANCE GROUP, INC.*, G.R. NO. 158806, 16 DECEMBER 2004; IT SHOULD HAVE DISMISSED THE APPEAL APPLYING INSTEAD THE JURISPRUDENCE ENUNCIATED IN THE CASES OF *LAMZON VS. NATIONAL LABOR RELATIONS COMMISSION* (307 SCRA 665), *ANTONIO VS. COMMISSION ON ELECTIONS* (315 SCRA 62) AND *PET PLANS, INC. ET AL. VS. COURT OF APPEALS*, G.R. NO. 148287, NOVEMBER 23, 2004, FOR RESPONDENT PDIC'S APPEAL IS FLIMSY AND FRIVOLOUS, POINTLESS AND PURELY DILATORY, GROSSLY PREJUDICIAL TO PETITIONERS.[45]

The petition has no merit. At the crux of the controversy is the determination of the propriety of the remedy of *certiorari* in order to assail the denial of a motion to dismiss.

The denial of a motion to dismiss or to quash, being interlocutory, cannot be questioned by *certiorari*. It cannot be the subject of appeal, until a final judgment or order is rendered.[46] An interlocutory order may be assailed by *certiorari* or prohibition only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by *certiorari* will not only delay the administration of justice, but will also unduly burden the courts.[47]

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of

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

[46] *Santiago Land Development Co. v. Court of Appeals*, 328 Phil. 38, 44 (1996).

[47] *Lee v. People*, 441 Phil. 705, 713-714 (2002).

a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[48]

Petitioners argue that the CA committed grave abuse of discretion when it did not dismiss the appeal of the PDIC when the latter failed to file seven copies of the approved record on appeal. Petitioners contend that such omission violated Section 4, Rule 44 of the Rules of Court which reads:

> SEC. 4. *Docketing of case* – Upon receiving the original record or the record on appeal and the accompanying documents and exhibits transmitted by the lower court, as well as the proof of payment of the docket and other lawful fees, the clerk of court of the Court of Appeals shall docket the case and notify the parties thereof.
>
> Within ten (10) days from receipt of said notice, the appellant, in appeals by record on appeal, shall file with the clerk of court seven (7) clearly legible copies of the approved record on appeal, together with the proof of service of two (2) copies thereof upon the appellee.
>
> Any unauthorized alteration, omission or addition in the approved record on appeal shall be a ground for dismissal of the appeal.

Petitioners argue that since Section 4, Rule 44 provides for the dismissal of an appeal in case of "any unauthorized alterations, omissions and additions in the approved record on appeal," with more reason that an appeal should be dismissed in case of failure of an appellant to file the requisite copies of the approved record thereof.

Petitioners' argument is bereft of merit.

Contrary to petitioners' assertion, a plain reading of Section 4, Rule 44 does not provide that non-submission of copies of the approved record on appeal is a ground to dismiss an appeal. Quite plainly, the rule only reads that should there be "any unauthorized alteration, omission or addition in the approved record of appeal," the same should be considered as a ground for dismissal. Petitioners' construction of the rules would unduly

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[48] *Solvic Industrial Corporation v. NLRC*, G.R. No. 125548, September 25, 1998, 296 SCRA 432, 441.

extend its meaning and application as there is no mention therein that non-submission of the required copies is a ground to dismiss an appeal. Moreover, Section 6, Rule 1 of the Rules of Court provides that rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Indeed, rules of procedure should be used to promote, not frustrate justice.[49] This Court cannot attribute to the CA grave abuse of discretion when simply put, the rules does not provide that non-submission of the copies of the approved record on appeal is a mandatory ground for the dismissal of an appeal.

Moroever, this Court observes that the PDIC filed on July 15, 2005 its record on appeal and that the same was approved by the RTC in an Order dated May 25, 2006. The CA did not find the non-submission of the copies fatal to PDIC's appeal. In the same vein, this Court finds no grave abuse of discretion on the part of the CA for choosing not to dismiss the appeal as it could just simply ask the PDIC to submit the required copies of the approved record on appeal. In any case, it bears to stress that *certiorari* will not issue to correct errors of procedure.[50]

Anent the second issue raised by petitioners, the same is without merit.

Petitioners contend that the PDIC's notice of appeal failed to comply with the formal requirements provided for in Section 5, Rule 41 of the Rules of Court. Petitioners thus argue that the PDIC's notice of appeal should be considered a mere scrap of paper and treated as if no notice of appeal was filed within the period prescribed under Section 1 (b), Rule 50 the Rules of Court.[51] Section 5, Rule 41 reads:

Sec. 5. *Notice of appeal*. – The notice of appeal shall indicate the parties to the appeal, specify the judgment or final order or part

[49] *Mendoza v. David*, 484 Phil. 128, 137 (2004).

[50] *La Campana Development Corporation v. See*, G.R. No. 149195, June 26, 2006, 492 SCRA 584, 590.

[51] *Rollo*, pp. 28-29.

thereof appealed from, specify the court to which the appeal is being taken, and state the material dates showing the timeliness of the appeal.

On the other hand, Section 1(b), Rule 50 reads:

Sec. 1. *Grounds for dismissal of appeal.* – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxx xxx xxx

(b) Failure to file the notice of appeal or the record on appeal within the period prescribed by these Rules;

Specifically, petitioners point out that a perusal of the PDIC's notice of appeal would readily show that said notice failed to state:

a. the timely filing of the notice of appeal;
b. the timely payment of the appeal bond/fees;
c. the timely filing of the record of appeal;
d. the appellees; and
e. the appellate court of appeal.[52]

The validity of the PDIC's notice of appeal has already been passed upon by the CA in its July 6, 2007 Resolution, which affirmed the findings of the RTC. The pertinent portion of said Resolution is hereunder reproduced, to wit:

The timeliness of the filing of petitioner-appellant's Notice of Appeal and Record of Appeal has already been resolved by the court *a quo* in an Order dated 25 May 2006, which reads:

> Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law, and taking into consideration the Comment/Opposition, Amended Comment, Supplemental to Amended Comment/Opposition to Petitioner's Notice of Appeal and Record on Appeal filed by Plaintiff-

[52] *Id.* at 24.

> Claimant, thereto, and the Reply and Rejoinder to Petitioner's Reply, the Court hereby resolves to approve the said Record on Appeal. (Emphasis supplied.)
>
> WHEREFORE, let the Record on Appeal, together with the transcript of stenographic notes of the proceedings in this case, be forwarded to the Honorable Court of Appeals, Cagayan de Oro City.
>
> SO ORDERED.

The Record on Appeal, consisting of seven (7) thick voluminous folders and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the *court a quo* and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees.

As such and also taking into consideration the Comment/ Opposition filed by petitioner-appellant on 22 May 2007 and the Reply to Comment/Opposition filed by claimants-appellants on 4 June 2007, this Court deems petitioner-appellant to have substantially complied with the requirements for the perfection of its appeal.

xxx xxx xxx

SO ORDERED.[53]

Again, this Court finds that the CA did not abuse its discretion in finding that the PDIC had substantially complied with the requirements for the perfection of its appeal. While it may be true that the PDIC's notice of appeal did not state on its face the appellate court to which the appeal was being taken, the same is merely a formal error. Moreover, while it is also true that on the face of the notice of appeal the timely filing thereof, the timely filing of the appeal bond/fees, and the timely filing of the record on appeal are all not stated, the same has already been resolved by the CA when it declared that, "*The Record on Appeal, consisting of seven (7) thick voluminous folders*

[53] *Id.* at 54-55.

*and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the court a quo and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees*." Moreover, the timely filing of the notice of appeal and the record on appeal was resolved by the RTC when it declared that "*Petitioner Philippine Deposit Insurance Corporation (PDIC) filed a Notice of Appeal and Record on Appeal within the reglementary period provided for by law*."

In addition, petitioners' argument that PDIC should have furnished the notice of appeal not just to the claimants-stockholders but also to the employees of MSLA, Gonzales, BIR, SSS, PAG-IBIG and NHMFC is not meritorious. As correctly observed by PDIC, the claim of the employees of MSLA is a labor claim and was not originally filed with the liquidation court. Moreover, the claim of Gonzales is already final and was earlier approved by the RTC in an Order[54] dated May 29, 1998. Lastly, the unremitted taxes due the BIR, unremitted premiums and salary loan payments due SSS, unremitted premiums and salary loan payments due PAG-IBIG, and unremitted loan amortizations due NHMFC fall under the category of trust. Said amounts were already set aside by PDIC for payment as seen in its July 1, 2003 Motion for Approval of Partial Project of Distribution. Assets held in trust do not form part of the assets of MSLA which are to be distributed to its general creditors. Such being the case, since the BIR, SSS, PAG-IBIG and NHMFC are not considered creditors of MSLA, they need not be furnished copies of the notice of appeal. The same, however, does not follow for petitioners-claimants-stockholders, who, being creditors of the MSLA, were correctly served with copies of the notice of appeal. Moreover, it bears to point out that if there is any party who should object to their non-inclusion to the PDIC's notice of appeal, such cause of action belongs to the parties who were

[54] Records, pp. 463-465.

allegedly omitted. However, a perusal of the records would show that the parties concerned interposed no objection to their non-inclusion. Consequently, this Court finds that the CA did not act with grave abuse of discretion when it ruled not to dismiss the PDIC's appeal based on the said ground.

Anent the third error raised by petitioners, the same is again without merit. Petitioners argue that the PDIC's record of appeal is defective for failure to state (1) when the notice of appeal was filed; (2) when the appellate court and docket fees were paid; and (3) when the record on appeal was filed. Moreover, petitioners argue that the PDIC did not include a copy of the May 25, 2006 RTC Order approving the Record of Appeal. Petitioners thus theorize that the PDIC violated Section 6,[55] Rule 41 of the Rules of Court and that the same warrants dismissal under Section 1 (a) of Rule 50.

Section 1 (a) reads:

Sec. 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:

(a) Failure of the record on appeal to show on its face that the appeal was taken within the period fixed by these Rules;[56]

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[55] Sec. 6. *Record on appeal; form and contents thereof.* - The full names of all the parties to the proceedings shall be stated in the caption of the record on appeal and it shall include the judgment or final order from which the appeal is taken and, in chronological order, copies of only such pleadings, petitions, motions and all interlocutory orders as are related to the appealed judgment or final order for the proper understanding of the issue involved, together with such data as will show that the appeal was perfected on time. If an issue of fact is to be raised on appeal, the record on appeal shall include by reference all the evidence, testimonial and documentary, taken upon the issue involved. The reference shall specify the documentary evidence by the exhibit numbers or letters by which it was identified when admitted or offered at the hearing, and the testimonial evidence by the names of the corresponding witnesses. If the whole testimonial and documentary evidence in the case is to be included, a statement to that effect will be sufficient without mentioning the names of the witnesses or the numbers or letters of exhibits. Every record on appeal exceeding twenty (20) pages must contain a subject index.

[56] Underscoring supplied.

To stress, the CA ruled that "*the Record on Appeal, consisting of seven (7) thick voluminous folders and totaling One Thousand Eight Hundred Forty-Three (1843) pages, was forwarded to this Court on 28 June 2006. A scrutiny thereof shows that the material(s) dates have been cited therein. The Record on Appeal also contains a copy of the assailed Resolution of the court a quo and a copy of the Notice of Appeal found on pages 1782 and 1795 thereof, respectively. Also, per Judicial Records Division (JRD) Report dated 25 June 2007, petitioner-appellant has fully paid its legal fees*." Moreover, the RTC found that both the notice of appeal and record on appeal were filed within the reglementary period provided by law.

The findings of the CA that the PDIC substantially complied with the requirements for an appeal must be respected. There can be no grave abuse of discretion attributed to it more so since the grounds for dismissing an appeal under Section 1 of Rule 50 of the Rules of Court are discretionary upon the CA. This can be gleaned from the very language of the Rules which uses the word *may* instead of *shall*. In *De Leon v. Court of Appeals*,[57] we held that Section 1, Rule 50, which provides specific grounds for dismissal of appeal, manifestly "confers a power and does not impose a duty. Moreover, it is directory, not mandatory." With the exception of Section 1(b), the grounds for the dismissal of an appeal are directory and not mandatory, and it is not the ministerial duty of the court to dismiss the appeal.[58] Based on the RTC's findings as well as its own independent assessment of the PDIC's appeal, it was discretionary on the CA whether or not to dismiss the appeal. In ruling to accept the PDIC's appeal, such action does not constitute capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

Lastly, petitioners would have this Court apply the jurisprudence enunciated in *Lamzon v. NLRC (Lamzon)*,[59] *Antonio v. Comelec (Antonio)*[60] and *Pet Plans, Inc. v. Court of Appeals*

[57] 432 Phil. 775, 789 (2002).

[58] *Id.* at 230.

[59] 373 Phil. 680 (1999).

[60] 486 Phil. 112 (2004).

*(Pet Plans),*[61] however, a perusal of the said decisions would show that the same are not at fours with herein petition. In *Lamzon*, the appeal filed was not perfected within the reglementary period because the appeal bond was filed out of time. In *Antonio*, the appeal was dismissed for having been filed out of time under Comelec rules. In *Pet Plans*, the appeal was dismissed for failure to comply with the rules on verification and certificate of non-forum shopping. The present petition, on the other hand, involves substantial compliance to the form and contents of the notice of appeal and record on appeal. The decisions relied upon by petitioners, therefore, have no application to herein petition.

In sum, this Court finds that the CA did not act with grave abuse of discretion when it denied petitioners motion to dismiss. In the absence of abuse of discretion, interlocutory orders such as a motion to dismiss are not the proper subject of a petition for *certiorari*. Time and again, this Court has ruled that dismissal of appeals on purely technical grounds is not encouraged. The rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. When a rigid application of the rules tends to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.[62]

**WHEREFORE,** premises considered the petition is *DISMISSED*. The July 6, 2007 Resolution and October 24, 2007 Resolution of the Court of Appeals, in CA-G.R. CV No. 00824, are *AFFIRMED*.

**SO ORDERED.**

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

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[61] G.R. No. 148287, November 23, 2004, 443 SCRA 510.

[62] *Heirs of Victoriana Villagracia v. Equitable Banking Corporation;* G.R. No. 136972, March 28, 2008, 550 SCRA 60, 69.

**THIRD DIVISION**

[G.R. No. 188108. February 21, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **EVILIO MILAGROSA,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; RAPE; CONVICTION MAY BE BASED SOLELY ON THE CREDIBLE TESTIMONY OF THE VICTIM.—** We find no reason to disturb the findings of the RTC that the CA wholly affirmed. It is well settled that an accused may be convicted of rape based solely on the testimony of the victim, as long as she is competent and credible. The unique nature of the crime of rape (which is usually committed in a private place where only the perpetrator and the rape victim are present) allows this evidentiary approach and the conclusion the lower courts reached. x x x Time and again, we have held, on the issue of credibility of the victim or of the prosecution witnesses, that the findings of the trial courts carry great weight and respect; generally, appellate courts do not overturn these findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that can alter the assailed decision or affect the result of the case.

**2. REMEDIAL LAW; EVIDENCE; ALIBI; WEAK DEFENSE AGAINST POSITIVE AND STRAIGHTFORWARD TESTIMONY.—** The defense of *alibi,* presented with no corroborating evidence, also deserves scant consideration. We note in this regards that no record or any witness attesting to the presence of the accused at Camp Crame at the time of the incident, was ever presented. Between the positive and straightforward testimony of AAA and Evilio's defense of alibi, the victim's testimony deserves great evidentiary weight.

**3. CRIMINAL LAW; RAPE; EXEMPLARY DAMAGES OF ₱30,000.00, MADE PROPER.—** [T]o conform with recent jurisprudence, we modify the CA decision and award exemplary damages in the amount of ₱30,000.00 on account of the moral

corruption, perversity and wickedness of the accused, who is 55 years old, in sexually assaulting a 16-year old girl.

**APPEARANCES OF COUNSEL**

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

**R E S O L U T I O N**

**BRION,[*] *J.*:**

We decide in this Resolution the appeal filed by appellant Evilio Milagrosa from the November 27, 2008 decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 02777.

On March 3, 2004, at around 7:00 in the morning, in the Province of Quezon, 16-year old[1] AAA[2] was alone in their house and had just finished washing the dishes when a person (later identified as Evilio Milagrosa) came. Evilio grabbed AAA and forcibly carried her to a grassy area outside the house. AAA struggled but Evilio, who was stronger, prevailed. She was also frightened when she noticed a *balisong* tucked at Evilio's waist. Evilio removed AAA's clothes, inserted his penis into her vagina, thereby consummating sexual intercourse with AAA. Evilio thereafter left, cautioning AAA not to tell anyone about the incident.[3]

Evilio was charged with the crime of rape. He argues that he could not have carried AAA to the grassy area as she insisted;

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[*] Designated Acting Chairperson of the Third Division effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

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

[2] *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419; in accordance with R.A. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and R.A. 7160 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), the complainant's name is withheld and the initials AAA is used instead.

[3] TSN, March 18, 2004, p. 5.

it was 7:00 in the morning and the neighbors would have heard her screams. She could also have easily grabbed his *balisong* and struck him with it. Finally, he raised *alibi* as his defense stating that he was in Camp Crame at that time.

The prosecution presented AAA as its sole witness. AAA testified that she had known Evilio for a long time as he was a friend of her father. She added that their house is in an isolated place; from there, she cannot even see the house of their nearest neighbor.[4]

After trial, the Regional Trial Court *(RTC)*, Branch 63, Calauag, Quezon, found AAA's testimony credible, and convicted Evilio of the crime of rape. He was sentenced to suffer the penalty of *reclusion perpetua* and to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[5]

On appeal, the CA ruled that the prosecution successfully proved beyond reasonable doubt the appellant's guilt. It found that the positive and competent testimony of AAA was enough to convict Evilio. The CA also reasoned that it was not altogether impossible for Evilio to forcibly carry AAA to the grassy area. Evilio, although 55 years old, was not old or weak; he was then still working as a carpenter. A carpenter's job is physical and Evilio had the required physical strength to overpower a 16-year old girl. Neither could AAA be faulted for not grabbing and using Evilio's *balisong* as she did not have the maturity for this kind of reaction and any physical resistance she could have offered would not have been effective. Her screaming, given the remote location of their house, could not have attracted the attention of their nearest neighbors. The CA, thus, affirmed the findings of the lower court.[6] Hence, the recourse to this Court for a final review.

**We affirm the appellant's guilt**.

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[4] TSN, September 14, 2004, pp. 16-20.

[5] Penned by Judge Mariano Morales, Jr.; CA *rollo*, pp. 59-69.

[6] Penned by Associate Justice Jose Catral Mendoza, and concurred in by Associate Justices Andres Reyes, Jr. and Sesinando Villon; CA *rollo*, pp. 97-108.

We find no reason to disturb the findings of the RTC that the CA wholly affirmed. It is well settled that an accused may be convicted of rape based solely on the testimony of the victim, as long as she is competent and credible. The unique nature of the crime of rape (which is usually committed in a private place where only the perpetrator and the rape victim are present)[7] allows this evidentiary approach and the conclusion the lower courts reached.

We note that the conduct of the trial and the findings of the trial court indicate no irregularity or grave abuse of discretion to warrant any suspicion about the validity of its findings and conclusions. Time and again, we have held, on the issue of credibility of the victim or of the prosecution witnesses, that the findings of the trial courts carry great weight and respect; generally, appellate courts do not overturn these findings unless the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that can alter the assailed decision or affect the result of the case.[8] In this case, we see no reason to alter the findings of the RTC and the affirmation the CA accorded these findings.

The defense of *alibi,* presented with no corroborating evidence, also deserves scant consideration. We note in this regards that no record or any witness attesting to the presence of the accused at Camp Crame at the time of the incident, was ever presented. Between the positive and straightforward testimony of AAA and Evilio's defense of alibi, the victim's testimony deserves great evidentiary weight. Lastly, to conform with recent jurisprudence,[9] we modify the CA decision and award exemplary damages in the amount of ₱30,000.00 on account of the moral corruption, perversity and wickedness of the accused, who is 55 years old, in sexually assaulting a 16-year old girl.

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[7] *People v. Guambor*, G.R. No. 152183, January 22, 2004, 420 SCRA 677.

[8] *People v. Blancaflor*, G.R. No. 130586, January 29, 2004, 421 SCRA 354.

[9] *People v. Dalisay*, G.R. No. 181806, November 25, 2009, 605 SCRA 807.

**WHEREFORE,** the November 27, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02777 is hereby *AFFIRMED with MODIFICATION*, in that, appellant Evilio Milagrosa is additionally *ORDERED* to *PAY* the complainant ₱30,000.00 as exemplary damages.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**THIRD DIVISION**

[G.R. No. 188323. February 21, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **CHARLIE ABAÑO *y* CAÑARES,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBLE POSITIVE TESTIMONY PREVAILS AGAINST ALIBI.—** We find no reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness account of the victim's wife is worthy of belief as it was a straight forward account consistent with the presented physical evidence. The witness had no reason to falsify and she was only interested in having the real killer punished; no motive affecting her credibility was ever imputed against her. On the other hand, the appellant failed to show by convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission; he was only a short 300 meters away.

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[**] Designated additional member of the Third Division effective February 16, 2011, per Special Order No. 926 dated January 24, 2011.

**2. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; PRESENT WHERE THE VICTIM WAS ASLEEP AT THE TIME OF THE ASSAULT.—** Treachery qualified the killing to murder as the victim was asleep at the time of the assault; the victim could not have possibly defended himself against his assailant.

**3. ID.; ID.; PROPER PENALTY; *RECLUSION PERPETUA*.—** Since neither aggravating nor mitigating circumstances attended the commission of the felony, the lower courts properly imposed the penalty of *reclusion perpetua*.

**4. ID.; ID.; CIVIL PENALTY; TEMPERATE DAMAGES PROPER IN LIEU OF ACTUAL DAMAGES AND EXEMPLARY DAMAGES PROPER WITH THE PRESENCE OF TREACHERY.—** Since the receipted expenses of the victim's family was less than ₱25,000.00, temperate damages should have been awarded in lieu of actual damages. With the finding of the qualifying circumstance of treachery, exemplary damages, too, of ₱30,000.00 should have been awarded.

**APPEARANCES OF COUNSEL**

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

**R E S O L U T I O N**

**BRION,[*] *J.*:**

We decide, through this Resolution, the appeal filed by appellant Charlie Abaño *y* Cañares from the decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 03060.

On October 5, 2005, appellant Charlie Abaño *y* Cañares was accused of murder[1] in the Regional Trial Court (*RTC*), Branch 62, Naga City, [2] under the following Information:

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[*] Designated Acting Chairperson of the Third Division effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

[1] *See* REVISED PENAL CODE, Article 248.

[2] Docketed as Criminal Case No. RTC 2005-0302.

That on or about the 3rd day of October, 2005 at around 10:00 P.M. at Brgy. Del Socorro, Municipality of Minalabac, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there willfully, unlawfully and feloniously, attack, assault and hack one CESAR CABASE *y* SAN JUAQUIN, with a bolo causing him to sustain fatal wounds on the different parts of his body and head which caused his instantaneous death, to the damage and prejudice of his heirs as shall be proven in court.[3]

The appellant pleaded not guilty. In the trial that followed, an eyewitness, the victim's wife Richelda Madera Cabase, testified on the details of the crime.

At about 10:00 p.m. of October 3, 2005, the victim (Cesar Cabase) was asleep in the room of their hut in Del Socorro, Minalabac, Camarines Sur, together with his youngest daughter (Criselda) and grandson. The room was illuminated by an outside kerosene lamp. While Richelda was about to join her sleeping family, the appellant suddenly barged into the room, focused a flashlight on the victim, and began hacking him with a *bolo*. Out of fear, Richelda retreated to a corner of the room while embracing her grandson. The appellant thereafter focused his flashlight on Richelda, but Criselda started crying. At that point, the appellant left.[4]

Medico-legal findings revealed that multiple hack wounds with skull fractures caused the victim's death.[5] The victim's family claimed to have spent ₱26,535.00 as funeral and burial expenses, but could only support ₱5,035.00 with receipts.[6]

The appellant, interposing the defense of alibi, claimed that he was asleep at the night of the killing at the farm of Antonio Almediere at Zone 5, Del Socorro, Minalabac, about 300 meters away from the scene of the crime.[7]

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[3] *Rollo,* p. 3.

[4] TSN, February 21, 2006, pp. 5-10; TSN, February 28, 2006, pp. 4-5.

[5] TSN, May 9, 2006, pp. 6-7; Exhibit "E", Records, p. 65.

[6] Exhibits "B-B4", Records, pp. 32-36.

[7] TSN, November 28, 2006, pp. 2-6, 10.

In its October 9, 2007 decision, the RTC convicted the appellant of the crime of murder mainly based on the eyewitness testimony of the victim's wife, Richelda. The trial court found her credible, consistent, and free of ill motive to testify against the appellant whom she knew well because he had previously lived with them for four years. It noted that the victim's house was illuminated by a kerosene lamp that was sufficient for purposes of identification. The RTC appreciated the qualifying circumstance of treachery because the appellant attacked the victim who was asleep and was thus totally incapable of defending himself. But the court disregarded evident premeditation as a qualifying circumstance because it was not duly established at the trial. The RTC sentenced the appellant to *reclusion perpetua*, and to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 in temperate damages.[8]

On intermediate appellate review, the CA affirmed the judgment of the RTC but deleted the award of temperate damages, finding that only ₱5,000.00 must be awarded as actual damages since only this amount was proven through receipts.[9] From the CA, the case is now with us for final review.

***We affirm the appellant's guilt.***

We find no reason to disturb the findings of the RTC, as affirmed by the CA. The eyewitness account of the victim's wife is worthy of belief as it was a straight forward account consistent with the presented physical evidence. The witness had no reason to falsify and she was only interested in having the real killer punished; no motive affecting her credibility was ever imputed against her. On the other hand, the appellant failed to show by convincing evidence that it was physically impossible for him to have been at the scene of the crime during its commission; he was only a short 300 meters

[8] CA *rollo,* pp. 10-13.

[9] Dated November 20, 2008. Decision penned by Associate Justice Hakim S. Abdulwahid, and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Teresita Dy-Liacco Flores of the Second Division of the Court of Appeals. *Rollo,* pp. 2-18.

away.[10] Treachery qualified the killing to murder as the victim was asleep at the time of the assault; the victim could not have possibly defended himself against his assailant.[11] Since neither aggravating nor mitigating circumstances attended the commission of the felony, the lower courts properly imposed the penalty of *reclusion perpetua*.

While we affirm the CA's factual findings and the imprisonment imposed, we find it necessary to modify the civil liability of the appellant. Since the receipted expenses of the victim's family was less than ₱25,000.00, temperate damages should have been awarded in lieu of actual damages.[12] With the finding of the qualifying circumstance of treachery, exemplary damages, too, of ₱30,000.00 should have been awarded.[13]

**WHEREFORE,** the November 20, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03060 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Charlie Abaño *y* Cañares is found guilty of murder, as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to *reclusion perpetua*. He is further ordered to pay the heirs of Cesar Cabase ₱50,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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[10] *People v. Abdulah*, G.R. No. 182518, January 20, 2009, 576 SCRA 797, 807; and *People v. Dela Peña, Jr.*, G.R. No. 183567, January 19, 2009, 576 SCRA 371, 379.

[11] *People v. Clariño*, G.R. No. 134634, July 31, 2001, 362 SCRA 85, 103; and *People v. Caringal*, G.R. No. 75368, August 11, 1989, 176 SCRA 404, 419.

[12] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 804; and *People v. Belonio*, G.R. No. 148695, May 27, 2004, 429 SCRA 579, 596.

[13] *People v. Lacaden, supra* note 8 at 805; and *People v. Gidoc*, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

[**] Designated additional member of the Third Division effective February 16, 2011, per Special Order No. 926 dated January 24, 2011.

**THIRD DIVISION**

[G.R. No. 189294. February 21, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **HERMINIANO MARZAN *y* OLONAN,** *appellant.*

**SYLLABUS**

1. **REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; SUFFICIENCY FOR CONVICTION.—** In convicting the accused, the RTC enumerated no less than eight pieces of circumstantial evidence against the appellant. After due consideration, we are satisfied that the evidence adduced against the appellant constitute an unbroken chain that could only lead to the conclusion that the appellant was the perpetrator of the crime.

2. **ID.; ID.; DENIAL; INFERIOR AGAINST CREDIBLE POSITIVE TESTIMONY.—** We duly considered the appellant's defense of denial — a defense that is inherently weak unless supported by other evidence. Denial is negative and self-serving and cannot be given greater evidentiary weight over the testimony of a credible witness who positively testified that the appellant was at the *locus criminis* and was the last person seen with the victim. Significantly, the appellant failed to support his denial by any supporting evidence.

3. **CRIMINAL LAW; MURDER QUALIFIED BY TREACHERY; PROPER PENALTY IS *RECLUSION PERPETUA*.—** The RTC correctly appreciated treachery as a qualifying circumstance since a child, by reason of tender years, could not significantly defend himself against the strangulation that he was subjected to. Beyond reasonable doubt, the presented evidence, collectively considered, point to no other conclusion than the appellant's guilt of the crime of murder. Since neither aggravating nor mitigating circumstances attended the commission of the crime, the penalty of *reclusion perpetua* was properly imposed.

4. **ID.; ID.; CIVIL PENALTY; EXEMPLARY DAMAGES IS PHP 30,000.00.—** Since the killing of the victim was attended by treachery, his heirs are additionally entitled to exemplary damages in the amount of ₱30,000.00.

**APPEARANCES OF COUNSEL**

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

**R E S O L U T I O N**

**BRION,[*] *J.*:**

We decide, through this Resolution, the appeal filed by appellant Herminiano Marzan *y* Olonan from the decision of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No 00123.

On May 10, 1996, appellant Herminiano Marzan *y* Olonan[1] was accused of murder[2] in the Regional Trial Court (*RTC*), Branch 20, Tacurong, Sultan Kudarat,[3] under the following Information:

> That in the afternoon of February 22, [996] at Sitio Valdez, Barangay Romualdez, Municipality of President Quirino, Province of Sultan Kudarat, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with evident premeditation and treachery, did then and there, willfully, unlawfully and feloniously, attack, assault and strangle one JOSEPH SARMIENTO, an 8[-]year old boy, which directly caused his instantaneous death.
>
> CONTRARY TO LAW, particularly Article 248 of the Revised Penal Code of the Philippines, as amended by Republic Act 7659 with the aggravating circumstances of taking advantage of superior strength.[4]

Appellant, upon arraignment, pleaded not guilty.

The antecedent facts and developments are summarized below:

At about 4:45 p.m. of February 22, 1996, while farmer Samuel Basalio was gathering grasses near a creek in *Sitio* Valdez,

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[*] Designated Acting Chairperson effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

[1] *Alias* "Gingo" and "Emen".

[2] *See* REVISED PENAL CODE, Article 248.

[3] Docketed as Criminal Case No. 1479.

[4] CA *rollo*, p. 5.

*Barangay* Romualdez, he saw from about 40 meters away, the appellant and eight-year old Joseph Sarmiento (*victim)* walking towards the creek. About 20 minutes later, Basalio saw the appellant walking alone from the creek going towards the rice field. When the appellant saw Basalio, he stared at him with a "dagger" look, and returned to the creek.[5]

At 5:00 a.m. the next day, February 23, 1996, *Kagawad* Dominador Regino saw the appellant who told him that he was going to General Santos City.[6] Later that morning, Elizabeth Sarmiento, the mother of the victim asked for assistance to look for her missing son.[7] Eventually, Officer-In-Charge *Barangay* Captain Amado Tomas was informed about the missing child. At 11:30 a.m., Amado went to Makar Port with the victim's uncle (Antonio Delfinado) after receiving a report that the missing child could be there with the appellant. At the port, Amado sought the assistance of the maritime police in looking for the appellant. The appellant was indeed at the port but ran upon seeing them. The maritime police gave chase and caught him.[8] Meanwhile, the body of the victim was found at the creek.[9] A postmortem examination revealed that the victim died from strangulation.[10] Antonio testified that he spent ₱10,000.00 for the victim's funeral and burial, but failed to present any receipt.[11]

The appellant denied the charge against him. While admitting that he was with the victim at 1:00 p.m. of February 22, 1996, he claimed that at 4:00 p.m., the victim asked permission to go to the *barangay* proper of Romualdez and he allowed him to go.[12]

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[5] TSN, September 5, 1996, pp. 2-12.

[6] TSN, September 30, 1996, pp. 11-17.

[7] TSN, September 20, 1996, pp. 2-23.

[8] TSN, September 20, 1996, pp. 2-23.

[9] TSN, September 19, 1996, p. 7.

[10] TSN, September 6, 1996, p. 6.

[11] TSN, October 14, 1996, pp. 2-25.

[12] TSN, October 28, 1996, pp. 23-24.

In its March 20, 1998 decision, the RTC convicted the appellant of murder based on eight pieces of circumstantial evidence, namely: (1) the admission of the appellant that he was with the victim at about 4:00 p.m. of February 22, 1996; (2) evidence that he was seen at about 4:45 p.m. of February 22, 1996 with the victim going towards the creek; (3) evidence that he was seen leaving alone, at about past 5:00 p.m. of February 22, 1996, coming from the creek going towards the direction of *Barangay* Katiku; (4) the report made to the *barangay* officials and to the police station in the morning of February 23, 1996 that the victim was missing; (5) evidence that the appellant was seen leaving at about past 5:00 a.m. of February 23, 1996, on board a passenger jeep going to Tacurong; (6) evidence that he was seen at about 2:00 p.m. of February 23, 1996 at the Makar Port by Amado and Antonio; (7) evidence that he ran away upon seeing Amado and Antonio at the Makar Port but was caught by the maritime police; and, (8) the discovery of the dead body of the victim at about past noon of February 23, 1996 at the creek where the said victim and the appellant had been seen together in the afternoon of February 22, 1996. The RTC appreciated the qualifying circumstance of treachery because the victim's weakness due to his tender age resulted in the absence of any danger to the appellant. The trial court sentenced the appellant to *reclusion perpetua*, and to pay ₱50,000.00 as civil indemnity to the heirs of the victim and ₱10,000.00 as actual damages to Antonio Delfinado for the funeral and burial expenses.[13]

On intermediate appellate review, the Court of Appeals affirmed the judgment of the RTC but modified the appellant's civil liability by awarding ₱50,000.00 as moral damages and ₱25,000.00 as temperate damages in lieu of actual damages.[14] From the appellate court, the case came to us for final review.

***We affirm the conviction of the appellant.***

In convicting the accused, the RTC enumerated no less than eight pieces of circumstantial evidence against the appellant.

[13] *Id*. at 17-56.

[14] Dated May 27, 2008. Decision penned by Associate Justice Michael P. Elbinias, and concurred in by Associate Justice Rodrigo F. Lim, Jr. and

After due consideration, we are satisfied that the evidence adduced against the appellant constitute an unbroken chain that could only lead to the conclusion that the appellant was the perpetrator of the crime.

Significantly, this is not the first case where we convicted the accused on a similar set of facts and based solely on circumstantial evidence. In *People v. Raymundo Corfin*,[15] we upheld the conviction of the accused based on evidence showing that: (1) the accused was the last person seen with the victim; (2) the accused and the victim were seen together near a dry creek; (3) the accused was seen leaving the place alone; and (4) the body of the victim was later found in the dry creek.

We duly considered the appellant's defense of denial — a defense that is inherently weak unless supported by other evidence.[16] Denial is negative and self-serving and cannot be given greater evidentiary weight over the testimony of a credible witness who positively testified that the appellant was at the *locus criminis* and was the last person seen with the victim.[17] Significantly, the appellant failed to support his denial by any supporting evidence. The RTC correctly appreciated treachery as a qualifying circumstance since a child, by reason of tender years, could not significantly defend himself against the strangulation that he was subjected to.[18] Beyond reasonable doubt, the presented evidence, collectively considered, point to no other conclusion than the appellant's guilt of the crime of murder. Since neither aggravating nor mitigating circumstances

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Associate Justice Edgardo T. Lloren of the Twenty-Third Division of the Court of Appeals. *Rollo*, pp. 4-14.

[15] G.R. No. 131478, April 11, 2002, 380 SCRA 504.

[16] *People v. Teodoro*, G.R. No. 172372, December 4, 2009, 607 SCRA 307, 320; and *People v. Mateo*, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 390.

[17] *People v. Corfin*, *supra* note 7, at 514; and *People v. Salas*, G.R. No. 115192, March 7, 2000, 327 SCRA 319, 331.

[18] *People v. Talavera*, G.R. No. 139967, July 19, 2001, 361 SCRA 433, 443; and *People v. Gonzales*, G.R. No. 130507, July 28, 1999, 311 SCRA 547, 564.

attended the commission of the crime, the penalty of *reclusion perpetua* was properly imposed.

The lower court's error in considering and imposing the penalty was in its failure to appreciate the full civil liability of the appellant. Since the killing of the victim was attended by treachery, his heirs are additionally entitled to exemplary damages in the amount of ₱30,000.00.[19]

**WHEREFORE,** the May 27, 2008 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00123 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Herminiano Marzan *y* Olonan is found guilty of murder as defined and penalized in Article 248 of the Revised Penal Code, and is sentenced to *reclusion perpetua*. He is further ordered to pay the heirs of Joseph Sarmiento ₱50,000.00 as civil indemnity *ex delicto*, ₱50,000.00 as moral damages, ₱25,000.00 as temperate damages, and ₱30,000.00 as exemplary damages.

**SO ORDERED**.

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**THIRD DIVISION**

[G.R. No. 189328. February 21, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **ARNOLD PELIS,** *appellant.*

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[19] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and *People v. Gidoc*, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

[**] Designated additional member of the Third Division effective February 16, 2011, per Special Order No. 926 dated January 24, 2011.

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; ALIBI; INFERIOR AGAINST CREDIBLE POSITIVE IDENTIFICATION OF ACCUSED. –** We find no reason to disturb the RTC's findings, as affirmed by the CA. The eyewitness account of Mario Makahilig is more plausible than the appellant's alibi. Positive identification, where categorical, consistent and not attended by any showing of ill motive on the part of the eyewitnesses, prevails over alibi and denial, particularly where the appellant had not shown the physical impossibility of his access to the victim at the time and place of the crime.

**2. CRIMINAL LAW; MURDER QUALIFIED BY TREACHERY, COMMITTED WITH CONSPIRACY; PROPER PENALTY IS *RECLUSION PERPETUA*. –** The RTC correctly appreciated conspiracy since the simultaneous acts of the accused during the stabbing disclosed a unity of objective. Treachery qualified the killing to murder. Although frontal, the attack was unexpected, and the unarmed victim was in no position to repel the attack. Since neither aggravating nor mitigating circumstances attended the commission of the felony, the trial court properly imposed the penalty of *reclusion perpetua*.

**3. ID.; ID.; CIVIL PENALTY; EXEMPLARY DAMAGES IS PHP 30,000.00. –** [T]he civil liability of the appellant must include exemplary damages. Since the killing of the victim was attended by treachery, his heirs are entitled to exemplary damages in the amount of ₱30,000.00.

**APPEARANCES OF COUNSEL**

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

## R E S O L U T I O N

**BRION,[*] *J.*:**

We decide, through this Resolution, the appeal filed by appellant Arnold Pelis from the decision of the Court of Appeals (*CA*) in CA G.R. CR-H.C. No. 02932.

On April 27, 2004, appellant Arnold Pelis, together with Mario Lito Entura, were accused of murder[1] in the Regional Trial Court (*RTC*), Branch 81, Quezon City, [2] under the following Information:

> That on or about [the] 19th day of February [2004], in Quezon City, Philippines, the said accused, conspiring together, and mutually helping each other, with intent to kill qualified by evident premeditation and treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of ROLANDO JUAN *Y* SAN DIEGO by then and there stabbing him with the use of [a] bladed weapon, thereby inflicting upon him serious and grave wounds which were the direct and immediate cause of his untimely death, to the damage and prejudice of the heirs of ROLANDO JUAN *Y* SAN DIEGO.[3]

The appellant, upon arraignment, pleaded not guilty. His co-accused, Entura, remained at large. An eyewitness, Mario Makahilig, testified on the details of the crime.

At about 10:00 p.m. of February 19, 2004, the victim, Rolando Juan, was sitting with some companions inside the Top 40 Videoke Bar located in Zabarte Road, Novaliches, Quezon City, when the appellant and Entura came and, acting together and using knives, stabbed the victim. The appellant stabbed the victim once in the abdomen, while Entura stabbed the victim's upper left chest. The appellant and Entura then fled from the crime

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[*] Designated Acting Chairperson of the Third Division effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

[1] *See* REVISED PENAL CODE, Art. 248.

[2] Docketed as Criminal Case No. Q-04-127136.

[3] CA *rollo,* p. 11.

scene.[4] The victim's companions rushed him to a nearby hospital where he died the next day.[5]

The postmortem examination on the victim's body confirmed that the victim sustained injuries at the thorax and abdomen, and that the cause of his death was the stab wound at the thorax.[6] The duly presented receipts show that the victim's family spent ₱30,000.00 for the victim's funeral and burial expenses.[7]

The appellant, interposing the defense of alibi, claimed that he was asleep at his house on Donji St., Zabarte, Quezon City at the time of the killing.[8]

In its March 9, 2007 Decision,[9] the RTC found the appellant guilty beyond reasonable doubt of murder. It gave credence to the positive testimony of prosecution eyewitness Mario Makahilig who, the trial court found, had no ill-motive to falsely testify against the appellant. The RTC disbelieved the appellant's alibi, noting that the appellant's house was within a walking distance from the crime scene. It appreciated conspiracy based on the accused's synchronized and coordinated acts of stabbing the victim. The RTC appreciated the qualifying circumstance of treachery because the appellant stabbed the victim without any previous warning while the victim was sitting and unarmed. The trial court disregarded the allegations of evident premeditation and abuse of superior strength; the presented evidence did not show any planning and preparation made by the appellant to commit the felony, nor proof that the accused purposely used excessive force to ensure the killing of the victim. Based on these premises, the court imposed the penalty of *reclusion perpetua*, and ordered the accused to pay the heirs of the victim ₱50,000.00 as civil indemnity, ₱30,000.00 as actual damages, and ₱50,000.00 as moral damages.

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[4] TSN, October 12, 2004, pp. 5-7.

[5] *Ibid*.

[6] TSN, November 23, 2004, pp. 2-4; Exhibit "E", Records, p. 74.

[7] Exhibit "I", Records, p. 79.

[8] TSN, August 2, 2005, pp. 2-3.

[9] CA *rollo*, pp. 22-26.

On intermediate appellate review, the CA fully affirmed the RTC decision.[10] The case is now before us for our final review.

***The appellant's conviction for murder stands.***

We find no reason to disturb the RTC's findings, as affirmed by the CA. The eyewitness account of Mario Makahilig is more plausible than the appellant's alibi. Positive identification, where categorical, consistent and not attended by any showing of ill motive on the part of the eyewitnesses, prevails over alibi and denial,[11] particularly where the appellant had not shown the physical impossibility of his access to the victim at the time and place of the crime.[12] The RTC correctly appreciated conspiracy since the simultaneous acts of the accused during the stabbing disclosed a unity of objective.[13] Treachery qualified the killing to murder. Although frontal, the attack was unexpected, and the unarmed victim was in no position to repel the attack.[14] Since neither aggravating nor mitigating circumstances attended the commission of the felony, the trial court properly imposed the penalty of *reclusion perpetua*.

We find it necessary to modify the civil liability of the appellant to include exemplary damages. Since the killing of the victim

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[10] Dated July 24, 2009. Decision penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Mario V. Lopez of the Twelfth Division of the Court of Appeals. *Rollo,* pp. 2-11.

[11] *People v. Garchitorena,* G.R. No. 175605, August 28, 2009, 597 SCRA 420, 444; and *People v. Villanueva, Jr.*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 545.

[12] *People v. Abdulah*, G.R. No. 182518, January 20, 2009, 576 SCRA 797, 807; and *People v. Dela Peña, Jr.*, G.R. No. 183567, January 19, 2009, 576 SCRA 371, 379.

[13] *David, Jr. v. People,* G.R. No. 136037, August 13, 2008, 562 SCRA 22, 35; and *People v. Recepcion,* G.R. Nos. 141943-45, November 13, 2002, 391 SCRA 558, 591.

[14] *Gandol v. People,* G.R. Nos. 178233 & 180510, December 4, 2008, 573 SCRA 108, 124; and *People v. Tolentino,* G.R. No. 176385, February 26, 2008, 546 SCRA 671, 697.

was attended by treachery, his heirs are entitled to exemplary damages in the amount of ₱30,000.00.[15]

**WHEREFORE,** the July 24, 2009 Decision of the Court of Appeals in CA G.R. CR-H.C. No. 02932 is hereby *AFFIRMED* with *MODIFICATION.* Appellant Arnold Pelis is found guilty of murder, as defined and penalized under Article 248 of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua.* He is further ordered to pay the heirs of Rolando Juan *y* San Diego ₱50,000.00 as civil indemnity *ex delicto,* ₱30,000.00 as actual damages, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

**SO ORDERED.**

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

*Carpio Morales, J., (Chairperson),* on wellness leave.

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**SECOND DIVISION**

[G.R. Nos. 190580-81. February 21, 2011]

**LIBERATO M. CARABEO,** *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (FOURTH DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PERSONNEL; MAY BE CHARGED WITH CORRUPTION OR ILLEGAL CONDUCT BY CONCERNED CITIZEN IF EVIDENCE WARRANTS, REGARDLESS OF E.O. 259 ON**

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[15] *People v. Lacaden,* G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and *People v. Gidoc,* G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

[**] Designated additional member of the Third Division effective February 16, 2009, per Special Order No. 926 dated January 24, 2011.

**LIFESTYLE CHECKS.—** [A]ny concerned citizen may file charges of corruption or illegal conduct against any government official or employee if the evidence warrants. Thus, the DOF-RIPS investigators were within their right to charge Carabeo before the Office of the Ombudsman regarding his case with or without E.O. 259.

**2. ID.; ID.; STATEMENT OF ASSETS, LIABILITIES AND NET WORTH (SALN); CHARGE IN CONNECTION THEREWITH WILL NOT BE BARRED BY ALLEGED FAILURE TO BE INFORMED FIRST OF THE ERROR IN THE SALN AND THE OPPORTUNITY TO CORRECT THE SAME, PURSUANT TO SEC. 10 OF RA 6713.—** Carabeo asserts that he was entitled to be informed of any error in his SALN and given the opportunity to correct the same pursuant to Section 10 of R.A. 6713 x x x before any charge is filed against him in connection with the same. But, the Sandiganbayan, citing *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG),* held that the review of the SALN by the head of office is irrelevant and cannot bar the Office of the Ombudsman from conducting an independent investigation for criminal violations committed by the public official or employee. x x x [The Office of the Ombudsman] is vested with the sole power to investigate and prosecute, *motu proprio* or on complaint of any person, any act or omission of any public officer or employee, office, or agency when such act or omission appears to be illegal, unjust, improper, or inefficient. x x x True, Section 10 of R.A. 6713 provides that when the head of office finds the SALN of a subordinate incomplete or not in the proper form such head of office must call the subordinate's attention to such omission and give him the chance to rectify the same. But this procedure is an internal office matter. Whether or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter. Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office. To hold otherwise would be to diminish its constitutionally guarded independence.

**3. ID.; ID.; ID.; ID.; ID.; ERROS REFERRED TO IN SEC. 10 OF RA 6713 ARE FORMAL ERRORS, NOT SUBSTANTIVE ERROR AS FALSIFICATION OF ASSETS IN THE SALN.**

— Carabeo's reliance on his supposed right to notice regarding errors in his SALNs and to be told to correct the same is misplaced. The notice and correction referred to in Section 10 are intended merely to ensure that SALNs are "submitted on time, are complete, and are in proper form." Obviously, these refer to formal defects in the SALNs. The charges against Carabeo, however, are for falsification of the assets side of his SALNs and for declaring a false net worth. These are substantive, not formal defects. Indeed, while the Court said in *Pleyto* that heads of offices have the duty to review their subordinates' SALNs, it would be absurd to require such heads to run a check on the truth of what the SALNs state and require their subordinates to correct whatever lies these contain. The responsibility for truth in those SALNs belongs to the subordinates who prepared them, not to the heads of their offices.

**APPEARANCES OF COUNSEL**

*Suarez Paredes Zamora Suarez & Luna Law Offices* and *Aguirre & Aguirre Law Firm* for petitioner.

*The Solicitor General* for respondents.

**D E C I S I O N**

**ABAD, *J.*:**

These cases pertain to a) the authority of Heads of Offices to investigate erring public officers and employees and file charges against them before the Office of the Ombudsman and b) the scope of the responsibility of such Heads of Offices to examine the Statement of Assets, Liabilities, and Net Worth (SALN) of their subordinates and require them to correct formal errors in them.

**The Facts and the Case**

Pursuant to Executive Order (E.O.) 259, investigators of the Department of Finance (DOF) Revenue Integrity Protection Service (RIPS) made lifestyles check of DOF officials and employees. As a result of these investigations, the DOF charged petitioner Liberato Carabeo, Parañaque City Treasurer, before the Office of the Ombudsman for violations of Section 7 in relation to Section 8 of Republic Act (R.A.) 3019 and Article 171

of the Revised Penal Code. The informations filed with the Sandiganbayan totaled eight in all. These, in essence, accused Carabeo of failing to disclose several items in his sworn SALN filed over the years.

Two informations, docketed as Criminal Cases SB-09-CRM-0034 and 0039, were raffled to the Sandiganbayan's Fourth Division. They charged Carabeo with failing to disclose personal properties consisting of three motor vehicles, misdeclaring the acquisition cost of a real property in Laguna, and falsely declaring his net worth in his SALN for 2003.

At the pre-trial of these cases, Carabeo submitted his Pre-Trial Brief, proposing the following issues for trial:

**1. Whether or not the accused was allowed to previously exercise his right to be informed beforehand and to take the necessary corrective action on questions concerning his Statement of Assets, Liabilities and Networth (SALN, for brevity), as provided under Section 10 of Republic Act No. 6713 before the instant charges were filed against him;**

**2. Whether or not the accused committed the crime of falsification of Public Documents under Paragraph 4, Article 171, Revised Penal Code, as amended;**

**3. Whether or not the accused committed a violation of Section 7, Republic Act No. 3019, as amended, in relation to Section 8, Republic Act. No. 6713; and**

**4. Whether or not the filing of the instant case is premature in the light of the pending Petition for *Certiorari* before the Supreme Court entitled: "*Liberato M. Carabeo, vs. Court of Appeals, Simeon V. Marcelo, et al.*, (docketed as "G.R. No. 178000"), questioning: (1) the legality, validity and constitutionality of Executive Order 259, upon which the present charges arose; and (2) whether the accused's right to be informed "beforehand" and to take the "necessary corrective action" on questions regarding his SALN, as clearly mandated under Section 10 of RA 6713, was blatantly disregarded and set aside during the course of the investigation by the Office of the Ombudsman.**[1]

[1] *Rollo*, pp. 29-30.

But the Pre-Trial Order of the Sandiganbayan dated August 14, 2009[2] did not include the issues as crafted by Carabeo. This prompted him to seek on September 1, 2009 the correction of the pre-trial order to include such issues.

On September 15, 2009 the Fourth Division issued a Resolution, stating that the issues in the pre-trial order already covered Carabeo's second and third proposed issues. As to the first and fourth issues, the Sandiganbayan said that Carabeo's head office's review was irrelevant and cannot bar the Office of the Ombudsman from conducting an independent investigation of his alleged offenses. Carabeo filed a motion for reconsideration with respect to his first and fourth issues but the Sandiganbayan denied this on October 29, 2009, hence, this special civil action of *certiorari*.

**The Issues Presented**

The petition presents the following issues:

1. Whether or not the Sandiganbayan may hear the criminal action against Carabeo pending this Court's resolution of his petition to annul E.O. 259 under which the DOF-RIPS' filed the pertinent complaint against him before the Office of the Ombudsman; and

2. Whether or not the Sandiganbayan gravely abused its discretion in excluding from the trial his proposed issues 1 and 4.

**The Court's Rulings**

**One.** Carabeo claims that the Office of the Ombudsman prematurely filed the criminal cases against him considering that a question was pending before this Court in G.R. 178000 concerning the validity of E.O. 259, which authorized the conduct of lifestyles check on official and employees of the executive department.

But such issue has since been rendered moot and academic when the Court held on December 4, 2009 that the validity of E.O. 259 is immaterial to the question of the propriety of the charges filed against Carabeo. Indeed, the Court pointed out

[2] *Id*. at 36-47.

that any concerned citizen may file charges of corruption or illegal conduct against any government official or employee if the evidence warrants. Thus, the DOF-RIPS investigators were within their right to charge Carabeo before the Office of the Ombudsman regarding his case with or without E.O. 259.[3]

**Two.** Carabeo asserts that he was entitled to be informed of any error in his SALN and given the opportunity to correct the same pursuant to Section 10 of R.A. 6713, which provides:

***Section 10. Review and Compliance Procedure.* – (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.**

**(b) In order to carry out their responsibilities under this Act, the designated Committees of both houses of the Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval of the affirmative vote of the majority of the particular House concerned.**

**The individual to whom the opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.**

**(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.**

Carabeo claims that his head office, the DOF, should have alerted him on the deficiency in his SALN and given him the chance to correct the same before any charge is filed against

[3] *Carabeo v. Court of Appeals*, G.R. Nos. 178000 and 178003, December 4, 2009, 607 SCRA 394, 405.

him in connection with the same. But, the Sandiganbayan, citing *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*,[4] held that the review of the SALN by the head of office is irrelevant and cannot bar the Office of the Ombudsman from conducting an independent investigation for criminal violations committed by the public official or employee.

Carabeo contends, however, that the head of office has a mandatory obligation to inform him of defects in his SALN and give him the chance to correct the same. Further, he cannot be subjected to any sanction until such obligation has been complied with. Carabeo points out that *Pleyto* could not apply to him because the authority that reviewed the SALN in *Pleyto* was not the head of office. Although the respondents involved in that case were employees of the Department of Public Works and Highways, it was the Philippine National Police that investigated and filed the complaints against them. Carabeo points out that, in his case, it was the DOF-RIPS, headed by the Secretary of Finance, which filed the complaints against him with the Office of the Ombudsman. As city treasurer, Carabeo reports to the Bureau of Local Government Finance under the Secretary of Finance.

But what Carabeo fails to grasp is that it was eventually the Office of the Ombudsman, not the DOF-RIPS, that filed the criminal cases against him before the Sandiganbayan. That office is vested with the sole power to investigate and prosecute, *motu proprio* or on complaint of any person, any act or omission of any public officer or employee, office, or agency when such act or omission appears to be illegal, unjust, improper, or inefficient.[5] The Office of the Ombudsman could file the informations subject of these cases without any help from the DOF-RIPS.

True, Section 10 of R.A. 6713 provides that when the head of office finds the SALN of a subordinate incomplete or not in the proper form such head of office must call the subordinate's attention to such omission and give him the chance to rectify the same. But this procedure is an internal office matter. Whether

[4] G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[5] *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693, 708.

or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter.[6] Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office. To hold otherwise would be to diminish its constitutionally guarded independence.

Further, Carabeo's reliance on his supposed right to notice regarding errors in his SALNs and to be told to correct the same is misplaced. The notice and correction referred to in Section 10 are intended merely to ensure that SALNs are "submitted on time, are complete, and are in proper form." Obviously, these refer to formal defects in the SALNs. The charges against Carabeo, however, are for falsification of the assets side of his SALNs and for declaring a false net worth. These are substantive, not formal defects. Indeed, while the Court said in *Pleyto* that heads of offices have the duty to review their subordinates' SALNs, it would be absurd to require such heads to run a check on the truth of what the SALNs state and require their subordinates to correct whatever lies these contain. The responsibility for truth in those SALNs belongs to the subordinates who prepared them, not to the heads of their offices.

Thus, the Sandiganbayan did not gravely abuse its discretion in excluding from its pre-trial order the first and fourth issues that Carabeo proposed.

**WHEREFORE,** the Court *DISMISSES* the petition and *AFFIRMS* the Resolutions of the Fourth Division of the Sandiganbayan in Criminal Cases SB-09-CRM-0034 and 0039 dated September 15, 2009 and October 29, 2009.

**SO ORDERED.**

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

**EN BANC**

[A.C. No. 5834. February 22, 2011]
(Formerly CBD-01-861)

**TERESITA D. SANTECO,** *complainant, vs.* **ATTY. LUNA B. AVANCE,** *respondent.*

**SYLLABUS**

**LEGAL ETHICS; LAWYERS; DUTIES; FAILURE TO COMPLY WITH THE COURT DIRECTIVES CONSTITUTES GROSS MISCONDUCT, INSUBORDINATION OR DISRESPECT WHICH MERITS A LAWYER'S DISBARMENT AS IN CASE AT BAR.—** As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Here, respondent's conduct evidently fell short of what is expected of her as an officer of the court as she obviously possesses a habit of defying this Court's orders. She willfully disobeyed this Court when she continued her law practice despite the five-year suspension order against her and even misrepresented herself to be another person in order to evade said penalty. Thereafter, when she was twice ordered to comment on her continued law practice while still suspended, nothing was heard from her despite receipt of two Resolutions from this Court. Neither did she pay the ₱30,000.00 fine imposed in the September 29, 2009 Resolution. We have held that failure to comply with Court directives constitutes gross misconduct, insubordination or disrespect which merits a lawyer's suspension or even disbarment. x x x Under Section 27, Rule 138 of the Rules of Court a member of the bar may be disbarred or suspended from office as an attorney for gross misconduct and/or for a willful disobedience of any lawful order of a superior court, to wit: x x x In repeatedly disobeying this Court's orders, respondent proved herself unworthy of membership in the Philippine Bar. Worse, she remains indifferent to the need to reform herself. Clearly, she is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

**D E C I S I O N**

***PER CURIAM:***

The case originated from an administrative complaint[1] filed by Teresita D. Santeco against respondent Atty. Luna B. Avance for mishandling Civil Case No. 97-275, an action to declare a deed of absolute sale null and void and for reconveyance and damages, which complainant had filed before the Regional Trial Court (RTC) of Makati City.

In an *En Banc* Decision[2] dated December 11, 2003, the Court found respondent guilty of gross misconduct for, among others, abandoning her client's cause in bad faith and persistent refusal to comply with lawful orders directed at her without any explanation for doing so. She was ordered suspended from the practice of law for a period of five years, and was likewise directed to return to complainant, within ten (10) days from notice, the amount of ₱3,900.00 which complainant paid her for the filing of a petition for *certiorari* with the Court of Appeals (CA), which she never filed.

Respondent moved to reconsider[3] the decision but her motion was denied in a Resolution[4] dated February 24, 2004.

Subsequently, while respondent's five-year suspension from the practice of law was still in effect, Judge Consuelo Amog-Bocar, Presiding Judge of the RTC of Iba, Zambales, Branch 71, sent a letter-report[5] dated November 12, 2007 to then Court Administrator Christopher O. Lock informing the latter that respondent had appeared and actively participated in three cases wherein she misrepresented herself as "Atty. Liezl Tanglao." When her opposing counsels confronted her and showed to the

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[1] *Rollo*, pp. 2-3.

[2] *Id.* at 179-189.

[3] *Id.* at 193-213.

[4] *Id.* at 269.

[5] *Id.* at 277.

court a certification regarding her suspension, respondent admitted and conceded that she is Atty. Luna B. Avance, but qualified that she was only suspended for three years and that her suspension has already been lifted. Judge Amog-Bocar further stated that respondent nonetheless withdrew her appearance from all the cases. Attached to the letter-report were copies of several pertinent orders from her court confirming the report.

Acting on Judge Amog-Bocar's letter-report, the Court, in a Resolution[6] dated April 9, 2008, required respondent to comment within ten (10) days from notice. Respondent, however, failed to file the required comment. On June 10, 2009, the Court reiterated the directive to comment; otherwise the case would be deemed submitted for resolution based on available records on file with the Court. Still, respondent failed to comply despite notice. Accordingly, this Court issued a Resolution[7] on September 29, 2009 finding respondent guilty of indirect contempt. The dispositive portion of the Resolution reads:

> ACCORDINGLY, respondent is hereby found guilty of indirect contempt and is hereby **FINED** in the amount of Thirty Thousand Pesos (₱30,000.00) and **STERNLY WARNED** that a repetition of the same or similar infractions will be dealt with more severely.
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> Let all courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Resolution, and be it duly recorded in the personal file of respondent Atty. Luna B. Avance.[8]

A copy of the September 29, 2009 Resolution was sent to respondent's address of record at "26-B Korea Ave., Ph. 4, Greenheights Subd., Nangka, Marikina City" by registered mail. The same was delivered by Postman Hermoso Mesa, Jr. and duly received by one Lota Cadete on October 29, 2009, per certification[9] dated February 3, 2011 by Postmaster Rufino C. Robles of the Marikina Central Post Office.

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[6] *Id*. at 283.

[7] *Id*. at 285-288.

[8] *Id*. at 287.

[9] *Id*. at 291.

Despite due notice, however, respondent failed to pay the fine imposed in the September 29, 2009 Resolution based on a certification issued by Araceli C. Bayuga, Chief Judicial Staff Officer of the Cash Collection and Disbursement Division, Fiscal Management and Budget Office. The said certification reads:

> This is to certify that as per records of the Cashier Division, there is no record of payment made by one ATTY. LUNA B. AVANCE in the amount of Thirty Thousand Pesos (₱30,000.00) as payment for COURT FINE imposed in the resolution dated 29 Sept. 2009 Re: Adm. Case No. 5834.[10]

In view of the foregoing, the Court finds respondent unfit to continue as a member of the bar.

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.[11]

Here, respondent's conduct evidently fell short of what is expected of her as an officer of the court as she obviously possesses a habit of defying this Court's orders. She willfully disobeyed this Court when she continued her law practice despite the five-year suspension order against her and even misrepresented herself to be another person in order to evade said penalty. Thereafter, when she was twice ordered to comment on her continued law practice while still suspended, nothing was heard from her despite receipt of two Resolutions from this Court. Neither did she pay the ₱30,000.00 fine imposed in the September 29, 2009 Resolution.

We have held that failure to comply with Court directives constitutes gross misconduct, insubordination or disrespect which

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[10] *Id*. at 289. Dated December 28, 2010.

[11] *Cuizon v. Macalino,* A.C. No. 4334, July 7, 2004, 433 SCRA 479, 484, citing *Villaflor v. Sarita*, A.C.-CBD No. 471, June 10, 1999, 308 SCRA 129, 136.

merits a lawyer's suspension or even disbarment.[12] *Sebastian v. Bajar*[13] teaches

> Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively. Respondent's obstinate refusal to comply with the Court's orders not "only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof."[14]

Under Section 27, Rule 138 of the Rules of Court a member of the bar may be disbarred or suspended from office as an attorney for gross misconduct and/or for a willful disobedience of any lawful order of a superior court, to wit:

> **SEC. 27**. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. **— A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office**, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, **or for a willful disobedience of any lawful order of a superior court,** or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied.)

In repeatedly disobeying this Court's orders, respondent proved herself unworthy of membership in the Philippine Bar. Worse, she remains indifferent to the need to reform herself. Clearly, she is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

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[12] *Sebastian v. Bajar*, A.C. No. 3731, September 7, 2007, 532 SCRA 435 and *Cuizon v. Macalino, supra*.

[13] *Id*.

[14] *Id.* at 449. Citations omitted.

**WHEREFORE,** respondent *ATTY. LUNA B. AVANCE* is hereby *DISBARRED* for gross misconduct and willful disobedience of lawful orders of a superior court. Her name is *ORDERED STRICKEN OFF* from the Roll of Attorneys.

Let a copy of this decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

**SO ORDERED.**

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

*Carpio Morales* and *Leonardo-de Castro, JJ.,* on official leave.

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**EN BANC**

[A.M. No. MTJ-01-1362. February 22, 2011]
(Formerly A.M. No. 01-2-49-RTC)

**JUDGE NAPOLEON E. INOTURAN, Regional Trial Court, Branch 133,Makati City,** *complainant, vs.* **JUDGE MANUEL Q. LIMSIACO, JR., Municipal Circuit Trial Court, Valladolid, San Enrique-Pulupandan, Negros Occidental,** *respondent.*

[A.M. No. MTJ-11-1785. February 22, 2011]
(Formerly A.M. OCA IPI No. 07-1945-MTJ)

**SANCHO E. GUINANAO,** *complainant, vs.* **JUDGE MANUEL Q. LIMSIACO, JR., Municipal Circuit Trial Court, Valladolid, San Enrique-Pulupandan, Negros Occidental,** *respondent.*

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; DUTY TO FOLLOW COURT DIRECTIVES, EMPHASIZED.—** Case law teaches us that a judge is the visible representation of the law, and more importantly of justice; he or she must, therefore, be the first to follow the law and weave an example for the others to follow. Interestingly, in *Julianito M. Salvador v. Judge Manuel Q. Limsiaco, Jr., etc.*, a case where Judge Limsiaco was also the respondent, we already had the occasion to impress upon him the clear import of the directives of the Court. x x x We also cited in that case our ruling in *Josephine C. Martinez v. Judge Cesar N. Zoleta* and emphasized that obedience to our lawful orders and directives should not be merely selective obedience, but must be full: x x x We cannot overemphasize that compliance with the rules, directives and circulars issued by the Court is one of the foremost duties that a judge accepts upon assumption to office. This duty is verbalized in Canon 1 of the New Code of Judicial Conduct: x x x Under existing jurisprudence, we have held judges administratively liable for failing to comply with our directives and circulars.

**2. ID.; ID.; DELAY IN DECIDING A CASE WITHIN THE REGLEMENTARY PERIOD IS GROSS INEFFICIENCY. —** The delay in deciding a case within the reglementary period constitutes a violation of Section 5, Canon 6 of the New Code of Judicial Conduct which mandates judges to perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with promptness. In line with jurisprudence, Judge Limsiaco is also liable for gross inefficiency for his failure to decide a case within the reglementary period.

**3. ID.; ID.; VIOLATION OF COURT DIRECTIVES AND GROSS INEFFICIENCY ARE LESS SERIOUS CHARGES; SANCTIONS; REPEAT OFFENDER MERITS DISMISSAL FROM SERVICE OR FORFEITURE OF RETIREMENT BENEFITS FOR RETIRED JUDGE.—** Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001, violation of Supreme Court rules, directives and circulars, and gross inefficiency are categorized as less serious charges with the following sanctions: (a) suspension from office without salary and other benefits for

not less than one or more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00. In determining the proper imposable penalty, we also consider Judge Limsiaco's work history which reflects how he performed his judicial functions as a judge. We observed that there are several administrative cases already decided against Judge Limsiaco that show his inability to properly discharge his judicial duties. x x x We find that his conduct as a repeat offender exhibits his unworthiness to don the judicial robes and merits a sanction heavier than what is provided by our rules and jurisprudence. Under the circumstances, Judge Limsiaco should be dismissed from the service. We, however, note that on May 17, 2009, Judge Limsiaco has retired from judicial service. We also note that Judge Limsiaco has not yet applied for his retirement benefits. Thus, in lieu of the penalty of dismissal for his unethical conduct and gross inefficiency in performing his duties as a member of the bench, we declare all his retirement benefits, except accrued leave credits, forfeited. Furthermore, he is barred from re-employment in any branch or service of the government, including government-owned and controlled corporations.

**APPEARANCES OF COUNSEL**

*Jose Allan N. Maglasang* for Sancho E. Guinanao.

**D E C I S I O N**

***PER CURIAM:***

Before us are two (2) consolidated cases filed against Judge Manuel Q. Limsiaco, Jr. as the Presiding Judge of the Municipal Circuit Trial Court (*MCTC*) of Valladolid, San Enrique-Pulupandan, Negros Occidental. The first case involves the failure of Judge Limsiaco to comply with the directives of the Court. The second case involves the failure of Judge Limsiaco to decide a case within the 90-day reglementary period.

A.M. No. MTJ-01-1362

On September 25, 1998, a complaint was filed against Judge Limsiaco for his issuance of a Release Order in favor of an

accused in a criminal case before him.[1] After considering the evidence, we then found Judge Limsiaco guilty of ignorance of the law and procedure and of violating the Code of Judicial Conduct. In the decretal portion of our May 6, 2005 Decision, we ruled:

> WHEREFORE, Judge Manuel Q. Limsiaco, Jr. is found **GUILTY** of ignorance of the law and procedure and violations of the Code of Judicial Conduct. He is hereby ordered to pay a **FINE** in the amount of Forty Thousand pesos (₱40,000.00) upon notice, and is **STERNLY WARNED** that a repetition of the same or similar infractions will be dealt with more severely.
>
> Respondent Judge is **DIRECTED** to explain, within ten (10) days from notice, why he should not be administratively charged for approving the applications for bail of the accused and ordering their release in the following Criminal Cases filed with other courts: Criminal Cases Nos. 1331,1342,1362,1366 and 1368 filed with the RTC, Branch 59, San Carlos City; 67322, 69055-69058 filed with the MTCC, Branch 3, Bacolod City; 67192-67193 filed with the MTCC, Branch 4, Bacolod City; 72866 filed with the MTCC, Branch 5, Bacolod City; 70249, 82897 to 82903, 831542, 83260 to 83268 filed with the MTCC, Branch 6, Bacolod City; and 95-17340 filed with the RTC, Branch 50, Bacolod City, as reported by Executive Judge Edgardo G. Garvilles.
>
> SO ORDERED.

Judge Limsiaco twice moved for an extension of time to file a motion for reconsideration of the above decision and to comply with the Court's directive requiring him to submit an explanation. Despite the extension of time given however, **Judge Limsiaco failed to file his motion for reconsideration and the required explanation**.

In the Resolution dated January 24, 2006, we issued a show cause resolution for contempt and required Judge Limsiaco to explain his failure to comply with the Decision dated May 6, 2005. In the Resolution dated December 12, 2006, after noting the failure of Judge Limsiaco to comply with the Resolution

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

dated January 24, 2006, we resolved to impose a fine in the amount of ₱1,000.00 against Judge Limsiaco and to reiterate our earlier directive for him to file an explanation to the show cause resolution.

On February 1, 2007, Judge Limsiaco filed a *Manifestation and Urgent Motion for Extension of Time to File Explanation* wherein he apologized to the Court and paid the ₱1,000.00 fine. He cited poor health as the reason for his failure to comply with the Resolution dated January 24, 2006. On February 6, 2007, we resolved to grant the motion for extension filed by Judge Limsiaco and gave him ten (10) days from January 15, 2007 within which to file his explanation.

**Despite the grant of the extension of time, no explanation for the show cause resolution was ever filed.** Per Resolution dated December 15, 2009, we again required Judge Limsiaco to comply with the show cause resolution within ten (10) days from receipt under pain of imposing a stiffer penalty. Verification made from the postmaster showed that a copy of the December 15, 2009 Resolution was received by Judge Limsiaco on February 1, 2010.

In addition, a Report (as of August 31, 2010) from the Documentation Division, Office of the Court Administrator (*OCA*) showed that the directives in **our Decision dated May 6, 2005 have not been complied with by Judge Limsiaco.**

A.M. No. MTJ-11-1785

On September 24, 2007, Judge Limsiaco was charged with Delay in the Disposition of a Case by complainant Sancho E. Guinanao, a plaintiff in an ejectment case pending before Judge Limsiaco. Guinanao claimed that Judge Limsiaco failed to seasonably decide the subject ejectment case which had been submitted for resolution as early as April 25, 2005. The OCA referred the matter to us when Judge Limsiaco failed to file his comment to the administrative complaint. Under the pain of a show cause order for contempt for failure to heed the OCA directives to file a comment, Judge Limsiaco informed us that he had already decided the case on February 4, 2008.

Subsequently, we resolved[2] to declare Judge Limsiaco in contempt and to impose a fine of ₱1,000.00 for his continued failure to file the required comment to the administrative complaint. **The records show that Judge Limsiaco paid the ₱1,000.00 fine but did not submit the required comment.**

Per Resolution dated November 23, 2010, we ordered the consolidation of the above cases, together with A.M. No. MTJ-09-1734, entitled *Florenda V. Tobias v. Judge Manuel Q. Limsiaco, Jr.,* which case was separately decided on January 19, 2011.

The Court's Ruling

We shall consider in this ruling not merely Judge Limsiaco's conduct in connection with the discharge of judicial functions within his territorial jurisdiction, but also the performance of his legal duties before this Court as a member of the bench. We shall then take both matters into account in scrutinizing his conduct as a judge and in determining whether proper disciplinary measures should be imposed against him under the circumstances.

*A judge's duties to the Court*

Case law teaches us that a judge is the visible representation of the law, and more importantly of justice; he or she must, therefore, be the first to follow the law and weave an example for the others to follow.[3] Interestingly, in *Julianito M. Salvador v. Judge Manuel Q. Limsiaco, Jr., etc.*,[4] a case where Judge Limsiaco was also the respondent, we already had the occasion to impress upon him the clear import of the directives of the Court, thus:

For a judge to exhibit indifference to a resolution requiring him to comment on the accusations in the complaint thoroughly and

[2] Resolution dated November 17, 2010.

[3] *Yu-Asensi v. Villanueva*, A.M. No. MTJ-00-1245, January 19, 2000, 322 SCRA 255.

[4] A.M. No. MTJ-06-1626, March 17, 2006, 485 SCRA 1, 6-7; also see *Sinaon, Sr. v. Dumlao*, A.M. No. MTJ-04-1519, March 4, 2008, 547 SCRA 531.

substantially is gross misconduct, and may even be considered as outright disrespect for the Court. The office of the judge requires him to obey all the lawful orders of his superiors. After all, a resolution of the Supreme Court is not a mere request and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but has likewise been considered as an utter lack of interest to remain with, if not contempt of the judicial system.

We also cited in that case our ruling in *Josephine C. Martinez v. Judge Cesar N. Zoleta*[5] and emphasized that obedience to our lawful orders and directives should not be merely selective obedience, but must be full:

> [A] resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them in the administrative complaints because it is their duty to preserve the integrity of the judiciary. Moreover, the Court should not and will not tolerate future indifference of respondents to administrative complaints and to resolutions requiring comment on such administrative complaints.

As demonstrated by his present acts, we find it clear that Judge Limsiaco failed to heed the above pronouncements. We observe that in A.M. No. MTJ-01-1362, Judge Limsiaco did not fully obey our directives. Judge Limsiaco failed to file the required comment to our show cause resolution despite several opportunities given to him by the Court. His disobedience was aggravated by his insincere representations in his motions for extension of time that he would file the required comments.

The records also show Judge Limsiaco's failure to comply with our decision and orders. In A.M. No. MTJ-01-1362, Judge Limsiaco failed to file his comment/answer to the charge of irregularity pertaining to his approval of applications for bail in several criminal cases before him. He also failed to pay the ₱40,000.00 fine which we imposed by way of administrative

[5] A.M. No. MTJ-94-904, September 29, 1999, 315 SCRA 438, 448-449.

penalty for his gross ignorance of the law and procedure and violations of the Code of Judicial Conduct. Incidentally, in A.M. No. MTJ-11-1785, Judge Limsiaco failed to file his comment on the verified complaint despite several orders issued by the Court.

We cannot overemphasize that compliance with the rules, directives and circulars issued by the Court is one of the foremost duties that a judge accepts upon assumption to office. This duty is verbalized in Canon 1 of the New Code of Judicial Conduct:

**SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the Judiciary.**

**SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary, which is fundamental to the maintenance of judicial independence.**

The obligation to uphold the dignity of his office and the institution which he belongs to is also found in Canon 2 of the Code of Judicial Conduct under Rule 2.01 which mandates a judge to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Under the circumstances, the conduct exhibited by Judge Limsiaco constitutes no less than clear acts of defiance against the Court's authority. His conduct also reveals his deliberate disrespect and indifference to the authority of the Court, shown by his failure to heed our warnings and directives. Judge Limsiaco's actions further disclose his inability to accept our instructions. Moreover, his conduct failed to provide a good example for other court personnel, and the public as well, in placing significance to the Court's directives and the importance of complying with them.

We cannot allow this type of behavior especially on a judge. Public confidence in the judiciary can only be achieved when the court personnel conduct themselves in a dignified manner befitting the public office they are holding. They should avoid

conduct or any demeanor that may tarnish or diminish the authority of the Supreme Court.

Under existing jurisprudence, we have held judges administratively liable for failing to comply with our directives and circulars.

In *Sinaon, Sr.*,[6] we penalized a judge for his deliberate failure to comply with our directive requiring him to file a comment. We disciplined another judge in *Noe Cangco Zarate v. Judge Isauro M. Balderian*[7] for his refusal to comply with the Court's resolution requiring him to file a comment on the administrative charge against him. In *Request of Judge Eduardo F. Cartagena, etc.*,[8] we dismissed the judge for his repeated violation of a circular of the Supreme Court. In fact, we have already reprimanded and warned Judge Limsiaco for his failure to timely heed the Court's directives in *Salvador*.[9]

*A judge's duty to his public office*

Given the factual circumstances in A.M. No. MTJ-11-1785, the considerable delay Judge Limsiaco incurred in deciding the subject ejectment case has been clearly established by the records and by his own admission. Judge Limsiaco admitted that he decided the ejectment case only on February 4, 2008. In turn, the records show that Judge Limsiaco did not deny Guinanao's claim that the ejectment case was submitted for resolution as early as April 25, 2005. Thus, it took Judge Limsiaco more than two (2) years to decide the subject ejectment case after it was declared submitted for resolution.

The delay in deciding a case within the reglementary period constitutes a violation of Section 5, Canon 6 of the New Code of Judicial Conduct[10] which mandates judges to perform all

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[6] *Supra* note 4.

[7] A.M. No. MTJ-00-1261, April 3, 2000, 329 SCRA 558.

[8] A.M. No. 95-9-98-MCTC, December 4, 1997, 282 SCRA 370.

[9] *Supra* note 4.

[10] Which took effect on June 1, 2004.

judicial duties, including the delivery of reserved decisions, efficiently, fairly and with promptness. In line with jurisprudence, Judge Limsiaco is also liable for gross inefficiency for his failure to decide a case within the reglementary period.[11]

The Penalty

Under Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC dated September 11, 2001, violation of Supreme Court rules, directives and circulars, and gross inefficiency are categorized as less serious charges with the following sanctions: (a) suspension from office without salary and other benefits for not less than one or more than three months; or (b) a fine of more than ₱10,000.00 but not exceeding ₱20,000.00.[12]

In determining the proper imposable penalty, we also consider Judge Limsiaco's work history which reflects how he performed his judicial functions as a judge. We observed that there are several administrative cases already decided against Judge Limsiaco that show his inability to properly discharge his judicial duties.

In *Salvador*,[13] we penalized Judge Limsiaco for having been found guilty of **undue delay in rendering a decision**, imposing on him a ₱20,000.00 fine, with a warning that a repetition of the same or similar infraction in the future shall be dealt with more severely.

In *Helen Gamboa-Mijares v. Judge Manuel Q. Limsiaco, Jr.*,[14] we found Judge Limsiaco guilty of **gross misconduct** and imposed on him a ₱20,000.00 fine, with a warning that a more severe penalty would be imposed in case of the same of similar act in the future.

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[11] *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, A.M. No. 05-2-101-RTC, April 26, 2005, 457 SCRA 1.

[12] *Sinaon, Sr. v. Dumlao, supra* note 4.

[13] *Supra* note 4.

[14] A.M. No. MTJ-03-1509, September 23, 2003, 411 SCRA 412.

In *Atty. Adoniram P. Pamplona v. Judge Manuel Q. Limsiaco, Jr.*,[15] we resolved to impose a ₱20,000.00 fine on Judge Limsiaco for **gross ignorance of the law and procedure,** with a stern warning that a repetition of the same or similar offense would be dealt with more severely. The Court also resolved in the said case to re-docket, as a regular administrative case, the charge for oppression and grave abuse of authority relative to Judge Limsiaco's handling of two criminal cases.

In *Re: Withholding of Salary of Judge Manuel Q. Limsiaco, Jr., etc.*,[16] we imposed a ₱5,000.00 fine, with warning, against Judge Limsiaco for his **delay in the submission of the monthly report of cases and for twice ignoring the OCA's directive to explain the delay**.

Moreover, in the recent case of *Florenda Tobias v. Judge Manuel Q. Limsiaco, Jr.*,[17] where Judge Limsiaco was charged with corruption, the Court found him liable for **gross misconduct** and imposed a fine in the amount of ₱25,000.00.

Lastly, we also note the existence of two other administrative cases filed against Judge Limsiaco that are presently pending with the Court. The first case is *Mario B. Tapinco v. Judge Manuel Q. Limsiaco, Jr.*,[18] where Judge Limsiaco is charged with grave misconduct, obstruction of justice, and abuse of authority in connection with his invalid issuance of an order for the provisional release of an accused. The second case entitled *Unauthorized Hearings Conducted by Judge Manuel Q. Limsiaco, Jr., MCTC, et al.*,[19] is a complaint charging Judge Limsiaco of violating the Court's Administrative Circular No. 3,

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[15] Resolution in A.M. No. MTJ-08-1726, December 8, 2008.

[16] Resolution, dated July 22, 2009, in A.M. No. MTJ-06-1654 entitled Re: Withholding of Salary of Judge Manuel Q. Limsiaco, Jr. and Clerk of Court John O. Negroprado, both of the Municipal Circuit Trial Court, Valladolid-San Enrique-Pulupandan, Negros Occidental.

[17] MTJ-08-1726 (07-1917-MTJ), January 19, 2011.

[18] A.M. No. MTJ-10-1757 (05-1718-MTJ).

[19] A.M. No. 08-9-291-MCTC.

dated July 14, 1978 which prohibits the conduct of hearings in another station without any authority from the Court.

We find that his conduct as a repeat offender exhibits his unworthiness to don the judicial robes and merits a sanction heavier than what is provided by our rules and jurisprudence. Under the circumstances, Judge Limsiaco should be dismissed from the service. We, however, note that on May 17, 2009, Judge Limsiaco has retired from judicial service. We also note that Judge Limsiaco has not yet applied for his retirement benefits. Thus, in lieu of the penalty of dismissal for his unethical conduct and gross inefficiency in performing his duties as a member of the bench, we declare all his retirement benefits, except accrued leave credits, forfeited. Furthermore, he is barred from re-employment in any branch or service of the government, including government-owned and controlled corporations.

**WHEREFORE,** premises considered, we find Judge Manuel Q. Limsiaco, Jr. administratively liable for unethical conduct and gross inefficiency under the provisions of the New Code of Judicial Conduct, specifically, Sections 7 and 8 of Canon 1, and Section 5 of Canon 6. For these infractions, we *DECLARE* all his retirement benefits, except accrued leave credits if any, *FORFEITED*. He is likewise barred from re-employment in any branch or service of the government, including government-owned and controlled corporations.

**SO ORDERED.**

*Corona, C.J., Carpio, Nachura, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Mendoza,* and *Sereno, JJ.,* concur.

*Velasco, Jr., J.,* no part due to prior action in OCA.

*Perez, J.,* no part. Acted as Court Administrator on the matter.

*Carpio Morales, J.,* on wellness leave.

*Leonardo-de Castro, J.,* on official leave.

**EN BANC**

[G.R. No. 192793. February 22, 2011]

**FESTO R. GALANG, JR.,** *petitioner, vs.* **HON. RAMIRO R. GERONIMO, as Presiding Judge of the Regional Trial Court of Romblon, Branch 81; and NICASIO M. RAMOS,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ELECTION CASES; PETITION FOR *CERTIORARI* QUESTIONING INTERLOCUTORY ORDER IN AN ELECTORAL PROTEST SHALL BE FILED WITH THE COMMISSION ON ELECTIONS, IN AID OF ITS APPELLATE JURISDICTION.—** Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides when and where a petition for *certiorari* should be filed, states thus: x x x **In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction**. The question then is, would taking cognizance of a petition for *certiorari* questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative. x x x Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that: Sec. 8. *Appeal*.— **An aggrieved party may appeal the decision to the COMELEC** within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel. Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of *certiorari* in aid of its appellate jurisdiction.

**2. ID.; ID.; ID.; "IN AID OF ITS APPELLATE JURISDICTION"; ELUCIDATED.—** Interpreting the phrase "in aid of its

> appellate jurisdiction," the Court held in *J.M. Tuason & Co., Inc. v. Jaramillo, et al*. that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of *certiorari*, ***in aid of its appellate jurisdiction***. This was reiterated in *De Jesus v. Court of Appeals*, where the Court stated that a court may issue a writ of *certiorari* ***in aid of its appellate jurisdiction*** if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

**APPEARANCES OF COUNSEL**

*Vicente Roy L. Kayaban, Jr.* for petitioner.
*Rico B. Bolongaita* for private respondent.

**D E C I S I O N**

**PERALTA, *J.*:**

This resolves the Petition for *Certiorari* under Rule 65 of the Rules of Court, praying that the Order[1] of the Regional Trial Court (RTC) of Romblon, Branch 81, dated June 24, 2010, denying petitioner's Motion to Admit Answer and the Order[2] dated July 22, 2010, denying herein petitioner's Omnibus Motion, be reversed and set aside.

The records reveal the following antecedent facts.

On May 12, 2010, at 12:37 p.m., petitioner was proclaimed winner for the mayoralty race during the May 10, 2010 Automated Elections for the Municipality of Cajidiocan, Province of Romblon. The proclamation was based on the Certificate of Canvass (COC), but without the official signed Certificate of Canvass for Proclamation (COCP). This was done with the approval of the Provincial Board of Canvassers (PBOC) Chairman.

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[1] Penned by Executive Judge Ramiro R. Geronimo; *rollo*, pp. 24-25.

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

Subsequently, private respondent Nicasio Ramos, who was also a mayoralty candidate in the same election, requested the Commission on Elections (COMELEC) to conduct a manual reconciliation of the votes cast. The COMELEC then issued Resolution No. 8923, granting said request. The manual reconciliation was done on May 20, 2010 at the *Sangguniang Bayan* Session Hall, after which proceedings the eight winning *Sangguniang Bayan* Members were also proclaimed. The MBOC made erasures and corrections using correction fluid on the COCP for the *Sangguniang Bayan* Members to reflect the results of the manual reconciliation. As for the COCP for the previously proclaimed mayoralty and vice-mayoralty candidates, the total number of votes for each of the candidates remained the same even after the manual reconciliation; hence, only the date was erased and changed to read "May 20, 2010" to correspond with the date of the manual reconciliation.

On May 27, 2010, private respondent filed an election protest case against petitioner before the RTC. The following day, the court sheriff went to petitioner's residence to serve summons with a copy of the petition. The Sheriff's Return of Summons[3] stated that the sheriff was able to serve Summons on petitioner by leaving the same and the attached copy of the protest with a certain Gerry Rojas, who was then at petitioner's residence.

On June 8, 2010, petitioner, together with his then counsel of record, Atty. Abner Perez, appeared in court and requested a copy of the summons with a copy of the election protest. During the hearing on said date, respondent judge directed petitioner to file the proper pleading and, on June 11, 2010, petitioner filed a Motion to Admit Answer, to which was attached his Answer with Affirmative Defense and Counterclaim. One of his affirmative defenses was that the electoral protest was filed out of time, since it was filed more than ten (10) days after the date of proclamation of the winning candidate.

The trial court then issued the assailed Order dated June 24, 2010, finding the service of Summons on petitioner on May 28,

[3] *Rollo*, pp. 44-45.

2010 as valid, and declaring the Answer filed on June 11, 2010, as filed out of time. The dispositive portion of said Order reads as follows:

> WHEREFORE, in view of the foregoing, the Motion to Admit Answer is DENIED for lack of merit.
>
> The Motion to Admit Answer having been denied, the preliminary conference shall proceed *ex parte*, as previously scheduled pursuant to Section 1, Rule 9, A.M. No. 10-4-1-SC.
>
> SO ORDERED.[4]

On July 12, 2010, petitioner filed an Omnibus Motion to: (1) Restore Protestee's Standing in Court; (2) Motion for Reconsideration of the Order dated June 24, 2010; and (3) Suspend Proceedings Pending Resolution of Falsification Case Before the Law Department of the COMELEC. However, on July 22, 2010, the trial court issued the second assailed Order denying petitioner's Omnibus Motion.

Hence, the present petition for *certiorari* and prohibition under Rule 65, alleging that respondent judge acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in considering as valid, the Sheriff's Service of Summons on May 28, 2010 on a person not residing in petitioner's residence.

On the other hand, respondents pointed out that the petition for *certiorari* should not be filed with this Court but with the COMELEC.

The petition must fail.

Section 4, Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, which provides when and where a petition for *certiorari* should be filed, states thus:

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

[4] *Id*. at 25.

filed not later than sixty (60) days counted from the notice of the denial of the motion.

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

**In election cases involving an act or an omission of a municipal or a regional trial court, the petition shall be filed exclusively with the Commission on Elections, in aid of its appellate jurisdiction**.[5]

The question then is, would taking cognizance of a petition for *certiorari* questioning an interlocutory order of the regional trial court in an electoral protest case be considered in aid of the appellate jurisdiction of the COMELEC? The Court finds in the affirmative.

Interpreting the phrase "in aid of its appellate jurisdiction," the Court held in *J.M. Tuason & Co., Inc. v. Jaramillo, et al.*[6] that if a case may be appealed to a particular court or judicial tribunal or body, then said court or judicial tribunal or body has jurisdiction to issue the extraordinary writ of *certiorari*, ***in aid of its appellate jurisdiction***. This was reiterated in *De Jesus v. Court of Appeals*,[7] where the Court stated that a court may issue a writ of *certiorari* ***in aid of its appellate jurisdiction*** if said court has jurisdiction to review, by appeal or writ of error, the final orders or decisions of the lower court.

Note that Section 8, Rule 14 of the 2010 Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal Officials states that:

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[5] Emphasis and underscoring supplied.

[6] 118 Phil. 1022 (1963).

[7] G.R. No. 101630, August 24, 1992, 212 SCRA 823, 827.

Sec. 8. *Appeal*. — **An aggrieved party may appeal the decision to the COMELEC** within five (5) days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or on the adverse party who is not represented by counsel.[8]

Since it is the COMELEC which has jurisdiction to take cognizance of an appeal from the decision of the regional trial court in election contests involving elective municipal officials, then it is also the COMELEC which has jurisdiction to issue a writ of *certiorari* in aid of its appellate jurisdiction. Clearly, petitioner erred in invoking this Court's power to issue said extraordinary writ.

**WHEREFORE,** the petition is *DISMISSED.*

**SO ORDERED.**

*Corona, C.J., Carpio, Velasco, Jr., Nachura, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza,* and *Sereno, JJ.,* concur.

*Carpio Morales* and *Leonardo-de Castro, JJ.,* on official leave.

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**THIRD DIVISION**

(G.R. No. 156448. February 23, 2011)

**SPS. MOISES and CLEMENCIA ANDRADA,** *petitioners, vs.* **PILHINO SALES CORPORATION, represented by its Branch Manager, JOJO S. SAET,** *respondent.*

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[8] Emphasis supplied.

**SYLLABUS**

**1. CIVIL LAW; ABUSE OF RIGHTS; ELEMENTS.—** Article 21 of the *Civil Code*, in conjunction with Article 19 of the *Civil Code*, is part of the cause of action known in this jurisdiction as "abuse of rights." The elements of abuse of rights are: (*a*) there is a legal right or duty; (*b*) exercised in bad faith; and (*c*) for the sole intent of prejudicing or injuring another.

**2. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CANNOT DETERMINE FACTUAL ISSUES; FINDINGS OF FACT BY THE COURT OF APPEALS ARE CONCLUSIVE AND BINDING ON THE COURT.—** [Petitioners'] insistence, which represents their disagreement with the CA's declaration that the second and third elements of abuse of rights, *supra*, were not established, requires the consideration and review of factual issues. Hence, this appeal cannot succeed, for an appeal by petition for review on *certiorari* cannot determine factual issues. In the exercise of its power of review, the Court is *not* a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. Perforce, the findings of fact by the CA are conclusive and binding on the Court.

**3. ID.; ID.; ID.; ID.; ID.; EXCEPTIONS; NOT PRESENT.—** It is true that the Court has, at times, allowed exceptions from the restriction. Among the recognized exceptions are the following, to wit: (*a*) When the findings are grounded entirely on speculation, surmises, or conjectures; (*b*) When the inference made is manifestly mistaken, absurd, or impossible; (*c*) When there is grave abuse of discretion; (*d*) When the judgment is based on a misapprehension of facts; (*e*) When the findings of facts are conflicting; (*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (*g*) When the CA's findings are contrary to those by the trial court; (*h*) When the findings are conclusions without citation of specific evidence on which they are based; (*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (*k*) When the CA manifestly overlooked certain relevant facts

not disputed by the parties, which, if properly considered, would justify a different conclusion. However, the circumstances of this case do not warrant reversing or modifying the findings of the CA, which are consistent with the established facts. Verily, the petitioners did not prove the concurrence of the elements of abuse of rights.

**4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, WHEN PROPER; DEMAND FOR ATTORNEY'S FEES MUST FAIL WHERE THE ELEMENT OF BAD FAITH IN COMMENCING AND PROSECUTING THE CASE WAS NOT ESTABLISHED.—** It is well accepted in this jurisdiction that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees. Indeed, before the effectivity of the new *Civil Code*, such fees could not be recovered in the absence of a stipulation. It was only with the advent of the new *Civil Code* that the right to collect attorney's fees in the instances mentioned in Article 2208 was recognized, and such fees are now included in the concept of actual damages. One such instance is where the defendant is guilty of gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. This is a corollary of the general principle expressed in Article 19 of the *Civil Code* that everyone must, in the performance of his duties, observe honesty and good faith and the rule embodied in Article 1170 that anyone guilty of fraud (bad faith) in the performance of his obligation shall be liable for damages. But, as noted by the Court in *Morales v. Court of Appeals*, the award of attorney's fees is the exception rather than the rule. The power of a court to award attorney's fees under Article 2208 of the *Civil Code* demands factual, legal, and equitable justification; its basis cannot be left to speculation and conjecture. The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. Herein, the element of bad faith on the part of Pilhino in commencing and prosecuting Civil Case No. 21,898-93, which was necessary to predicate the lawful grant of attorney's fees based on Article 2208 (4) of the *Civil Code*, was not established. Accordingly, the petitioners' demand for attorney's fees must fail.

**APPEARANCES OF COUNSEL**

*Into Pantojan and Gonzales Law Offices* for petitioners.
*Jose C. Estrada* for respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

An appeal by petition for review on *certiorari* under Rule 45 shall raise only questions of law. Thus, the herein petition for review must fail for raising a question essentially of fact.

**Antecedents**

On December 28, 1990, respondent Pilhino Sales Corporation (Pilhino) sued Jose Andrada, Jr. and his wife, Maxima, in the Regional Trial Court in Davao City (RTC) to recover the principal sum of ₱240,863.00, plus interest and incidental charges (Civil Case No. 20,489-90). Upon Pilhino's application, the RTC issued a writ of preliminary attachment, which came to be implemented against a Hino truck and a Fuso truck both owned by Jose Andrada, Jr. However, the levies on attachment were lifted after Jose filed a counter-attachment bond.

In due course, the RTC rendered a decision against Jose Andrada, Jr. and his wife. Pilhino opted to enforce the writ of execution against the properties of the Andradas instead of claiming against the counter-attachment bond considering that the premium on the bond had not been paid. As a result, the sheriff seized the Hino truck and sold it at the ensuing public auction, with Pilhino as the highest bidder. However, the Hino truck could not be transferred to Pilhino's name due to its having been already registered in the name of petitioner Moises Andrada. It appears that the Hino truck had been meanwhile sold by Jose Andrada, Jr. to Moises Andrada, which sale was unknown to Pilhino, and that Moises had mortgaged the truck to BA Finance Corporation (BA Finance) to secure his own obligation.

BA Finance sued Moises Andrada for his failure to pay the loan (Civil Case No. 5117). After a decision was rendered in

the action in favor of BA Finance, a writ of execution issued, by which the sheriff levied upon and seized the Hino truck while it was in the possession of Pilhino and sold it at public auction, with BA Finance as the highest bidder.

Consequently, Pilhino instituted this action in the RTC in Davao City against Spouses Jose Andrada, Jr. and Maxima Andrada, Spouses Moises Andrada and Clemencia Andrada, Jose Andrada, Sr., BA Finance, Land Transportation Office (in Surallah, South Cotabato), and the Registrar of Deeds of General Santos City to annul the following: (*a*) the deed of sale between Jose Andrada, Jr. and Moises Andrada; (*b*) the chattel mortgage involving the Hino truck between Moises Andrada and BA Finance; (*c*) the deed of conveyance executed by Jose Andrada, Jr. in favor of his father, Jose Andrada, Sr., involving a hard-top jeep; and (*d*) the certificate of registration of the Hino truck in the name of Moises Andrada as well as the registration of the chattel mortgage with the Registry of Deeds of General Santos City. The action was docketed as Civil Case No. 21,898-93.

Of the Andradas who were defendants in Civil Case No. 21,898-93, only Moises Andrada and his wife filed their responsive pleading. Later on, Jose Andrada, Jr. and his wife and Pilhino submitted a compromise agreement dated August 20, 1993. They submitted a second compromise agreement dated March 4, 1994 because the first was found to be defective and incomplete. The RTC thereafter rendered a partial judgment on March 21, 1994 based on the second compromise agreement. After that, further proceedings were taken in Civil Case No. 21,898-93 only with respect to Moises Andrada and his wife, and BA Finance.

Moises Andrada and his wife averred as defenses that they had already acquired the Hino truck from Jose Andrada, Jr. free from any lien or encumbrance prior to its seizure by the sheriff pursuant to the writ of execution issued in Civil Case No. 20,489-90; that their acquisition had been made in good faith, considering that at the time of the sale the preliminary attachment had already been lifted; and that Pilhino's recourse was to proceed against the counter-attachment bond.

For its part, BA Finance claimed lack of knowledge of the truth of the material allegations of the complaint of Pilhino; and insisted that the Hino truck had been validly mortgaged to it by Moises Andrada, the lawful owner, to secure his own valid obligation.

On March 25, 1998, the RTC, citing the compromise agreement between Pilhino and Jose Andrada, Jr. that had settled all the claims of Pilhino against Jose Andrada, Jr., and the good faith of Pilhino and BA Finance in filing their respective actions, rendered its decision in Civil Case No. 21,898-93,[1] disposing:

> WHEREFORE, judgment is rendered dismissing this case insofar as the spouses Moises Andrada and Clemencia Andrada, Jose Andrada, Sr. and BA Finance Corporation, now accordingly BA Savings Bank, including the counterclaims.
>
> SO ORDERED.

Spouses Moises and Clemencia Andrada appealed the decision rendered on March 25, 1998 to the extent that the RTC thereby: (*a*) dismissed their counterclaim; (*b*) declared that the deed of sale of the Hino truck between Jose Andrada, Jr. and Moises Andrada had been simulated; and (*c*) approved the compromise agreement between Pilhino and Spouses Jose Andrada, Jr. and Maxima Andrada.

On December 13, 2001, the Court of Appeals (CA) promulgated its decision, as follows:[2]

> WHEREFORE, the judgment appealed from is AFFIRMED with the modification that the sale of the Hino truck by defendant Jose Andrada, Jr. in favor of defendant-appellant Moises Andrada is declared valid, subject to the rights of BA Finance as mortgagee and highest bidder.
>
> SO ORDERED.

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[1] *Rollo,* pp. 32-40.

[2] *Id.*, pp. 71-81; penned by Associate Justice Ruben T. Reyes (later Presiding Justice and a Member of the Court, but already retired), and concurred in by Associate Justice Renato C. Dacudao (retired) and Associate Justice Mariano C. Del Castillo (now a Member of the Court).

Spouses Moises and Clemencia Andrada are now before the Court *via* petition for review on *certiorari* to pose the following issues: [3]

1. Whether or not Pilhino should be held liable for the damages the petitioners sustained from Pilhino's levy on execution upon the Hino truck under Civil Case No. 20,489-90; and

2. Whether or not Pilhino was guilty of bad faith when it proceeded with the levy on execution upon the Hino truck owned by Moises Andrada.

**Ruling**

We find no merit in the petition for review.

The petitioners assail the decision promulgated by the CA to the extent that it denied their claim for the damages they had sought by way of counterclaim. They anchored their claim on Article 21 of the *Civil Code,* which provides that "*any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage*."

Article 21 of the *Civil Code*, in conjunction with Article 19 of the *Civil Code*, is part of the cause of action known in this jurisdiction as "abuse of rights." The elements of abuse of rights are: (*a*) there is a legal right or duty; (*b*) exercised in bad faith; and (*c*) for the sole intent of prejudicing or injuring another.[4]

In its assailed decision, the CA found that Pilhino had acted in good faith in bringing Civil Case No. 21,898-93 to annul the deed of sale involving the Hino truck executed by Jose Andrada, Jr. in favor of Moises Andrada, considering that Pilhino had "believed that the sale in favor of defendants-appellants [had been] resorted to so that Jose Andrada [might] evade his obligations."[5] The CA concluded that no remedy was available

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

[4] *Albenson Enterprises Corp. v. Court of Appeals*, G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25.

[5] *Rollo,* p. 80.

for any damages that the petitioners sustained from the filing of Civil Case No. 21,898-93 against them because "the law affords no remedy for such damages resulting from an act which does not amount to a legal injury or wrong."[6]

Worthy to note is that the CA's finding and conclusion rested on the RTC's own persuasion that the sale of the Hino truck to Moises Andrada had been simulated.[7]

Yet, the petitioners still insist in this appeal that both lower courts erred in their conclusion on the absence of bad faith on the part of Pilhino.

We cannot side with the petitioners. Their insistence, which represents their disagreement with the CA's declaration that the second and third elements of abuse of rights, *supra*, were not established, requires the consideration and review of factual issues. Hence, this appeal cannot succeed, for an appeal by petition for review on *certiorari* cannot determine factual issues. In the exercise of its power of review, the Court is *not* a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial. Perforce, the findings of fact by the CA are conclusive

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[6] *Ibid*.

[7] *Id*., pp. 37-38. The RTC said:

The evidence adduced by the plaintiff is convincing that the DEED OF SALE OF A MOTOR VEHICLE (Exh. "K") executed by Jose Andrada, Jr. in favor of his brother Moises was simulated to put it beyond the reach of his creditors, especially the plaintiff, considering that the purported consideration for the Hino truck was only ₱50,000.00; and that only three days after the purported sale, Moises Andrada was able to secure a loan from the BA Finance in the amount of ₱235,632.00 by giving the Hino truck as collateral; and that thereafter, Jose Andrada, Jr. continued to operate the Hino truck in hauling for Dole Philippines. This finding by this Court is notwithstanding the Special Power of Attorney executed by Moises Andrada in favor of Jose Andrada, Jr. and the former's explanation about his not having yet an approved franchise from the LTFRB. It is hard to believe that, after selling the Hino truck to Moises for only ₱50,000.00 even when it was being utilized in his hauling business with Dole Philippines, Jose Andrada, Jr. would agree to continue to operate it in that same business for the benefit of Moises Andrada, the buyer! Why did he sell it to him for ₱50,000.00 only in the first place?

and binding on the Court. This restriction of the review to questions of law has been institutionalized in Section 1, Rule 45 of the *Rules of Court, viz*:

> Section 1. *Filing of petition with Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (1a, 2a)[8]

It is true that the Court has, at times, allowed exceptions from the restriction. Among the recognized exceptions are the following, to wit:[9]

(*a*) When the findings are grounded entirely on speculation, surmises, or conjectures;

(*b*) When the inference made is manifestly mistaken, absurd, or impossible;

(*c*) When there is grave abuse of discretion;

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[8] The rule, which has been amended by A.M. No. 07-7-12-SC, effective December 27, 2007, now reads:

> Section 1. *Filing of petition with Supreme Court*. —A party desiring to appeal by *certiorari* from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition** may include an application for a writ of preliminary injunction or other provisional remedies and **shall raise only questions of law, which must be distinctly set forth.** The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

[9] *Sampayan v. Court of Appeals*, G.R. No. 156360, January 14, 2005, 448 SCRA 220; *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, G.R. No. 139437, December 8, 2000, 347 SCRA 542, 549; *Nokom v. National Labor Relations Commission*, G.R. No. 140043, July 18, 2000, 336 SCRA 97; *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, G.R. No. 96262, March 22, 1999, 305 SCRA 70; *Sta. Maria v. Court of Appeals*, G.R. No. 127549, January 28, 1998, 285 SCRA 351.

(*d*) When the judgment is based on a misapprehension of facts;

(*e*) When the findings of facts are conflicting;

(*f*) When in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;

(*g*) When the CA's findings are contrary to those by the trial court;

(*h*) When the findings are conclusions without citation of specific evidence on which they are based;

(*i*) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent;

(*j*) When the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or

(*k*) When the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

However, the circumstances of this case do not warrant reversing or modifying the findings of the CA, which are consistent with the established facts. Verily, the petitioners did not prove the concurrence of the elements of abuse of rights.

The petitioners further seek attorney's fees based on Article 2208 (4) of the *Civil Code,* which provides that "*in the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except xxx (4) in cases of clearly unfounded civil action or proceeding against the plaintiff xxx.*"

The petitioners are not entitled to attorney's fees.

It is well accepted in this jurisdiction that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[10] Indeed,

[10] *Tanay Recreation Center and Development Corporation v. Fausto*, G.R. No. 140182, April 12, 2005, 455 SCRA 436 ; *Firestone Tire & Rubber*

before the effectivity of the new *Civil Code*, such fees could not be recovered in the absence of a stipulation.[11] It was only with the advent of the new *Civil Code* that the right to collect attorney's fees in the instances mentioned in Article 2208 was recognized,[12] and such fees are now included in the concept of actual damages.[13] One such instance is where the defendant is guilty of gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim.[14] This is a corollary of the general principle expressed in Article 19 of the *Civil Code* that everyone must, in the performance of his duties, observe honesty and good faith and the rule embodied in Article 1170 that anyone guilty of fraud (bad faith) in the performance of his obligation shall be liable for damages.

But, as noted by the Court in *Morales v. Court of Appeals*,[15] the award of attorney's fees is the exception rather than the rule. The power of a court to award attorney's fees under Article 2208 of the *Civil Code* demands factual, legal, and equitable justification; its basis cannot be left to speculation and conjecture.[16] The general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate.[17]

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*Co. of the Phils. v. Ines Chaves & Co., Ltd.*, G.R. No. L-17106, October 19, 1966, 18 SCRA 356, 358; *Heirs of Basilia Justiva v. Gustilo*, L-16396, January 31, 1963, 7 SCRA 72.

[11] *Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd., supra*.

[12] See *Reyes v. Yatco*, 100 Phil. 964 (1957); *Tan Ti v. Alvear*, 26 Phil. 566 (1914); *Castueras v. Bayona*, 106 Phil. 340.

[13] *Fores v. Miranda*, 105 Phil. 266 (1959).

[14] Article 2208 (5), *Civil Code*.

[15] G. R. No. 117228, June 19, 1997; 274 SCRA 282, 309.

[16] Citing *Scott Consultants & Resource Development Corporation v. Court of Appeals*, G.R. No. 112911, March 16, 1995, 242 SCRA 393, 406.

[17] Citing *Firestone Tire & Rubber Co. of the Phils. v. Ines Chaves & Co., Ltd.*, G.R. No. L-17106, October 19, 1966, 18 SCRA 356, 358; *Philippine Air Lines v. Miano*, G.R. No. 106664, March 8, 1995, 242 SCRA 235, 240.

Herein, the element of bad faith on the part of Pilhino in commencing and prosecuting Civil Case No. 21,898-93, which was necessary to predicate the lawful grant of attorney's fees based on Article 2208 (4) of the *Civil Code*, was not established. Accordingly, the petitioners' demand for attorney's fees must fail.

**WHEREFORE,** we deny the petition for review on *certiorari* for its lack of merit, and affirm the decision of the Court of Appeals.

**SO ORDERED.**

*Brion*[*] *(Acting Chairperson), Abad,*[**] *Villarama, Jr.,* and *Sereno JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 157547. February 23, 2011]

**HEIRS OF EDUARDO SIMON,** *petitioners, vs.* **ELVIN**[*] **CHAN and THE COURT OF APPEALS,** *respondents.*

**SYLLABUS**

**1. CRIMINAL LAW; BATAS PAMBANSA BLG. 22; VIOLATION THEREOF WILL GIVE RISE TO CIVIL LIABILITY; RULING IN THE CASE OF *BANAL V. JUDGE TADEO, JR.* (G.R. NO. 78911, DEC. 11, 1987), CITED.—** The Supreme Court has settled the issue of whether or not a violation of BP

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[*] Acting Chairperson in lieu of Justice Conchita Carpio Morales who is on leave per Special Order No. 925 dated January 24, 2011.

[**] Additional member per Special Order No. 926 dated January 24, 2011.

[*] Misspelled as Elven in the caption of the petition and in the *rollo*.

22 can give rise to civil liability in *Banal v. Judge Tadeo, Jr.*, holding: xxx. Civil liability to the offended party cannot thus be denied. The payee of the check is entitled to receive the payment of money for which the worthless check was issued. Having been caused the damage, she is entitled to recompense. Surely, it could not have been the intendment of the framers of Batas Pambansa Blg. 22 to leave the offended private party defrauded and empty-handed by excluding the civil liability of the offender, giving her only the remedy, which in many cases results in a Pyrrhic victory, of having to file a separate civil suit. To do so may leave the offended party unable to recover even the face value of the check due her, thereby unjustly enriching the errant drawer at the expense of the payee. The protection which the law seeks to provide would, therefore, be brought to naught.

**2. ID.; ID.; ID.; INDEPENDENT CIVIL ACTION TO RECOVER THE VALUE OF A BOUNCING CHECK ISSUED IN CONTRAVENTION OF BP 22 CANNOT BE MAINTAINED UNDER BOTH SUPREME COURT CIRCULAR 57-97 AND RULE 111 OF THE RULES OF COURT, NOTWITHSTANDING THE ALLEGATIONS OF FRAUD AND DECEIT; RETROACTIVE APPLICATION OF PROCEDURAL LAWS NOT CONSTITUTIONALLY OBJECTIONABLE; RATIONALE.—** However, there is no independent civil action to recover the value of a bouncing check issued in contravention of BP 22. This is clear from Rule 111 of the *Rules of Court*, effective December 1, 2000, which relevantly provides: Section 1. *Institution of criminal and civil actions*. – x x x. **(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed**. x x x. The aforequoted provisions of the *Rules of Court*, even if not yet in effect when Chan commenced Civil Case No. 915-00 on August 3, 2000, are nonetheless applicable. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel adversely affected, nor is it constitutionally objectionable. The reason is simply that, as a general rule, no vested right may attach to, or arise from, procedural laws. Any new rules may validly be made to apply to cases pending at the time of their promulgation, considering that no party to an

action has a vested right in the rules of procedure, except that in criminal cases, the changes do not retroactively apply if they permit or require a lesser quantum of evidence to convict than what is required at the time of the commission of the offenses, because such retroactivity would be unconstitutional for being *ex post facto* under the Constitution. Moreover, the application of the rule would not be precluded by the violation of any assumed vested right, because the new rule was adopted from Supreme Court Circular 57-97 that took effect on November 1, 1997. xxx. To repeat, Chan's separate civil action to recover the amount of the check involved in the prosecution for the violation of BP 22 could not be independently maintained under both Supreme Court Circular 57-97 and the aforequoted provisions of Rule 111 of the *Rules of Court*, notwithstanding the allegations of fraud and deceit.

**3. ID.; ID.; ID.; PROCEDURES FOR THE RECOVERY OF CIVIL LIABILITIES ARISING FROM THE VIOLATION OF BP 22 AND THE CRIME OF ESTAFA, DISTINGUISHED; RULING IN CASE OF *DMPI EMPLOYEES CREDIT ASSOCIATION V. VELEZ*, INAPPLICABLE.—** The CA's reliance on *DMPI Employees Credit Association v. Velez* to give due course to the civil action of Chan independently and separately of Criminal Case No. 275381 was unwarranted. *DMPI Employees*, which involved a prosecution of *estafa*, is not on all fours with this case, which is a prosecution for a violation of BP 22. Although the Court has ruled that the issuance of a bouncing check may result in two separate and distinct crimes of *estafa* and violation of BP 22, the procedures for the recovery of the civil liabilities arising from these two distinct crimes are different and non-interchangeable. In prosecutions of *estafa*, the offended party may opt to reserve his right to file a separate civil action, or may institute an independent action based on fraud pursuant to Article 33 of the Civil Code, as *DMPI Employees* has allowed. In prosecutions of violations of BP 22, however, the Court has adopted a policy to prohibit the reservation or institution of a separate civil action to claim the civil liability arising from the issuance of the bouncing check upon the reasons delineated in *Hyatt Industrial Manufacturing Corporation, supra.*

**4. REMEDIAL LAW; ACTIONS; DISMISSAL OF THE CIVIL ACTION ON GROUND OF *LITIS PENDENTIA*,**

**REQUISITES; PRESENT.—** For *litis pendentia* to be successfully invoked as a bar to an action, the concurrence of the following requisites is necessary, namely: (*a*) there must be identity of parties or at least such as represent the same interest in both actions; (*b*) there must be identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and, (*c*) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in respect of the other. Absent the first two requisites, the possibility of the existence of the third becomes nil. A perusal of Civil Case No. 01-0033 and Criminal Case No. 275381 ineluctably shows that all the elements of *litis pendentia* are attendant. It is clear, therefore, that the MeTC in Pasay City properly dismissed Civil Case No. 915-00 on the ground of *litis pendentia* through its decision dated October 23, 2000; and that the RTC in Pasay City did not err in affirming the MeTC.

**APPEARANCES OF COUNSEL**

*Manuel S. Fonacier, Jr.* for petitioners.
*Herenio E. Martinez* for private respondent.

**D E C I S I O N**

**BERSAMIN, *J.*:**

There is no independent civil action to recover the civil liability arising from the issuance of an unfunded check prohibited and punished under *Batas Pambansa Bilang 22* (BP 22).

**Antecedents**

On July 11, 1997, the Office of the City Prosecutor of Manila filed in the Metropolitan Trial Court of Manila (MeTC) an information charging the late Eduardo Simon (Simon) with a violation of BP 22, docketed as Criminal Case No. 275381 entitled *People v. Eduardo Simon*. The accusatory portion reads:

That sometime in December 1996 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Elvin Chan to apply on account or for value Landbank Check No. 0007280 dated December 26, 1996 payable to cash in the amount of ₱336,000.00 said accused well knowing that at the time of issue she/he/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said Elvin Chan the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW. [1]

More than three years later, or on August 3, 2000, respondent Elvin Chan commenced in the MeTC in Pasay City a civil action for the collection of the principal amount of ₱336,000.00, coupled with an application for a writ of preliminary attachment (docketed as Civil Case No. 915-00).[2] He alleged in his complaint the following:

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2. Sometime in December 1996 defendant employing fraud, deceit, and misrepresentation encashed a check dated December 26, 1996 in the amount of ₱336,000.00 to the plaintiff assuring the latter that the check is duly funded and that he had an existing account with the Land Bank of the Philippines, xerox copy of the said check is hereto attached as Annex "A";

3. However, when said check was presented for payment the same was dishonored on the ground that the account of the defendant with the Land Bank of the Philippines has been closed contrary to his representation that he has an existing account with the said bank and that the said check was duly funded and will be honored when presented for payment;

4. Demands had been made to the defendant for him to make good the payment of the value of the check, xerox copy of the letter

[1] *Rollo*, p. 31.

[2] *Id.*, pp. 35-37.

of demand is hereto attached as Annex "B", but despite such demand defendant refused and continues to refuse to comply with plaintiff's valid demand;

5. Due to the unlawful failure of the defendant to comply with the plaintiff's valid demands, plaintiff has been compelled to retain the services of counsel for which he agreed to pay as reasonable attorney's fees the amount of ₱50,000.00 plus additional amount of ₱2,000.00 per appearance.

ALLEGATION IN SUPPORT OF PRAYER
FOR PRELIMINARY ATTACHMENT

6. The defendant as previously alleged has been guilty of fraud in contracting the obligation upon which this action is brought and that there is no sufficient security for the claims sought in this action which fraud consist in the misrepresentation by the defendant that he has an existing account and sufficient funds to cover the check when in fact his account was already closed at the time he issued a check;

7. That the plaintiff has a sufficient cause of action and this action is one which falls under Section 1, sub-paragraph (d), Rule 57 of the Revised Rules of Court of the Philippines and the amount due the plaintiff is as much as the sum for which the plaintiff seeks the writ of preliminary attachment;

8. That the plaintiff is willing and able to post a bond conditioned upon the payment of damages should it be finally found out that the plaintiff is not entitled to the issuance of a writ of preliminary attachment.[3]

On August 9, 2000, the MeTC in Pasay City issued a writ of preliminary attachment, which was implemented on August 17, 2000 through the sheriff attaching a Nissan vehicle of Simon.[4]

On August 17, 2000, Simon filed an *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*,[5] pertinently averring:

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[3] *Id*., pp. 35-36.

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

[5] *Id*., pp. 38-46.

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On the ground of *litis pendentia*, that is, as a consequence of the pendency of another action between the instant parties for the same cause before the Metropolitan Trial Court of Manila, Branch X (10) entitled "People of the Philippines vs. Eduardo Simon," docketed thereat as Criminal Case No. 275381-CR, the instant action is dismissable under Section 1, (e), Rule 16, 1997 Rules of Civil Procedure, xxx

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While the instant case is civil in nature and character as contradistinguished from the said Criminal Case No. 915-00 in the Metropolitan Trial Court of Manila, Branch X (10), the basis of the instant civil action is the herein plaintiff's criminal complaint against defendant arising from a charge of violation of Batas Pambansa Blg. 22 as a consequence of the alleged dishonor in plaintiff's hands upon presentment for payment with drawee bank a Land Bank Check No. 0007280 dated December 26, 1996 in the amount of ₱336,000— drawn allegedly issued to plaintiff by defendant who is the accused in said case, a photocopy of the Criminal information filed by the Assistant City Prosecutor of Manila on June 11, 1997 hereto attached and made integral part hereof as Annex "1".

It is our understanding of the law and the rules, that, "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately xxx.

On August 29, 2000, Chan opposed Simon's *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*, stating:

1. The sole ground upon which defendant seeks to dismiss plaintiff's complaint is the alleged pendency of another action between the same parties for the same cause, contending among others that the pendency of Criminal Case No. 275381-CR entitled "*People of the Philippines vs. Eduardo Simon*" renders this case dismissable;

2. The defendant further contends that under Section 1, Rule 111 of the Revised Rules of Court, the filing of the criminal action, the

civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action which the plaintiff does not contest; however, it is the submission of the plaintiff that an implied reservation of the right to file a civil action has already been made, first, by the fact that the information for violation of B.P. 22 in Criminal Case No. 2753841 does not at all make any allegation of damages suffered by the plaintiff nor is there any claim for recovery of damages; on top of this the plaintiff as private complainant in the criminal case, during the presentation of the prosecution evidence was not represented at all by a private prosecutor such that no evidence has been adduced by the prosecution on the criminal case to prove damages; all of these we respectfully submit demonstrate an effective implied reservation of the right of the plaintiff to file a separate civil action for damages;

3. The defendant relies on Section 3 sub-paragraph (a) Rule 111 of the Revised Rules of Court which mandates that after a criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action; however, the defendant overlooks and conveniently failed to consider that under Section 2, Rule 111 which provides as follows:

> In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of criminal case provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In as much as the case is one that falls under Art. 33 of the Civil Code of the Philippines as it is based on fraud, this action therefore may be prosecuted independently of the criminal action;

4. In fact we would even venture to state that even without any reservation at all of the right to file a separate civil action still the plaintiff is authorized to file this instant case because the plaintiff seeks to enforce an obligation which the defendant owes to the plaintiff by virtue of the negotiable instruments law. The plaintiff in this case sued the defendant to enforce his liability as drawer in favor of the plaintiff as payee of the check. Assuming the allegation of the defendant of the alleged circumstances relative to the issuance

of the check, still when he delivered the check payable to bearer to that certain Pedro Domingo, as it was payable to cash, the same may be negotiated by delivery by who ever was the bearer of the check and such negotiation was valid and effective against the drawer;

5. Indeed, assuming as true the allegations of the defendant regarding the circumstances relative to the issuance of the check it would be entirely impossible for the plaintiff to have been aware that such check was intended only for a definite person and was not negotiable considering that the said check was payable to bearer and was not even crossed;

6. We contend that what cannot be prosecuted separate and apart from the criminal case without a reservation is a civil action arising from the criminal offense charged. However, in this instant case since the liability of the defendant are imposed and the rights of the plaintiff are created by the negotiable instruments law, even without any reservation at all this instant action may still be prosecuted;

7. Having this shown, the merits of plaintiff's complaint the application for damages against the bond is totally without any legal support and perforce should be dismissed outright.[6]

On October 23, 2000, the MeTC in Pasay City granted Simon's *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*,[7] dismissing the complaint of Chan because:

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After study of the arguments of the parties, the court resolves to GRANT the Motion to Dismiss and the application to charge plaintiff's bond for damages.

For "*litis pendentia*" to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two (2) cases should be such that the judgment, which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. xxx

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[6] *Id*., pp. 47-49.

[7] *Id*., pp. 50-54.

A close perusal of the herein complaint denominated as "Sum of Money" and the criminal case for violation of BP Blg. 22 would readily show that the parties are not only identical but also the cause of action being asserted, which is the recovery of the value of Landbank Check No. 0007280 in the amount of ₱336,000.00. In both civil and criminal cases, the rights asserted and relief prayed for, the reliefs being founded on the same facts, are identical.

Plaintiff's claim that there is an effective implied waiver of his right to pursue this civil case owing to the fact that there was no allegation of damages in BP Blg. 22 case and that there was no private prosecutor during the presentation of prosecution evidence is unmeritorious. It is basic that when a complaint or criminal Information is filed, even without any allegation of damages and the intention to prove and claim them, the offended party has the right to prove and claim for them, unless a waiver or reservation is made or unless in the meantime, the offended party has instituted a separate civil action. xxx The over-all import of the said provision conveys that the waiver which includes indemnity under the Revised Penal Code, and damages arising under Articles 32, 33, and 34 of the Civil Code must be both clear and express. And this must be logically so as the primordial objective of the Rule is to prevent the offended party from recovering damages twice for the same act or omission of the accused.

Indeed, the evidence discloses that the plaintiff did not waive or made a reservation as to his right to pursue the civil branch of the criminal case for violation of BP Blg. 22 against the defendant herein. To the considered view of this court, the filing of the instant complaint for sum of money is indeed legally barred. The right to institute a separate civil action shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation. xxx

Even assuming the correctness of the plaintiff's submission that the herein case for sum of money is one based on fraud and hence falling under Article 33 of the Civil Code, still prior reservation is required by the Rules, to wit:

> "In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of criminal case provided the right is reserved as required in the

preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

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WHEREFORE, premises considered, the court resolves to:

1. Dismiss the instant complaint on the ground of "*litis pendentia*";
2. Dissolve/Lift the Writ of Attachment issued by this court on August 14, 2000;
3. Charge the plaintiff's bond the amount of ₱336,000.00 in favor of the defendant for the damages sustained by the latter by virtue of the implementation of the writ of attachment;
4. Direct the Branch Sheriff of this Court to RESTORE with utmost dispatch to the defendant's physical possession the vehicle seized from him on August 16, 2000; and
5. Direct the plaintiff to pay the defendant the sum of ₱5,000.00 by way of attorney's fees.

SO ORDERED.

Chan's *motion for reconsideration* was denied on December 20, 2000,[8] *viz*:

Considering that the plaintiff's arguments appear to be a mere repetition of his previous submissions, and which submissions this court have already passed upon; and taking into account the inapplicability of the *ratio decidendi* in the *Tactaquin vs. Palileo* case which the plaintiff cited as clearly in that case, the plaintiff therein expressly made a reservation to file a separate civil action, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.

On July 31, 2001, the Regional Trial Court (RTC) in Pasay City upheld the dismissal of Chan's complaint, disposing:[9]

WHEREFORE, finding no error in the appealed decision, the same is hereby AFFIRMED *in toto*.

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

[9] *Id.*, pp. 76-79.

SO ORDERED.

On September 26, 2001, Chan appealed to the Court of Appeals (CA) by *petition for review*,[10] challenging the propriety of the dismissal of his complaint on the ground of *litis pendentia*.

In his *comment*,[11] Simon countered that Chan was guilty of bad faith and malice in prosecuting his alleged civil claim twice in a manner that caused him (Simon) utter embarrassment and emotional sufferings; and that the dismissal of the civil case because of the valid ground of *litis pendentia* based on Section 1 (*e*), Rule 16 of the 1997 *Rules of Civil Procedure* was warranted.

On June 25, 2002, the CA promulgated its assailed decision,[12] overturning the RTC, *viz*:

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As a general rule, an offense causes two (2) classes of injuries. The first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity which is also civil in nature. Thus, "every person criminally liable for a felony is also civilly liable."

The offended party may prove the civil liability of an accused arising from the commission of the offense in the criminal case since the civil action is either deemed instituted with the criminal action or is separately instituted.

Rule 111, Section 1 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000, provides that:

(a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action

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[10] *Id.*, pp. 80-88.

[11] *Id.*, pp. 89-97.

[12] *Id.*, pp. 23-27; penned by Associate Justice Perlita J. Tria Tirona (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Mario L. Guariña.

> unless the offended party waives the civil action, reserves the right to institute it separately or institute the civil action prior to the criminal action.

Rule 111, Section 2 further states:

> After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

However, with respect to civil actions for recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission, the rule has been changed.

In *DMPI Employees Credit Association vs. Velez*, the Supreme Court pronounced that only the civil liability arising from the offense charged is deemed instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action. Speaking through Justice Pardo, the Supreme Court held:

> "There is no more need for a reservation of the right to file the independent civil action under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines. The reservation and waiver referred to refers only to the civil action for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately without a reservation."

Rule 111, Section 3 reads:

> Sec. 3. When civil action may proceed independently. In the cases provided in Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.
>
> The changes in the Revised Rules on Criminal Procedure pertaining to independent civil actions which became effective on December 1, 2000 are applicable to this case.

> Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage. There are no vested rights in the rules of procedure. xxx
>
> Thus, Civil Case No. CV-94-124, an independent civil action for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, may proceed independently even if there was no reservation as to its filing.

It must be pointed that the abovecited case is similar with the instant suit. The complaint was also brought on allegation of fraud under Article 33 of the Civil Code and committed by the respondent in the issuance of the check which later bounced. It was filed before the trial court, despite the pendency of the criminal case for violation of BP 22 against the respondent. While it may be true that the changes in the Revised Rules on Criminal Procedure pertaining to independent civil action became effective on December 1, 2000, the same may be given retroactive application and may be made to apply to the case at bench, since procedural rules may be given retroactive application. There are no vested rights in the rules of procedure.

In view of the ruling on the first assigned error, it is therefore an error to adjudge damages in favor of the petitioner.

WHEREFORE, the petition is hereby GRANTED. The Decision dated July 13, 2001 rendered by the Regional Trial Court of Pasay City, Branch 108 affirming the dismissal of the complaint filed by petitioner is hereby REVERSED and SET ASIDE. The case is hereby REMANDED to the trial court for further proceedings.

SO ORDERED.

On March 14, 2003, the CA denied Simon's *motion for reconsideration*.[13]

Hence, this appeal, in which the petitioners submit that the CA erroneously premised its decision on the assessment that the civil case was an independent civil action under Articles 32, 33, 34, and 2176 of the *Civil Code*; that the CA's reliance on the ruling in *DMPI Employees Credit Cooperative Inc. v. Velez*[14]

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[13] *Id.*, pp. 29-30.

[14] G.R. No. 129282, November 29, 2001, 371 SCRA 72.

stretched the meaning and intent of the ruling, and was contrary to Sections 1 and 2 of Rule 111 of the *Rules of Criminal Procedure*; that this case was a simple collection suit for a sum of money, precluding the application of Section 3 of Rule 111 of the *Rules of Criminal Procedure*.[15]

In his *comment*,[16] Chan counters that the *petition for review* should be denied because the petitioners used the wrong mode of appeal; that his cause of action, being based on fraud, was an independent civil action; and that the appearance of a private prosecutor in the criminal case did not preclude the filing of his separate civil action.

**Issue**

The lone issue is whether or not Chan's civil action to recover the amount of the unfunded check (Civil Case No. 915-00) was an independent civil action.

**Ruling**

The petition is meritorious.

**A**

**Applicable Law and Jurisprudence on the Propriety of filing a separate civil action based on BP 22**

The Supreme Court has settled the issue of whether or not a violation of BP 22 can give rise to civil liability in *Banal v. Judge Tadeo, Jr.*,[17] holding:

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Article 20 of the New Civil Code provides:

> Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

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[15] See note 19, p.16.

[16] *Rollo*, pp. 105-109.

[17] G.R. No. 78911, December 11, 1987, 156 SCRA 325.

Regardless, therefore, of whether or not a special law so provides, indemnification of the offended party may be had on account of the damage, loss or injury directly suffered as a consequence of the wrongful act of another. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of a crime (*Quemel v. Court of Appeals*, 22 SCRA 44, citing *Bagtas v. Director of Prisons*, 84 Phil. 692). Every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to civil action for the restitution of the thing, repair of the damage, and indemnification for the losses (*United States v. Bernardo*, 19 Phil. 265).

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Civil liability to the offended party cannot thus be denied. The payee of the check is entitled to receive the payment of money for which the worthless check was issued. Having been caused the damage, she is entitled to recompense.

Surely, it could not have been the intendment of the framers of Batas Pambansa Blg. 22 to leave the offended private party defrauded and empty-handed by excluding the civil liability of the offender, giving her only the remedy, which in many cases results in a Pyrrhic victory, of having to file a separate civil suit. To do so may leave the offended party unable to recover even the face value of the check due her, thereby unjustly enriching the errant drawer at the expense of the payee. The protection which the law seeks to provide would, therefore, be brought to naught.

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However, there is no independent civil action to recover the value of a bouncing check issued in contravention of BP 22. This is clear from Rule 111 of the *Rules of Court*, effective December 1, 2000, which relevantly provides:

Section 1. *Institution of criminal and civil actions.* — (*a*) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action. (1a)

(b) **The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed**.[18]

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in

[18] Bold emphasis supplied.

accordance with Section 2 of the Rule governing consolidation of the civil and criminal actions.

Section 3. *When civil action may proceed independently*. – In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

The aforequoted provisions of the *Rules of Court*, even if not yet in effect when Chan commenced Civil Case No. 915-00 on August 3, 2000, are nonetheless applicable. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel adversely affected, nor is it constitutionally objectionable. The reason is simply that, as a general rule, no vested right may attach to, or arise from, procedural laws.[19] Any new rules may validly be made to apply to cases pending at the time of their promulgation, considering that no party to an action has a vested right in the rules of procedure,[20] except that in criminal cases, the changes do not retroactively apply if they permit or require a lesser quantum of evidence to convict than what is required at the time of the commission of the offenses, because such retroactivity would be unconstitutional for being *ex post facto* under the Constitution.[21]

Moreover, the application of the rule would not be precluded by the violation of any assumed vested right, because the new rule was adopted from Supreme Court Circular 57-97 that took effect on November 1, 1997.

Supreme Court Circular 57-97 states:

Any provision of law or Rules of Court to the contrary notwithstanding, the following rules and guidelines shall henceforth be observed in the filing and prosecution of all criminal cases under

[19] *Cheng v. Sy*, G.R. No. 174238, July 7, 2009, 592 SCRA 155, 164-165.

[20] *Aldeguer v. Hoskyn*, 2 Phil. 502; *Ayala de Roxas v. Case*, 8 Phil. 197.

[21] Sec. 22, Art. III, 1987 Constitution; Cooley's *Principle of Constitutional Law*, p. 313.

Batas Pambansa Blg. 22 which penalizes the making or drawing and issuance of a check without funds or credit:

1. **The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized.**[22]

2. Upon the filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based upon the amount of the check involved which shall be considered as the actual damages claimed, in accordance with the schedule of fees in Section 7 (a) and Section 8 (a), Rule 141 of the Rules of Court as last amended by Administrative Circular No. 11-94 effective August 1, 1994. Where the offended party further seeks to enforce against the accused civil liability by way of liquidated, moral, nominal, temperate or exemplary damages, he shall pay the corresponding filing fees therefor based on the amounts thereof as alleged either in the complaint or information. If not so alleged but any of these damages are subsequently awarded by the court, the amount of such fees shall constitute a first lien on the judgment.

3. Where the civil action has heretofore been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with the pertinent procedure outlined in Section 2 (a) of Rule 111 governing the proceedings in the actions as thus consolidated.

4. This Circular shall be published in two (2) newspapers of general circulation and shall take effect on November 1, 1997.

The reasons for issuing Circular 57-97 were amply explained in *Hyatt Industrial Manufacturing Corporation v. Asia Dynamic Electrix Corporation*,[23] thus:

xxx xxx xxx

We agree with the ruling of the Court of Appeals that upon filing of the criminal cases for violation of B.P. 22, the civil action for

[22] Bold emphasis supplied.

[23] G.R. No. 163597, July 29, 2005, 465 SCRA 454, 459-461.

the recovery of the amount of the checks was also impliedly instituted under Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. Under the present revised Rules, the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. The reservation to file a separate civil action is no longer needed. The Rules provide:

> Section 1. *Institution of criminal and civil actions. —*
>
> (a) x x x
>
> (b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.
>
> Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.
>
> Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with Section 2 of this Rule governing consolidation of the civil and criminal actions.

The foregoing rule was adopted from Circular No. 57-97 of this Court. It specifically states that the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. It also requires the complainant to pay in full the filing fees based on the amount of the check involved. Generally, no filing fees are required for criminal cases, but because of the inclusion of the civil action in complaints for violation of B.P. 22, the Rules require the payment of docket fees upon the filing of the complaint. **This rule was enacted to help declog court dockets which are filled with B.P. 22 cases as creditors actually use the courts as collectors. Because ordinarily no filing fee is charged in criminal cases**

**for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit gratis and sometimes, upon being paid, the trial court is not even informed thereof. The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried. It should be stressed that the policy laid down by the Rules is to discourage the separate filing of the civil action. The Rules even prohibit the reservation of a separate civil action, which means that one can no longer file a separate civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourage the consolidation of the civil and criminal cases. We have previously observed that a separate civil action for the purpose of recovering the amount of the dishonored checks would only prove to be costly, burdensome and time-consuming for both parties and would further delay the final disposition of the case. This multiplicity of suits must be avoided. Where petitioners' rights may be fully adjudicated in the proceedings before the trial court, resort to a separate action to recover civil liability is clearly unwarranted. In view of this special rule governing actions for violation of B.P. 22, Article 31 of the Civil Code cited by the trial court will not apply to the case at bar.**[24]

The CA's reliance on *DMPI Employees Credit Association v. Velez*[25] to give due course to the civil action of Chan independently and separately of Criminal Case No. 275381 was unwarranted. *DMPI Employees,* which involved a prosecution for *estafa,* is not on all fours with this case, which is a prosecution for a violation of BP 22. Although the Court has ruled that the issuance of a bouncing check may result in two separate and distinct crimes of *estafa* and violation of BP 22,[26] the procedures

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[24] Bold emphasis supplied.

[25] *Supra,* note 14.

[26] *E.g., Rodriguez v. Ponferrada,* G.R. Nos.155531-34, July 29, 2005, 465 SCRA 338, 343.

for the recovery of the civil liabilities arising from these two distinct crimes are different and non-interchangeable. In prosecutions of *estafa*, the offended party may opt to reserve his right to file a separate civil action, or may institute an independent action based on fraud pursuant to Article 33 of the *Civil Code*,[27] as *DMPI Employees* has allowed. In prosecutions of violations of BP 22, however, the Court has adopted a policy to prohibit the reservation or institution of a separate civil action to claim the civil liability arising from the issuance of the bouncing check upon the reasons delineated in *Hyatt Industrial Manufacturing Corporation, supra*.

To repeat, Chan's separate civil action to recover the amount of the check involved in the prosecution for the violation of BP 22 could not be independently maintained under both Supreme Court Circular 57-97 and the aforequoted provisions of Rule 111 of the *Rules of Court*, notwithstanding the allegations of fraud and deceit.

**B**
**Aptness of the dismissal of the civil action on the ground of *litis pendentia***

Did the pendency of the civil action in the MeTC in Manila (as the civil aspect in Criminal Case No. 275381) bar the filing of Civil Case No. 915-00 in the MeTC in Pasay City on the ground of *litis pendentia*?

For *litis pendentia* to be successfully invoked as a bar to an action, the concurrence of the following requisites is necessary, namely: (*a*) there must be identity of parties or at least such as represent the same interest in both actions; (*b*) there must be identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and, (*c*) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount

[27] Article 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

to *res judicata* in respect of the other. Absent the first two requisites, the possibility of the existence of the third becomes nil.[28]

A perusal of Civil Case No. 01-0033 and Criminal Case No. 275381 ineluctably shows that all the elements of *litis pendentia* are attendant. First of all, the parties in the civil action involved in Criminal Case No. 275381 and in Civil Case No. 915-00, that is, Chan and Simon, are the same. Secondly, the information in Criminal Case No. 275381 and the complaint in Civil Case No. 915-00 both alleged that Simon had issued Landbank Check No. 0007280 worth ₱336,000.00 payable to "cash," thereby indicating that the rights asserted and the reliefs prayed for, as well as the facts upon which the reliefs sought were founded, were identical in all respects. And, thirdly, any judgment rendered in one case would necessarily bar the other by *res judicata*; otherwise, Chan would be recovering twice upon the same claim.

It is clear, therefore, that the MeTC in Pasay City properly dismissed Civil Case No. 915-00 on the ground of *litis pendentia* through its decision dated October 23, 2000; and that the RTC in Pasay City did not err in affirming the MeTC.

**WHEREFORE,** we grant the petition for review on *certiorari*, and, accordingly, we reverse and set aside the decision promulgated by the Court of Appeals on June 25, 2002. We reinstate the decision rendered on October 23, 2000 by the Metropolitan Trial Court, Branch 45, in Pasay City.

Costs of suit to be paid by the respondent.

**SO ORDERED.**

*Brion,*[**] *Abad,*[***] *Villarama, Jr.*, and *Sereno JJ.*, concur.

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[28] *Taningco v. Taningco*, G.R. No. 153481, August 10, 2007, 529 SCRA 735.

[**] Acting Chairperson in lieu of Justice Conchita Carpio Morales who is on leave per Special Order No. 925 dated January 24, 2011.

[***] Additional member per Special Order No. 926 dated January 24, 2011.

**THIRD DIVISION**

[G.R. No. 159402. February 23, 2011]

**AIR TRANSPORTATION OFFICE,** *petitioner, vs.* **SPOUSES DAVID[*] and ELISEA RAMOS,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; STATE; DOCTRINE OF SOVEREIGN IMMUNITY; EXPLAINED; RATIONALE FOR THE ADHERENCE TO THE DOCTRINE.—** The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State, is expressly provided in Article XVI of the 1987 Constitution, *viz*: Section 3. The State may not be sued without its consent. The immunity from suit is based on the political truism that the State, as a sovereign, can do no wrong. xxx Practical considerations dictate the establishment of an immunity from suit in favor of the State. Otherwise, and the State is suable at the instance of every other individual, government service may be severely obstructed and public safety endangered because of the number of suits that the State has to defend against. Several justifications have been offered to support the adoption of the doctrine in the Philippines, but that offered in *Providence Washington Insurance Co. v. Republic of the Philippines* is "the most acceptable explanation," according to Father Bernas, a recognized commentator on Constitutional Law, to wit: [A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well-known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits,

[*] David Ramos died on October 14, 2001, before the assailed decision was promulgated. He was substituted by his children Cherry Ramos, Joseph David Ramos and Elsie Grace R. Dizon pursuant to a resolution of the CA promulgated on April 23, 2003 (see *rollo*, p. 136).

in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.

**2. ID.; ID.; ID.; IMMUNITY UPHELD IN FAVOR OF AN UNINCORPORATED GOVERNMENT AGENCY PERFORMING GOVERNMENTAL FUNCTIONS BUT NOT IN FAVOR OF ONE PERFORMING PROPRIETARY FUNCTIONS.—** An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated. However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function; it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.

**3. ID.; ID.; ID.; CANNOT BE CLAIMED BY THE AIR TRANSPORTATION OFFICE (ATO) WHEN IT ENGAGED IN THE MANAGEMENT AND MAINTENANCE OF THE LOAKAN AIRPORT.—** [T]he CA correctly appreciated the juridical character of the ATO as an agency of the Government *not performing a purely governmental or sovereign function*, but was instead involved in the management and maintenance of the Loakan Airport, an activity that was not the exclusive prerogative of the State in its sovereign capacity. Hence, the ATO had no claim to the State's immunity from suit.

**4. ID.; ID.; ID.; CANNOT BE INVOKED TO DEFEAT A VALID CLAIM FOR COMPENSATION ARISING FROM TAKING OF PRIVATE PROPERTY IN EXPROPRIATION WITHOUT JUST COMPENSATION.—** We further observe that the doctrine of sovereign immunity cannot be successfully invoked to defeat a valid claim for compensation arising from the taking without just compensation and without the proper expropriation proceedings being first resorted to of the plaintiffs' property. Thus, in *De los Santos v. Intermediate Appellate Court*, the trial court's dismissal based on the doctrine of non-suability of the State of two cases (one of which was

for damages) filed by owners of property where a road 9 meters wide and 128.70 meters long occupying a total area of 1,165 square meters and an artificial creek 23.20 meters wide and 128.69 meters long occupying an area of 2,906 square meters had been constructed by the provincial engineer of Rizal and a private contractor without the owners' knowledge and consent was reversed and the cases remanded for trial on the merits. The Supreme Court ruled that the doctrine of sovereign immunity was not an instrument for perpetrating any injustice on a citizen. In exercising the right of eminent domain, the Court explained, the State exercised its *jus imperii*, as distinguished from its proprietary rights, or *jus gestionis*; yet, even in that area, where private property had been taken in expropriation without just compensation being paid, the defense of immunity from suit could not be set up by the State against an action for payment by the owners.

**5. ID.; ADMINISTRATIVE LAW; CIVIL AVIATION AUTHORITY ACT OF 2008 (R.A. NO. 9497); OBLIGATIONS INCURRED BY THE AIR TRANSPORTATION OFFICE (ATO) MAY NOW BE ENFORCED AGAINST THE CIVIL AVIATION AUTHORITY OF THE PHILIPPINES (CAAP).—** [T]he issue of whether or not the ATO could be sued without the State's consent has been rendered moot by the passage of Republic Act No. 9497, otherwise known as the *Civil Aviation Authority Act of 2008*. x x x Under its Transitory Provisions, R.A. No. 9497 established in place of the ATO the Civil Aviation Authority of the Philippines (CAAP), which thereby assumed all of the ATO's powers, duties and rights, assets, real and personal properties, funds, and revenues x x x. Section 23 of R.A. No. 9497 enumerates the corporate powers vested in the CAAP, including the power to sue and be sued, to enter into contracts of every class, kind and description, to construct, acquire, own, hold, operate, maintain, administer and lease personal and real properties, and to settle, under such terms and conditions most advantageous to it, any claim by or against it. With the CAAP having legally succeeded the ATO pursuant to R.A. No. 9497, the obligations that the ATO had incurred by virtue of the deed of sale with the Ramos spouses might now be enforced against the CAAP.

**APPEARANCES OF COUNSEL**

*The Government Corporate Counsel* for petitioner.
*Juan Antonio Reyes Alberto III* for respondents.

**R E S O L U T I O N**

**BERSAMIN, *J.*:**

The State's immunity from suit does not extend to the petitioner because it is an agency of the State engaged in an enterprise that is far from being the State's exclusive prerogative.

Under challenge is the decision promulgated on May 14, 2003,[1] by which the Court of Appeals (CA) affirmed with modification the decision rendered on February 21, 2001 by the Regional Trial Court, Branch 61 (RTC), in Baguio City in favor of the respondents.[2]

**Antecedents**

Spouses David and Elisea Ramos (respondents) discovered that a portion of their land registered under Transfer Certificate of Title No. T-58894 of the Baguio City land records with an area of 985 square meters, more or less, was being used as part of the runway and running shoulder of the Loakan Airport being operated by petitioner Air Transportation Office (ATO). On August 11, 1995, the respondents agreed after negotiations to convey the affected portion by deed of sale to the ATO in consideration of the amount of ₱778,150.00. However, the ATO failed to pay despite repeated verbal and written demands.

Thus, on April 29, 1998, the respondents filed an action for collection against the ATO and some of its officials in the RTC (docketed as Civil Case No. 4017-R and entitled *Spouses David*

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[1] *Rollo*, pp. 25-35; penned by Associate Justice Conrado M. Vasquez (later Presiding Justice, now retired), and concurred in by Associate Justice Mercedes Gozo-Dadole (retired) and Associate Justice Rosmari D. Carandang,

[2] *Id.*, pp. 80-87; penned by Judge Antonio C. Reyes.

*and Elisea Ramos v. Air Transportation Office, Capt. Panfilo Villaruel, Gen. Carlos Tanega, and Mr. Cesar de Jesus*).

In their answer, the ATO and its co-defendants invoked as an affirmative defense the issuance of Proclamation No. 1358, whereby President Marcos had reserved certain parcels of land that included the respondents' affected portion for use of the Loakan Airport. They asserted that the RTC had no jurisdiction to entertain the action without the State's consent considering that the deed of sale had been entered into in the performance of governmental functions.

On November 10, 1998, the RTC denied the ATO's motion for a preliminary hearing of the affirmative defense.

After the RTC likewise denied the ATO's motion for reconsideration on December 10, 1998, the ATO commenced a special civil action for *certiorari* in the CA to assail the RTC's orders. The CA dismissed the petition for *certiorari*, however, upon its finding that the assailed orders were not tainted with grave abuse of discretion.[3]

Subsequently, February 21, 2001, the RTC rendered its decision on the merits,[4] disposing:

> WHEREFORE, the judgment is rendered ORDERING the defendant Air Transportation Office to pay the plaintiffs DAVID and ELISEA RAMOS the following: (1) The amount of ₱778,150.00 being the value of the parcel of land appropriated by the defendant ATO as embodied in the Deed of Sale, plus an annual interest of 12% from August 11, 1995, the date of the Deed of Sale until fully paid; (2) The amount of ₱150,000.00 by way of moral damages and ₱150,000.00 as exemplary damages; (3) the amount of ₱50,000.00 by way of attorney's fees plus ₱15,000.00 representing the 10, more or less, court appearances of plaintiff's counsel; (4) The costs of this suit.
>
> SO ORDERED.

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[3] *Id.*

[4] *Id.*

In due course, the ATO appealed to the CA, which affirmed the RTC's decision on May 14, 2003,[5] *viz*:

> IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby AFFIRMED, with MODIFICATION that the awarded cost therein is deleted, while that of moral and exemplary damages is reduced to ₱30,000.00 each, and attorney's fees is lowered to ₱10,000.00.
>
> No cost.
>
> SO ORDERED.

Hence, this appeal by petition for review on *certiorari*.

**Issue**

The only issue presented for resolution is whether the ATO could be sued without the State's consent.

**Ruling**

The petition for review has no merit.

The immunity of the State from suit, known also as the doctrine of sovereign immunity or non-suability of the State, is expressly provided in Article XVI of the 1987 Constitution, *viz*:

> Section 3. The State may not be sued without its consent.

The immunity from suit is based on the political truism that the State, as a sovereign, can do no wrong. Moreover, as the eminent Justice Holmes said in *Kawananakoa v. Polyblank*:[6]

> The territory [of Hawaii], of course, could waive its exemption (*Smith v. Reeves*, 178 US 436, 44 L ed 1140, 20 Sup. Ct. Rep. 919), and it took no objection to the proceedings in the cases cited if it could have done so. xxx But in the case at bar it did object, and the question raised is whether the plaintiffs were bound to yield. Some doubts have been expressed as to the source of the immunity of a sovereign power from suit without its own permission, but the answer has been public property since before the days of Hobbes. *Leviathan*,

[5] *Id.*, pp. 25-35.

[6] 205 US 349, 353 (1907).

chap. 26, 2. **A sovereign is exempt from suit, not because of any formal conception or obsolete theory, but on the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends.** "*Car on peut bien recevoir loy d'autruy, mais il est impossible par nature de se donner loy.*" Bodin, *Republique*, 1, chap. 8, ed. 1629, p. 132; Sir John Eliot, *De Jure Maiestatis*, chap. 3. *Nemo suo statuto ligatur necessitative.* Baldus, *De Leg. et Const. Digna Vox*, 2. ed. 1496, fol. 51b, ed. 1539, fol. 61.[7]

Practical considerations dictate the establishment of an immunity from suit in favor of the State. Otherwise, and the State is suable at the instance of every other individual, government service may be severely obstructed and public safety endangered because of the number of suits that the State has to defend against.[8] Several justifications have been offered to support the adoption of the doctrine in the Philippines, but that offered in *Providence Washington Insurance Co. v. Republic of the Philippines*[9] is "the most acceptable explanation," according to Father Bernas, a recognized commentator on Constitutional Law,[10] to wit:

> [A] continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multifarious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well-known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.

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[7] Bold emphasis supplied.

[8] *Veterans Manpower and Protective Services, Inc. v. Court of Appeals*, G.R. No. 91359, Sept. 25, 1992, 214 SCRA 286, 294; *Republic v. Purisima*, No. L-36084, Aug. 31, 1977, 78 SCRA 470, 473.

[9] L-26386, Sept. 30, 1969, 29 SCRA 598, 601-602.

[10] Bernas, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, 2003 Edition, p. 1269.

An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated.[11] However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function;[12] it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.[13]

Should the doctrine of sovereignty immunity or non-suability of the State be extended to the ATO?

In its challenged decision,[14] the CA answered in the negative, holding:

> On the first assignment of error, appellants seek to impress upon Us that the subject contract of sale partook of a governmental character. *Apropos*, the lower court erred in applying the High Court's ruling in *National Airports Corporation vs. Teodoro* (*91 Phil. 203* [*1952*]), arguing that in *Teodoro*, the matter involved the collection of landing and parking fees which is a proprietary function, while the case at bar involves the maintenance and operation of aircraft and air navigational facilities and services which are governmental functions.
>
> We are not persuaded.
>
> Contrary to appellants' conclusions, it was not merely the collection of landing and parking fees which was declared as proprietary in nature by the High Court in *Teodoro*, but management and maintenance of airport operations as a whole, as well. Thus, in

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[11] *Metropolitan Transportation Service v. Paredes*, 79 Phil. 819 (1948).

[12] *E.g., Angat River Irrigation System, et. al. v. Angat River Worker's Union, et. al.*, 102 Phil. 789 (1957).

[13] *E.g., National Airports Corporation v. Teodoro, Sr. and Phil. Airlines Inc.*, 91 Phil. 203 (1952).

[14] *Rollo*, pp. 25-35.

the much later case of *Civil Aeronautics Administration vs. Court of Appeals (167 SCRA 28 [1988])*, the Supreme Court, reiterating the pronouncements laid down in *Teodoro*, declared that the CAA (predecessor of *ATO*) is an agency not immune from suit, it being engaged in functions pertaining to a private entity. It went on to explain in this wise:

xxx xxx xxx

> The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being the exclusive prerogative of state, may, more than the construction of public roads, be undertaken by private concerns. [*National Airports Corp. v. Teodoro*, *supra*, p. 207.]

xxx xxx xxx

> True, the law prevailing in 1952 when the *Teodoro* case was promulgated was Exec. Order 365 (Reorganizing the Civil Aeronautics Administration and Abolishing the National Airports Corporation). Republic Act No. 776 (Civil Aeronautics Act of the Philippines), subsequently enacted on June 20, 1952, did not alter the character of the CAA's objectives under Exec. Order 365. The pertinent provisions cited in the *Teodoro* case, particularly Secs. 3 and 4 of Exec. Order 365, which led the Court to consider the CAA in the category of a private entity were retained substantially in Republic Act 776, Sec. 32(24) and (25). Said Act provides:
>
> Sec. 32. *Powers and Duties of the Administrator*. – Subject to the general control and supervision of the Department Head, the Administrator shall have among others, the following powers and duties:
>
> xxx xxx xxx
>
> (24) *To administer, operate, manage, control, maintain and develop the Manila International Airport and all government-owned aerodromes* except those controlled or operated by the Armed Forces of the Philippines including

such powers and duties as: (a) to plan, design, construct, equip, expand, improve, repair or alter aerodromes or such structures, improvement or air navigation facilities; (b) to enter into, make and execute contracts of any kind with any person, firm, or public or private corporation or entity; …

(25) To determine, fix, impose, collect and receive landing fees, parking space fees, royalties on sales or deliveries, direct or indirect, to any aircraft for its use of aviation gasoline, oil and lubricants, spare parts, accessories and supplies, tools, other royalties, fees or rentals for the use of any of the property under its management and control.

xxx xxx xxx

From the foregoing, it can be seen that the CAA is tasked with private or non-governmental functions which operate to remove it from the purview of the rule on State immunity from suit. For the correct rule as set forth in the *Teodoro* case states:

xxx xxx xxx

Not all government entities, whether corporate or non-corporate, are immune from suits. *Immunity from suits is determined by the character of the objects for which the entity was organized.* The rule is thus stated in Corpus Juris:

> Suits against State agencies with relation to matters in which they have assumed to act in private or non-governmental capacity, and various suits against certain corporations created by the state for public purposes, but to engage in matters partaking more of the nature of ordinary business rather than functions of a governmental or political character, are not regarded as suits against the state. The latter is true, although the state may own stock or property of such a corporation for by engaging in business operations through a corporation, the state divests itself so far of its sovereign character, and by implication consents to suits against the corporation. (59 C.J., 313) [*National Airports Corporation v. Teodoro, supra,* pp. 206-207; Italics supplied.]

This doctrine has been reaffirmed in the recent case of *Malong v. Philippine National Railways* [G.R. No. L-49930, August 7, 1985, 138 SCRA 63], where it was held that the

> Philippine National Railways, although owned and operated by the government, was not immune from suit as it does not exercise sovereign but purely proprietary and business functions. Accordingly, as the CAA was created to undertake the management of airport operations which primarily involve proprietary functions, it cannot avail of the immunity from suit accorded to government agencies performing strictly governmental functions.[15]

In our view, the CA thereby correctly appreciated the juridical character of the ATO as an agency of the Government *not performing a purely governmental or sovereign function*, but was instead involved in the management and maintenance of the Loakan Airport, an activity that was not the exclusive prerogative of the State in its sovereign capacity. Hence, the ATO had no claim to the State's immunity from suit. We uphold the CA's aforequoted holding.

We further observe that the doctrine of sovereign immunity cannot be successfully invoked to defeat a valid claim for compensation arising from the taking without just compensation and without the proper expropriation proceedings being first resorted to of the plaintiffs' property.[16] Thus, in *De los Santos v. Intermediate Appellate Court*,[17] the trial court's dismissal based on the doctrine of non-suability of the State of two cases (one of which was for damages) filed by owners of property where a road 9 meters wide and 128.70 meters long occupying a total area of 1,165 square meters and an artificial creek 23.20 meters wide and 128.69 meters long occupying an area of 2,906 square meters had been constructed by the provincial engineer of Rizal and a private contractor without the owners' knowledge and consent was reversed and the cases remanded for trial on the merits. The Supreme Court ruled that the doctrine of sovereign

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[15] *Id.*, pp. 29-32.

[16] *Republic v. Sandiganbayan*, G.R. No. 90478, Nov. 2, 1991, 204 SCRA 212, 231; *Ministerio v. Court of First Instance of Cebu*, No. L-31635, Aug. 31, 1971, 40 SCRA 464; *Santiago v. Republic*, No. L-48214, Dec. 19, 1978, 87 SCRA 294.

[17] G.R. Nos. 71998-99, June 2, 1993, 223 SCRA 11.

immunity was not an instrument for perpetrating any injustice on a citizen. In exercising the right of eminent domain, the Court explained, the State exercised its *jus imperii*, as distinguished from its proprietary rights, or *jus gestionis*; yet, even in that area, where private property had been taken in expropriation without just compensation being paid, the defense of immunity from suit could not be set up by the State against an action for payment by the owners.

Lastly, the issue of whether or not the ATO could be sued without the State's consent has been rendered moot by the passage of Republic Act No. 9497, otherwise known as the *Civil Aviation Authority Act of 2008*.

R.A. No. 9497 abolished the ATO, to wit:

> Section 4. *Creation of the Authority*. – There is hereby created an independent regulatory body with quasi-judicial and quasi-legislative powers and possessing corporate attributes to be known as the Civil Aviation Authority of the Philippines (CAAP), herein after referred to as the "Authority" attached to the Department of Transportation and Communications (DOTC) for the purpose of policy coordination. **For this purpose, the existing Air Transportation Office created under the provisions of Republic Act No. 776, as amended is hereby abolished.**
>
> xxx xxx xxx

Under its Transitory Provisions, R.A. No. 9497 established in place of the ATO the Civil Aviation Authority of the Philippines (CAAP), which thereby assumed all of the ATO's powers, duties and rights, assets, real and personal properties, funds, and revenues, *viz*:

> CHAPTER XII
> TRANSITORTY PROVISIONS
>
> Section 85. *Abolition of the Air Transportation Office*. – The Air Transportation Office (ATO) created under Republic Act No. 776, a sectoral office of the Department of Transportation and Communications (DOTC), is hereby abolished.
>
> **All powers, duties and rights** vested by law and exercised **by the ATO is** hereby **transferred to the Authority**.

**All assets, real and personal properties, funds and** revenues owned by or vested in the different offices of the **ATO are transferred to the Authority. All contracts, records and documents relating to the operations of the abolished agency** and its offices and branches are likewise **transferred to the Authority. Any real property owned by the national government or government-owned corporation or authority** which is **being used and utilized** as office or facility **by the ATO** shall be **transferred and titled in favor of the Authority.**

Section 23 of R.A. No. 9497 enumerates the corporate powers vested in the CAAP, including the power to sue and be sued, to enter into contracts of every class, kind and description, to construct, acquire, own, hold, operate, maintain, administer and lease personal and real properties, and to settle, under such terms and conditions most advantageous to it, any claim by or against it.[18]

With the CAAP having legally succeeded the ATO pursuant to R.A. No. 9497, the obligations that the ATO had incurred by virtue of the deed of sale with the Ramos spouses might now be enforced against the CAAP.

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[18] Section 23. *Corporate Powers*. – **The Authority, acting through the Board, shall have the following corporate powers:**

(a) To succeed in its corporate name, **to sue and be sued** in such corporate name xxx.

xxx xxx xxx

(c) **To enter into, make, perform and carry out contracts of every class, kind and description,** which are necessary or incidental to the realization of its purposes, with any person, domestic or foreign private firm, or corporation, local or national government office, agency and with international institutions or foreign government;

xxx xxx xxx

(e) To construct, **acquire, own**, hold, operate, maintain, administer and lease personal and **real properties**, including buildings, machinery, equipment, other infrastructure, agricultural land, and its improvements, property rights, and interest therein x x x

xxx xxx xxx

(i) **To settle, under such terms and conditions most advantageous to it, any claim by or against it;**

xxx xxx xxx

**WHEREFORE,** the Court denies the petition for review on *certiorari,* and affirms the decision promulgated by the Court of Appeals.

No pronouncement on costs of suit.

**SO ORDERED.**

*Brion,*[**] *Abad,*[***] *Villarama, Jr.,* and *Sereno JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 161282. February 23, 2011]

**FGU INSURANCE CORPORATION (Now BPI/MS INSURANCE CORPORATION),** *petitioner, vs.* **REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66, and G.P. SARMIENTO TRUCKING CORPORATION,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF FINALITY OR IMMUTABILITY OF JUDGMENT; EXPLAINED; EXCEPTIONS TO THE DOCTRINE .—** Indeed, a writ of *mandamus* lies to compel a judge to issue a writ of execution when the judgment had already become final and executory and the prevailing party is entitled to the same as a matter of right. Fundamental is the rule that where the judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is

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[**] Acting Chairperson in lieu of Justice Conchita Carpio Morales who is on leave per Special Order No. 925 dated January 24, 2011.

[***] Additional member per Special Order No. 926 dated January 24, 2011.

the ministerial act of carrying out the decision and issuing the writ of execution. In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty. The lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution; much less may it review the same upon any matter decided on appeal or error apparent; nor intermeddle with it further than to settle so much as has been demanded. Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice.

**2. ID.; ID.; ID.; THE COURT IS NOT PRECLUDED FROM RECTIFYING ERRORS OF JUDGMENT IF BLIND AND STUBBORN ADHERENCE THERETO WOULD INVOLVE THE SACRIFICE OF JUSTICE FOR TECHNICALITY.—** [T]he Court agrees with the RTC that there is indeed a need to find out the whereabouts of the subject refrigerators. For this purpose, a hearing is necessary to determine the issue of whether or not there was an actual turnover of the subject refrigerators to FGU by the assured CII. If there was an actual turnover, it is very important to find out whether FGU sold the subject refrigerators to third parties and profited from such sale. xxx. If, indeed, there was an actual delivery of the refrigerators and FGU profited from the sale after the delivery, there would be an unjust enrichment if the realized profit would not be deducted from the judgment amount. "The Court is not precluded from rectifying errors of judgment if blind and stubborn

adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality."

**APPEARANCES OF COUNSEL**

*Dollete Blanco Ejercito and Associates* for petitioner.
*Willard S. Wong* for private respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a petition for *mandamus* praying that the July 1, 2003 and November 3, 2003 orders [1] of the Regional Trial Court Branch 66, Makati City (*RTC*), which granted the Motion To Set Case For Hearing filed by private respondent G.P. Sarmiento Trucking Corporation *(GPS)*, be set aside and, in lieu thereof, "a decision be rendered ordering the lower court to issue the Writ of Execution in Civil Case No. 94-3009 in consonance with the decision of this venerable court dated August 6, 2002."[2]

Records show that on June 18, 1994, GPS agreed to transport thirty (30) units of Condura S.D. white refrigerators in one of its Isuzu trucks, driven by Lambert Eroles *(Eroles)*, from the plant site of Concepcion Industries, Inc. *(CII)* in Alabang, to the Central Luzon Appliances in Dagupan City. On its way to its destination, however, the Isuzu truck collided with another truck resulting in the damage of said appliances.

FGU Insurance Corporation *(FGU)*, the insurer of the damaged refrigerators, paid CII, the insured, the value of the covered shipment in the sum of ₱204,450.00. FGU, in turn, as subrogee of the insured's rights and interests, sought reimbursement of the amount it paid from GPS.

The failure of the GPS to heed FGU's claim for reimbursement, led the latter to file a complaint for damages and breach of

[1] *Rollo*, pp. 34-35.

[2] *Id*. at 23.

contract of carriage against the former and its driver, Eroles, with the RTC. During the hearing of the case, FGU presented evidence establishing its claim against GPS. For its part, GPS filed a motion to dismiss by way of demurrer to evidence, which was granted by the RTC.

The RTC ruled, among others, that FGU failed to adduce evidence that GPS was a common carrier and that its driver was negligent, thus, GPS could not be made liable for the damages of the subject cargoes. On appeal, the Court of Appeals *(CA)* affirmed the ruling of the RTC. The case was then elevated to this Court. On August 6, 2002, the Court rendered a decision[3] agreeing with the lower courts that GPS was not a common carrier but nevertheless held it liable under the doctrine of *culpa contractual*. Thus, the dispositive portion of the Court's decision reads as follows:

> WHEREFORE, the order, dated 30 April 1996, of the Regional Trial Court, Branch 66, of Makati City, and the decision, dated 10 June 1999, of the Court of Appeals, are AFFIRMED only insofar as respondent Lambert M. Eroles is concerned, but said assailed order of the trial court and decision of the appellate court are REVERSED as regards G.P. Sarmiento Trucking Corporation which, instead, is hereby ordered to pay FGU Corporation the value of the damaged and lost cargoes in the amount of ₱204,450.00. No costs.
>
> SO ORDERED.

On September 18, 2002, this Court denied GPS' motion for reconsideration with finality.[4] In due course, an entry of judgment[5] was issued certifying that the August 6, 2002 decision of this Court became final and executory on October 3, 2002.

On October 14, 2002, FGU filed a motion for execution[6] with the RTC praying that a writ of execution be issued to

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[3] *Id*. at 37-47.

[4] *Id*. at 48.

[5] *Id*. at 49.

[6] *Id*. at 51-53.

enforce the August 6, 2002 judgment award of this Court in the amount of ₱204,450.00.

On November 5, 2002, GPS filed its Opposition to Motion for Execution[7] praying that FGU's motion for execution be denied on the ground that the latter's claim was unlawful, illegal, against public policy and good morals, and constituted unjust enrichment. GPS alleged that it discovered, upon verification from the insured, that after the insured's claim was compensated in full, the insured transferred the ownership of the subject appliances to FGU. In turn, FGU sold the same to third parties thereby receiving and appropriating the consideration and proceeds of the sale. GPS believed that FGU should not be allowed to "doubly recover" the losses it suffered.

Thereafter, on January 13, 2003, GPS filed its Comment with Motion to Set Case for Hearing on the Merits.[8]

On July 1, 2003, the RTC issued an order granting GPS motion to set case for hearing. Its order, in its pertinent parts, reads:

xxx xxx xxx.

The defendant, however, contends that it has already turned over to the consignee the 30 refrigerator units subject[s] of the case. It also appears from the record that the Accounting/Administrative Manager of Concepcion Industries has executed a *certification* to the effect that the assured company has turned over the refrigerator units in question to plaintiff.

In view of the foregoing and considering that plaintiff may not be allowed to recover more than what it is entitled to, there is a need for the parties to clarify the following issues to allow a fair and judicious resolution of plaintiff's motion for issuance of a writ of execution:

1) Was there an actual turn-over of 30 refrigerators to the plaintiff?

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[7] *Id*. at 54-56.

[8] *Id*. at 57-60.

2) In the affirmative, what is the salvage value of the 30 refrigerators?

WHEREFORE, the Court hereby orders both parties to present evidence in support of their respective positions on these issues.

SO ORDERED.[9] [Italicization in the original]

Upon denial of its motion for reconsideration, FGU filed this petition for *mandamus* directly with this Court on the following

**GROUNDS**

**THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS DUTY WHEN IT RE-OPENED A CASE, THE DECISION OF WHICH HAD ALREADY ATTAINED FINALITY.**

**THE REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 66 UNLAWFULLY NEGLECTED THE PERFORMANCE OF ITS MINISTERIAL DUTY WHEN IT DENIED THE ISSUANCE OF A WRIT OF EXECUTION.**

In advocacy of its position, FGU argues that the decision is already final and executory and, accordingly, a writ of execution should issue. The lower court should not be allowed to hear the matter of turnover of the refrigerators to FGU because it was not an issue raised in the Answer of GPS. Neither was it argued by GPS in the CA and in this Court. It was only brought out after the decision became final and executory.

Indeed, a writ of *mandamus* lies to compel a judge to issue a writ of execution when the judgment had already become final and executory and the prevailing party is entitled to the same as a matter of right.[10]

Fundamental is the rule that where the judgment of a higher court has become final and executory and has been returned to the lower court, the only function of the latter is the ministerial

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[9] *Id*. at 35.

[10] *Gatmaytan v. Court of Appeals*, G.R. No. 132856, August 28, 2006; and *Gonzales v. Hon. Sayo*, G.R. No. 58407, May 30, 1983.

act of carrying out the decision and issuing the writ of execution.[11] In addition, a final and executory judgment can no longer be amended by adding thereto a relief not originally included. In short, once a judgment becomes final, the winning party is entitled to a writ of execution and the issuance thereof becomes a court's ministerial duty. The lower court cannot vary the mandate of the superior court or reexamine it for any other purpose other than execution; much less may it review the same upon any matter decided on appeal or error apparent; nor intermeddle with it further than to settle so much as has been demanded.[12]

Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.

But like any other rule, it has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[13] The exception to the doctrine of immutability of judgment has been applied in several cases in order to serve substantial justice. The early case of *City of Butuan vs. Ortiz*[14] is one where the Court held as follows:

> Obviously a prevailing party in a civil action is entitled to a writ of execution of the final judgment obtained by him within five years from its entry (Section 443, Code of Civil Procedure). But it has been repeatedly held, and it is now well-settled in this jurisdiction, that when after judgment has been rendered and the latter has become

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[11] *Ruben Sia v. Erlinda Villanueva*, G.R. No. 152921, October 9, 2006, 504 SCRA 43.

[12] *Tropical Homes v. Fortun*, 251 Phil. 83 (1989).

[13] *Villa v. GSIS*, G.R. No. 174642, October 31, 2009.

[14] 113 Phil. 636 (1961).

final, facts and circumstances transpire which render its execution impossible or unjust, the interested party may ask the court to modify or alter the judgment to harmonize the same with justice and the facts (*Molina vs. De la Riva*, 8 Phil. 569; *Behn, Meyer & Co. vs. McMicking*, 11 Phil. 276; *Warner, Barnes & Co. vs. Jaucian*, 13 Phil. 4; *Espiritu vs. Crossfield and Guash*, 14 Phil. 588; *Flor Mata vs. Lichauco and Salinas*, 36 Phil. 809). In the instant case the respondent Cleofas alleged that subsequent to the judgment obtained by Sto. Domingo, they entered into an agreement which showed that he was no longer indebted in the amount claimed of ₱995, but in a lesser amount. Sto. Domingo had no right to an execution for the amount claimed by him. (*De la Costa vs. Cleofas*, 67 Phil. 686-693).

Shortly after *City of Butuan v. Ortiz,* the case of *Candelario v. Cañizares*[15] was promulgated, where it was written that:

> After a judgment has become final, if there is evidence of an event or circumstance which would affect or change the rights of the parties thereto, the court should be allowed to admit evidence of such new facts and circumstances, and thereafter suspend execution thereof and grant relief as the new facts and circumstances warrant. We, therefore, find that the ruling of the court declaring that the order for the payment of ₱40,000.00 is final and may not be reversed, is erroneous as above explained.

These rulings were reiterated in the cases of *Abellana vs. Dosdos*,[16] *The City of Cebu vs. Mendoza*[17] and *PCI Leasing and Finance, Inc. v Antonio Milan*.[18] In these cases, there were compelling circumstances which clearly warranted the exercise of the Court's equity jurisdiction.

In the case at bench, the Court agrees with the RTC that there is indeed a need to find out the whereabouts of the subject refrigerators. For this purpose, a hearing is necessary to determine the issue of whether or not there was an actual turnover of the

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[15] 114 Phil. 672 (1962).

[16] 121 Phil. 241 (1965).

[17] 160 Phil. 869 (1975).

[18] G.R. No. 151215, April 5, 2010.

subject refrigerators to FGU by the assured CII. If there was an actual turnover, it is very important to find out whether FGU sold the subject refrigerators to third parties and profited from such sale. These questions were brought about by the contention of GPS in its *Opposition to Motion for Execution*[19] that after the assured, CII, was fully compensated for its claim on the damaged refrigerators, it delivered the possession of the subject refrigerators to FGU as shown in the certification of the Accounting/Administrative Manager of CII. Thereafter, the subject refrigerators were sold by FGU to third parties and FGU received and appropriated the consideration and proceeds of the sale. GPS claims that it verified the whereabouts of the subject refrigerators from the CII because it wanted to repair and sell them to compensate FGU.

If, indeed, there was an actual delivery of the refrigerators and FGU profited from the sale after the delivery, there would be an unjust enrichment if the realized profit would not be deducted from the judgment amount. "The Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability of final judgments would involve the sacrifice of justice for technicality."[20]

**WHEREFORE,** the petition is *DISMISSED*.

**SO ORDERED.**

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

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[19] *Rollo,* pp. 54-56.

[20] *Heirs of Maura So, et al. v. Lucila Jomoc Obliosca, et al.,* G.R. No. 147082, January 28, 2008.

**THIRD DIVISION**

[G.R. No. 165617. February 23, 2011]

**SUPREME TRANSLINER, INC., MOISES C. ALVAREZ and PAULITA S. ALVAREZ,** *petitioners, vs.* **BPI FAMILY SAVINGS BANK, INC.,** *respondent.*

[G.R. No. 165837. February 23, 2011]

**BPI FAMILY SAVINGS BANK, INC.,** *petitioner, vs.* **SUPREME TRANSLINER, INC., MOISES C. ALVAREZ and PAULITA S. ALVAREZ,** *respondents.*

**SYLLABUS**

**1. TAXATION; CAPITAL GAINS TAX AND DOCUMENTARY STAMP TAX; MUST BE PAID BEFORE TITLE TO THE FORECLOSED PROPERTY CAN BE CONSOLIDATED IN FAVOR OF THE MORTGAGEE BANK.—** [W]e find merit in petitioners-mortgagors' argument that there is no legal basis for the inclusion of [Capital gains tax] charge in the redemption price. Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under Section 34(a) of the Tax Code shall be subject to the final capital gains tax. The term sale includes *pacto de retro* and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86 (as amended by RMO No. 16-88 and as further amended by RMO Nos. 27-89 and 6-92) states that these conditional sales "necessarily include mortgage foreclosure sales (judicial and extrajudicial foreclosure sales)." Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank.

**2. CIVIL LAW; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (P.D. NO. 1529); IN FORECLOSURE SALE, THERE IS NO ACTUAL TRANSFER OF THE MORTGAGED REAL PROPERTY UNTIL AFTER THE EXPIRATION OF THE REDEMPTION**

**PERIOD AND TITLE THERETO IS CONSOLIDATED IN THE MORTGAGEE'S NAME IN CASE OF NON-REDEMPTION; THE ISSUANCE OF CERTIFICATE OF SALE DOES NOT BY ITSELF TRANSFER OWNERSHIP.—** Under Section 63 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title. It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership.

**3. TAXATION; CAPITAL GAINS TAX; REVENUE REGULATION NO. 4-99; APPLIED RETROACTIVELY TO THE CASE AT BAR; MORTGAGEE-BANK IS NOT LIABLE TO PAY THE CAPITAL GAINS TAX DUE ON THE EXTRAJUDICIAL FORECLOSURE SALE WHERE THE MORTGAGORS EXERCISED THEIR RIGHT OF REDEMPTION BEFORE THE EXPIRATION OF THE REDEMPTION PERIOD; INCLUSION OF THE CAPITAL GAINS TAX ON THE REDEMPTION PRICE, UNWARRANTED.—** RR No. 4-99 issued on March 16, 1999, further amends RMO No. 6-92 relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies. xxx. Although the subject foreclosure sale and redemption took place before the effectivity of RR No. 4-99, its provisions may be given retroactive effect in this case. xxx. [T]he retroactive application of RR No. 4-99 is more consistent with the policy of aiding the exercise of the right of redemption. As the Court

of Tax Appeals concluded in one case, RR No. 4-99 "has curbed the inequity of imposing a capital gains tax even before the expiration of the redemption period [since] there is yet no transfer of title and no profit or gain is realized by the mortgagor at the time of foreclosure sale but only upon expiration of the redemption period." In his commentaries, De Leon expressed the view that while revenue regulations as a general rule have no retroactive effect, if the revocation is due to the fact that the regulation is erroneous or contrary to law, such revocation shall have retroactive operation as to affect past transactions, because a wrong construction of the law cannot give rise to a vested right that can be invoked by a taxpayer. Considering that herein petitioners-mortgagors exercised their right of redemption before the expiration of the statutory one-year period, petitioner bank is not liable to pay the capital gains tax due on the extrajudicial foreclosure sale. There was no actual transfer of title from the owners-mortgagors to the foreclosing bank. Hence, the inclusion of the said charge in the total redemption price was unwarranted and the corresponding amount paid by the petitioners-mortgagors should be returned to them.

**APPEARANCES OF COUNSEL**

*Natalio T. Paril, Jr.* for Supreme Transliner, Inc., *et al.*

*Rodolfo G. Palattao and Associates* as collaborating counsel for Supreme Transliner, Inc.

*Felipe Atienza De Lumen Coloma Lopez Tria & Associates* for BPI Family Savings Bank.

**D E C I S I O N**

**VILLARAMA, JR., *J.*:**

This case involves the question of the correct redemption price payable to a mortgagee bank as purchaser of the property in a foreclosure sale.

On April 24, 1995, Supreme Transliner, Inc. represented by its Managing Director, Moises C. Alvarez, and Paulita S. Alvarez, obtained a loan in the amount of ₱9,853,000.00 from BPI Family

Savings Bank with a 714-square meter lot covered by Transfer Certificate of Title No. T-79193 in the name of Moises C. Alvarez and Paulita S. Alvarez, as collateral.[1]

For non-payment of the loan, the mortgage was extrajudicially foreclosed and the property was sold to the bank as the highest bidder in the public auction conducted by the Office of the Provincial Sheriff of Lucena City. On August 7, 1996, a Certificate of Sale[2] was issued in favor of the bank and the same was registered on October 1, 1996.

Before the expiration of the one-year redemption period, the mortgagors notified the bank of their intention to redeem the property. Accordingly, the following Statement of Account[3] was prepared by the bank indicating the total amount due under the mortgage loan agreement:

| | | | |
|---|---|---|---|
| xxx | xxx | xxx | |
| Balance of Principal | | | ₱ 9,551,827.64 |
| Add: Interest Due | | | 1,417,761.24 |
| Late Payment Charges | | | 155,546.25 |
| MRI | | | 0.00 |
| Fire Insurance | | | 0.00 |
| Foreclosure Expenses | | | 155,817.23 |
| Sub-total | | | ₱ 11,280,952.36 |
| Less: Unapplied Payment | | | 908,241.01 |
| Total Amount Due As Of 08/07/96 (Auction Date) | | | 10,372,711.35 |
| Add: Attorney's Fees (15%) | | | 1,555,906.70 |
| Liquidated Damages (15%) | | | 1,555,906.70 |
| Interest on ₱ 10,372,711.35 from 08/07/96 to 04/07/97 (243 days) at 17.25% p.a. | | | 1,207,772.58 |
| xxx | xxx | xxx | |

[1] Records, pp. 48-52.

[2] *Id.* at 9.

[3] *Id.* at 14.

| | | |
|---|---|---|
| Asset Acquired Expenses: | | |
| Documentary Stamps | 155,595.00 | |
| Capital Gains Tax | 518,635.57 | |
| Foreclosure Fee | 207,534.23 | |
| Registration and Filing Fee | 23,718.00 | |
| Add'l. Registration & Filing Fee | 660.00 | 906,142.79 |
| Interest on ₱ 906,142.79 from 08/07/96 to 04/07/97 (243 days) at 17.25% p.a. | | 105,509.00 |
| Cancellation Fee | | 300.00 |
| Total Amount Due As Of 04/07/97 (Subject to Audit) | | **₱ 15,704,249.12** |

xxx xxx xxx

The mortgagors requested for the elimination of liquidated damages and reduction of attorney's fees and interest (1% per month) but the bank refused. On May 21, 1997, the mortgagors redeemed the property by paying the sum of ₱15,704,249.12. A Certificate of Redemption[4] was issued by the bank on May 27, 1997.

On June 11, 1997, the mortgagors filed a complaint against the bank to recover the allegedly unlawful and excessive charges totaling ₱5,331,237.77, with prayer for damages and attorney's fees, docketed as Civil Case No. 97-72 of the Regional Trial Court of Lucena City, Branch 57.

In its Answer with Special and Affirmative Defenses and Counterclaim, the bank asserted that the redemption price reflecting the stipulated interest, charges and/or expenses, is valid, legal and in accordance with documents duly signed by the mortgagors. The bank further contended that the claims are deemed waived and the mortgagors are already estopped from questioning the terms and conditions of their contract.

On September 30, 1997, the bank filed a motion to set the case for hearing on the special and affirmative defenses by way

[4] *Id.* at 18.

of motion to dismiss. The trial court denied the motion on January 8, 1998 and also denied the bank's motion for reconsideration. The bank elevated the matter to the Court of Appeals (CA-G.R. SP No. 47588) which dismissed the petition for *certiorari* on February 26, 1999.

On February 14, 2002, the trial court rendered its decision[5] dismissing the complaint and the bank's counterclaims. The trial court held that plaintiffs-mortgagors are bound by the terms of the mortgage loan documents which clearly provided for the payment of the following interest, charges and expenses: 18% p.a. on the loan, 3% post-default penalty, 15% liquidated damages, 15% attorney's fees and collection and legal costs. Plaintiffs-mortgagors' claim that they paid the redemption price demanded by the defendant bank under extreme pressure was rejected by the trial court since there was active negotiation for the final redemption price between the bank's representatives and plaintiffs-mortgagors who at the time had legal advice from their counsel, together with Orient Development Banking Corporation which committed to finance the redemption.

According to the trial court, plaintiffs-mortgagors are estopped from questioning the correctness of the redemption price as they had freely and voluntarily signed the letter-agreement prepared by the defendant bank, and along with Orient Bank expressed their conformity to the terms and conditions therein, thus:

May 14, 1997

ORIENT DEVELOPMENT BANKING CORPORATION
7th Floor Ever Gotesco Corporate Center
C.M. Recto Avenue corner Matapang Street
Manila

Attention: MS. AIDA C. DELA ROSA
Senior Vice-President

Gentlemen:

This refers to your undertaking to settle the account of SUPREME TRANS LINER, INC. and spouses MOISES C. ALVAREZ and

[5] *Id*. at 393-401. Penned by Judge Rafael R. Lagos.

PAULITA S. ALVAREZ, covering the real estate property located in the Poblacion, City of Lucena under TCT No. T-79193 which was foreclosed by BPI FAMILY SAVINGS BANK, INC.

With regard to the proposed refinancing of the account, we interpose no objection to the annotation of your mortgage lien thereon subject to the following conditions:

1. That all expenses for the registration of the annotation of mortgage and other incidental registration and cancellation expenses shall be borne by the borrower.

2. That you will recognize our mortgage liens as first and superior until the loan with us is fully paid.

3. That you will annotate your mortgage lien and pay us the full amount to close the loan within five (5) working days from the receipt of the titles. If within this period, you have not registered the same and paid us in full, you will immediately and unconditionally return the titles to us without need of demand, free from liens/encumbrances other than our lien.

4. That in case of loss of titles, you will undertake and shoulder the cost of re-issuance of a new owner's titles.

5. That we will issue the Certificate of Redemption **after full payment of ₱15,704,249.12. representing the outstanding balance of the loan as of May 15, 1997 including interest and other charges thereof** within a period of five (5) working days after clearance of the check payment.

6. That we will release the title and the Certificate of Redemption and other pertinent papers only to your authorized representative with complete authorization and identification.

7. That all expenses related to the cancellation of your annotated mortgage lien should the Bank be not fully paid on the period above indicated shall be charged to you.

If you find the foregoing conditions acceptable, please indicate your conformity on the space provided below and return to us the duplicate copy.

Very truly yours,

BPI FAMILY BANK

BY:

(SGD.) LOLITA C. CARRIDO
Manager

C O N F O R M E :

ORIENT DEVELOPMENT BANKING CORPORATION

(SGD.) AIDA C. DELA ROSA
Senior Vice President

C O N F O R M E :

SUPREME TRANS LINER, INC.

(SGD.) MOISES C. ALVAREZ/PAULITA S. ALVAREZ
Mortgagors[6]

(Underscoring in the original; emphasis supplied.)

As to plaintiffs-mortgagors' contention that the amounts representing attorney's fees and liquidated damages were already included in the ₱10,372,711.35 bid price, the trial court said this was belied by their own evidence, the Statement of Account showing the breakdown of the redemption price as computed by the defendant bank.

The mortgagors appealed to the CA (CA-G.R. CV No. 74761) which, by Decision[7] dated April 6, 2004 reversed the trial court and decreed as follows:

WHEREFORE, foregoing considered, the appealed decision is hereby REVERSED and SET ASIDE. A new one is hereby entered as follows:

1. Plaintiffs-appellants' complaint for damages against defendant-appellee is hereby REINSTATED;

2. Defendant-appellee is hereby ORDERED to return to plaintiffs-appellees *(sic)* the invalidly collected amount of

[6] *Id*. at 46-47.

[7] *Rollo* (G.R. No. 165617), pp. 23-36. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Mercedes Gozo-Dadole and Rosmari D. Carandang.

₱3,111,813.40 plus six (6) percent legal interest from May 21, 1997 until fully returned;

3. Defendant-appellee is hereby ORDERED to pay plaintiffs-appellees *(sic)* the amount of ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages and ₱100,000.00 as attorney's fees;

4. Costs against defendant-appellee.

SO ORDERED.[8]

The CA ruled that attorney's fees and liquidated damages were already included in the bid price of ₱10,372,711.35 as per the recitals in the Certificate of Sale that said amount was paid to the foreclosing mortgagee to satisfy not only the principal loan but also "interest and penalty charges, cost of publication and expenses of the foreclosure proceedings." These "penalty charges" consist of 15% attorney's fees and 15% liquidated damages which the bank imposes as penalty in cases of violation of the terms of the mortgage deed. The total redemption price thus should only be ₱12,592,435.72 and the bank should return the amount of ₱3,111,813.40 representing attorney's fees and liquidated damages. The appellate court further stated that the mortgagors cannot be deemed estopped to question the propriety of the charges because from the very start they had repeatedly questioned the imposition of attorney's fees and liquidated damages and were merely constrained to pay the demanded redemption price for fear that the redemption period will expire without them redeeming their property.[9]

By Resolution[10] dated October 12, 2004, the CA denied the parties' respective motions for reconsideration.

Hence, these petitions separately filed by the mortgagors and the bank.

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[8] *Id.* at 36.

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

[10] *Id.* at 41-42. Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Edgardo P. Cruz and Rosmari D. Carandang.

In G.R. No. 165617, the petitioners-mortgagors raise the single issue of whether the foreclosing mortgagee should pay capital gains tax upon execution of the certificate of sale, and if paid by the mortgagee, whether the same should be shouldered by the redemptioner. They specifically prayed for the return of all asset-acquired expenses consisting of documentary stamps tax, capital gains tax, foreclosure fee, registration and filing fee, and additional registration and filing fee totaling ₱906,142.79, with 6% interest thereon from May 21, 1997.[11]

On the other hand, the petitioner bank in G.R. No. 165837 assails the CA in holding that —

1. … the Certificate of Sale, the bid price of ₱10,372,711.35 includes penalty charges and as such for purposes of computing the redemption price petitioner can no longer impose upon the private respondents the penalty charges in the form of 15% attorney's fees and the 15% liquidated damages in the aggregate amount of ₱3,111,813.40, although the evidence presented by the parties show otherwise.

2. … private respondents cannot be considered to be under estoppel to question the propriety of the aforestated penalty charges despite the fact that, as found by the Honorable Trial Court, "there was very active negotiation between the parties in the computation of the redemption price" culminating into the signing freely and voluntarily by the petitioner, the private respondents and Orient Bank, which financed the redemption of the foreclosed property, of Exhibit "3", wherein they mutually agreed that the redemption price is in the sum of ₱15,704,249.12.

3. … petitioner [to] pay private respondents damages in the aggregate amount of ₱300,000.00 on the ground that the former acted in bad faith in the imposition upon them of the aforestated penalty charges, when in truth it is entitled thereto as the law and the contract expressly provide and that private respondents agreed to pay the same.[12]

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[11] *Id*. at 11, 15 and 18.

[12] *Rollo* (G.R. No. 165837), pp. 13-14.

On the correct computation of the redemption price, Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, governs in cases where the mortgagee is a bank.[13] Said provision reads:

> 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, or **the amount due under the mortgage deed, as the case may be, with interest thereon at the rate specified in the mortgage, and all the costs, and judicial and other 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**. x x x (Emphasis supplied.)

Under the Mortgage Loan Agreement,[14] petitioners-mortgagors undertook to pay the attorney's fees and the costs of registration and foreclosure. The following contract terms would show that the said items are separate and distinct from the bid price which represents only the outstanding loan balance with stipulated interest thereon.

> 23. **Application of Proceeds of Foreclosure Sale**. The proceeds of sale of the mortgaged property/ies shall be applied as follows:
>
> a) To the payment of the expenses and cost of foreclosure and sale, including the attorney's fees as herein provided;

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[13] *Tecklo v. Rural Bank of Pamplona, Inc.*, G.R. No. 171201, June 18, 2010, 621 SCRA 262, 273, citing *Heirs of Norberto J. Quisumbing v. Philippine National Bank*, G.R. No. 178242, January 20, 2009, 576 SCRA 762, 772; *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 134068, June 25, 2001, 359 SCRA 480, 490, citing *Ponce de Leon v. Rehabilitation Finance Corporation*, No. L-24571, December 18, 1970, 36 SCRA 289 and *Sy v. Court of Appeals*, G.R. No. 83139, April 12, 1989, 172 SCRA 125.

[14] Records, pp. 48-51.

b) To the satisfaction of all interest and charges accruing upon the obligations herein and hereby secured.

c) To the satisfaction of the principal amount of the obligations herein and hereby secured.

d) To the satisfaction of all other obligations then owed by the Borrower/Mortgagor to the Bank or any of its subsidiaries/affiliates such as, but not limited to BPI Credit Corporation; or to Bank of the Philippine Islands or any of its subsidiaries/affiliates such as, but not limited to BPI Leasing Corporation, BPI Express Card Corporation, BPI Securities Corporation and BPI Agricultural Development Bank; and

e) The balance, if any, to be due to the Borrower/Mortgagor.

xxx xxx xxx

31. **Attorney's Fees:** In case the Bank should engage the services of counsel to enforce its rights under this Agreement, the Borrower/Mortgagor shall pay an amount equivalent to fifteen (15%) percent of the total amount claimed by the Bank, which in no case shall be less than ₱2,000.00, Philippine currency, plus costs, collection expenses and disbursements allowed by law, all of which shall be secured by this mortgage.[15]

Additionally, the Disclosure Statement on Loan/Credit Transaction[16] also duly signed by the petitioners-mortgagors provides:

10. ADDITIONAL CHARGES IN CASE CERTAIN STIPULATIONS ARE NOT MET BY THE BORROWER

| | |
|---|---|
| a. Post Default Penalty | 3.00% per month |
| b. Attorney's Services | 15% of sum due but not less than ₱2,000.00 |
| c. Liquidated Damages | 15% of sum due but not less than ₱10,000.00 |
| d. Collection & Legal Cost | As provided by the Rules of Court |
| e. Others (Specify) | |

[15] *Id.* at 50.

[16] *Id.* at 45.

As correctly found by the trial court, that attorney's fees and liquidated damages were not yet included in the bid price of ₱10,372,711.35 is clearly shown by the Statement of Account as of April 4, 1997 prepared by the petitioner bank and given to petitioners-mortgagors. On the other hand, par. 23 of the Mortgage Loan Agreement indicated that asset acquired expenses were to be added to the redemption price as part of "costs and other expenses incurred" by the mortgagee bank in connection with the foreclosure sale.

Coming now to the issue of capital gains tax, we find merit in petitioners-mortgagors' argument that there is no legal basis for the inclusion of this charge in the redemption price. Under Revenue Regulations (RR) No. 13-85 (December 12, 1985), every sale or exchange or other disposition of real property classified as capital asset under Section 34(a)[17] of the Tax Code shall be subject to the final capital gains tax. The term sale includes *pacto de retro* and other forms of conditional sale. Section 2.2 of Revenue Memorandum Order (RMO) No. 29-86 (as amended by RMO No. 16-88 and as further amended by RMO Nos. 27-89 and 6-92) states that these conditional sales "necessarily include mortgage foreclosure sales (judicial and extrajudicial foreclosure sales)." Further, for real property foreclosed by a bank on or after September 3, 1986, the capital gains tax and documentary stamp tax must be paid before title to the property can be consolidated in favor of the bank.[18]

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[17] Now Sec. 39(A) of the National Internal Revenue Code of 1997.

SEC. 39. **Capital Gains and Losses**. –

(A) *Definitions*. – As used in this Title –

(1) *Capital Assets.* – The term "*capital assets*" means property held by the taxpayer (whether or not connected with his trade or business), but does not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or property used in the trade or business, of a character which is subject to the allowance for depreciation provided in Subsection (F) of Section 34; or real property used in trade or business of the taxpayer.

[18] De Leon and De Leon, Jr., *THE NATIONAL INTERNAL REVENUE CODE ANNOTATED*, 2003 Ed., Vol. 1, pp. 130-131, citing BIR Ruling No. 134, July 12, 1990.

Under Section 63 of Presidential Decree No. 1529 otherwise known as the Property Registration Decree, if no right of redemption exists, the certificate of title of the mortgagor shall be cancelled, and a new certificate issued in the name of the purchaser. But where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title.

It is therefore clear that in foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. The issuance of the Certificate of Sale does not by itself transfer ownership.[19]

RR No. 4-99 issued on March 16, 1999, further amends RMO No. 6-92 relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies.

SEC. 3. **CAPITAL GAINS TAX.** –

(1) **In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed** because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. x x x

(2) In case of non-redemption, the capital gains [tax] on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but only upon the expiration of the one-year period

[19] BIR Ruling [DA-062-06] February 28, 2006.

of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period.

SEC. 4. **DOCUMENTARY STAMP TAX.** –

(1) In case the mortgagor exercises his right of redemption, the transaction **shall only be subject to the ₱15.00 documentary stamp tax** imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) In case of non-redemption, the corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines. x x x (Emphasis supplied.)

Although the subject foreclosure sale and redemption took place before the effectivity of RR No. 4-99, its provisions may be given retroactive effect in this case.

Section 246 of the NIRC of 1997 states:

SEC. 246. **Non-Retroactivity of Rulings.** – Any revocation, modification, or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application **if the revocation, modification, or reversal will be prejudicial to the taxpayers**, except in the following cases:

(a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue;

(b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or

(c) where the taxpayer acted in bad faith.

In this case, the retroactive application of RR No. 4-99 is more consistent with the policy of aiding the exercise of the right of redemption. As the Court of Tax Appeals concluded in one case, RR No. 4-99 "has curbed the inequity of imposing a

capital gains tax even before the expiration of the redemption period [since] there is yet no transfer of title and no profit or gain is realized by the mortgagor at the time of foreclosure sale but only upon expiration of the redemption period."[20] In his commentaries, De Leon expressed the view that while revenue regulations as a general rule have no retroactive effect, if the revocation is due to the fact that the regulation is erroneous or contrary to law, such revocation shall have retroactive operation as to affect past transactions, because a wrong construction of the law cannot give rise to a vested right that can be invoked by a taxpayer.[21]

Considering that herein petitioners-mortgagors exercised their right of redemption before the expiration of the statutory one-year period, petitioner bank is not liable to pay the capital gains tax due on the extrajudicial foreclosure sale. There was no actual transfer of title from the owners-mortgagors to the foreclosing bank. Hence, the inclusion of the said charge in the total redemption price was unwarranted and the corresponding amount paid by the petitioners-mortgagors should be returned to them.

**WHEREFORE,** premises considered, both petitions are *PARTLY GRANTED.*

In G.R. No. 165617, BPI Family Savings Bank, Inc. is hereby ordered to *RETURN* the amounts representing capital gains and documentary stamp taxes as reflected in the Statement of Account To Redeem as of April 7, 1997, to petitioners Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez, and to retain only the sum provided in RR No. 4-99 as documentary stamps tax due on the foreclosure sale.

In G.R. No. 165837, petitioner BPI Family Savings Bank, Inc. is hereby declared entitled to the attorney's fees and liquidated damages included in the total redemption price paid by Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez. The sums awarded as moral and exemplary damages, attorney's fees

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[20] *Spouses Alfredo & Imelda Diaz v. BIR*, C.T.A. Case No. 6244, March 5, 2003.

[21] De Leon and De Leon, Jr., *supra*, Vol. 2, p. 540.

and costs in favor of Supreme Transliner, Inc., Moises C. Alvarez and Paulita Alvarez are *DELETED*.

The Decision dated April 6, 2004 of the Court of Appeals in CA-G.R. CV No. 74761 is accordingly *MODIFIED*.

**SO ORDERED.**

*Brion*[*], *Bersamin, Abad,*[**] and *Sereno, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 166109. February 23, 2011]

**EXODUS INTERNATIONAL CONSTRUCTION CORPORATION and ANTONIO P. JAVALERA,** *petitioners, vs.* **GUILLERMO BISCOCHO, FERNANDO PEREDA, FERDINAND MARIANO, GREGORIO BELLITA and MIGUEL BOBILLO,** *respondents*.

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE EMPLOYEES MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF THEIR DISMISSAL BEFORE THE BURDEN IS SHIFTED TO THE EMPLOYER TO PROVE THAT THE DISMISSAL WAS LEGAL.—** "[T]his Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized

[*] Designated Acting Chairperson per Special Order No. 925 dated January 24, 2011.

[**] Designated Additional member per Special Order No. 926 dated January 24, 2011.

cause." But "[b]efore the [petitioners] must bear the burden of proving that the dismissal was legal, [the respondents] must first establish by substantial evidence" that indeed they were dismissed. "[I]f there is no dismissal, then there can be no question as to the legality or illegality thereof."

**2. ID.; ID.; ABSENT ANY SHOWING OF AN OVERT ACT PROVING THAT THE EMPLOYER HAD DISMISSED THE EMPLOYEES, THE LATTER'S CLAIM OF ILLEGAL DISMISSAL CANNOT BE SUSTAINED.—** In *Machica v. Roosevelt Services Center, Inc.,* this Court sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In so ruling, this Court held that: "The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners." In this case, petitioners were able to show that they never dismissed respondents. Hence, as between respondents' general allegation of having been orally dismissed from the service *vis-a-vis* those of petitioners which were found to be substantiated by the sworn statement of foreman Wenifredo, we are persuaded by the latter. Absent any showing of an overt or positive act proving that petitioners had dismissed respondents, the latters' claim of illegal dismissal cannot be sustained. Indeed, a cursory examination of the records reveal no illegal dismissal to speak of.

**3. ID.; ID.; ABANDONMENT; ELEMENTS; BURDEN OF PROVING A DELIBERATE AND UNJUSTIFIED REFUSAL OF THE EMPLOYEE TO RESUME HIS EMPLOYMENT LIES WITH THE EMPLOYER.—** The Labor Arbiter is also correct in ruling that there was no abandonment on the part of respondents that would justify their dismissal from their employment. It is a settled rule that "[m]ere absence or failure to report for work x x x is not enough to amount to abandonment of work." "Abandonment is the deliberate and unjustified refusal of an employee to resume his employment." In *Northwest Tourism Corporation v. Former Special 3rd Division of the Court of Appeals* this Court held that "[t]o constitute

abandonment of work, two elements must concur, [namely]: (1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and (2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act." "It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning." It is therefore incumbent upon petitioners to ascertain the respondents' interest or non-interest in the continuance of their employment. However, petitioners failed to do so.

**4. ID.; EMPLOYER AND EMPLOYEE; TYPES OF EMPLOYEES IN THE CONSTRUCTION INDUSTRY, ENUMERATED; RESPONDENTS DECLARED REGULAR EMPLOYEES OF PETITIONERS.—** [Petitioners] forgot that there are two types of employees in the construction industry. The first is referred to as project employees or those employed in connection with a particular construction project or phase thereof and such employment is coterminous with each project or phase of the project to which they are assigned. The second is known as non-project employees or those employed without reference to any particular construction project or phase of a project. The second category is where respondents are classified. As such they are regular employees of petitioners. It is clear from the records of the case that when one project is completed, respondents were automatically transferred to the next project awarded to petitioners. There was no employment agreement given to respondents which clearly spelled out the duration of their employment, the specific work to be performed and that such is made clear to them at the time of hiring. It is now too late for petitioners to claim that respondents are project employees whose employment is coterminous with each project or phase of the project to which they are assigned.

**5. ID.; ID.; PROJECT EMPLOYEE; WHEN MAY ACQUIRE THE STATUS OF A REGULAR EMPLOYEE; REINSTATEMENT, PROPER.—** [A]ssuming that respondents were initially hired as project employees, petitioners must be reminded of our ruling in *Maraguinot, Jr. v. National Labor Relations Commission* that "[a] project employee x x x may acquire the status of a regular employee when the following [factors] concur:

1. There is a continuous rehiring of project employees even after cessation of a project; and 2. The tasks performed by the alleged "project employee" are vital, necessary and indespensable to the usual business or trade of the employer." In this case, the evidence on record shows that respondents were employed and assigned continuously to the various projects of petitioners. As painters, they performed activities which were necessary and desirable in the usual business of petitioners, who are engaged in subcontracting jobs for painting of residential units, condominium and commercial buildings. As regular employees, respondents are entitled to be reinstated without loss of seniority rights. Respondents are also entitled to their money claims such as the payment of holiday pay, service incentive leave pay, and 13th month pay.

**6. ID.; TERMINATION OF EMPLOYMENT; AWARD OF ATTORNEY'S FEES, WHEN PROPER.—** Even though respondents were not represented by counsel in most of the stages of the proceedings of this case, the award of attorney's fees as ruled by the Labor Arbiter, the NLRC and the CA to the respondents is still proper. In *Rutaquio v. National Labor Relations Commission*, this Court held that: It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. In *Producers Bank of the Philippines v. Court of Appeals* this Court ruled that: Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party. In this case, respondents filed a complaint for illegal dismissal with claim for payment of their holiday pay, service incentive leave pay, and 13th month pay. The Labor Arbiter, the NLRC and the CA were one in ruling that petitioners did not pay the respondents their holiday pay, service incentive leave pay, and 13th month pay as mandated by law. For sure, this unjustified act of petitioners had compelled the respondents to institute an action primarily to protect their rights and interests.

**7. ID.; ID.; AN AWARD OF THE PAYMENT OF BACKWAGES CANNOT BE ALLOWED ABSENT A FINDING OF ILLEGAL DISMISSAL.—** In cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages. In this case, both the Labor Arbiter and

the NLRC made a finding that there was no dismissal much less an illegal one. "It is settled that factual findings of quasi-judicial agencies are generally accorded respect and finality so long as these are supported by substantial evidence." In *Leonardo v. National Labor Relations Commission*, this Court held that: In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss. Thus, inasmuch as no finding of illegal dismissal had been made, and considering that the absence of such finding is supported by the records of the case, this Court is bound by such conclusion and cannot allow an award of the payment of backwages.

**APPEARANCES OF COUNSEL**

*L.R. Reyes Law Office* for petitioners.
*Public Attorney's Office* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

In illegal dismissal cases, it is incumbent upon the employees to first establish the fact of their dismissal before the burden is shifted to the employer to prove that the dismissal was legal.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated August 10, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 79800, which dismissed the petition for *certiorari* challenging the Resolutions dated January 17, 2003[3] and July 31, 2003[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CASE Nos. 30-11-04656-00[5] and 30-12-04714-00.

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[1] *Rollo*, pp. 10-30.

[2] CA *rollo*, pp. 186-198; penned by Associate Justice Vicente S.E. Veloso and concurred in by Associate Justices Roberto A. Barrios and Amelita G. Tolentino.

[3] *Id.* at 34-41.

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

[5] Denominated as NLRC NCR CASE No. 30-11-004650-00 in some parts of the records.

***Factual Antecedents***

Petitioner Exodus International Construction Corporation (Exodus) is a duly licensed labor contractor for the painting of residential houses, condominium units and commercial buildings. Petitioner Antonio P. Javalera is the President and General Manager of Exodus.

On February 1, 1999, Exodus obtained from Dutch Boy Philippines, Inc. (Dutch Boy) a contract[6] for the painting of the Imperial Sky Garden located at Ongpin Street, Binondo, Manila. On July 28, 1999, Dutch Boy awarded another contract[7] to Exodus for the painting of Pacific Plaza Towers in Fort Bonifacio, Taguig City.

In the furtherance of its business, Exodus hired respondents as painters on different dates with the corresponding wages appearing opposite their names as hereunder listed:

| NAME | DATE EMPLOYED | DAILY SALARY |
|---|---|---|
| 1. Guillermo B. Biscocho | Feb. 8, 1999 | ₱ 222.00 |
| 2. Fernando S. Pereda | Feb. 8, 1999 | 235.00 |
| 3. Ferdinand M. Mariano | April 12, 1999 | 235.00 |
| 4. Gregorio S. Bellita | May 20, 1999 | 225.00 |
| 5. Miguel B. Bobillo | March 10, 2000 | 220.00 |

Guillermo Biscocho (Guillermo) was assigned at the Imperial Sky Garden from February 8, 1999 to February 8, 2000. Fernando Pereda (Fernando) worked in the same project from February 8, 1999 to June 17, 2000. Likewise, Ferdinand Mariano (Ferdinand) worked there from April 12, 1999 to February 17, 2000. All of them were then transferred to Pacific Plaza Towers.

Gregorio S. Bellita (Gregorio) was assigned to work at the house of Mr. Teofilo Yap in Ayala Alabang, Muntinlupa City from May 20, 1999 to December 4, 1999. Afterwards he was transferred to Pacific Plaza Towers.

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[6] CA *rollo*, pp. 59-61.

[7] *Id.* at 62-64.

Miguel B. Bobillo (Miguel) was hired and assigned at Pacific Plaza Towers on March 10, 2000.

On November 27, 2000, Guillermo, Fernando, Ferdinand, and Miguel filed a complaint[8] for illegal dismissal and non-payment of holiday pay, service incentive leave pay, 13th month pay and night-shift differential pay. This was docketed as NLRC NCR CASE No. 30-11-04656-00.

On December 1, 2000, Gregorio also filed a complaint[9] which was docketed as NLRC NCR CASE No. 30-12-04714-00. He claimed that he was dismissed from the service on September 12, 2000 while Guillermo, Fernando, Ferdinand, and Miguel were orally notified of their dismissal from the service on November 25, 2000.

Petitioners denied respondents' allegations. As regards Gregorio, petitioners averred that on September 15, 2000, he absented himself from work and applied as a painter with SAEI-EEI which is the general building contractor of Pacific Plaza Towers. Since then, he never reported back to work.

Guillermo absented himself from work without leave on November 27, 2000. When he reported for work the following day, he was reprimanded for being Absent Without Official Leave (AWOL). Because of the reprimand, he worked only half-day and thereafter was unheard of until the filing of the instant complaint.

Fernando, Ferdinand, and Miguel were caught eating during working hours on November 25, 2000 for which they were reprimanded by their foreman. Since then they no longer reported for work.

***Ruling of the Labor Arbiter***

On March 21, 2002, the Labor Arbiter rendered a Decision[10] exonerating petitioners from the charge of illegal dismissal as

[8] *Id.* at 46-47.

[9] *Id.* at 48.

[10] *Id.* at 22-32.

respondents chose not to report for work. The Labor Arbiter ruled that since there is neither illegal dismissal nor abandonment of job, respondents should be reinstated but without any backwages. She disallowed the claims for premium pay for holidays and rest days and nightshift differential pay as respondents failed to prove that actual service was rendered on such non-working days. However, she allowed the claims for holiday pay, service incentive leave pay and 13th month pay. The dispositive portion of the Labor Arbiter's Decision reads:

WHEREFORE, premises considered, respondents Exodus International Construction Corporation and/or Antonio Javalera are hereby ordered to reinstate complainants to their former positions as painters without loss of seniority rights and other benefits appurtenant thereto without any backwages.

Respondents are likewise hereby ordered to pay complainants the following:

1. Guillermo Biscocho

| | | |
|---|---|---|
| ₱ 1,968.75 | - | Service Incentive Leave Pay |
| 10,237.50 | - | 13th Month Pay |
| 3,600.00 | - | Holiday Pay |
| ₱ 15,806.25 | - | Sub-Total |
| + 1,580.87 | - | 10% Attorney's Fees |
| **₱ 17,386.86** | | **Total** |

2. Fernando Pereda

| | | |
|---|---|---|
| ₱ 2,056.25 | - | Service Incentive Leave Pay |
| 10,692.50 | - | 13th Month Pay |
| 3,525.00 | - | Holiday Pay |
| ₱ 16,273.75 | - | Sub-Total |
| + 1,627.37 | - | 10% Attorney's Fees |
| **₱ 17,901.12** | | **Total** |

3. Miguel Bobillo

| | | |
|---|---|---|
| ₱ 3,813.34 | - | 13th Month Pay |
| 1,320.00 | - | Holiday Pay |
| ₱ 5,133.34 | - | Sub-Total |
| + 513.33 | - | 10% Attorney's Fees |
| **₱ 5,646.67** | | **Total** |

4. Ferdinand Mariano

| | | |
|---|---|---|
| ₱ 1,860.42 | - | Service Incentive Leave Pay |
| 9,674.19 | - | 13th Month Pay |
| 3,055.00 | - | Holiday Pay |
| ₱ 14,589.61 | - | Sub-Total |
| + 1,458.96 | - | 10% Attorney's Fees |
| **₱ 16,048.57** | | **Total** |

5. Gregorio Bellita

| | | |
|---|---|---|
| ₱ 1,500.00 | - | Service Incentive Leave Pay |
| 7,800.00 | - | 13th Month Pay |
| 2,700.00 | - | Holiday Pay |
| ₱ 12,000.00 | - | Sub-Total |
| + 1,200.00 | - | 10% Attorney's Fees |
| **₱ 13,200.00** | | **Total** |

or the total aggregate sum of Seventy Thousand, One Hundred Eighty Three and 23/100 (₱70,183.23) Pesos, inclusive of the ten (10%) percent of the award herein by way of attorney's fees, all within ten (10) days from receipt hereof;

The rest of complainants' claims for lack of merit are hereby Dismissed.

SO ORDERED.[11]

### *Ruling of the National Labor Relations Commission*

Petitioners sought recourse to the NLRC limiting their appeal to the award of service incentive leave pay, 13th month pay, holiday pay and 10% attorney's fees in the sum of ₱70,183.23.

On January 17, 2003, the NLRC dismissed the appeal. It ruled that petitioners, who have complete control over the records of the company, could have easily rebutted the monetary claims against it. All that it had to do was to present the vouchers showing payment of the same. However, they opted not to lift a finger, giving an impression that they never paid said benefits.

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[11] *Id.* at 30-32.

As to the award of attorney's fees, the NLRC found the same to be proper because respondents were forced to litigate in order to validate their claim.

The NLRC thus affirmed the Decision of the Labor Arbiter, *viz*:

> Accordingly, premises considered, the decision appealed from is hereby AFFIRMED and the appeal DISMISSED for lack of merit.
>
> SO ORDERED.[12]

Petitioners filed a Motion for Reconsideration[13] which was denied by the NLRC in a Resolution[14] dated July 31, 2003.

***Ruling of the Court of Appeals***

Aggrieved, petitioners filed with the CA a petition for *certiorari*. The CA through a Resolution[15] dated October 22, 2003, directed the respondents to file their comment. On December 4, 2003, respondents filed their comment.[16] On January 12, 2004, petitioners filed their reply.[17]

On August 10, 2004, the CA dismissed the petition and affirmed the findings of the Labor Arbiter and the NLRC. It opined that in a situation where the employer has complete control over the records and could thus easily rebut any monetary claims against it but opted not to lift any finger, the burden is on the employer and not on the complainants. This is so because the latter are definitely not in a position to adduce any documentary evidence, the control of which being not with them.

However, in addition to the reliefs awarded to respondents in the March 21, 2002 Decision of the Labor Arbiter which

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[12] *Id.* at 40.

[13] *Id.* at 94-99.

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

[15] *Id.* at 101-102.

[16] *Id.* at 115-122.

[17] *Id.* at 128-140.

was affirmed by the NLRC in a Resolution dated January 17, 2003, the petitioners were directed by the CA to solidarily pay full backwages, inclusive of all benefits the respondents should have received had they not been dismissed.

The dispositive portion of the CA Decision reads:

> WHEREFORE, the instant petition for *certiorari* is dismissed. However, in addition to the reliefs awarded to private respondents in the decision dated March 21, 2002 of Labor Arbiter Aldas and resolution of the NLRC dated January 17, 2003, the petitioners are directed to solidarily pay private respondents full backwages, inclusive of all benefits they should have received had they not been dismissed, computed from the time their wages were withheld until the time they are actually reinstated. Such award of full backwages shall be included in the computation of public respondents' award of ten percent (10%) attorney's fees.
>
> SO ORDERED.[18]

Petitioners moved for reconsideration,[19] but to no avail. Hence, this appeal anchored on the following grounds:

**Issues**

I.

The Honorable Court of Appeals erred and committed grave abuse of discretion in ordering the reinstatement of respondents to their former positions which were no longer existing because its findings of facts are premised on misappreciation of facts.

II.

The Honorable Court of Appeals also seriously erred and committed grave abuse of discretion in affirming the award of service incentive leave pay, 13th month pay, and holiday pay in the absence of evidentiary and legal basis therefor.

III.

The Honorable Court of Appeals likewise seriously erred and committed grave abuse of discretion in affirming the award of

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[18] *Id.* at 197-198.

[19] *Id.* at 202-212.

attorney's fees even in the absence of counsel on record to handle and prosecute the case.

IV.

The Honorable Court of Appeals also seriously erred and gravely abused its discretion in holding individual petitioner solidarily liable with petitioner company without specific evidence on which the same was based.[20]

***Petitioners' Arguments***

Petitioners contend that, contrary to their allegations, respondents were never dismissed from the service. If respondents find themselves no longer in the service of petitioners, it is simply because of their refusal to report for work. Further, granting that they were dismissed, respondents' prolonged absences is tantamount to abandonment which is a valid ground for the termination of their employment. As to respondents monetary claims, it is incumbent upon them to prove the same because the burden of proof rests on their shoulders. But since respondents failed to prove the same, their claims should be denied.

***Respondents' Arguments***

Respondents, in support of their claim that they were illegally dismissed, argue that as painters, they performed activities which were necessary and desirable in the usual business of petitioners, who are engaged in the business of contracting painting jobs. Hence, they are regular employees who, under the law, cannot just be dismissed from the service without prior notice and without any just or valid cause. According to the respondents, they did not abandon their job. For abandonment to serve as basis for a valid termination of their employment, it must first be established that there was a deliberate and unjustified refusal on their part to resume work. Mere absences are not sufficient for these must be accompanied by overt acts pointing to the fact that they simply do not want to work anymore. Petitioners failed to prove this. Furthermore, the filing of a complaint for

[20] *Rollo,* pp. 16-17.

illegal dismissal ably defeats the theory of abandonment of the job.

**Our Ruling**

The petition is partly meritorious.

"[T]his Court is not unmindful of the rule that in cases of illegal dismissal, the employer bears the burden of proof to prove that the termination was for a valid or authorized cause."[21] But "[b]efore the [petitioners] must bear the burden of proving that the dismissal was legal, [the respondents] must first establish by substantial evidence" that indeed they were dismissed. "[I]f there is no dismissal, then there can be no question as to the legality or illegality thereof."[22]

*There was no dismissal in this case, hence, there is no question that can be entertained regarding its legality or illegality.*

As found by the Labor Arbiter, there was no evidence that respondents were dismissed nor were they prevented from returning to their work. It was only respondents' unsubstantiated conclusion that they were dismissed. As a matter of fact, respondents could not name the particular person who effected their dismissal and under what particular circumstances.

In *Machica v. Roosevelt Services Center, Inc.*,[23] this Court sustained the employer's denial as against the employees' categorical assertion of illegal dismissal. In so ruling, this Court held that:

The rule is that one who alleges a fact has the burden of proving it; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. It must be

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[21] *Ledesma, Jr. v. National Labor Relations Commission,* G.R. No. 174585, October 19, 2007, 537 SCRA 358, 370.

[22] *Id*.

[23] G.R. No. 168664, May 4, 2006, 489 SCRA 534, 544-545.

stressed that the evidence to prove this fact must be clear, positive and convincing. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners.

In this case, petitioners were able to show that they never dismissed respondents. As to the case of Fernando, Miguel and Ferdinand, it was shown that on November 25, 2000, at around 7:30 a.m., the petitioners' foreman, Wenifredo Lalap (Wenifredo) caught the three still eating when they were supposed to be working already. Wenifredo reprimanded them and, apparently, they resented it so they no longer reported for work. In the case of Gregorio, he absented himself from work on September 15, 2000 to apply as a painter with SAEI-EEI, the general contractor of Pacific Plaza Towers. Since then he never reported back to work. Lastly, in the case of Guillermo, he absented himself without leave on November 27, 2000, and so he was reprimanded when he reported for work the following day. Because of the reprimand, he did not report for work anymore.

Hence, as between respondents' general allegation of having been orally dismissed from the service *vis-a-vis* those of petitioners which were found to be substantiated by the sworn statement of foreman Wenifredo, we are persuaded by the latter. Absent any showing of an overt or positive act proving that petitioners had dismissed respondents, the latters' claim of illegal dismissal cannot be sustained. Indeed, a cursory examination of the records reveal no illegal dismissal to speak of.

*There was also no abandonment of work on the part of the respondents.*

The Labor Arbiter is also correct in ruling that there was no abandonment on the part of respondents that would justify their dismissal from their employment.

It is a settled rule that "[m]ere absence or failure to report for work x x x is not enough to amount to abandonment of

work."[24] "Abandonment is the deliberate and unjustified refusal of an employee to resume his employment."[25]

In *Northwest Tourism Corporation v. Former Special 3rd Division of the Court of Appeals*[26] this Court held that "[t]o constitute abandonment of work, two elements must concur, [namely]:

(1) the employee must have failed to report for work or must have been absent without valid or justifiable reason; and

(2) there must have been a clear intention on the part of the employee to sever the employer-employee relationship manifested by some overt act."

"It is the employer who has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning."[27] It is therefore incumbent upon petitioners to ascertain the respondents' interest or non-interest in the continuance of their employment. However, petitioners failed to do so.

*Respondents must be reinstated and paid their holiday pay, service incentive leave pay, and 13th month pay.*

Clearly therefore, there was no dismissal, much less illegal, and there was also no abandonment of job to speak of. The Labor Arbiter is therefore correct in ordering that respondents be reinstated but without any backwages.

However, petitioners are of the position that the reinstatement of respondents to their former positions, which were no longer existing, is impossible, highly unfair and unjust. The project

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[24] *New Ever Marketing, Inc. v. Court of Appeals*, 501 Phil. 575, 586 (2005).

[25] *NEECO II v. National Labor Relations Commission*, 499 Phil. 777, 789 (2005).

[26] 500 Phil. 85, 95 (2005).

[27] *R. Transport Corporation v. Ejandra*, G.R. No. 148508, May 20, 2004, 428 SCRA 725, 732.

was already completed by petitioners on September 28, 2001. Thus the completion of the project left them with no more work to do. Having completed their tasks, their positions automatically ceased to exist. Consequently, there were no more positions where they can be reinstated as painters.

Petitioners are misguided. They forgot that there are two types of employees in the construction industry. The first is referred to as project employees or those employed in connection with a particular construction project or phase thereof and such employment is coterminous with each project or phase of the project to which they are assigned. The second is known as non-project employees or those employed without reference to any particular construction project or phase of a project.

The second category is where respondents are classified. As such they are regular employees of petitioners. It is clear from the records of the case that when one project is completed, respondents were automatically transferred to the next project awarded to petitioners. There was no employment agreement given to respondents which clearly spelled out the duration of their employment, the specific work to be performed and that such is made clear to them at the time of hiring. It is now too late for petitioners to claim that respondents are project employees whose employment is coterminous with each project or phase of the project to which they are assigned.

Nonetheless, assuming that respondents were initially hired as project employees, petitioners must be reminded of our ruling in *Maraguinot, Jr. v. National Labor Relations Commission*[28] that "[a] project employee x x x may acquire the status of a regular employee when the following [factors] concur:

1. There is a continuous rehiring of project employees even after cessation of a project; and
2. The tasks performed by the alleged "project employee" are vital, necessary and indespensable to the usual business or trade of the employer."

[28] 348 Phil. 580, 601 (1998).

In this case, the evidence on record shows that respondents were employed and assigned continuously to the various projects of petitioners. As painters, they performed activities which were necessary and desirable in the usual business of petitioners, who are engaged in subcontracting jobs for painting of residential units, condominium and commercial buildings. As regular employees, respondents are entitled to be reinstated without loss of seniority rights.

Respondents are also entitled to their money claims such as the payment of holiday pay, service incentive leave pay, and 13th month pay. Petitioners as the employer of respondents and having complete control over the records of the company could have easily rebutted the monetary claims against it. All that they had to do was to present the vouchers or payrolls showing payment of the same. However, they decided not to provide the said documentary evidence. Our conclusion therefore is that they never paid said benefits and therefore they must be ordered to settle their obligation with the respondents.

*Respondents are also entitled to the payment of attorney's fees.*

Even though respondents were not represented by counsel in most of the stages of the proceedings of this case, the award of attorney's fees as ruled by the Labor Arbiter, the NLRC and the CA to the respondents is still proper. In *Rutaquio v. National Labor Relations Commission*,[29] this Court held that:

> It is settled that in actions for recovery of wages or where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

In *Producers Bank of the Philippines v. Court of Appeals*[30] this Court ruled that:

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[29] 375 Phil. 405, 418 (1999), citing *Philippine National Construction Corporation v. National Labor Relations Commission*, 342 Phil. 769, 784 (1997).

[30] 417 Phil. 646, 661 (2001).

Attorney's fees may be awarded when a party is compelled to litigate or to incur expenses to protect his interest by reason of an unjustified act of the other party.

In this case, respondents filed a complaint for illegal dismissal with claim for payment of their holiday pay, service incentive leave pay, and 13th month pay. The Labor Arbiter, the NLRC and the CA were one in ruling that petitioners did not pay the respondents their holiday pay, service incentive leave pay, and 13th month pay as mandated by law. For sure, this unjustified act of petitioners had compelled the respondents to institute an action primarily to protect their rights and interests.

*The CA erred when it ordered reinstatement of respondents with payment of full backwages.*

It must be noted that the Labor Arbiter's disposition directed petitioners to reinstate respondents without any backwages and awarded the payment of service incentive leave pay, holiday pay, 13th month pay, and 10% attorney's fees in the sum of ₱70,183.23.

On appeal to the NLRC, petitioners limited their appeal to the award of service incentive leave pay, holiday pay, 13th month pay, and 10% attorney's fees. No appeal was made on the order of reinstatement.

In the proceedings before the CA, it is only the award of service incentive leave pay, holiday pay, 13th month pay, and 10% attorney's fees that were raised by the petitioners. The CA in fact dismissed the petition. However, the CA further concluded in its Decision that since there is no abandonment to speak about, it is therefore indisputable that respondents were illegally dismissed. Therefore, they deserve not only reinstatement but also the payment of full backwages.

We do not agree with this ruling of the CA.

In cases where there is no evidence of dismissal, the remedy is reinstatement but without backwages. In this case, both the Labor Arbiter and the NLRC made a finding that

there was no dismissal much less an illegal one. "It is settled that factual findings of quasi-judicial agencies are generally accorded respect and finality so long as these are supported by substantial evidence."[31]

In *Leonardo v. National Labor Relations Commission*,[32] this Court held that:

> In a case where the employee's failure to work was occasioned neither by his abandonment nor by a termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss.

Thus, inasmuch as no finding of illegal dismissal had been made, and considering that the absence of such finding is supported by the records of the case, this Court is bound by such conclusion and cannot allow an award of the payment of backwages.

Lastly, since there was no need to award backwages to respondents, the ruling of the CA that Javalera is solidarily liable with Exodus International Construction Corporation in paying full backwages need not be discussed.

**WHEREFORE,** the instant petition for review on *certiorari* is *PARTLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. SP No. 79800 dated August 10, 2004, is *AFFIRMED* with *MODIFICATION* that the award of full backwages is *DELETED* for lack of legal basis.

**SO ORDERED.**

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

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[31] *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa*, G.R. No. 164016, March 15, 2010.

[32] 389 Phil. 118, 128 (2000).

[*] In lieu of Justice Teresita T. Leonardo-De Castro per Special Order No. 947 dated February 1, 2011.

**FIRST DIVISION**

[G.R. No. 169754. February 23, 2011]

**LEGEND INTERNATIONAL RESORTS LIMITED,** *petitioner, vs.* **KILUSANG MANGGAGAWA NG LEGENDA (KML-INDEPENDENT),** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; CERTIFICATION ELECTION MAY BE CONDUCTED DURING THE PENDENCY OF THE PETITION FOR CANCELLATION OF THE UNION'S REGISTRATION; RATIONALE; THE CANCELLATION OF THE CERTIFICATE OF UNION REGISTRATION SHOULD NOT RETROACT TO THE TIME OF ITS ISSUANCE.—** In *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor,* we already ruled that: Anent the issue of whether or not the Petition to cancel/revoke registration is a prejudicial question to the petition for certification election, the following ruling in the case of *Association of the Court of Appeals Employees (ACAE) v. Hon. Pura Ferrer-Calleja,* x x x is in point, to wit: x x x. At any rate, the Court applies the established rule correctly followed by the public respondent that **an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing the cancellation**. In *Capitol Medical Center, Inc. v. Hon. Trajano,* we also held that "the pendency of a petition for cancellation of union registration does not preclude collective bargaining." Citing the Secretary of Labor, we held *viz*: **That there is a pending cancellation proceedings against the respondent Union is not a bar to set in motion the mechanics of collective bargaining. If a certification election may still be ordered despite the pendency of a petition to cancel the union's registration certificate x x x more so should the collective bargaining process continue despite its pendency. x x x.**

Based on the foregoing jurisprudence, it is clear that a certification election may be conducted during the pendency of the cancellation proceedings. This is because at the time the petition for certification was filed, the petitioning union is presumed to possess the legal personality to file the same. There is therefore no basis for LEGEND's assertion that the cancellation of KML's certificate of registration should retroact to the time of its issuance or that it effectively nullified all of KML's activities, including its filing of the petition for certification election and its demand to collectively bargain.

**2. ID.; ID.; ID.; ONCE A CERTIFICATE OF REGISTRATION IS ISSUED TO A UNION, ITS LEGAL PERSONALITY CANNOT BE COLLATERALLY ATTACKED IN A PETITION FOR CERTIFICATION ELECTION PROCEEDING.—** We agree with the ruling of the Office of the Secretary of DOLE that the legitimacy of the legal personality of KML cannot be collaterally attacked in a petition for certification election proceeding. This is in consonance with our ruling in *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment* that "such legal personality may not be subject to a collateral attack but only through a separate action instituted particularly for the purpose of assailing it." x x x. "[T]he legal personality of a legitimate labor organization x x x cannot be subject to a collateral attack. The law is very clear on this matter. x x x The Implementing Rules stipulate that a labor organization shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Once a certificate of registration is issued to a union, its legal personality cannot be subject to a collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book V of the Implementing Rules."

**APPEARANCES OF COUNSEL**

*Espinosa Aldea-Espinosa & Associates* for petitioner.
*Pro-Labor Legal Assistance Center* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari* assails the September 18, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 72848 which found no grave abuse of discretion on the part of the Office of the Secretary of the Department of Labor and Employment (DOLE) which ruled in favor of *Kilusang Manggagawa ng Legenda* (KML). Also assailed is the September 14, 2005 Resolution denying petitioner's motion for reconsideration.

***Factual Antecedents***

On June 6, 2001, KML filed with the Med-Arbitration Unit of the DOLE, San Fernando, Pampanga, a Petition for Certification Election[1] docketed as Case No. RO300-0106-RU-001. KML alleged that it is a legitimate labor organization of the rank and file employees of Legend International Resorts Limited (LEGEND). KML claimed that it was issued its Certificate of Registration No. RO300-0105-UR-002 by the DOLE on May 18, 2001.

LEGEND moved to dismiss[2] the petition alleging that KML is not a legitimate labor organization because its membership is a mixture of rank and file and supervisory employees in violation of Article 245 of the Labor Code. LEGEND also claimed that KML committed acts of fraud and misrepresentation when it made it appear that certain employees attended its general membership meeting on April 5, 2001 when in reality some of them were either at work; have already resigned as of March 2001; or were abroad.

In its Comment,[3] KML argued that even if 41 of its members are indeed supervisory employees and therefore excluded from

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[1] CA *rollo,* pp. 51-54.

[2] *Id.* at 56-74.

[3] *Id.* at 144-152.

its membership, the certification election could still proceed because the required number of the total rank and file employees necessary for certification purposes is still sustained. KML also claimed that its legitimacy as a labor union could not be collaterally attacked in the certification election proceedings but only through a separate and independent action for cancellation of union registration. Finally, as to the alleged acts of misrepresentation, KML asserted that LEGEND failed to substantiate its claim.

***Ruling of the Med-Arbiter***

On September 20, 2001, the Med-Arbiter[4] rendered judgment[5] dismissing for lack of merit the petition for certification election. The Med-Arbiter found that indeed there were several supervisory employees in KML's membership. Since Article 245 of the Labor Code expressly prohibits supervisory employees from joining the union of rank and file employees, the Med-Arbiter concluded that KML is not a legitimate labor organization. KML was also found to have fraudulently procured its registration certificate by misrepresenting that 70 employees were among those who attended its organizational meeting on April 5, 2001 when in fact they were either at work or elsewhere.

KML thus appealed to the Office of the Secretary of the DOLE.

***Ruling of the Office of the Secretary of DOLE***

On May 22, 2002, the Office of the Secretary of DOLE rendered its Decision[6] granting KML's appeal thereby reversing and setting aside the Med-Arbiter's Decision. The Office of the Secretary of DOLE held that KML's legitimacy as a union could not be collaterally attacked, citing Section 5,[7] Rule V of Department Order No. 9, series of 1997.

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[4] Atty. Brigida C. Fadrigon.

[5] CA *rollo*, pp. 290-301.

[6] *Id.* at 43-47; per Acting Secretary Manuel G. Imson.

[7] Section 5. *Effect of registration.* – The labor organization or workers' association shall be deemed registered and vested with legal personality on

The Office of the Secretary of DOLE also opined that Article 245 of the Labor Code merely provides for the prohibition on managerial employees to form or join a union and the ineligibility of supervisors to join the union of the rank and file employees and *vice versa*. It declared that any violation of the provision of Article 245 does not *ipso facto* render the existence of the labor organization illegal. Moreover, it held that Section 11, paragraph II of Rule XI which provides for the grounds for dismissal of a petition for certification election does not include mixed membership in one union.

The dispositive portion of the Office of the Secretary of DOLE's Decision reads:

> WHEREFORE, the appeal is hereby GRANTED and the order of the Med-Arbiter dated 20 September 2001 is REVERSED and SET ASIDE.
>
> Accordingly, let the entire record of the case be remanded to the regional office of origin for the immediate conduct of the certification election, subject to the usual pre-election conference, among the rank and file employees of LEGEND INTERNATIONAL RESORTS LIMITED with the following choices:
>
> 1. KILUSANG MANGGAGAWA NG LEGENDA (KML-INDEPENDENT); and
>
> 2. NO UNION.
>
> Pursuant to Rule XI, Section II.1 of D.O. No. 9, the employer is hereby directed to submit to the office of origin, within ten days from receipt of the decision, the certified list of employees in the bargaining unit for the last three (3) months prior to the issuance of this decision.
>
> SO DECIDED.[8]

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the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules. (*Id.* at 44.)

[8] *Id.* at 46-47.

LEGEND filed its Motion for Reconsideration[9] reiterating its earlier arguments. It also alleged that on August 24, 2001, it filed a Petition[10] for Cancellation of Union Registration of KML docketed as Case No. RO300-0108-CP-001 which was granted[11] by the DOLE Regional Office No. III of San Fernando, Pampanga in its Decision[12] dated November 7, 2001.

In a Resolution[13] dated August 20, 2002, the Office of the Secretary of DOLE denied LEGEND's motion for reconsideration. It opined that Section 11, paragraph II(a), Rule XI of Department Order No. 9 requires a final order of cancellation before a petition for certification election may be dismissed on the ground of lack of legal personality. Besides, it noted that the November 7, 2001 Decision of DOLE Regional Office No. III of San Fernando, Pampanga in Case No. RO300-0108-CP-001 was reversed by the Bureau of Labor Relations in a Decision dated March 26, 2002.

***Ruling of the Court of Appeals***

Undeterred, LEGEND filed a Petition for *Certiorari*[14] with the Court of Appeals docketed as CA-G.R. SP No. 72848. LEGEND alleged that the Office of the Secretary of DOLE gravely abused its discretion in reversing and setting aside the Decision of the Med-Arbiter despite substantial and overwhelming evidence against KML.

For its part, KML alleged that the Decision dated March 26, 2002 of the Bureau of Labor Relations in Case No. RO300-

[9] *Id.* at 347-358.

[10] *Id.* at 176-197.

[11] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered cancelling the registration of Kilusang Manggagawa sa Legenda. Let copy of this Decision be furnished the Bureau of Labor Relations, the central registry of unions and collective bargaining agreements under Article 231 of the Labor Code. (*Id.* at 346.)

[12] *Id.* at 333-346; penned by Atty. Ana C. Dione.

[13] *Id.* at 49-50; per Secretary Patricia A. Sto. Tomas.

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

0108-CP-001 denying LEGEND's petition for cancellation and upholding KML's legitimacy as a labor organization has already become final and executory, entry of judgment having been made on August 21, 2002.[15]

The Office of the Secretary of DOLE also filed its Comment[16] asserting that KML's legitimacy cannot be attacked collaterally. Finally, the Office of the Secretary of DOLE stressed that LEGEND has no legal personality to participate in the certification election proceedings.

On September 18, 2003, the Court of Appeals rendered its Decision[17] finding no grave abuse of discretion on the part of the Office of the Secretary of DOLE. The appellate court held that the issue on the legitimacy of KML as a labor organization has already been settled with finality in Case No. RO300-0108-CP-001. The March 26, 2002 Decision of the Bureau of Labor Relations upholding the legitimacy of KML as a labor organization had long become final and executory for failure of LEGEND to appeal the same. Thus, having already been settled that KML is a legitimate labor organization, the latter could properly file a petition for certification election. There was nothing left for the Office of the Secretary of DOLE to do but to order the holding of such certification election.

The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, and finding that no grave abuse of discretion amounting to lack or excess of jurisdiction has been committed by the Department of Labor and Employment, the assailed May 22, 2002 Decision and August 20, 2002 Resolution in Case No. RO300-106-RU-001 are UPHELD and AFFIRMED. The instant petition is DENIED due course and, accordingly, DISMISSED for lack of merit.[18]

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[15] See KML's Comment, *id.* at 385-402.

[16] *Id.* at 459-465.

[17] *Id.* at 497-503; penned by Associate Justice Sergio L. Pestaño and concurred in by Associate Justices Perlita J. Tria Tirona and now Supreme Court Associate Justice Jose C. Mendoza.

[18] *Id.* at 502.

LEGEND filed a Motion for Reconsideration[19] alleging, among others, that it has appealed to the Court of Appeals the March 26, 2002 Decision in Case No. RO300-0108-CP-001 denying its petition for cancellation and that it is still pending resolution.

On September 14, 2005, the appellate court denied LEGEND's motion for reconsideration.

Hence, this Petition for Review on *Certiorari* raising the lone assignment of error, *viz*:

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN THE APPLICATION OF LAW IN DENYING THE PETITIONER'S PETITION FOR *CERTIORARI*.[20]

***Petitioner's Arguments***

LEGEND submits that the Court of Appeals grievously erred in ruling that the March 26, 2002 Decision denying its Petition for Cancellation of KML's registration has already become final and executory. It asserts that it has seasonably filed a Petition for *Certiorari*[21] before the CA docketed as CA-G.R. SP No. 72659 assailing said Decision. In fact, on June 30, 2005, the Court of Appeals granted the petition, reversed the March 26, 2002 Decision of the Bureau of Labor Relations and reinstated the November 7, 2001 Decision of the DOLE Regional Office III ordering the cancellation of KML's registration.

Finally, LEGEND posits that the cancellation of KML's certificate of registration should retroact to the time of its issuance.[22] It thus claims that the petition for certification election and all of KML's activities should be nullified because it has no legal personality to file the same, much less demand collective bargaining with LEGEND.[23]

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[19] *Id.* at 505-525.

[20] *Rollo* of G.R. No. 169754, p. 826.

[21] *Id.* at 461-494.

[22] *Id.* at 838.

[23] *Id.*

LEGEND thus prays that the September 20, 2001 Decision of the Med-Arbiter dismissing KML's petition for certification election be reinstated.[24]

***Respondent's Arguments***

In its Comment filed before this Court dated March 21, 2006, KML insists that the Decision of the Bureau of Labor Relations upholding its legitimacy as a labor organization has already attained finality[25] hence there was no more hindrance to the holding of a certification election. Moreover, it claims that the instant petition has become moot because the certification election sought to be prevented had already been conducted.

**Our Ruling**

The petition is partly meritorious.

***LEGEND has timely appealed the March 26, 2002 Decision of the Bureau of Labor Relations to the Court of Appeals.***

We cannot understand why the Court of Appeals totally disregarded LEGEND's allegation in its Motion for Reconsideration that the March 26, 2002 Decision of the Bureau of Labor Relations has not yet attained finality considering that it has timely appealed the same to the Court of Appeals and which at that time is still pending resolution. The Court of Appeals never bothered to look into this allegation and instead dismissed outright LEGEND's motion for reconsideration. By doing so, the Court of Appeals in effect maintained its earlier ruling that the March 26, 2002 Decision of the Bureau of Labor Relations upholding the legitimacy of KML as a labor organization has long become final and executory for failure of LEGEND to appeal the same.

This is inaccurate. Records show that (in the cancellation of registration case) LEGEND has timely filed on September 6,

[24] *Id.* at 851.

[25] *Id.* at 720.

2002 a petition for *certiorari*[26] before the Court of Appeals which was docketed as CA-G.R. SP No. 72659 assailing the March 26, 2002 Decision of the Bureau of Labor Relations. In fact, KML received a copy of said petition on September 10, 2002[27] and has filed its Comment thereto on December 2, 2002.[28] Thus, we find it quite interesting for KML to claim in its Comment (in the certification petition case) before this Court dated March 21, 2006[29] that the Bureau of Labor Relations' Decision in the petition for cancellation case has already attained finality. Even in its Memorandum[30] dated March 13, 2007 filed before us, KML is still insisting that the Bureau of Labor Relations' Decision has become final and executory.

Our perusal of the records shows that on June 30, 2005, the Court of Appeals rendered its Decision[31] in CA-G.R. SP No. 72659 reversing the March 26, 2002 Decision of the Bureau of Labor Relations and reinstating the November 7, 2001 Decision of the Med-Arbiter which canceled the certificate of registration of KML.[32] On September 30, 2005, KML's motion for reconsideration was denied for lack of merit.[33] On November 25, 2005, KML filed its Petition for Review on *Certiorari*[34] before

[26] *Id.* at 461-494.

[27] *Rollo* of G.R. No. 169972 (*Kilusang Manggagawa ng Legenda-KML Independent v. Legend International Resorts, Ltd.)*, p. 59.

[28] *Rollo* of G.R. No. 169754, p. 559.

[29] *Id.* at 721.

[30] *Id.* at 796.

[31] *Rollo* of G.R. No. 169972, pp. 35-45; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.

[32] The dispositive portion of the Decision reads:

> WHEREFORE, public respondent's impugned March 26, 2002 decision is REVERSED and SET ASIDE. In lieu thereof, another is entered ordering the REINSTATEMENT of the November 7, 2001 Decision in Case No. RO300-0108-P-001.
>
> SO ORDERED. (*Id.* at 45.)

[33] *Id.* at 47.

[34] *Id.* at 10-33.

this Court which was docketed as G.R. No. 169972. However, the same was denied in a Resolution[35] dated February 13, 2006 for having been filed out of time. KML moved for reconsideration but it was denied with finality in a Resolution[36] dated June 7, 2006. Thereafter, the said Decision canceling the certificate of registration of KML as a labor organization became final and executory and entry of judgment was made on July 18, 2006.[37]

***The cancellation of KML's certificate of registration should not retroact to the time of its issuance.***

Notwithstanding the finality of the Decision canceling the certificate of registration of KML, we cannot subscribe to LEGEND's proposition that the cancellation of KML's certificate of registration should retroact to the time of its issuance. LEGEND claims that KML's petition for certification election filed during the pendency of the petition for cancellation and its demand to enter into collective bargaining agreement with LEGEND should be dismissed due to KML's lack of legal personality.

This issue is not new or novel. In *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*,[38] we already ruled that:

> Anent the issue of whether or not the Petition to cancel/revoke registration is a prejudicial question to the petition for certification election, the following ruling in the case of *Association of the Court of Appeals Employees (ACAE) v. Hon. Pura Ferrer-Calleja*, x x x is in point, to wit:
>
> > x x x It is well-settled rule that 'a certification proceedings is not a litigation in the sense that the term is ordinarily understood, but an investigation of a non-adversarial and fact

[35] *Id.* at 316.

[36] *Id.* (unpaged).

[37] *Id.* (unpaged).

[38] 371 Phil. 30 (1999).

finding character.' (*Associated Labor Unions (ALU) v. Ferrer-Calleja*, 179 SCRA 127 [1989]; *Philippine Telegraph and Telephone Corporation v. NLRC*, 183 SCRA 451 [1990]. Thus, the technical rules of evidence do not apply if the decision to grant it proceeds from an examination of the sufficiency of the petition as well as a careful look into the arguments contained in the position papers and other documents.

At any rate, the Court applies the established rule correctly followed by the public respondent that **an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing the cancellation**.[39] (Emphasis supplied.)

In *Capitol Medical Center, Inc. v. Hon. Trajano*,[40] we also held that "the pendency of a petition for cancellation of union registration does not preclude collective bargaining."[41] Citing the Secretary of Labor, we held *viz*:

**That there is a pending cancellation proceedings against the respondent Union is not a bar to set in motion the mechanics of collective bargaining. If a certification election may still be ordered despite the pendency of a petition to cancel the union's registration certificate x x x more so should the collective bargaining process continue despite its pendency.**[42] (Emphasis supplied.)

In *Association of Court of Appeals Employees v. Ferrer-Calleja*,[43] this Court was tasked to resolve the issue of whether "the certification proceedings should be suspended pending [the petitioner's] petition for the cancellation of union registration

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

[40] 501 Phil. 144 (2005).

[41] *Id.* at 150.

[42] *Id.*

[43] G.R. No. 94716, November 15, 1991, 203 SCRA 596.

of the UCECA[44]."[45] The Court resolved the issue in the negative holding that "**an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union**. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing a cancellation."[46] We reiterated this view in *Samahan ng Manggagawa sa Pacific Plastic v. Hon. Laguesma*[47] where we declared that "**a certification election can be conducted despite pendency of a petition to cancel the union registration certificate**. For the fact is that at the time the respondent union filed its petition for certification, it still had the legal personality to perform such act absent an order directing its cancellation."[48]

Based on the foregoing jurisprudence, it is clear that a certification election may be conducted during the pendency of the cancellation proceedings. This is because at the time the petition for certification was filed, the petitioning union is presumed to possess the legal personality to file the same. There is therefore no basis for LEGEND's assertion that the cancellation of KML's certificate of registration should retroact to the time of its issuance or that it effectively nullified all of KML's activities, including its filing of the petition for certification election and its demand to collectively bargain.

***The legitimacy of the legal personality of KML cannot be collaterally attacked in a petition for certification election.***

We agree with the ruling of the Office of the Secretary of DOLE that the legitimacy of the legal personality of KML cannot

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[44] Union of Concerned Employees of the Court of Appeals.

[45] *Association of Court of Appeals Employees v. Ferrer-Calleja*, *supra* note 43 at 606.

[46] *Id.* at 607. Emphasis supplied.

[47] 334 Phil. 955 (1997).

[48] *Id.* at 965. Emphasis supplied.

be collaterally attacked in a petition for certification election proceeding. This is in consonance with our ruling in *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*[49] that "such legal personality may not be subject to a collateral attack but only through a separate action instituted particularly for the purpose of assailing it."[50] We further held therein that:

> This is categorically prescribed by Section 5, Rule V of the Implementing Rules of Book V, which states as follows:
>
> > SEC. 5.[51] *Effect of registration.* – The labor organization or worker's association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. *Such legal personality cannot thereafter be subject to collateral attack but may be questioned only in an independent petition for cancellation in accordance with these Rules.*
>
> Hence, to raise the issue of the respondent union's legal personality is not proper in this case. The pronouncement of the Labor Relations Division Chief, that the respondent union acquired a legal personality x x x cannot be challenged in a petition for certification election.
>
> The discussion of the Secretary of Labor and Employment on this point is also enlightening, thus:
>
> > . . . Section 5, Rule V of D.O. 9 is instructive on the matter. It provides that the legal personality of a union cannot be the subject of collateral attack in a petition for certification election, but may be questioned only in an independent petition for cancellation of union registration. This has been the rule since *NUBE v. Minister of Labor*, 110 SCRA 274 (1981). What applies in this case is the principle that once a union acquires a legitimate status as a labor organization, it continues as such until its certificate of registration is cancelled or revoked in an independent action for cancellation.

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[49] 497 Phil. 255 (2005).

[50] *Id.* at 266.

[51] Now Section 8, Rule IV, Book V of the Omnibus Rules Implementing the Labor Code.

> Equally important is Section 11, Paragraph II, Rule IX of D.O. 9, which provides for the dismissal of a petition for certification election based on the lack of legal personality of a labor organization only in the following instances: (1) appellant is not listed by the Regional Office or the BLR in its registry of legitimate labor organizations; or (2) appellant's legal personality has been revoked or cancelled with finality. Since appellant is listed in the registry of legitimate labor organizations, and its legitimacy has not been revoked or cancelled with finality, the granting of its petition for certification election is proper.[52]

"[T]he legal personality of a legitimate labor organization x x x cannot be subject to a collateral attack. The law is very clear on this matter. x x x The Implementing Rules stipulate that a labor organization shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Once a certificate of registration is issued to a union, its legal personality cannot be subject to a collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book V of the Implementing Rules."[53]

**WHEREFORE,** in view of the foregoing, the petition is *PARTLY GRANTED*. The Decision of the Court of Appeals dated September 18, 2003 in CA-G.R. SP No. 72848 insofar as it affirms the May 22, 2002 Decision and August 20, 2002 Resolution of the Office of the Secretary of Department of Labor and Employment is *AFFIRMED*. The Decision of the Court of Appeals insofar as it declares that the March 26, 2002 Decision of the Bureau of Labor Relations in Case No. RO300-0108-CP-001 upholding that the legitimacy of KML as a labor

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[52] *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment, supra* note 49 at 266-267. Italics in the original.

[53] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, G.R. No. 171153, September 12, 2007, 533 SCRA 125, 145-146.

organization has long become final and executory for failure of LEGEND to appeal the same, is *REVERSED* and *SET ASIDE*.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 171726. February 23, 2011]

**VICENTE YU CHANG and SOLEDAD YU CHANG,** *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; LAND REGISTRATION; PUBLIC LAND ACT; APPLICATION FOR REGISTRATION OF TITLE; REQUIREMENTS.—** Under [Section 48 (b) of the Public Land Act, as amended by P.D. 1073], in order that petitioners' application for registration of title may be granted, they must first establish the following: (1) that the subject land forms part of the disposable and alienable lands of the public domain and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership, since June 12, 1945, or earlier. Applicants must overcome the presumption that the land they are applying for is part of the public domain and that they have an interest therein sufficient to warrant registration in their names arising from an imperfect title.

**2. ID.; ID.; ID.; ID.; ID.; THE CLASSIFICATION OF LAND IS DESCRIPTIVE OF ITS LEGAL NATURE OR STATUS AND DOES NOT HAVE TO BE DESCRIPTIVE OF WHAT THE**

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[*] Inn lieu of Teresita T. Leonardo-De Castro per Special Order No. 947 dated February 11, 2011.

**LAND ACTUALLY LOOKS LIKE.—** In the instant case, petitioners did not adduce any evidence to the effect that the lots subject of their application are alienable and disposable land of the public domain. Instead, petitioners contend that the subject properties could no longer be considered and classified as forest land since there are building structures, residential houses and even government buildings existing and standing on the area. This, however, is hardly the proof required under the law. As clarified by this Court in *Heirs of Jose Amunategui v. Director of Forestry*, a forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted with crops by *kaingin* cultivators or other farmers. "Forest lands" do not have to be on mountains or in out-of-the-way places. The classification of land is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like. Unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.

**3. ID.; ID.; ID.; ID.; ID.; THE ADVERSE POSSESSION WHICH CAN BE THE BASIS OF A GRANT OF TITLE IN CONFIRMATION OF IMPERFECT TITLE CASES CANNOT COMMENCE UNTIL AFTER FOREST LAND HAS BEEN DECLARED ALIENABLE.—** [T]he subject lots were declared alienable and disposable only on October 30, 1986. Prior to that period, the same could not be the subject of confirmation of imperfect title. Petitioners' possession of the subject forest land prior to the date when it was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession. To reiterate, it is well settled that possession of forest land, prior to its classification as alienable and disposable land, is ineffective since such possession may not be considered as possession in the concept of owner. The adverse possession which can be the basis of a grant of title in confirmation of imperfect title cases cannot commence until after forest land has been declared as disposable and alienable.

**BRION, *J., separate opinion:***

**1. CIVIL LAW; LAND REGISTRATION; CONFIRMATION OF AN IMPERFECT OR INCOMPLETE TITLE; ALLOWED ONLY IF THE CLAIMANT HAS BEEN IN OPEN, CONTINUOUS, EXCLUSIVE AND NOTORIOUS POSSESSION AND OCCUPATION OF ALIENABLE AND DISPOSABLE LANDS OF PUBLIC DOMAIN SINCE JUNE 12, 1945 OR EARLIER.—** Section 48(b) of the Public Land Act is the law that recognizes the substantive right of a possessor and occupant of an alienable and disposable land of the public domain, while Section 14(1) of the Property Registration Decree recognizes this right by authorizing its registration, thus bringing the land within the coverage of the Torrens System. The mode of acquisition recognized by Section 48(b) of the Public Land Act and made registrable under Section 14(1) of the Property Registration Decree is through **confirmation of an imperfect or incomplete title**. Both provisions allow confirmation of an imperfect or incomplete title only if the claimant has been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain **since June 12, 1945 or earlier.**

**2. ID.; ID.; ID.; PERSONS WHO HAVE BEEN IN OPEN, CONTINUOUS AND EXCLUSIVE POSSESSION OF ALIENABLE PUBLIC LAND ON A DATE LATER THAN JUNE 12, 1945 MAY HAVE THE RIGHT TO REGISTER THE LAND BY VIRTUE OF SECTION 14 (2) OF THE PROPERTY REGISTRATION DECREE; APPLICABLE ONLY TO PRIVATE LANDS ACQUIRED THROUGH PRESCRIPTION.—** Section 48(b) of the Public Land Act and Section 14(1) of the Property Registration Decree, however, are not only open avenues to register title over the land. "[E]ven if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being open, continuous and exclusive, then **the possessor may have the right to register the land by virtue of Section 14(2) of the Property Registration Decree**." Section 14(2) of the Property Registration Decree states: SECTION 14. *Who may apply*.— The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

xxx **(2) Those who have acquired ownership of *private* lands by prescription under the provisions of existing laws**. But this recourse is open only to **private lands acquired through prescription;** the provision thus calls for the application of Civil Code concepts of private property and prescription.

**3. ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; DISCUSSED.—** Prescription is a mode of acquiring ownership and other real rights over immovable property through the lapse of time in the manner and under the conditions laid down by law. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary. If the applicant's possession of the immovable property is coupled with good faith and just title, the lapse of 10 years is sufficient; otherwise, the law requires 30 years of uninterrupted, adverse possession of the property. Whether ordinary or extraordinary, **prescription will run only against properties that are within the commerce of men**. Properties of public dominion are not susceptible to acquisitive prescription. Article 1113 of the Civil Code states that property of the State or any of its subdivisions **not patrimonial in character** shall **not** be the object of prescription. Properties of the public dominion become patrimonial properties only when they no longer intended for public use or for public service. A land declared as alienable and disposable by the government does not necessarily become patrimonial property; it remains part of the public dominion. [T]here must be an **express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion,** pursuant to Article 420(2), and thus incapable of acquisition by prescription. **It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run.** Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.

**4. ID.; LAND REGISTRATION; PROPERTY REGISTRATION DECREE; SECTION 14(2) THEREOF; THE 10 OR 30-YEAR PERIOD OF PRESCRIPTION COMMENCES TO RUN ONLY FROM THE TIME THE LAND, SEPARATELY FROM BEING DECLARED ALIENABLE AND DISPOSABLE, IS DECLARED AS PATRIMONIAL PROPERTY OF THE STATE.—**[T]he **10 or 30-year period of prescription that Section 14(2) of the Property Registration Decree and the Civil Code speak of commences to run only from the time the land, separately from being declared alienable and disposable, is declared as patrimonial property of the State, *i.e.*, properties held by the State in its private capacity.** Tested against these requirements in the application of Section 14(2) of the Property Registration Decree, it is clear that the petitioners' application for registration of their title should be denied. Although the subject property was declared alienable and disposable by the government on October 30, 1986, the petitioners – *for purposes of a claim of prescription* – failed to established whether it had also been declared as patrimonial property.

**APPEARANCES OF COUNSEL**

*Reynaldo L. Herrera* for petitioners.
*The Solicitor General* for respondent.

**D E C I S I O N**

**VILLARAMA, JR. *J.*:**

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assails the Decision[1] dated August 26, 2005 and the Resolution[2] dated February 13, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67430.

[1] *Rollo*, pp. 49-60. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. Del Castillo (now a Member of this Court), concurring.

[2] *Id.* at 64-66. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Jose L. Sabio, Jr. and Mariano C. Del Castillo (now a Member of this Court), concurring.

The CA reversed and set aside the April 28, 2000 Decision[3] of the Regional Trial Court of Pili, Camarines Sur, Branch 31, in LRC No. P-115, LRA Rec. No. N-68012, which granted petitioners' application for registration of title over two parcels of land, denominated as Lots 2199 and 2200 of Cad. 291, Pili Cadastre.

The antecedent facts, as culled from the records, are as follows:

On March 22, 1949, petitioners' father, L. Yu Chang[4] and the Municipality of Pili, Camarines Sur, through its then Mayor, Justo Casuncad, executed an Agreement to Exchange Real Property[5] wherein the former assigned and transferred to the Municipality of Pili his 400-square-meter residential lot in Barrio San Roque, Pili, Camarines Sur, in exchange for a 400-square-meter piece of land located in San Juan, Pili. Thereafter, L. Yu Chang and his family took possession of the property thus obtained and erected a residential house and a gasoline station thereon. He also declared the property in his name under Tax Declaration No. 01794[6] and 01795[7] and paid the real property taxes thereon as evidenced by twenty-eight (28) official receipts from February 21, 1951 up to March 10, 1976. When L. Yu Chang died on September 30, 1976, his wife, Donata Sta. Ana and his seven children inherited the property and succeeded in the possession of the property.

On March 1, 1978, a Deed of Transfer and Renunciation[8] of their rights over the property was executed by L. Yu Chang's five children, Rafaela, Catalina, Flaviana, Esperanza, and Antonio, in favor of herein petitioners. After the transfer, petitioners had the subject property surveyed and subdivided into two lots,

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[3] *Id.* at 176-182. Penned by Judge Martin P. Badong, Jr.

[4] "Leoncio Yu Chang" in other parts of the records.

[5] Records, pp. 9-11.

[6] Exh. "M", Additional Exhibits for the Petitioners.

[7] Exh. "M-1", *id.*

[8] Records, pp. 12-13.

Lot 2199[9] and Lot 2200[10] of Plan SWO-05-000888, Pili Cadastre. Petitioners also declared the lots in their names for taxation purposes as shown in Tax Declaration No. 02633[11] and paid the real property taxes thereon.

On February 21, 1997, petitioner Soledad Yu Chang, for herself and in representation of her brother and co-petitioner, Vicente Yu Chang, filed a petition[12] for registration of title over the aforementioned lots under the Property Registration Decree. In their petition, they declared that they are the co-owners of the subject lots; that they and their predecessors-in-interest "have been in actual, physical, material, exclusive, open, occupation and possession of the above described parcels of land for more than 100 years";[13] and that allegedly, they have continuously, peacefully, and adversely possessed the property in the concept of owners. Hence, they are entitled to confirmation of ownership and issuance and registration of title in their names.

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[9] Lot 2199 was described as follows: "A parcel of land (Lot-2199 of Plan SWO-05-000888 Cad. 291, Pili Cadastre), situated in the Poblacion, Municipality of Pili, Province of Camarines Sur, Island of Luzon. Bounded on the SW., along line 1-2 by Lot 2184 on the NW., along line 2-3 by Lot 2198, all of Cad. 291, Pili Cadastre, on the NE., along line 3-4 by National Road (20.00m. wide) and on the SE., along line 4-1 by Lot 2200, SWO-05-000888. Containing an area of ONE HUNDRED THIRTY[-]THREE (133) square meters. x x x" (Records, p. 2.)

[10] Lot 2200 was described as follows: "A parcel of land (Lot-2200 of Plan SWO-05-000888, Cad. 291, Pili Cadastre), situated in the Poblacion, Municipality of Pili, Province of Camarines Sur, Island of Luzon. Bounded on the NW., along line 1-2 by Lot 2199, SWO-05-000888, on the NE., along line 2-3 by Lot 2394, beyond by National Road (20.00 m. wide) on the SE., along line 3-4 by Lot 1, Cad. 291, Pili Cadastre, (Lot 2, PSU-48590 Port. Accepted), and on the SW., along line 4-1 by Lot 2184, Cad-291 Pili Cadastre. Containing an area of TWO HUNDRED SIXTY[-]FOUR (264) square meters. x x x" (*Id.*)

[11] Exh "O", Additional Exhibits for the Petitioners.

[12] Records, pp. 1-7. Exh. "A", entitled Re: Petition for Land Registration of Lot 2199 and Lot 2200 of Plan SWO-05-000888, CAD. 291, Pili Cadastre and to Cover the Same under the Operation of the Property Registration Decree and to Have the Title Thereto Registered and Confirmed.

[13] *Id.* at 3; *rollo*, p. 33.

In support of their application, petitioners submitted the following documents, to wit:

1. Agreement to Exchange Real Property;
2. Deed of Transfer and Renunciation;
3. Approved Plan of Lot 2199 and Lot 2200, Cad. 291, Pili Cadastre;
4. Approved Technical Description of Lot 2199;
5. Approved Technical Description of Lot 2200;
6. Field Appraisal and Assessment Sheet (FAAS) A.R.P. No. 026-044 for Lot 2199 Cad. 291; and
7. Field Appraisal and Assessment Sheet (FAAS) A.R.P. No. 026-043 for Lot 2200 Cad. 291 Pili Cadastre.

The Republic, through the Office of the Solicitor General (OSG), filed an Opposition[14] to the application, alleging, *inter alia*, that: (1) neither the applicants nor their predecessors-in-interest have been in open, continuous, exclusive and notorious possession of the land since June 12, 1945 or prior thereto; (2) the muniments of title, tax declarations and tax receipts do not constitute competent and sufficient evidence of a *bona fide* acquisition of the land; and (3) that the parcels of land applied for are portions of the public domain and are not subject to private appropriation.

No other parties filed their opposition. Thus, on December 14, 1998, an Order of General Default[15] was issued by the trial court.

After hearing, the trial court rendered a Decision granting petitioners' application. The *fallo* of the trial court's decision reads:

WHEREFORE, in view of the foregoing, decision is hereby rendered as follows:

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[14] Records, pp. 61-62.

[15] *Id.* at 118.

1. Confirming the imperfect title of the herein applicants Vicente Yu Chang and Soledad Yu Chang over the two (2) parcels of land described in paragraph two (2) page 2 of the Petition, particularly Lot 2199, Plans S"0-05-000888, Cad. 291, Pili Cadastre and Lot 2200, Plan SWO-05-000888, Cad. 291, Pili Cadastre; both Filipino citizens, residents of #14 Joaquin St., Corinthian Garden, Quezon City and San Juan, Pili, Camarines Sur respectively;

2. Ordering the dismissal of the application in the Cadastral proceeding with respect to Lots 2199 and 2200, Cad. 291, Pili Cadastre under CAD Case No. N-9;

3. After finality of this decision, let the corresponding decree of registration be issued by the Administrator, Land Registration Authority to the herein applicants above-mentioned.

SO ORDERED.[16]

The Republic appealed the decision to the CA on the ground that the court *a quo* erred in granting petitioners' application for registration of Lots 2199 and 2200 despite their failure to show compliance with the requirements of the law. In addition, the Republic asserted that the land was classified as public forest land; hence, it could not be subject to appropriation and alienation.

As aforesaid, the CA reversed the trial court's decision on August 26, 2005, and dismissed petitioners' application for land registration. The CA considered the petition to be governed by Section 48(b) of Commonwealth Act (C.A.) No. 141 or the Public Land Act, as amended, and held that petitioners were not able to present incontrovertible evidence that the parcels of land sought to be registered are alienable and disposable.[17] The CA relied on the testimony of Lamberto Orcena, Land Management Officer III of CENRO, Iriga City, who testified that prior to October 30, 1986, the entire area encompassing the right side of the Naga-Legaspi Highway, including the subject properties, was classified as forest land. According to the CA, even if the area within which the subject properties are located is now being used for residential and commercial purposes,

[16] *Id.* at 181-182.

[17] *Rollo*, p. 57.

such fact will not convert the subject parcels of land into agricultural land.[18] The CA stressed that there must be a positive act from the government declassifying the land as forest land before it could be deemed alienable or disposable land for agricultural or other purposes.[19]

Additionally, the CA noted that the lands sought to be registered were declared disposable public land only on October 30, 1986. Thus, it was only from that time that the period of open, continuous and notorious possession commenced to toll against the State.

Aggrieved, petitioners are now before this Court *via* the present appeal, raising the sole issue of whether the appellate court erred in dismissing their application for registration of title on the ground that they failed to prove compliance with the requirements of Section 48(b) of the Public Land Act, as amended.

Petitioners insist that the subject properties could no longer be considered and classified as forest land since there are buildings, residential houses and even government structures existing and standing on the land.[20] In their Memorandum,[21] petitioners point out that the original owner and possessor of the subject land was the Municipal Government of Pili which was established in 1930. The land was originally part of the municipal ground adjacent to the Municipal Building located at the right side of the Naga-Legaspi National Highway.[22] From 1949, when L. Yu Chang acquired the property through barter and up to the filing of petitioners' application in 1997, petitioners and their predecessors-in-interest had been in actual physical and material possession of the land in the concept of an owner, notorious and known to the public and adverse to the whole world.

The Republic, through the OSG, for its part, maintains that petitioners failed to prove their open, continuous, exclusive and

[18] *Id.* at 58.

[19] *Id.* 58-59.

[20] *Id.* at 22.

[21] *Id.* at 112-123.

[22] *Id.* at 120.

notorious possession of the subject lots for the period of time required by law. The OSG also submits that the subject lands were declared as alienable and disposable only on October 30, 1986.

We deny the petition for lack of merit.

Section 48(b) of the Public Land Act, as amended by P.D. 1073, under which petitioners' application was filed, provides:

> SEC. 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Regional Trial Court of the province or city where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Property Registration Decree, to wit:
>
> xxx xxx xxx
>
> (b) Those who by themselves or through their predecessors[-]in[-]interest have been in the open, continuous, exclusive, and notorious possession and occupation of alienable and disposable agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.
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> xxx xxx xxx[23]

Under this provision, in order that petitioners' application for registration of title may be granted, they must first establish the following: (1) that the subject land forms part of the disposable and alienable lands of the public domain and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership, since June 12, 1945, or earlier.[24] Applicants must overcome

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[23] See Agcaoili, *PROPERTY REGISTRATION DECREE AND RELATED LAWS (LAND TITLES AND DEEDS*), 2006 Ed., p. 69.

[24] *Ong v. Republic*, G.R. No. 175746, March 12, 2008, 548 SCRA 160, 166.

the presumption that the land they are applying for is part of the public domain and that they have an interest therein sufficient to warrant registration in their names arising from an imperfect title.[25]

In the instant case, petitioners did not adduce any evidence to the effect that the lots subject of their application are alienable and disposable land of the public domain. Instead, petitioners contend that the subject properties could no longer be considered and classified as forest land since there are building structures, residential houses and even government buildings existing and standing on the area. This, however, is hardly the proof required under the law. As clarified by this Court in *Heirs of Jose Amunategui v. Director of Forestry*,[26] a forested area classified as forest land of the public domain does not lose such classification simply because loggers or settlers may have stripped it of its forest cover. Parcels of land classified as forest land may actually be covered with grass or planted with crops by *kaingin* cultivators or other farmers. "Forest lands" do not have to be on mountains or in out-of-the-way places. The classification of land is descriptive of its legal nature or status and does not have to be descriptive of what the land actually looks like.[27] Unless and until the land classified as forest land is released in an official proclamation to that effect so that it may form part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.[28] As aptly held by the appellate court:

> [T]he fact that the area within which the subject parcels of land are located is being used for residential and commercial purposes does not serve to convert the subject parcels of land into agricultural land. It is fundamental that before any land may be declassified from the forest group and converted into alienable or disposable land for agricultural or other purposes, there must be a positive act from the government. A person cannot enter into forest land and by the simple

[25] *Collado v. Court of Appeals*, G.R. No. 107764, October 4, 2002, 390 SCRA 343, 361.

[26] G.R. No. L-27873, November 29, 1983, 126 SCRA 69.

[27] *Id.* at 75.

[28] *Id.*

act of cultivating a portion of that land, earn credits towards an eventual confirmation of imperfect title. The Government must first declare the forest land to be alienable and disposable agricultural land before the year of entry, cultivation and exclusive and adverse possession can be counted for purposes of an imperfect title.[29]

Moreover, during the hearing of petitioners' application, the Republic presented a Report[30] of Rene Gomez, Land Investigator/ Inspector, CENRO No. V-2-3, which disclosed that the lots applied for by the petitioners were classified as alienable and disposable under Project No. 9-E, L.C. Map No. 3393 and released and certified as such only on October 30, 1986. A Compliance[31] dated January 19, 1999 submitted by OIC-CENR Officer Joaquin Ed A. Guerrero to the trial court also stated that Lots 2199 and 2200 of Cad. 291 were *"verified to be within Alienable and Disposable area under Project No. 9-E, L.C. Map No. 3393, as certified on October 30, 1986 by the then Bureau of Forestry."* Evidently, therefore, the subject lots were declared alienable and disposable only on October 30, 1986. Prior to that period, the same could not be the subject of confirmation of imperfect title. Petitioners' possession of the subject forest land prior to the date when it was classified as alienable and disposable is inconsequential and should be excluded from the computation of the period of possession.[32] To reiterate, it is well settled that possession of forest land, prior to its classification as alienable and disposable land, is ineffective since such possession may not be considered as possession in the concept of owner.[33] The adverse possession

[29] *Rollo*, pp. 58-59.

[30] Exh. "5", Additional Exhs. For the Oppositor.

[31] Exh. "R", records, p. 121.

[32] *Ponciano, Jr. v. Laguna Lake Development Authority*, G.R. No. 174536, October 29, 2008, 570 SCRA 207, 227 citing *Republic v. Herbieto*, G.R. No. 156117, May 26, 2005, 459 SCRA 183, 201-202; *Almeda v. Court of Appeals*, G.R. No. 85322, April 30, 1991, 196 SCRA 476, 480; *Vallarta v. Intermediate Appellate Court*, G.R. No. 74957, June 30, 1987, 151 SCRA 679, 690; *Republic v. Court of Appeals*, G.R. No. L-40402, March 16, 1987, 148 SCRA 480, 492.

[33] *Supra* note 23 at 74.

which can be the basis of a grant of title in confirmation of imperfect title cases cannot commence until after forest land has been declared as disposable and alienable.[34]

Much as this Court wants to conform to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice, our hands are tied by the law's stringent safeguards against registering imperfect titles.[35] Here, petitioners failed to present "well-nigh incontrovertible" evidence necessary to prove their compliance of the requirements under Section 48(b) of C.A. No. 141. Hence, the Court of Appeals did not err in dismissing their application for confirmation and registration of title.

**WHEREFORE,** the petition is hereby *DENIED.* The Decision dated August 26, 2005 and the Resolution dated February 13, 2006 of the Court of Appeals in CA-G.R. CV No. 67430 are hereby *AFFIRMED*.

With costs against the petitioners.

**SO ORDERED.**

*Bersamin, Abad,*[*] and *Sereno JJ.*, concur.

*Brion,*[**] *J, (Acting Chairperson),* see separate opinion.

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[34] See *Republic v. Diloy*, G.R. No. 174633, August 26, 2008, 563 SCRA 413, 424.

[35] *Republic v. Bibonia*, G.R. No. 157466, June 21, 2007, 525 SCRA 268, 277.

[*] Designated additional member per Special Order No. 926 dated January 24, 2011.

[**] Designated Acting Chairperson per Special Order No. 926 dated January 24, 2011.

## SEPARATE OPINION

**BRION, *J.*:**

I concur *in the result* for the reasons discussed below.

**The Facts**

The petitioners' father, L. Yu Chang, was the owner of a 400 square meter property located in **San Roque**, Pili, Camarines Sur. On March 22, 1949, he agreed to **exchange** this property for a similarly-sized property in **San Juan**, Pili, Camarines Sur (subject property) **owned by the Municipality of Pili** (embodied in an Agreement to Exchange Real Property). From then on, L. Yu Chang and his family took possession of the subject property where they constructed a residential house and a gas station. When L. Yu Chang died, his other children ceded their rights to the subject property to the petitioners (as embodied in a Deed of Transfer and Renunciation dated March 1, 1978).

On **February 21, 1997**, petitioners (as co-owners) filed a **petition for registration of title over the subject property**, contending that they and their predecessors-in-interest have been in actual, physical, material, exclusive, open occupation and possession of the [subject property] for more than 100 years and that "they have continuously, peacefully, and adversely possessed the [subject] property in the concept of owners. Hence, they possessed the [subject] property in the concept of owners. Hence, they claimed to be entitled to a confirmation of ownership and the issuance and registration of title in their names.

**THE REGIONAL TRIAL COURT** (*RTC*) **of Pili, Camarines Sur granted the petitioners' application. On appeal, the CA reversed the RTC's decision**. Agreeing with the respondent Republic of the Philippines (represented by the Office of the Solicitor General), the **Court of Appeals** (*CA*) **declared that the petitioners failed to present incontrovertible evidence that the subject property sought to be registered are alienable and disposable**, as required under Section 48 (b) of Commonwealth Act No. 141 (*Public Land Act*). The CA pointed

out that, according to official records, **the subject property was previously classified as forest land, and was declared disposable public land only on October 30, 1986. Thus, it was only from that time that the period of open, continuous and notorious possession commenced to toll against the State.**

The petitioners seek the reversal of the CA's judgment through the present petition for review on *certiorari* under Rule 45 of the Rules of Court. They insist that the subject property can no longer be considered and classified as forest land because there are buildings, residential houses, and government structures existing on the land.

**The *Ponencia***

The *ponencia* **denied** the petition for lack of merit.

The *ponencia* declared that a petition for registration under Section 48 (b) of the Public Land Act[1] can prosper only if the following are established: (a) that the subject property forms part of the disposable and alienable lands of the public domain, and (b) that the petitioners have been in open, continuous, exclusive and notorious possession and occupation of the subject property under a *bona fide* claim of ownership **since June 12, 1945 or earlier.**

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[1] Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

xxx xxx xxx

**(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure.* These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.**

The *ponencia* agreed with the CA and held that the petitioners failed to adduce any evidence showing that the subject property is alienable and disposable land of the public domain; the petitioners' insistence that the subject property can no longer be considered and classified as forest land because there are structures erected thereon is unavailing because "the classification of land is descriptive of the land's legal nature or status, and does not have to be descriptive of what the land actually looks like." Unless and until a land classified as a forest land is formally declared in an official proclamation to be part of the disposable agricultural lands of the public domain, the rules on confirmation of imperfect title do not apply.[2]

Since the subject property was declared alienable and disposable only on October 30, 1986, it is only from that time that the petitioners' possession can be considered as basis to establish their claim of ownership over the subject property. Prior to the classification of a forest land as alienable and disposable agricultural land, the land of public domain cannot be alienated.[3] Prescription does not lie against the State and adverse possession, which is the basis for a confirmation of title, cannot commence.[4] In these lights, the *ponencia* concluded that **the petitioners failed to prove compliance with the requirements of Section 48 (b) of the Public Land Act**.

**An Alternative View**

While the *ponencia* denied the petition and thereby arrived at the correct result, it failed to make the proper consideration in resolving the basic issue presented — *i.e.*, ***whether the petitioners have a valid title over the subject property that can be registered under the law***.

***a. Registration under Section 14 (1) of the Property Registration Decree***

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[2] *Ponencia* at 7.

[3] CONSTITUTION, Article XII, Section 2.

[4] CIVIL CODE, Article 1113; *Celestial v. Cachopero*, G.R. No. 142595, October 15, 2003, 413 SCRA 469.

Section 48 (b) of the Public Land Act reads:

Sec. 48. The following-described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:

xxx xxx xxx

(b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive, and notorious possession and occupation of alienable and disposable lands of the public domain, under a *bona fide* claim of acquisition or ownership, since June 12, 1945, except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.

Complementing Section 48 (b) of the Public Land Act is Section 14 (1) of Presidential Decree (P.D.) No. 1529 (Property Registration Decree), which provides:

Sec. 14. *Who may apply*. — The following persons may file in the proper Court of First instance [now Regional Trial Court] an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.

Section 48 (b) of the Public Land Act is the law that recognizes the substantive right of a possessor and occupant of an alienable and disposable land of the public domain, while Section 14 (1) of the Property Registration Decree recognizes this right by authorizing its registration, thus bringing the land within the

coverage of the Torrens System.[5] The mode of acquisition recognized by Section 48 (b) of the Public Land Act and made registrable under Section 14 (1) of the Property Registration Decree is through ***confirmation of an imperfect or incomplete title***.[6] Both provisions allow confirmation of an imperfect or incomplete title only if the claimant has been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain **since June 12, 1945 or earlier**.

Parenthetically, I discussed the use of "June 12, 1945" as the cut-off date in my dissenting opinion in *Heirs of Mario Malabanan v. Republic*, based on the legislative history of the Public Land Act and the Court's ruling in *Abejaron v. Nabasa*.[7] Prior to the Public Land Act's amendment by P.D. No. 1073, the law provided for "a simple 30-year prescriptive period for judicial confirmation of imperfect title."[8] P.D. No. 1073, however, "changed the required 30-year possession and occupation period provision, to possession and occupation of the land applied for *since June 12, 1945, or earlier*."[9] The significance of this date though was never explained by the law. In order not to prejudice

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[5] See *Heirs of Mario Malabanan v. Republic*, G.R. No. 178987, April 29, 2009, 587 SCRA 172, 190-191. I concurred with therein majority's opinion with respect to the relation between Section 48 (b) of the Public Land Act and Section 14 (1) of the Property Registration Decree, see pp. 230-234.

[6] Effectively, this is a grant of title by the State under Section 11 (4) of the Public Land Act, which states:

SEC. 11. Public lands suitable for agricultural purposes can be disposed of only as follows and not otherwise:

(1) For homestead settlement;

(2) By sale;

(3) By lease;

**(4) By confirmation of imperfect or incomplete title;**

(5) By judicial legalization;

(6) By administrative legalization (free patent).

[7] G.R. No. 84831, June 20, 2001, 359 SCRA 47.

[8] *Heirs of Mario Malabanan v. Republic*, *supra* note 2 at 234.

[9] *Id.* at 235.

the vested rights of those who complied with the original 30-year period of possession (but whose possession began only *after* the June 12, 1945 cut-off date set by P.D. No. 1073), the Court declared that the P.D.'s requirement as inapplicable to them:

> Filipino citizens who by themselves or their predecessors-in-interest have been, prior to the effectivity of P.D. 1073 on January 25, 1977, in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, for at least 30 years, or at least since January 24, 1947 may apply for judicial confirmation of their imperfect or incomplete title under Sec. 48(b) of the Public Land Act.[10]

Whether the cut-off date is June 12, 1945 or January 24, 1947 (applying the 30-year prescriptive period used prior to the effectivity of P.D. No. 1073), the petitioners' application for registration of land pursuant to Section 48 (b) of the Public Land Act [in relation with Section 14 (1) of the Property Registration Decree] should be denied. The facts stated that the petitioners (through their predecessors-in-interest) possessed the subject property only after the **March 22, 1949** exchange agreement with the Municipality of Pili. The petitioners' obvious failure to meet the law's alternative deadline renders any discussion of Section 48 (b) of the Public Land Act unnecessary.

**b. Registration under Section 14 (2) of the Property Registration Decree**

Section 48 (b) of the Public Land Act and Section 14 (1) of the Property Registration Decree, however, are not the only open avenues to register title over the land. "[E]ven if possession of the alienable public land commenced on a date later than June 12, 1945, and such possession being open, continuous and exclusive, then **the possessor may have the right to register the land by virtue of Section 14 (2) of the Property**

[10] *Id.* at 236, citing *Abejaron v. Nabasa.*

**Registration Decree**."[11] Section 14 (2) of the Property Registration Decree states:

SECTION 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

xxx xxx xxx

**(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.**

But this recourse is open only to **private lands acquired through prescription**; the provision thus calls for the application of Civil Code concepts of private property and prescription.

Prescription is a mode of acquiring ownership and other real rights over immovable property through the lapse of time in the manner and under the conditions laid down by law. [12] Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.[13] If the applicant's possession of the immovable property is coupled with good faith and just title, the lapse of 10 years is sufficient;[14] otherwise, the law requires 30 years of uninterrupted, adverse possession of the property.[15]

Whether ordinary or extraordinary, **prescription will run only against properties that are within the commerce of**

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[11] *Heirs of Mario Malabanan v. Republic*, *supra* note 2 at 197.

[12] CIVIL CODE, Article 1106. By prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law.

In the same way, rights and conditions are lost by prescription. (1930a)

[13] CIVIL CODE, Art. 1117. Acquisitive prescription of dominion and other real rights may be ordinary or extraordinary.

[14] CIVIL CODE, Article 1134. Ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years.

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

**men**. Properties of public dominion are not susceptible to acquisitive prescription.[16] Article 1113 of the Civil Code states that property of the State or any of its subdivisions **not patrimonial in character** shall not be the object of prescription. Properties of the public dominion become patrimonial properties only when they no longer intended for public use or for public service.[17] A land declared as alienable and disposable by the government does not necessarily become patrimonial property; it remains part of the public dominion:

> [T]here must be an **express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion**, pursuant to Article 420(2), and thus incapable of acquisition by prescription. **It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run**. Such declaration shall be in the form of a law duly enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[18]

Thus, the **10 or 30-year period of prescription that Section 14 (2) of the Property Registration Decree and the Civil Code**

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[16] *Celestial v. Cachopero, supra* note 4.

[17] Art. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (339a)

Art. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property. (340a)

Art. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State. (341a)

[18] *Heirs of Malabanan v. Republic, supra* note 2 at 203, which position is similar to what I discussed in my dissenting opinion, at 253-254.

**speak of commences to run only from the time the land, separately from being declared alienable and disposable, is declared as patrimonial property of the State, *i.e.*, properties held by the State in its private capacity**.[19]

Tested against these requirements in the application of Section 14 (2) of the Property Registration Decree, it is clear that the petitioners' application for registration of their title should be denied. Although the subject property was declared alienable and disposable by the government on October 30, 1986, the petitioners — *for purposes of a claim of prescription* — failed to establish whether it had also been declared as patrimonial property.

Thus, the petitioners have no basis to register the subject property either on the basis of Section 14 (1) or 14 (2) of the Property Registration Decree. For this reason, the petition should be denied.

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**FIRST DIVISION**

[G.R. No. 177190. February 23, 2011]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **HON. ERNESTO P. PAGAYATAN, in his capacity as Presiding Judge of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro; and JOSEFINA S. LUBRICA, in her capacity as Assignee of Federico Suntay,** *respondents.*

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[19] CIVIL CODE, Art. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

**SYLLABUS**

**1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; PRINCIPLE THEREOF, DISCUSSED; CANNOT BE APPLIED TO THE CASE AT BAR.—** In *Lanuza v. Court of Appeals*, the Court discussed the principle of *res judicata*, to wit: *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment, on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The elements of *res judicata* are (a) identity of parties or at least such as representing the same interest in both actions; **(b) identity of rights asserted and relief prayed for, the relief being founded on the same facts**; and (c) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. The issue before Us is whether the RTC acted properly in ordering the deposit or payment to the landowner of the preliminary valuation of the land made by the PARAD. This is considering that Sec. 16(e) of RA 6657 clearly requires the **initial valuation** made by the DAR and LBP be deposited or paid to the landowner before taking possession of the latter's property, not the preliminary valuation made by the PARAD. Evidently, the second element of *res judicata* is not present. The relief prayed for in *Lubrica* is that the amount for deposit in favor of the landowner be determined on the basis of the time of payment and not of the time of taking. But here, the prayer of the LBP is for the deposit of the valuation of the LBP and DAR and not that of the PARAD. These are two distinct and separate issues. *Res judicata*, therefore, cannot apply.

**2. ID.; ID.; *STARE DECISIS*; PRINCIPLE THEREOF, EXPLAINED; INAPPLICABLE TO THE CASE AT BAR.—** We cannot apply the principle of *stare decisis* to the instant case, too. The Court explained the principle in *Ting v. Velez-Ting*: The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of

law has been examined and decided, it should be deemed settled and closed to further argument. **Basically, it is a bar to any attempt to relitigate the same issues**, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code. To reiterate, *Lubrica* and the instant case have different issues. Hence, *stare decisis* is also inapplicable here.

**3. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657); PROCEDURE FOR ACQUISITION OF PRIVATE LANDS; IT IS THE INITIAL VALUATION MADE BY THE DEPARTMENT OF AGRARIAN REFORM (DAR) AND THE LAND BANK OF THE PHILIPPINES (LBP) WHICH MUST BE DEPOSITED AND RELEASED TO THE LANDOWNER PRIOR TO TAKING POSSESSION OF THE LAND, NOT THE VALUATION OF THE PARAD.—** The LBP posits that under Sec. 16(e) of RA 6657, and as espoused in *Land Bank of the Philippines v. Court of Appeals*, it is the purchase price offered by the DAR in its notice of acquisition of the land that must be deposited in an accessible bank in the name of the landowner before taking possession of the land, not the valuation of the PARAD. The Court agrees with the LBP. xxx. Sec. 16 of RA 6657 contains the procedure for the acquisition of private lands, *viz*: x x x [T]here is no mention of the PARAD in Sec. 16(e) when it speaks of "the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act." Moreover, it is only after the DAR has made its final determination of the initial valuation of the land that the landowner may resort to the judicial determination of the just compensation for the land. Clearly, therefore, it is the initial valuation made by the DAR and LBP that is contained in the letter-offer to the landowner under Sec. 16(a), said valuation of which must be deposited and released to the landowner prior to taking possession of the property. x x x It is clear from Sec. 16 of RA 6657 that it is the initial valuation made by the DAR and the LBP that must be released to the landowner in order for DAR to take possession of the property. Otherwise stated, Sec. 16 of RA 6657 does not authorize the release of the PARAD's determination of just compensation for the land which has not yet become final and executory.

**4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; WILL PROSPER ONLY IF GRAVE ABUSE OF DISCRETION IS ALLEGED AND PROVED TO EXIST; FAILURE OF THE REGIONAL TRIAL COURT TO DISTINGUISH BETWEEN THE INITIAL VALUATION THAT IS CONTEMPLATED IN SEC. 16 OF RA 6657 AND THE JUST COMPENSATION SUBJECT OF JUDICIAL DETERMINATION IS A GROSS AND PATENT ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION.—** [T]he RTC's failure to distinguish between the initial valuation that is contemplated in Sec. 16 of RA 6657 and the just compensation subject of judicial determination is a gross and patent error that can be considered as grave abuse of discretion. Gross abuse of discretion is defined, as follows: A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. **For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross**. x x x

**5. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657); PROCEDURE FOR ACQUISITION OF PRIVATE LANDS; THE LENGTH OF TIME THAT HAS ELAPSED THAT THE LANDOWNER HAS NOT RECEIVED ANY COMPENSATION FOR THE LAND CANNOT JUSTIFY THE RELEASE OF THE PARAD VALUATION TO HIM.—** [I]n order to give life and breath to Sec. 16 of RA 6657, as well as DAR Administrative Order No. 02, Series of 1996, the Court is constrained to direct the DAR and the LBP to make the initial valuation of the subject land as of the time of its taking and to deposit the valuation in the name of the landowner or his estate, in accordance with RA 6657 and the

pertinent decisions of this Court on the matter. The length of time that has elapsed that the landowner has not received any compensation for the land cannot justify the release of the PARAD valuation to the landowner. Sec. 16 of RA 6657 only allows the release of the initial valuation of the DAR and the LBP to the landowner prior to the determination by the courts of the final just compensation due. Besides, it must be stressed that it was only sometime in 2003 that the assignee of the landowner filed a petition for determination of just compensation with the PARAD. Clearly, the landowner slept on his right to demand payment of the initial valuation of the land. Nevertheless, such lapse of time demands that the DAR and the LBP act with dispatch in determining such initial valuation and to deposit it in favor of the landowner at the soonest possible time.

**APPEARANCES OF COUNSEL**

*LBP Legal Department* for petitioner.
*Verona Feliciano & Aquino* for private respondent.

**D E C I S I O N**

**VELASCO, JR., *J.*:**

**The Case**

This Petition for Review on *Certiorari* under Rule 45 seeks to annul the August 17, 2006 Decision[1] and March 27, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 93206, which affirmed the Order dated March 4, 2005[3] of the Regional Trial Court (RTC), Branch 46 in San Jose, Occidental Mindoro, in Agrarian Case No. 1390 for the fixing of just compensation, entitled *Land Bank of the Philippines v. Josefina S. Lubrica, in her capacity as assignee of Federico Suntay,*

[1] *Rollo*, pp. 73-80. Penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Godardo A. Jacinto and Magdangal M. de Leon.

[2] *Id.* at 82-83.

[3] *Id.* at 177-178.

*and Hon. Teodoro A. Cidro, as Provincial Agrarian Reform Adjudicator of San Jose, Occidental Mindoro*. The RTC Order affirmed the Decision dated March 21, 2003[4] of the Provincial Agrarian Reform Adjudicator (PARAD) of San Jose, Occidental Mindoro in Case No. DCN-0405-0022-02, entitled *Josefina S. Lubrica, in her capacity as Assignee of Federico Suntay v. Hon. Hernani A. Braganza, in his capacity as Secretary of the Department of Agrarian Reform, and Land Bank of the Philippines*.

**The Facts**

On October 21, 1972, the 3,682.0286-hectare Suntay Estate, consisting of irrigated/unirrigated rice and corn lands covered by Transfer Certificate of Title No. T-31(1326) located in the *Barangay*s of Gen. Emilio Aguinaldo, Sta. Lucia, and San Nicolas in Sablayan, Occidental Mindoro, was subjected to the operation of Presidential Decree No. 27, under its Operation Land Transfer (OLT), with the farmer-beneficiaries declared as owners of the property. However, a 300-hectare portion of the land was subjected to the Comprehensive Agrarian Reform Program (CARP) instead of the OLT. Thus, Certificates of Landownership Award were issued to the farmer-beneficiaries in possession of the land.[5] Such application of the CARP to the 300-hectare land was later the subject of a case before the Department of Agrarian Reform Adjudicatory Board (DARAB), which ruled that the subject land should have been the subject of OLT instead of CARP. The landowner admitted before the PARAD that said case was pending with this Court and docketed as G.R. No. 108920, entitled *Federico Suntay v. Court of Appeals*.

Meanwhile, the owner of the land remained unpaid for the property. Thus, Josefina S. Lubrica, in her capacity as assignee of the owner of the property, Federico Suntay, filed a Petition for Summary Determination of Just Compensation with the PARAD, docketed as Case No. DCN-0405-0022-2002. Thereafter,

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[4] *Id.* at 185-194.

[5] *Id.* at 187.

the PARAD issued its Decision dated March 21, 2003, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered:
>
> 1. Fixing the preliminary just compensation for 431.1407 hectare property at ₱166,150.00 per hectare or a total of ₱71,634,027.30.
> 2. Directing the Land Bank of the Philippines to immediately pay the aforestated amount to the Petitioner;
> 3. Directing the DAR to immediately comply with all applicable requirements so that the subject property may be formally distributed and turned over to the farmer beneficiaries thereof, in accordance with the Decision of the DARAB Central in DARAB Case No. 2846.
>
> No cost.
>
> SO ORDERED.[6]

Petitioner Land Bank of the Philippines (LBP) filed a Motion for Reconsideration dated April 10, 2003 of the above decision, but the PARAD denied the motion in an Order dated December 15, 2003.[7]

The LBP then filed a Petition dated March 4, 2004 with the RTC docketed as Agrarian Case No. 1390, appealing the PARAD Decision. In the Petition, the LBP argued that because G.R. No. 108920 was pending with this Court in relation to the 300-hectare land subject of the instant case, the Petition for Summary Determination of Just Compensation filed before the PARAD was premature. The LBP argued further that the PARAD could only make an award of up to PhP 5 million only. The PARAD, therefore, could not award an amount of PhP 71,634,027.30. The LBP also contended that it could not satisfy the demand for payment of Lubrica, considering that the documents necessary for it to undertake a preliminary valuation of the property were still with the Department of Agrarian Reform (DAR).

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[6] *Id.* at 193.

[7] *Id.* at 200-201.

By way of answer, Lubrica filed a Motion to Deposit the Preliminary Valuation under Section 16(e) of Republic Act No. (RA) 6657 and *Ad Cautelam* Answer dated June 18, 2004.[8] In the said motion, Lubrica claimed that since the DAR already took possession of the disputed property, the LBP is duty-bound to deposit the compensation determined by the PARAD in a bank accessible to the landowner.

In an Order dated March 4, 2005, the RTC resolved Lubrica's motion, as follows:

> The foregoing considered and as prayed for by the respondent-movant The Land Compensation Department, Land Bank of the Philipines, is hereby directed to deposit the preliminary compensation as determined by the PARAD, in case and bonds in the total amount of Php 71,634,027.30, with the Land Bank of the Philippines, Manila, within seven (7) days from receipt of this order, and to notify this Court of compliance within such period.[9]

Thus, the LBP filed an Omnibus Motion dated March 17, 2005 praying for the reconsideration of the above order, the admission of an amended petition impleading the DAR, and the issuance of summons to the new defendants. In the Omnibus Motion, the LBP contended:

> In this AMENDED PETITION, Land Bank impleaded the DAR as respondent because DAR is the lead agency of the government in the implementation of the agrarian reform. It is the one which is responsible in identifying the lands to be covered by agrarian reform program, placing/identifying the farmer beneficiaries, parcellary mapping of the land, and determining the land value covered by PD 27/EO 228. The documents DAR prepares is placed in a folder called "claim folder" which it forwards to Land Bank for processing and payment.
>
> 21. At present there is no claim folder prepared and submitted by DAR to Land Bank, and therefore Land Bank has no claim folder to process and no basis to pay the landowner.[10]

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[8] *Id.* at 214-221.

[9] *Id.* at 178.

[10] *Id.* at 275-276.

In an Order dated December 8, 2005,[11] the RTC denied the Omnibus Motion finding no reversible error in its Order dated March 4, 2005 and denying the motion to amend the petition for being unnecessary towards land valuation.

Thus, the LBP appealed the RTC Orders dated March 4, 2005 and December 8, 2005 to the CA through a Petition for *Certiorari* dated February 13, 2006. The LBP argued that without the claim folder from the DAR, it could not preliminarily determine the valuation of the covered lands and process the compensation claims. Moreover, it said that the amount to be deposited under Sec. 16 of RA 6657, or the *Agrarian Reform Law of 1988*, is the offered purchase price of DAR for the land contained in the notice of acquisition and not the price determined in an administrative proceeding before the PARAD.

Afterwards, on August 17, 2006, the CA issued the assailed decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is hereby DENIED DUE COURSE, and subsequently DISMISSED for lack of merit.
>
> SO ORDERED.[12]

The LBP moved for reconsideration of the CA Decision, but the CA did not reconsider it, as stated in its Resolution dated March 27, 2007.

Hence, the LBP filed this petition.

**The Issue**

What is the proper amount to be deposited under Section 16 of Republic Act No. 6657? Is it the PARAD/DARAB determined valuation or the preliminary valuation as determined by the DAR/LBP?[13]

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[11] *Id.* at 179-180.

[12] *Id.* at 80.

[13] *Id.* at 61.

**The Ruling of the Court**

The petition is meritorious.

Private respondent Lubrica argues that, under the doctrines of *res judicata* and *stare decisis*, the instant case must be dismissed in light of the decision of this Court in *Lubrica v. Land Bank of the Philippines*,[14] the dispositive portion of which reads:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Amended Decision dated October 27, 2005 of the Court of Appeals in CA-G.R. SP No. 77530 is REVERSED and SET ASIDE. The Decision dated May 26, 2004 of the Court of Appeals affirming **(a) the March 31, 2003 Order of the Special Agrarian Court ordering the respondent Land Bank of the Philippines to deposit the just compensation provisionally determined by the PARAD;** (b) the May 26, 2003 Resolution denying respondent's Motion for Reconsideration; and (c) the May 27, 2003 Order directing Teresita V. Tengco, respondent's Land Compensation Department Manager to comply with the March 31, 2003 Order, is REINSTATED. The Regional Trial Court of San Jose, Occidental Mindoro, Branch 46, acting as Special Agrarian Court is ORDERED to proceed with dispatch in the trial of Agrarian Case Nos. R-1339 and R-1340, and to compute the final valuation of the subject properties based on the aforementioned formula.
>
> SO ORDERED. (Emphasis supplied.)

The principles of *res judicata* and *stare decisis* do not apply to the case at bar.

In *Lanuza v. Court of Appeals*,[15] the Court discussed the principle of *res judicata*, to wit:

> *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment, on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to

[14] G.R. No. 170220, November 20, 2006, 507 SCRA 415, 425-426.

[15] G.R. No. 131394, March 28, 2005, 454 SCRA 54, 61-62.

subsequent actions involving the same claim, demand, or cause of action. The elements of *res judicata* are (a) identity of parties or at least such as representing the same interest in both actions; **(b) identity of rights asserted and relief prayed for, the relief being founded on the same facts**; and (c) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. (Emphasis supplied.)

In *Lubrica*, the issue was as follows:

> Petitioners insist that the determination of just compensation should be based on the value of the expropriated properties at the time of payment. Respondent LBP, on the other hand, claims that the value of the realties should be computed as of October 21, 1972 when P.D. No. 27 took effect.[16]

While the Court directed that the valuation made by the PARAD be the amount to be deposited in favor of the landowner, it was done only because the PARAD's valuation was based on the time the payment was made.

The issue before Us is whether the RTC acted properly in ordering the deposit or payment to the landowner of the preliminary valuation of the land made by the PARAD. This is considering that Sec. 16(e) of RA 6657 clearly requires the **initial valuation** made by the DAR and LBP be deposited or paid to the landowner before taking possession of the latter's property, not the preliminary valuation made by the PARAD.

Evidently, the second element of *res judicata* is not present. The relief prayed for in *Lubrica* is that the amount for deposit in favor of the landowner be determined on the basis of the time of payment and not of the time of taking. But here, the prayer of the LBP is for the deposit of the valuation of the LBP and DAR and not that of the PARAD. These are two distinct and separate issues. *Res judicata*, therefore, cannot apply.

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[16] *Supra* note 14, at 421.

We cannot apply the principle of *stare decisis* to the instant case, too. The Court explained the principle in *Ting v. Velez-Ting*:[17]

> The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. **Basically, it is a bar to any attempt to relitigate the same issues**, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code. (Emphasis supplied.)

To reiterate, *Lubrica* and the instant case have different issues. Hence, *stare decisis* is also inapplicable here.

The LBP posits that under Sec. 16(e) of RA 6657, and as espoused in *Land Bank of the Philippines v. Court of Appeals*,[18] it is the purchase price offered by the DAR in its notice of acquisition of the land that must be deposited in an accessible bank in the name of the landowner before taking possession of the land, not the valuation of the PARAD.

The Court agrees with the LBP. The RTC erred when it ruled:

> Under Section 16 (e) the payment of the provisional compensation determined by the PARAD in the summary administrative proceedings under Section 16 (d) should precede the taking of the land. In the present case, the taking of the property even preceded the mere determination of a provisional compensation by more than 30 years.[19]

Sec. 16 of RA 6657 contains the procedure for the acquisition of private lands, *viz*:

> SEC. 16. *Procedure for Acquisition of Private Lands*.— For purposes of acquisition of private lands, the following procedures shall be followed:

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[17] G.R. No. 166562, March 31, 2009, 582 SCRA 694, 704.

[18] G.R. No. 118712, October 6, 1995, 249 SCRA 149.

[19] *Rollo*, p. 178.

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and *barangay* hall of the place where the property is located. **Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.**

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation of the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. **The DAR shall decide the case within thirty (30) days after it is submitted for decision.**

**(e) Upon receipt by the landowner of the corresponding payment or in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.**

**(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.** (Emphasis supplied.)

Conspicuously, there is no mention of the PARAD in the foregoing Sec. 16(e) when it speaks of "the deposit with an accessible bank designated by the DAR of the compensation in cash or LBP bonds in accordance with this Act." Moreover, it is only after the DAR has made its final determination of the initial valuation of the land that the landowner may resort to the judicial determination of the just compensation for the land. Clearly, therefore, it is the initial valuation made by the DAR and LBP that is contained in the letter-offer to the landowner under Sec. 16(a), said valuation of which must be deposited and released to the landowner prior to taking possession of the property.

This too was the Court's interpretation of the above provision in *Land Bank of the Philippines v. Heir of Trinidad S. Vda. De Arieta*:[20]

> It was thus erroneous for the CA to conclude that the provisional compensation required to be deposited as provided in Section 16 (e) is the sum determined by the DARAB/PARAD/RARAD in a summary administrative proceeding merely because the word "deposit" appeared for the first time in the sub-paragraph immediately succeeding that sub-paragraph where the administrative proceeding is mentioned (sub-paragraph d). On the contrary, sub-paragraph (e) should be related to sub-paragraphs (a), (b) and (c) considering that the taking of possession by the State of the private agricultural land placed under the CARP is the next step after the DAR/LBP has complied with notice requirements which include the offer of just compensation based on the initial valuation by LBP. To construe sub-paragraph (e) as the appellate court did would hamper the land redistribution process because the government still has to wait for the termination of the summary administrative proceeding before it can take possession of the lands. Contrary to the CA's view, the deposit of provisional compensation is made even before the summary administrative proceeding commences, or at least simultaneously with it, once the landowner rejects the initial valuation ("offer") by the LBP. Such deposit results from his rejection of the DAR offer (based on the LBP's initial valuation). Both the conduct of summary administrative proceeding and deposit of provisional compensation follow as a

[20] G.R. No. 161834, August 11, 2010.

consequence of the landowner's rejection under both the compulsory acquisition and VOS. This explains why the words "rejection or failure to reply" and "rejection or no response from the landowner" are found in sub-paragraphs (d) and (e). Such "rejection"/"no response from the landowner" could not possibly refer to the award of just compensation in the summary administrative proceeding considering that the succeeding sub-paragraph (f) states that the landowner who disagrees with the same is granted the right to petition in court for final determination of just compensation. As it is, the CA's interpretation would have loosely interchanged the terms "rejected the offer" and "disagrees with the decision," which is far from what the entire provision plainly conveys.

xxx xxx xxx

Under the law, the LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Once an expropriation proceeding or the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins. EO No. 405, issued on June 14, 1990, provides that the DAR is required to make use of the determination of the land valuation and compensation by the LBP as the latter is primarily responsible for the determination of the land valuation and compensation. In fact, the LBP can disagree with the decision of the DAR in the determination of just compensation, and bring the matter to the RTC designated as [Special Agrarian Court] for final determination of just compensation.

**The amount of "offer" which the DAR gives to the landowner as compensation for his land, as mentioned in Section 16 (b) and (c), is based on the initial valuation by the LBP. This then is the amount which may be accepted or rejected by the landowner under the procedure established in Section 16. Perforce, such initial valuation by the LBP also becomes the basis of the deposit of provisional compensation pending final determination of just compensation, in accordance with sub-paragraph (e).** (Emphasis supplied.)

It is clear from Sec. 16 of RA 6657 that it is the initial valuation made by the DAR and the LBP that must be released to the landowner in order for DAR to take possession of the property. Otherwise stated, Sec. 16 of RA 6657 does not authorize the

release of the PARAD's determination of just compensation for the land which has not yet become final and executory.

Moreover, it bears pointing out that, pursuant to DAR Administrative Order No. 02, Series of 1996, entitled *Revised Rules and Procedures Governing the Acquisition of Agricultural Lands subject of Voluntary Offer to Sell and Compulsory Acquisition pursuant to Republic Act No. 6657*, the DAR Municipal Office (DARMO) first prepares a claim folder (CF) containing the necessary documents for the valuation of the land. The DARMO then forwards this claim folder to the DAR Provincial Office (DARPO) which, in turn, has the following duties: "Receives claim folder and forwards to the DAR-LBP Pre-Processing Unit (PPU) for review/evaluation of documents. Gathers lacking documents, if any."[21] The DAR-LBP PPU then forwards the CF to the LBP-Land Valuation and Landowner's Compensation Office (LVLCO) which "receives and evaluates the CF for completeness, consistency and document sufficiency. Gathers additional valuation documents."[22] Thereafter, the LBP-LVLCO "determines land valuation based on valuation inputs" and "prepares and sends Memo of Valuation, Claim Folder Profile and Valuation Summary (MOV-CFPVS)" to the DARPO.[23] The DARPO then "sends Notice of Valuation and Acquisition to LO [landowner] by personal delivery with proof of service or by registered mail with return card, attaching copy of MOV-CFPVS and inviting LO's attention to the submission of documents required for payment of claim."[24]

Notably, DAR failed to prepare the claim folder which is necessary for the LBP to make a valuation of the land to be expropriated. The proper remedy would have been to ask the DAR and LBP to determine such initial valuation and to have the amount deposited to his account, in accordance with Sec. 16 of RA 6657. Nevertheless, it was erroneous for private respondent

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[21] *Rollo*, p. 288.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 289.

to have filed a Petition for Determination of Just Compensation with PARAD when the remedy that she was seeking was for the deposit of the initial valuation that the DAR and LBP should have made.

Contrary to the CA's ruling, the RTC's failure to distinguish between the initial valuation that is contemplated in Sec. 16 of RA 6657 and the just compensation subject of judicial determination is a gross and patent error that can be considered as grave abuse of discretion. Gross abuse of discretion is defined, as follows:

> A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. **For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross**.[25] x x x (Emphasis supplied.)

It should also be pointed out that in the related *Land Bank of the Philippines v. Pagayatan*,[26] the Court had found the presiding judge of the RTC, Branch 16 in San Jose, Occidental Mindoro, herein respondent Judge Ernesto P. Pagayatan, guilty of Gross Ignorance of the Law or Procedure and Gross Misconduct for holding Teresita V. Tengco, Acting Chief of the Land Compensation Department of the LBP, and Leticia Lourdes A. Camara, Chief of the Land Compensation Department of the LBP, guilty of indirect contempt for allegedly disobeying the very same Order dated March 4, 2005 of the RTC. In that case, Court ruled:

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[25] *Beluso v. Commission on Elections*, G.R. No. 180711, June 22, 2010, 621 SCRA 450, 456.

[26] A.M. No. RTJ-07-2089, September 8, 2009, 598 SCRA 592, 605.

The partiality of respondent was highlighted when, out of his selective invocation of judicial courtesy, he refused to resolve Leticia and Teresita's February 14, 2007 Urgent Manifestation of Compliance and Motion and other pending incidents in view of the pendency before the appellate court of the LBP's Omnibus Motion praying for, among other things, the quashal of the warrant of arrest, whereas he had earlier found Leticia and Teresita guilty of contempt despite the pendency before the appellate court of LBP's motion for reconsideration of the dismissal of the petition in CA-G.R. SP No. 93206.

Evidently, the RTC had already acted with partiality in deciding the case and with grave abuse of discretion.

Moreover, in order to give life and breath to Sec. 16 of RA 6657, as well as DAR Administrative Order No. 02, Series of 1996, the Court is constrained to direct the DAR and the LBP to make the initial valuation of the subject land as of the time of its taking and to deposit the valuation in the name of the landowner or his estate, in accordance with RA 6657 and the pertinent decisions of this Court on the matter.

The length of time that has elapsed that the landowner has not received any compensation for the land cannot justify the release of the PARAD valuation to the landowner. Sec. 16 of RA 6657 only allows the release of the initial valuation of the DAR and the LBP to the landowner prior to the determination by the courts of the final just compensation due. Besides, it must be stressed that it was only sometime in 2003 that the assignee of the landowner filed a petition for determination of just compensation with the PARAD. Clearly, the landowner slept on his right to demand payment of the initial valuation of the land. Nevertheless, such lapse of time demands that the DAR and the LBP act with dispatch in determining such initial valuation and to deposit it in favor of the landowner at the soonest possible time.

**WHEREFORE,** the petition is *GRANTED*. The CA's August 17, 2006 Decision and March 27, 2007 Resolution in CA-G.R. SP No. 93206 are hereby *REVERSED* and *SET ASIDE*. The DAR and the LBP are hereby given three (3) months from receipt of notice that this Decision has become final and executory,

within which to determine the initial valuation of the subject lot and to deposit its initial value to the account of private respondent Lubrica.

The PARAD Decision dated March 21, 2003 in Case No. DCN-0405-0022-02 is hereby *ANNULLED* and *SET ASIDE*. The RTC Order dated March 4, 2005 in Agrarian Case No. 1390 is also *ANNULLED* and *SET ASIDE*.

No costs.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Nachura,*[*] *del Castillo,* and *Perez, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 178060. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **ROMEO DANSICO *y* MONAY *a.k.a.* "Lamyak" and AUGUSTO CUADRA *y* ENRIQUEZ,** *appellants.*

**SYLLABUS**

**1. CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425, AS AMENDED); ILLEGAL SALE OF *MARIJUANA*; ESSENTIAL ELEMENTS; PROVEN IN CASE AT BAR.—** [T]o convict an accused of illegal sale of *marijuana*, the prosecution must establish these essential elements: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment. All these elements were duly proven during the trial.

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[*] Additonal member per Special Order No. 947 dated February 11, 2011.

**2. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL, FRAME-UP AND POLICE EXTORTION; FAILURE OF THE ACCUSED TO FILE CRIMINAL AND ADMINISTRATIVE CASES AGAINST THE CONCERNED POLICE OFFICERS IN LIGHT OF HIS ALLEGATIONS OF FRAME-UP AND EXTORTION INDICATES THAT THE SAME ARE MERE CONCOCTED AFTERTHOUGHTS.—** The defenses of denial, frame-up, and police extortion only become weighty when inconsistencies and improbabilities cast doubt on the credibility of the prosecution evidence. We do not see these inconsistencies and improbabilities in the presented evidence. Besides, the failure of the appellants to file appropriate criminal and administrative cases against the concerned police officers in light of their allegations highly indicates that the appellants' claims are mere concocted afterthoughts.

**3. CRIMINAL LAW; INSTIGATION; DISTINGUISHED FROM ENTRAPMENT.—** [T]he evidence on record belies that the appellants were instigated to sell *marijuana*. Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him. On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker. Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer. In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes. In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction.

**4. ID.; ID.; CONDUCT OF THE APPREHENDING OFFICERS AND THE PREDISPOSITION OF THE ACCUSED TO COMMIT THE CRIME MUST BE EXAMINED TO DETERMINE WHETHER THERE IS INSTIGATION OR ENTRAPMENT; DISCUSSED.—** To determine whether there is instigation or entrapment, we held in *People v. Doria* that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined: [I]n

buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.

**5. ID.; THE DANGEROUS DRUGS ACT OF 1972 (R.A. NO. 6425, AS AMENDED); ILLEGAL SALE OF MARIJUANA; PROPER PENALTY.—** The guilt of the appellants for selling *marijuana* having been proven beyond reasonable doubt, the appellants are liable to suffer the penalty provided under Section 4, Article II, in connection with Section 20 of R.A. No. 6425, as amended x x x. P/Sr. Insp. Razonable testified that the quantity of *marijuana* taken from the appellants weighed 878.80 grams. Accordingly, we affirm the ruling of the RTC and the CA imposing the penalty of *reclusion perpetua* and a fine of ₱500,000.00, as these are the penalties provided for by law. In lieu of merely ordering the return of the ₱5,000.00 buy-bust money, the appellants are ordered to pay ₱5,000.00 as reimbursement for the unrecovered buy-bust money.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Public Attorney's Office* for appellants.

## D E C I S I ON

**BRION,*** ***J.*****:**

We review in this Rule 45 petition the decision[1] of the Court of Appeals[2] (*CA*) in CA-G.R. CR-H.C. No. 00645. The CA decision affirmed the decision[3] of the Regional Trial Court (*RTC*), Branch 30, San Jose, Camarines Sur, in Criminal Case No. T-1910, finding appellants Romeo Dansico *y* Monay *a.k.a*. "Lamyak" and Augusto Cuadra y Enriquez guilty beyond reasonable doubt of illegal sale of *marijuana* under Section 4, Article II of Republic Act (R.A.) No. 6425, as amended.

*The Information and Plea*

The appellants were charged under the following Information dated September 8, 1998:

> That sometime on September 7, 1998 at about 4:30 o'clock [sic] in the afternoon, at Brgy. May-Anao, Tigaon, Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping one another to attain a common purpose did then and there willfully, unlawfully and feloniously without authority of law sell, deliver one (1) pc. Marijuana bricks wrapped in newspaper with approximate size of 1 ½ x 8 x 10 inches weighing approximately NINE HUNDRED (900) grams for and in consideration of FIVE THOUSAND PESOS (₱5,000.00) to the prejudice of the Government.
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> ACTS CONTRARY TO LAW.[4]

With the assistance of their counsel, the appellants pleaded not guilty to the charge. In the pre-trial, the appellants admitted

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* Designated Acting Chairperson on the Third Division effective February 16, 2011, per Order No. 925 dated January 24, 2011.

[1] Dated February 27, 2007; *rollo*, pp. 3-22.

[2] Penned by CA Associate Justice Japar B. Dimaampao, with the concurrence of CA Associate Justices Portia Aliño-Hormachuelos and Mario L. Guariña III.

[3] Dated June 26, 2001; CA *rollo*, pp. 26-40.

[4] CA *rollo*, p. 8.

their identities and the existence of the booking sheet and the arrest report against them. Trial on the merits thereafter ensued.

*The Prosecution's Case*

The prosecution established its case by presenting the testimonies of three (3) witnesses[5] and the supporting documentary evidence.[6] The prosecution's account showed that the appellants were caught and arrested for selling *marijuana* during a buy-bust operation.

The prosecution's evidence shows that on the basis of reports that the appellants were engaged in peddling *marijuana*, the members of the Camarines Narcotics Provincial (*NARGROUP*) Office, Naga City (headed by P/Insp. Dennis Vargas) organized a buy-bust operation against the appellants. The buy-bust team was assisted by an unidentified confidential informant and four (4) civilian volunteers. The confidential informant and Willie Paz, a civilian volunteer, were designated to act as poseur-buyers. P/Insp. Vargas gave Paz ₱5,000.00 as buy-bust money.[7]

On September 7, 1998, the buy-bust team went to May-Anao, Tigaon where they briefed the local Tigaon Police at their station of the impending buy-bust operation. The buy-

[5] They are (1) P/Insp. Dennis A. Vargas, (2) Willie Paz, and (3) P/Sr. Insp. Ma. Julieta Razonable.

[6] It consists of the following: (1) Request for Laboratory Examination (Exh. A with submarking); (2) Chemistry Report No. D-104-98 (Exh. B, with submarkings); (3) report and sketch (Exh. C, with submarkings); (4) the plastic bag with the subject marijuana with a mark Julieta G. Razonable (Exh. E, with submarkings); (5) the letter-request of P/Insp. Dennis Vargas to the Crime Laboratory (Exh. F, with submarking, and Exh. G, with submarkings); (6) the photocopy of the Police Blotter Entry and the Memo (Exh. H, with submarking, to Exh. I, with submarking); (7) the Booking Sheet for Augusto Cuadra and Romeo Dansico (Exh. J, with submarking, and Exh. K, with submarking); (8) the respective pictures of Augusto Cuadra and Romeo Dansico (Exh. L, with submarkings, to Exh. M, with submarkings); (9) the picture of the motorcycle (Exh. N, with submarkings); (10) the Certificate of Initial Field Test (Exh. O, with submarkings); (11) the Joint Affidavit of Arrest (Exh. P, with submarkings); and (12) the Medical Certificate issued to P/Insp. Dennis Vargas.

[7] CA Decision, *supra* note 1, at 4-5.

bust team afterwards proceeded to the nipa hut owned by appellant Dansico. Paz and the confidential informant met with the appellants; the confidential informant informed the appellants that Paz wanted to buy ₱5,000.00 worth of *marijuana*. Paz handed the buy-bust money to the appellants who left in a motorcycle to get the *marijuana*.[8]

After three hours, more or less, the appellants returned with a brick, allegedly *marijuana*, wrapped in a newspaper. Appellant Dansico took the brick from appellant Cuadra and gave it to Paz. At this point, Paz gave the pre-arranged signal for P/Insp. Vargas and the buy-bust team to approach. The team immediately apprehended appellant Dansico, while appellant Cuadra resisted by throwing stones at and grappling with P/Insp. Vargas. Paz turned the seized *marijuana* to P/Insp. Vargas and the group proceeded to the Tigaon Police Station.[9]

The arrest of the appellants, the recovery of the suspected *marijuana* and the confiscation of the appellants' motorcycle were entered in the police blotter of the Tigaon Police Station. Afterwards, the buy-bust team (with the appellants in tow and with the confiscated items) proceeded to the NARGROUP Office where P/Insp. Vargas prepared a booking sheet and the arrest report. The confiscated brick of *marijuana* was placed inside a plastic bag and marked "07 September 1998 WPD" to indicate the date of the buy-bust. The plastic bag was initialed by P/Insp. Vargas and Paz.[10] P/Insp. Vargas also conducted an initial field test which confirmed the confiscated item to be *marijuana*. Afterwards, P/Insp. Vargas submitted the confiscated *marijuana* to the Crime Laboratory for further laboratory examination.[11] As borne by the mark stamped on the request of P/Insp. Vargas, the submitted *marijuana* was received by the receiving clerk of the Crime Laboratory and was given control no. 1774-98 D-10498.[12]

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[8] *Id.* at 5-6.

[9] TSN, July 28, 1999, p. 8.

[10] TSN, October 13, 1999, p. 3.

[11] TSN, July 28, 1999, p. 15; and TSN, May 5, 1999, p. 7.

[12] Records, p. 180.

The confiscated *marijuana* was turned over by the receiving clerk to P/Sr. Insp. Ma. Julieta Razonable[13] who then conducted the laboratory tests which subsequently confirmed that the submitted specimen was *marijuana*.[14] P/Sr. Insp. Razonable reduced her findings to writing under Chemistry Report No. D-104-98. After the examination, P/Sr. Insp. Razonable placed the *marijuana* inside a plastic bag and sealed it with tape.[15] In court, P/Sr. Insp. Razonable presented the *marijuana* by unsealing the plastic bag. She identified the *marijuana* by the markings she previously made.[16]

*The Case for the Defense*

The defense denied the charges and countered that the appellants were victims of frame-up and police extortion. The defense presented six (6) witnesses[17] (including the two appellants) and the documentary evidence. Appellant Dansico admitted that the *marijuana* presented in court was the same *marijuana* shown to him at the Tigaon Police Station.

According to the defense, appellant Dansico had a farm where appellant Cuadra worked. In the afternoon of September 7, 1998, appellant Cuadra was on his way back to the farm when he was accosted by P/Insp. Vargas who poked a gun at him. Appellant Cuadra attempted to flee and even shouted for help but P/Insp. Vargas struck him on the head with his gun.

SPO4 Paterno Boncodin, a local Tigaon policeman, was presented to corroborate the appellants' story. SPO4 Boncodin claimed that he saw P/Insp. Vargas and appellant Cuadra grappling with each other. He was then informed by the confidential informant that appellant Cuadra was being arrested for the illegal sale of *marijuana*. SPO4 Boncodin claimed that after appellant

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[13] TSN, May 5, 1999, p. 22.

[14] *Id.* at 7.

[15] *Id.* at 5.

[16] TSN, May 5, 1999, pp. 5 and 6.

[17] The other three witnesses were SPO3 Edgar Latam, SPO1 Roberto Caña and Elena Sora.

Cuadra was subdued and taken to the police station, P/Insp. Vargas returned to appellant Dansico's farm and arrested appellant Dansico. Thereafter, the appellants were charged with selling *marijuana*.

In its decision, the RTC found the appellants guilty of illegal sale of *marijuana* and sentenced them to suffer the penalty of *reclusion perpetua* with the corresponding accessory penalties. The RTC also ordered them (a) to pay a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00); (b) to return or reimburse Five Thousand Pesos (₱5,000.00) representing the unrecovered buy-bust money; and (c) to pay the costs.[18]

The CA, on appeal, affirmed the RTC decision. The CA sustained the convictions of the appellants, finding the prosecution's version more credible in the absence of any improper motive established against the prosecution witnesses. The CA also relied on the presumption of regularity that attended the conduct of the buy-bust operation which led to the arrest of the appellants.

*The Issue*

In their Brief,[19] the appellants seek their acquittal based on the following arguments. *First*, the two (2) elements of the crime – the sale and delivery of the *marijuana*, and the knowledge of the sale of *marijuana* – were not established in evidence. *Second*, the evidence failed to establish the existence of the buy-bust operation; for the first time on appeal, the appellants argue that they were instigated into selling *marijuana*. The other arguments relate to the disregard by the lower courts of the defenses of denial and frame-up, and the claim of police extortion raised by the appellants.

The Office of the Solicitor General[20] (*OSG*) contends that the evidence sufficiently established the sale and delivery of *marijuana* by the appellants during the buy-bust operation

[18] *Rollo*, p. 7.

[19] CA *rollo*, pp. 59-70.

[20] *Id.* at 98-121.

conducted by the team of P/Insp. Vargas. That an actual buy-bust operation took place was even testified to by defense witness SPO1 Roberto Caña and supported by the police blotter. The OSG also contends that the appellants' defenses of frame-up and extortion were not properly substantiated. On the instigation claim, the OSG stresses that this claim was only raised for the first on appeal. By this argument, the appellants in fact actually admitted having sold and delivered *marijuana* to the team of P/Insp. Vargas.

*The Court's Ruling*

**We find no reversible error committed by the RTC and the CA in appreciating the presented evidence and, therefore, deny the petition for lack of merit.**

*First*, to convict an accused of illegal sale of *marijuana*, the prosecution must establish these essential elements: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment.[21]

All these elements were duly proven during the trial. The fact that an actual buy-bust operation took place involving the appellants is supported not only by the testimonies of Paz (as the poseur-buyer) and P/Insp. Vargas, but also by the presented documentary evidence consisting of (a) the photocopy of the serial numbers of the marked money used in the buy-bust operation,[22] (b) the Tigaon Police Station police blotter showing the arrest of the appellants on September 7, 1998 and the cause of their arrest by the group of P/Insp. Vargas,[23] (c) the booking sheet and arrest report against the appellants prepared by P/Insp. Vargas,[24] and (d) the Joint Affidavit of Arrest executed by P/Insp. Vargas and Eduardo Buenavente, another civilian volunteer.[25]

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[21] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299.

[22] Records, p. 235.

[23] *Id.* at 234.

[24] *Id.* at 14-15.

[25] *Id.* at 6-8.

*Second*, the testimonies of Paz and P/Insp. Vargas on the buy-bust operation and the identities of the appellants as the sellers of the *marijuana* were positive and straightforward; they were consistent with one another with respect to the events that transpired before, during, and after the buy-bust operation that led to the appellants' arrest. We consider, too, the testimonies of Paz and P/Insp. Vargas to be in accord with the physical evidence showing in detail the process undertaken by P/Insp. Vargas and the police officers immediately after the appellants' arrest and the confiscation of the *marijuana*. We also take into account that no improper motive was ever successfully established showing why the buy-bust team would falsely accuse the appellants.

*Third*, the defenses of denial, frame-up, and police extortion only become weighty when inconsistencies and improbabilities cast doubt on the credibility of the prosecution evidence. We do not see these inconsistencies and improbabilities in the presented evidence. Besides, the failure of the appellants to file appropriate criminal and administrative cases against the concerned police officers in light of their allegations highly indicates that the appellants' claims are mere concocted afterthoughts.

*Fourth*, the records show that the defenses of denial, frame-up, and police extortion were even contradicted by the appellants' own conduct during the appeal to the CA. By raising instigation as a defense, the appellants effectively admitted that they sold *marijuana*; they only now question the circumstances of the sale, with the claim that they were led into it by the police.

*Fifth*, the evidence on record belies that the appellants were instigated to sell *marijuana*. Instigation means luring the accused into a crime that he, otherwise, had no intention to commit, in order to prosecute him.[26] On the other hand, entrapment is the employment of ways and means in order to trap or capture a lawbreaker.[27] Instigation presupposes that the criminal intent to commit an offense originated from the inducer and not the

[26] See *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741.

[27] *Id.* at 748.

accused who had no intention to commit the crime and would not have committed it were it not for the initiatives by the inducer.[28] In entrapment, the criminal intent or design to commit the offense charged originates in the mind of the accused; the law enforcement officials merely facilitate the apprehension of the criminal by employing ruses and schemes.[29] In instigation, the law enforcers act as active co-principals. Instigation leads to the acquittal of the accused, while entrapment does not bar prosecution and conviction. [30]

To determine whether there is instigation or entrapment, we held in *People v. Doria*[31] that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

> [I]n buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[32]

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[28] *Ibid.*

[29] *Ibid.*

[30] *Id.* at 748-749.

[31] G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[32] *Id.* at 698-699.

In the present case, Paz testified to his initial contact with the confidential informant, on one hand, and with the appellants, on the other. Acting as the poseur-buyer, Paz asked the appellants if they had ₱5,000.00 worth of *marijuana* which the appellants told him was equivalent to one (1) kilo. Paz and the appellants initially haggled over the price before the appellants left to get the *marijuana* after receiving payment. The appellants were immediately arrested by the group of P/Insp. Vargas after the *marijuana* was handed to Paz.

The appellants' conversation with Paz best illustrates that they were not at all instigated to sell *marijuana*, but were, in fact, engaged in the business of selling *marijuana*. In his testimony, Paz testified:

Q: Now, after the brief introduction and your purpose was mentioned to the accused, tell us what happened if any?
A: Lamyak [appellant Dansico] asked from me the money and I asked him how much.

Q: And what was the response of the accused if any?
A: As of now the ranning [sic] price for one (1) kilo is ₱5,000.00.[33]

During cross-examination, Paz also related:

Q: But you will agree with me that Lamyak said he does not have *marijuana* in that safehouse, is that correct?
A: Yes, sir.

xxx xxx xxx

Q: All he said is that he has no *marijuana?*
A: He said that he has no *marijuana* in that place and that he will get.[34]

In addition to this testimony, appellant Dansico admitted that his brother-in-law sells *marijuana* in Naga City. All these circumstances, collectively considered, fully support the conclusion that the appellants, by their own volition, sold *marijuana* to Paz.[35]

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[33] TSN, February 16, 1999, p. 11.

[34] TSN, March 29, 1999, p. 13.

[35] TSN, November 24, 2000, p. 12.

*The Penalty*

The guilt of the appellants for selling *marijuana* having been proven beyond reasonable doubt, the appellants are liable to suffer the penalty provided under Section 4, Article II, in connection with Section 20 of R.A. No. 6425, as amended, which provides:

> Sec. 4. *Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs*. — The **penalty of *reclusion perpetua* to death and a fine ranging 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 broker in any of such transactions.
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> xxx xxx xxx
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> Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments 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:
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> xxx xxx xxx
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> 5. **750 grams or more of** Indian hemp or *marijuana[.]*

P/Sr. Insp. Razonable testified that the quantity of *marijuana* taken from the appellants weighed 878.80 grams. Accordingly, we affirm the ruling of the RTC and the CA imposing the penalty of *reclusion perpetua* and a fine of ₱500,000.00, as these are the penalties provided for by law. In lieu of merely ordering the return of the ₱5,000.00 buy-bust money, the appellants are ordered to pay ₱5,000.00 as reimbursement for the unrecovered buy-bust money.

**WHEREFORE,** premises considered, we hereby *DENY* the appeal of appellants Romeo Dansico *y* Monay *a.k.a*. "Lamyak" and Augusto Cuadra *y* Enriquez. The decision dated February 27, 2007 of the Court of Appeals in CA-G.R. CR-H.C. No. 00645, finding Romeo Dansico *y* Monay *a.k.a*. "Lamyak" and Augusto Cuadra *y* Enriquez guilty beyond reasonable doubt of illegal

sale of *marijuana* under Section 4, Article II of Republic Act No. 6425, as amended, is *AFFIRMED with the MODIFICATION* that the appellants are ordered to pay ₱5,000.00 as reimbursement for the unrecovered buy-bust money.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson), on wellness leave.*

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**SECOND DIVISION**

[G.R. No. 178544. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **MANUEL PALOMA *y* ESPINOSA,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; OBJECTIVE TEST; DETAILS OF THE PURPORTED SALE MUST BE CLEARLY AND ADEQUATELY ESTABLISHED.—** Under the "objective" test set by the Court in *People v. Doria*, the prosecution must clearly and adequately show the details of the purported sale, namely, the initial contact between the *poseur*-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and, finally, the accused's delivery of the illegal drug to the buyer, whether the latter be the informant alone or the police officer. This proof is essential to ensure that law-abiding citizens are not unlawfully induced to commit the

[*] Additional Member per Special Order No. 926 dated January 24, 2011.

offense. Here, PO2 Amigo's testimony miserably failed to establish the required details of the supposed illegal drug sale.

**2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF DUTIES IS DISPUTABLE BY CONTRARY PROOF AND CANNOT PREVAIL OVER THE RIGHT OF THE ACCUSED TO BE PRESUMED INNOCENT; ACQUITTAL OF THE ACCUSED, WARRANTED.—** While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption is disputable by contrary proof and cannot prevail over the constitutional right of the accused to be presumed innocent. The totality of the evidence presented in this case does not support Paloma's conviction for violation of Section 5, Article II of R.A. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**ABAD, *J.*:**

This case is about the need in cases of illegal sale of prohibited drugs for the prosecution to prove the details of the transaction through someone who saw the sale take place.

**The Facts and the Case**

The public prosecutor charged the accused Manuel Paloma (Paloma) before the Regional Trial Court (RTC) of Quezon City in Criminal Case Q-03-116898 with violation of Section 5, Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

At the trial, PO2 Bernard Amigo testified that at about 1:00 p.m. on April 23, 2003 the Batasan Police Station got a tip from an informant that accused Paloma was selling illegal drugs at Pacomara Street in Commonwealth, Quezon City. The station chief directed PO2 Amigo and PO1 Arnold Peñalosa to conduct a buy-bust operation involving Paloma. The police officers went to Pacomara Street with the informant and brought with them a ₱100.00 bill marked with the initials "AP."

When the buy-bust team arrived at Pacomara Street at around 3:15 p.m., they saw Paloma standing beside a man and a woman. PO1 Peñalosa and the informant approached them; PO2 Amigo, the witness, stood as back-up some 15 meters away. From where he stood, he saw PO1 Peñalosa talking to Paloma. Momentarily, PO1 Peñalosa waved his hand, signifying that he had made the purchase. On seeing the pre-arranged signal, PO2 Amigo approached and arrested Paloma; PO1 Peñalosa for his part arrested Paloma's companions, later on identified as Noriel Bamba (Bamba) and Angie Grotel (Grotel). PO2 Amigo recovered from Paloma's pants pocket a plastic sachet with a white crystalline substance and the marked ₱100.00 bill.

After the police officers informed Paloma, Bamba, and Grotel of their rights during custodial investigation, they brought them to the police station and turned them over to the desk officer. The arresting officers also turned over the three sachets of suspected *shabu* that they seized. According to PO2 Amigo, two of these sachets were those that PO1 Peñalosa bought from Paloma. The police eventually let Bamba and Grotel go for the reason that the police officers found no illegal drugs in their possession.

In his defense, Paloma denied that such a buy-bust operation took place. He claimed that at the time of the alleged buy-bust, he was with his 80-year-old mother at their house on Pacomara Street, taking a nap. Suddenly, five armed men in civilian clothes barged into the house and woke him up. Two of them held him by the arms while the others searched the house. Although the men found nothing, they handcuffed him and brought him to the police station.

On June 10, 2005 the RTC found Paloma guilty beyond reasonable doubt in Criminal Case Q-03-116898 of the crime charged and sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

On February 13, 2007 the Court of Appeals (CA) in CA-G.R. HC CR 01289 affirmed the RTC's ruling *in toto*.

**The Issue Presented**

The sole issue in this case is whether or not the CA erred in finding that the prosecution succeeded in proving beyond reasonable doubt that Paloma sold prohibited drugs to PO1 Peñalosa.

**The Ruling of the Court**

To prove the crime of illegal sale of drugs under Section 5, Article II of R.A. 9165, the prosecution is required to prove (a) the identity of the buyer and the seller as well as the object and consideration of the sale; and (b) the delivery of the thing sold and the payment given for the same. Further, the prosecution must present in court evidence of *corpus delicti*.[1]

Here, the proof of the sale of illegal drugs is wanting.

**One.** Under the "objective" test set by the Court in *People v. Doria*,[2] the prosecution must clearly and adequately show the details of the purported sale, namely, the initial contact between the *poseur*-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, and, finally, the accused's delivery of the illegal drug to the buyer, whether the latter be the informant alone or the police officer. This proof is essential to ensure that law-abiding citizens are not unlawfully induced to commit the offense.[3]

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[1] *People v. Serrano*, G.R. No. 179038, May 6, 2010, citing *People v. Doria*, 361 Phil. 595, 641 (1999).

[2] *Id.* at 621.

[3] *People v. Pagkalinawan*, G.R. No. 184805, March 3, 2010.

Here, PO2 Amigo's testimony miserably failed to establish the required details of the supposed illegal drug sale. He testified on direct examination:

Q: When you, [P]olice [O]fficer Peñalosa and the confidential informant arrived at around 3:15 at Pacomara Street, what happened there?

A: Upon arrival of that said place Pacomara Street we saw Paloma and one female companion talking with each other.[4]

xxx xxx xxx

**Q: Now when Police Officer Peñalosa and the asset approached Paloma where were you at that time?**

**A: I was in a hiding place, in a viewing distance.**

**Q: Can you see them talking with each other from where you were stationed?**

**A: Yes, sir.**

Q: You said earlier Mr. Witness that there were other person[s] other than Paloma, female and male when Police Officer Peñalosa and the confidential informant approached him, where were these two persons?

A: They were beside each other.

Q: What were they doing, these two persons at that time when they approached by your companion?

A: They were just standing.

**Q: When these Peñalosa and confidential informant approached the subject, what happened next? What transpired next at that time?**

**A: While they were talking Peñalosa made the pre-arrange[d] signal.**

**Q: What was that signal that Peñalosa did?**

**A: By waving his hand.**

**Q: Meaning to say?**

[4] TSN, June 7, 2004, p. 6.

**A: The buy-bust has already consummated.**

Q: When Peñalosa made that signal what did you do if any?

A: We rushed up to the area where they were standing.

Q: When you arrived in that area what happened there?

A: I grabbed Paloma and made the search.[5] (Emphasis supplied)

All that PO2 Amigo could say was that PO1 Peñalosa and the informant approached Paloma, talked to him, and then PO1 Peñalosa made the pre-arranged signal that the sale had been consummated. Since he was standing at a great distance during the purported buy-bust, PO2 Amigo could not provide the details of the offer to buy the drug and the acceptance of that offer. Indeed, he did not see Paloma take money from PO1 Peñalosa nor Peñalosa take delivery of the prohibited substance from Paloma.

The cross-examination of PO2 Amigo does not help. He testified:

**Q: As a back up Mr. Witness you will agree with me that you cannot hear what was the conversation between the informant, Mr. Peñalosa and Mr. Paloma?**

**A: Yes, ma'am.**

Q: So you merely acted upon their gesture?

A: Yes, ma'am.

Q: So Mr. Witness when you rushed-in to the place where the buy-bust operation was being conducted, you just rushed-in not because you were called upon, but because of the gesture that the same was consummated?

A: Yes ma'am only the pre-arranged signal.[6] (Emphasis supplied)

While law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption is disputable by contrary proof and cannot prevail over the constitutional

[5] *Id*. at 7-8.

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

right of the accused to be presumed innocent.[7] The totality of the evidence presented in this case does not support Paloma's conviction for violation of Section 5, Article II of R.A. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense.[8]

**WHEREFORE,** the Court *GRANTS* the petition, *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. HC CR 01289 dated February 13, 2007 as well as the decision of the Regional Trial Court of Quezon City, Branch 103, in Criminal Case Q-03-116898, and *ACQUITS* the accused-appellant Manuel Paloma *y* Espinosa of the crime of which he is charged on the ground of reasonable doubt. The Court orders his immediate *RELEASE* from custody unless he is being held for some other lawful cause.

The Court further *ORDERS* the Director of the Bureau of Corrections to implement this Decision forthwith and to inform this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs *de oficio.*

**SO ORDERED.**

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

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[7] *People v. Cantalejo*, G.R. No. 182790, April 24, 2009, 586 SCRA 777, 788.

[8] *Id*.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated February 23, 2011.

**SECOND DIVISION**

[G.R. No. 179242. February 23, 2011]

**AVELINA F. SAGUN,** *petitioner, vs.* **SUNACE INTERNATIONAL MANAGEMENT SERVICES, INC.,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; PROCEEDINGS BEFORE ADMINISTRATIVE AND QUASI-JUDICIAL AGENCIES; REQUIRED QUANTUM OF EVIDENCE TO ESTABLISH A FACT IS SUBSTANTIAL EVIDENCE.—** In proceedings before administrative and quasi-judicial agencies, the quantum of evidence required to establish a fact is substantial evidence, or that level of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

**2. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE; WHERE THERE IS FAILURE TO ADDUCE SUFFICIENT REBUTTAL EVIDENCE, A RECEIPT IS THE BEST EVIDENCE OF THE DELIVERY OF MONEY OR GOODS.—** We are inclined to give more credence to respondent's evidence, that is, the acknowledgment receipt showing the amount paid by petitioner and received by respondent. A receipt is a written and signed acknowledgment that money or goods have been delivered. Although a receipt is not conclusive evidence, an exhaustive review of the records of this case fails to disclose any other evidence sufficient and strong enough to overturn the acknowledgment embodied in respondent's receipt as to the amount it actually received from petitioner. Having failed to adduce sufficient rebuttal evidence, petitioner is bound by the contents of the receipt issued by respondent. The subject receipt remains as the primary or best evidence.

**3. LABOR AND SOCIAL LEGISLATION; RECRUITMENT AND PLACEMENT; PLACEMENT FEES; PROMISSORY NOTE SIGNED BY THE APPLICANT NOT ADEQUATE EVIDENCE TO SHOW EXCESSIVE PLACEMENT FEES; PROMISSORY NOTE, NATURE OF.—** The promissory note

presented by petitioner cannot be considered as adequate evidence to show the excessive placement fee. It must be emphasized that a promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith.

**4. ID.; ID.; ID.; CHARGE OF ILLEGAL EXACTION MUST BE PROVEN AND SUBSTANTIATED BY CLEAR, CREDIBLE AND COMPETENT EVIDENCE.—** [M]ere general allegations of payment of excessive placement fees cannot be given merit as the charge of illegal exaction is considered a grave offense which could cause the suspension or cancellation of the agency's license. They should be proven and substantiated by clear, credible, and competent evidence.

**5. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES, LIKE THE POEA, WHICH HAVE ACQUIRED EXPERTISE BECAUSE THEIR JURISDICTION IS CONFINED TO SPECIFIC MATTERS, ARE GENERALLY ACCORDED NOT ONLY RESPECT, BUT AT TIMES EVEN FINALITY IF SUPPORTED BY SUBSTANTIAL EVIDENCE.—** [W]e would like to emphasize the well-settled rule that the factual findings of quasi-judicial agencies, like the POEA, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but at times even finality if such findings are supported by substantial evidence. While the Constitution is committed to the policy of social justice and to the protection of the working class, it should not be presumed that every dispute will automatically be decided in favor of labor.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioner.
*Gaspar Tagalo* for respondent.

## R E S O L U T I O N

**NACHURA, *J.*:**

This is a Petition for Review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated March 23, 2007 and Resolution[2] dated August 16, 2007 in CA-G.R. SP No. 89298.

The case arose from a complaint for alleged violation of Article 32 and Article 34(a) and (b) of the Labor Code, as amended, filed by petitioner Avelina F. Sagun against respondent Sunace International Management Services, Inc. and the latter's surety, Country Bankers Insurance Corporation, before the Philippine Overseas Employment Administration (POEA). The case was docketed as POEA Case No. RV 00-03-0261.[3]

Petitioner claimed that sometime in August 1998, she applied with respondent for the position of caretaker in Taiwan. In consideration of her placement and employment, petitioner allegedly paid ₱30,000.00 cash, ₱10,000.00 in the form of a promissory note, and NT$60,000.00 through salary deduction, in violation of the prohibition on excessive placement fees. She also claimed that respondent promised to employ her as caretaker but, at the job site, she worked as a domestic helper and, at the same time, in a poultry farm.[4]

Respondent, however, denied petitioner's allegations and maintained that it only collected ₱20,840.00, the amount authorized by the POEA and for which the corresponding official receipt was issued. It also stressed that it did not furnish or publish any false notice or information or document in relation

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[1] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Rosmari D. Carandang, concurring; *rollo*, pp. 232-248.

[2] *Id.* at 257-258.

[3] *Id.* at 101.

[4] *Id.* at 101-102.

to recruitment or employment as it was duly received, passed upon, and approved by the POEA.[5]

On December 27, 2001, POEA Administrator Rosalinda Dimapilis-Baldoz dismissed[6] the complaint for lack of merit. Specifically, the POEA Administrator found that petitioner failed to establish facts showing a violation of Article 32, since it was proven that the amount received by respondent as placement fee was covered by an official receipt; or of Article 34(a) as it was not shown that respondent charged excessive fees; and of Article 34(b) simply because respondent processed petitioner's papers as caretaker, the position she applied and was hired for.

Aggrieved, petitioner filed a Motion for Reconsideration[7] with the Office of the Secretary of Labor. The Secretary treated the motion as a Petition for Review. On January 13, 2004, then Secretary of Labor Patricia A. Sto. Tomas partially granted[8] petitioner's motion, the pertinent portion of which reads:

> WHEREFORE, premises considered, the Motion for Reconsideration, herein treated as a petition for review, is PARTIALLY GRANTED. The Order dated December 27, 2001 of the POEA Administrator is partially MODIFIED, and SUNACE International Management Services, Inc. is held liable for collection of excessive placement fee in violation of Article 34 (a) of the Labor Code, as amended. The penalty of suspension of its license for two (2) months, or in lieu thereof, the penalty of fine in the amount of Twenty Thousand Pesos (₱20,000.00) is hereby imposed upon SUNACE. Further, SUNACE and its surety, Country Bankers Insurance Corporation, are ordered to refund the petitioner the amounts of Ten Thousand Pesos (₱10,000.00) and NT$65,000.00, representing the excessive placement fee exacted from her.
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> SO ORDERED.[9]

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[5] *Id.* at 102.

[6] *Id.* at 101-104.

[7] *Id.* at 105-107.

[8] *Id.* at 136-139.

[9] *Id.* at 139.

On appeal by respondent, the Office of the President (OP) affirmed[10] the Order of the Secretary of Labor. In resolving the case for petitioner, the OP emphasized the State's policy on the full protection to labor, local and overseas, organized and unorganized. It also held that it was impossible for respondent to have extended a loan to petitioner since it was not in the business of lending money. It likewise found it immaterial that no evidence was presented to show the overcharging since the issuance of a receipt could not be expected.

Respondent's motion for reconsideration was denied in an Order[11] dated March 21, 2005, which prompted respondent to elevate the matter to the CA via a petition for review under Rule 43 of the Rules of Court.

On March 23, 2007, the CA decided in favor of respondent, disposing, as follows:

> WHEREFORE, premises considered, the instant petition is ***GRANTED*** and the decision of the Office of the President dated 07 January 2005 is ***REVERSED*** and ***SET ASIDE*** for lack of sufficient evidence. The Order of the POEA Administrator dismissing the complaint of respondent for violation of Article 34(a) and (b) of the Labor Code is hereby ***AFFIRMED***.
>
> SO ORDERED.[12]

The appellate court reversed the rulings of the Secretary of Labor and the OP mainly because their conclusions were based not on evidence but on speculation, conjecture, possibilities, and probabilities.

Hence, this petition filed by petitioner, raising the sole issue of:

> WHETHER THE COURT OF APPEALS ERRED IN GRANTING THE RESPONDENT'S PETITION FOR REVIEW REVERSING THE DECISION AND ORDER [OF THE] OFFICE OF THE PRESIDENT.[13]

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[10] Embodied in a Decision dated January 7, 2005; *id.* at 169-175.

[11] *Id.* at 191-192.

[12] *Supra* note 1, at 247-248.

[13] *Rollo*, p. 60.

The petition is without merit.

Respondent was originally charged with violation of Article 32 and Article 34(a) and (b) of the Labor Code, as amended. The pertinent provisions read:

**ART. 32.** ***Fees to be Paid by Workers.*** **—** Any person applying with a private fee charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through its efforts or has actually commenced employment. Such fee shall be always covered with the appropriate receipt clearly showing the amount paid. The Secretary of Labor shall promulgate a schedule of allowable fees.

**ART. 34.** ***Prohibited Practices.*** **—** It shall be unlawful for any individual, entity, licensee, or holder of authority:

(a) To charge or accept, directly or indirectly, any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor; or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment.

The POEA, the Secretary of Labor, the OP, and the CA already absolved respondent of liability under Articles 32 and 34(b). As no appeal was interposed by petitioner when the Secretary of Labor freed respondent of said liabilities, the only issue left for determination is whether respondent is liable for collection of excess placement fee defined in Article 34(a) of the Labor Code, as amended.

Although initially, the POEA dismissed petitioner's complaint for lack of merit, the Secretary of Labor and the OP reached a different conclusion. On appeal to the CA, the appellate court, however, reverted to the POEA conclusion. Following this turn of events, we are constrained to look into the records of the case and weigh anew the evidence presented by the parties.

We find and so hold that the POEA and the CA are correct in dismissing the complaint for illegal exaction filed by petitioner against respondent.

In proceedings before administrative and quasi-judicial agencies, the quantum of evidence required to establish a fact is substantial evidence, or that level of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[14]

In this case, are the pieces of evidence presented by petitioner substantial to show that respondent collected from her more than the allowable placement fee? We answer in the negative.

To show the amount it collected as placement fee from petitioner, respondent presented an acknowledgment receipt showing that petitioner paid and respondent received ₱20,840.00. This notwithstanding, petitioner claimed that she paid more than this amount. In support of her allegation, she presented a photocopy of a promissory note she executed, and testified on the purported deductions made by her foreign employer. In the promissory note, petitioner promised to pay respondent the amount of ₱10,000.00 that she borrowed for only two weeks.[15] Petitioner also explained that her foreign employer deducted from her salary a total amount of NT$60,000.00. She claimed that the ₱10,000.00 covered by the promissory note was never obtained as a loan but as part of the placement fee collected by respondent. Moreover, she alleged that the salary deductions made by her foreign employer still formed part of the placement fee collected by respondent.

We are inclined to give more credence to respondent's evidence, that is, the acknowledgment receipt showing the amount paid by petitioner and received by respondent. A receipt is a written and signed acknowledgment that money or goods have been delivered.[16] Although a receipt is not conclusive evidence, an exhaustive review of the records of this case fails to disclose any other evidence sufficient and strong enough to overturn

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[14] *Philemploy Services and Resources, Inc. v. Rodriguez*, G.R. No. 152616, March 31, 2006, 486 SCRA 302, 314.

[15] *Rollo*, p. 108.

[16] *Cham v. Paita-Moya*, A.C. No. 7494, June 27, 2008, 556 SCRA 1, 8; *Towne & City Development Corporation v. Court of Appeals*, 478 Phil. 466, 475 (2004).

the acknowledgment embodied in respondent's receipt as to the amount it actually received from petitioner. Having failed to adduce sufficient rebuttal evidence, petitioner is bound by the contents of the receipt issued by respondent. The subject receipt remains as the primary or best evidence.[17]

The promissory note presented by petitioner cannot be considered as adequate evidence to show the excessive placement fee. It must be emphasized that a promissory note is a solemn acknowledgment of a debt and a formal commitment to repay it on the date and under the conditions agreed upon by the borrower and the lender. A person who signs such an instrument is bound to honor it as a legitimate obligation duly assumed by him through the signature he affixes thereto as a token of his good faith.[18] Moreover, as held by the CA, the fact that respondent is not a lending company does not preclude it from extending a loan to petitioner for her personal use. As for the deductions purportedly made by petitioner's foreign employer, we reiterate the findings of the CA that "there is no single piece of document or receipt showing that deductions have in fact been made, nor is there any proof that these deductions from the salary formed part of the subject placement fee."[19]

At this point, we would like to emphasize the well-settled rule that the factual findings of quasi-judicial agencies, like the POEA, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but at times even finality if such findings are supported by substantial evidence.[20] While the Constitution is committed to the policy of social justice and to the protection of the working

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[17] *Towne & City Development Corporation v. Court of Appeals*, *supra*, at 475.

[18] *Dela Peña v. Court of Appeals*, G.R. No. 177828, February 13, 2009, 579 SCRA 396, 413.

[19] *Rollo*, p. 243.

[20] *Philsa Int'l. Placement and Services Corp. v. Sec. of Labor and Employment*, 408 Phil. 270, 282 (2001).

class, it should not be presumed that every dispute will automatically be decided in favor of labor.[21]

To be sure, mere general allegations of payment of excessive placement fees cannot be given merit as the charge of illegal exaction is considered a grave offense which could cause the suspension or cancellation of the agency's license. They should be proven and substantiated by clear, credible, and competent evidence.[22]

**WHEREFORE,** premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated March 23, 2007 and Resolution dated August 16, 2007 in CA-G.R. SP No. 89298 are *AFFIRMED*.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 180257. February 23, 2011]

**EUSEBIO GONZALES,** *petitioner, vs.* **PHILIPPINE COMMERCIAL AND INTERNATIONAL BANK, EDNA OCAMPO, and ROBERTO NOCEDA,** *respondents.*

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[21] *Ropali Trading Corporation v. NLRC*, 357 Phil. 314, 320 (1998).

[22] Opinion of the POEA Administrator in *Alindao v. Hon. Joson*, 332 Phil. 239, 246 (1996).

**SYLLABUS**

**1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; ACCOMMODATION PARTY; DEFINED AND DISCUSSED; LIABILITY OF AN ACCOMMODATION PARTY, DISCUSSED; APPLICATION.—** [A]s an accommodation party, Gonzales is solidarily liable with the spouses Panlilio for the loans. In *Ang v. Associated Bank*, quoting the definition of an accommodation party under Section 29 of the Negotiable Instruments Law, the Court cited that an accommodation party is a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person." The Court further explained: [A]n accommodation party is one who meets all the three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person. An accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto. The accommodation party is liable on the instrument to a holder for value even though the holder, at the time of taking the instrument, knew him or her to be merely an accommodation party, as if the contract was not for accommodation. x x x. Thus, the knowledge, acquiescence, or even demand by Ocampo for an accommodation by Gonzales in order to extend the credit or loan of PhP 1,800,000 to the spouses Panlilio does not exonerate Gonzales from liability on the three promissory notes.

**2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; SOLIDARY LIABILITY CANNOT BE PRESUMED BUT MUST BE ESTABLISHED BY LAW OR CONTRACT; SOLIDARY LIABILITY OF THE PETITIONER IS CLEARLY STIPULATED IN THE PROMISSORY NOTES.—** [T]he solidary liability of Gonzales is clearly stipulated in the promissory notes which uniformly begin, "For value received, the undersigned (the "BORROWER") **jointly and severally** promise to pay x x x." Solidary liability cannot be presumed but must be established by law or contract.

Article 1207 of the Civil Code pertinently states that "there is solidary liability only when the obligation expressly so states, or when the obligation requires solidarity." This is true in the instant case where Gonzales, as accommodation party, is immediately, equally, and absolutely bound with the spouses Panlilio on the promissory notes which indubitably stipulated solidary liability for all the borrowers. Moreover, the three promissory notes serve as the contract between the parties. Contracts have the force of law between the parties and must be complied with in good faith.

**3. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ESPECIALLY WHEN AFFIRMED BY THE APPELLATE COURT, ARE GENERALLY BINDING; EXCEPTION; PRESENT.—** As a rule, an appeal by *certiorari* under Rule 45 of the Rules of Court is limited to review of errors of law. The factual findings of the trial court, especially when affirmed by the appellate court, are generally binding on us unless there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken. The instant case falls within the exception.

**4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATIONS; THE AMOUNTS DEMANDED FROM THE BORROWER MUST BE DEFINITE, CLEAR AND WITHOUT AMBIGUITY.—** In business, more so for banks, the amounts demanded from the debtor or borrower have to be definite, clear, and without ambiguity. It is not sufficient simply to be informed that one must pay over a hundred thousand aggregate outstanding interest dues without clear and certain figures. Thus, We find PCIB negligent in not properly informing Gonzales, who is an accommodation party, about the default and the exact outstanding periodic interest dues. Without being properly apprised, Gonzales was not given the opportunity to properly act on them.

**5. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; ACCOMMODATION PARTY; MUST BE FORMALLY INFORMED AND APPRISED OF THE DEFAULTS AND THE OUTSTANDING OBLIGATIONS OF THE ACCOMMODATED PARTY.—** [A] written notice on the default and deficiency of the PhP 1,800,000 loan covered by the three promissory notes was required to apprise Gonzales,

an accommodation party. PCIB is obliged to formally inform and apprise Gonzales of the defaults and the outstanding obligations, more so when PCIB was invoking the solidary liability of Gonzales. This PCIB failed to do.

**6. ID.; BANKS AND BANKING; A BANK SHOULD EXERCISE EXTRAORDINARY DILIGENCE TO NEGATE ITS LIABILITY TO THE DEPOSITORS AND MAY NOT WANTONLY EXERCISE ITS RIGHTS WITHOUT RESPECTING AND HONORING THE RIGHTS OF ITS CLIENTS.—** Indeed, the business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service. Like a common carrier whose business is imbued with public interest, a bank should exercise extraordinary diligence to negate its liability to the depositors. In this instance, PCIB is sorely remiss in the diligence required in treating with its client, Gonzales. It may not wantonly exercise its rights without respecting and honoring the rights of its clients.

**7. CIVIL LAW; HUMAN RELATIONS; PRINCIPLE OF ABUSE OF RIGHT; ELEMENTS.—** Art. 19 of the New Civil Code clearly provides that "[e]very 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." This is the basis of the principle of abuse of right which, in turn, is based upon the maxim *suum jus summa injuria* (the abuse of right is the greatest possible wrong). In order for Art. 19 to be actionable, the following elements must be present: "(1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another." We find that such elements are present in the instant case. The effectivity clause of the COHLA is crystal clear that termination of the COH should be done only **upon prior notice served on the CLIENT**. This is the legal duty of PCIB—to inform Gonzales of the termination. However, as shown by the above testimonies, PCIB failed to give prior notice to Gonzales.

**8. ID.; ID.; ID.; ID.; MALICE OR BAD FAITH, EXPLAINED; FAILURE OF THE RESPONDENT BANK TO GIVE PRIOR NOTICE TO THE PETITIONER OF THE TERMINATION**

**OF THE CREDIT-ON-HAND-LOAN AGREEMENT (COHLA) IS *PRIMA FACIE* EVIDENCE OF BAD FAITH.—** Malice or bad faith is at the core of Art. 19. Malice or bad faith "implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity." In the instant case, PCIB was able to send a letter advising Gonzales of the unpaid interest on the loans but failed to mention anything about the termination of the COHLA. More significantly, no letter was ever sent to him about the termination of the COHLA. The failure to give prior notice on the part of PCIB is already *prima facie* evidence of bad faith. Therefore, it is abundantly clear that this case falls squarely within the purview of the principle of abuse of rights as embodied in Art. 19.

**9. COMMERCIAL LAW; BANKS AND BANKING; THE DEGREE OF DILIGENCE REQUIRED FROM BANKS IS MORE THAN THAT OF A GOOD FATHER OF THE FAMILY; RATIONALE.—** With banks, the degree of diligence required is more than that of a good father of the family considering that the business of banking is imbued with public interest due to the nature of their function. The law imposes on banks a high degree of obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of banking. Had Gonzales been properly notified of the delinquencies of the PhP 1,800,000 loan and the process of terminating his credit line under the COHLA, he could have acted accordingly and the dishonor of the check would have been avoided.

**10. ID.; ID.; BANKS SHOULD GUARD AGAINST INJURY ATTRIBUTABLE TO NEGLIGENCE OR BAD FAITH ON ITS PART; CREDIT IS VERY IMPORTANT TO BUSINESSMEN AND ITS LOSS OR IMPAIRMENT NEEDS TO BE RECOGNIZED AND COMPENSATED.—** The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society—banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part. In the instant case, Gonzales suffered from the negligence and bad faith of PCIB. From the testimonies of Gonzales' witnesses, particularly those of Dominador Santos

and Freddy Gomez, the embarrassment and humiliation Gonzales has to endure not only before his former close friend Unson but more from the members and families of his friends and associates in the PCA, which he continues to experience considering the confrontation he had with Unson and the consequent loss of standing and credibility among them from the fact of the apparent bouncing check he issued. Credit is very important to businessmen and its loss or impairment needs to be recognized and compensated.

**11. CIVIL LAW; DAMAGES; NOMINAL DAMAGES; NATURE OF, EXPLAINED; THE BANK IS LIABLE TO PAY NOMINAL DAMAGES WHERE IT FAILED TO PROPERLY INFORM THE ACCOMODATION PARTY OF THE ACCRUED INTEREST AND TO GIVE PRIOR NOTICE OF THE TERMINATION OF THE CREDIT ON-HAND-LOAN AGREEMENT (COHLA).—** The termination of the COHLA by PCIB without prior notice and the subsequent dishonor of the check issued by Gonzales constitute acts of *contra bonus mores*. Art. 21 of the Civil Code refers to such acts when it says, "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage." Accordingly, this Court finds that such acts warrant the payment of indemnity in the form of nominal damages. Nominal damages "are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind x x x." We further explained the nature of nominal damages in *Almeda v. Cariño*: x x x Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. **Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper**. In the present case, Gonzales had the right to be informed of the accrued interest and most especially, for the suspension of his COHLA. For failure to do so, the bank is liable to pay nominal damages. The amount of such damages

is addressed to the sound discretion of the court, taking into account the relevant circumstances. In this case, the Court finds that the grant of PhP 50,000 as nominal damages is proper.

**12. ID.; ID.; MORAL DAMAGES; MAY BE RECOVERED IN CASE OF BREACH OF CONTRACT WHERE THE DEFENDANT ACTED FRAUDULENTLY OR IN BAD FAITH; AWARD OF MORAL DAMAGES, WARRANTED.—** [A]s We held in *MERALCO v. CA*, failure to give prior notice when required, such as in the instant case, constitutes a breach of contract and is a clear violation of Art. 21 of the Code. In cases such as this, Art. 2219 of the Code provides that moral damages may be recovered in acts referred to in its Art. 21. Further, Art. 2220 of the Code provides that "[w]illful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith." Similarly, "every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same." Evidently, Gonzales is entitled to recover moral damages.

**13. ID.; ID.; ID.; MAY BE RECOVERED, EVEN ABSENT MALICE OR BAD FAITH, WHERE THE DEPOSITOR SUFFERED MENTAL ANGUISH, SERIOUS ANXIETY, EMBARRASSMENT, AND HUMILIATION BECAUSE OF THE BANK'S WRONGFUL ACT OR OMISSION.—** Even in the absence of malice or bad faith, a depositor still has the right to recover reasonable moral damages, if the depositor suffered mental anguish, serious anxiety, embarrassment, and humiliation. Although incapable of pecuniary estimation, moral damages are certainly recoverable if they are the proximate result of the defendant's wrongful act or omission. The factual antecedents bolstered by undisputed testimonies likewise show the mental anguish and anxiety Gonzales had to endure with the threat of Unson to file a suit. Gonzales had to pay Unson PhP 250,000, while his FCD account in PCIB was frozen, prompting Gonzales to demand from PCIB and to file the instant suit.

**14. ID.; ID.; ID.; AWARD THEREOF MUST ALWAYS REASONABLY APPROXIMATE THE EXTENT OF**

**INJURY AND BE PROPORTIONAL TO THE WRONG COMMITTED; AWARD OF PHP 50,000 MORAL DAMAGES DECLARED REASONABLE.—** The award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual *status quo ante*—it must always reasonably approximate the extent of injury and be proportional to the wrong committed. Thus, an award of PhP 50,000 is reasonable moral damages for the unjust dishonor of the PhP 250,000 which was the proximate cause of the consequent humiliation, embarrassment, anxiety, and mental anguish suffered by Gonzales from his loss of credibility among his friends, colleagues and peers.

**15. ID.; ID.; EXEMPLARY DAMAGES; IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD; GRANT OF PHP 10,000.00 EXEMPLARY DAMAGES, PROPER.—** [T]he initial carelessness of the bank's omission in not properly informing Gonzales of the outstanding interest dues—aggravated by its gross neglect in omitting to give prior notice as stipulated under the COHLA and in not giving actual notice of the termination of the credit line—justifies the grant of exemplary damages of PhP 10,000. Such an award is imposed by way of example or correction for the public good.

**16. ID.; ID.; ATTORNEYS FEES; THE BANK'S NEGLIGENCE WHICH COMPELLED ITS CLIENT TO LITIGATE TO PROTECT HIS INTEREST JUSTIFIES THE AWARD OF ATTORNEY'S FEES—** [A]n award for attorney's fees is likewise called for from PCIB's negligence which compelled Gonzales to litigate to protect his interest. In accordance with Art. 2208(1) of the Code, attorney's fees may be recovered when exemplary damages are awarded. We find that the amount of PhP 50,000 as attorney's fees is reasonable.

**APPEARANCES OF COUNSEL**

*De Jesus & Associates* for petitioner.
*Siguion Reyna Montecillo & Ongsiako* for respondents.

## D E C I S I O N

**VELASCO, JR., *J.*:**

### The Case

This is an appeal via a Petition for Review on *Certiorari* under Rule 45 from the Decision[1] dated October 22, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 74466, which denied petitioner's appeal from the December 10, 2001 Decision[2] in Civil Case No. 99-1324 of the Regional Trial Court (RTC), Branch 138 in Makati City. The RTC found justification for respondents' dishonor of petitioner's check and found petitioner solidarily liable with the spouses Jose and Jocelyn Panlilio (spouses Panlilio) for the three promissory notes they executed in favor of respondent Philippine Commercial and International Bank (PCIB).

### The Facts

Petitioner Eusebio Gonzales (Gonzales) was a client of PCIB for a good 15 years before he filed the instant case. His account with PCIB was handled by respondent Edna Ocampo (Ocampo) until she was replaced by respondent Roberto Noceda (Noceda).

In October 1992, PCIB granted a credit line to Gonzales through the execution of a Credit-On-Hand Loan Agreement[3] (COHLA), in which the aggregate amount of the accounts of Gonzales with PCIB served as collateral for and his availment limit under the credit line. Gonzales drew from said credit line through the issuance of check. At the institution of the instant case, Gonzales had a Foreign Currency Deposit (FCD) of USD 8,715.72 with PCIB.

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[1] *Rollo*, pp. 28-44. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Rodrigo V. Cosico and Hakim S. *Abdulwahid.*

[2] Records, pp. 751-764. Penned by Judge Sixto Marella, Jr.

[3] *Id.* at 157, 159.

On October 30, 1995, Gonzales and his wife obtained a loan for PhP 500,000. Subsequently, on December 26, 1995 and January 3, 1999, the spouses Panlilio and Gonzales obtained two additional loans from PCIB in the amounts of PhP 1,000,000 and PhP 300,000, respectively. These three loans amounting to PhP 1,800,000 were covered by three promissory notes.[4] To secure the loans, a real estate mortgage (REM) over a parcel of land covered by Transfer Certificate of Title (TCT) No. 38012 was executed by Gonzales and the spouses Panlilio. Notably, the promissory notes specified, among others, the solidary liability of Gonzales and the spouses Panlilio for the payment of the loans. However, it was the spouses Panlilio who received the loan proceeds of PhP 1,800,000.

The monthly interest dues of the loans were paid by the spouses Panlilio through the automatic debiting of their account with PCIB. But the spouses Panlilio, from the month of July 1998, defaulted in the payment of the periodic interest dues from their PCIB account which apparently was not maintained with enough deposits. PCIB allegedly called the attention of Gonzales regarding the July 1998 defaults and the subsequent accumulating periodic interest dues which were left still left unpaid.

In the meantime, Gonzales issued a check dated September 30, 1998 in favor of Rene Unson (Unson) for PhP 250,000 drawn against the credit line (COHLA). However, on October 13, 1998, upon presentment for payment by Unson of said check, it was dishonored by PCIB due to the termination by PCIB of the credit line under COHLA on October 7, 1998 for the unpaid periodic interest dues from the loans of Gonzales and the spouses Panlilio. PCIB likewise froze the FCD account of Gonzales.

Consequently, Gonzales had a falling out with Unson due to the dishonor of the check. They had a heated argument in the premises of the Philippine Columbian Association (PCA) where they are both members, which caused great embarrassment and

[4] *Id.* at 10-15.

humiliation to Gonzales. Thereafter, on November 5, 1998, Unson sent a demand letter[5] to Gonzales for the PhP 250,000. And on December 3, 1998, the counsel of Unson sent a second demand letter[6] to Gonzales with the threat of legal action. With his FCD account that PCIB froze, Gonzales was forced to source out and pay the PhP 250,000 he owed to Unson in cash.

On January 28, 1999, Gonzales, through counsel, wrote PCIB insisting that the check he issued had been fully funded, and demanded the return of the proceeds of his FCD as well as damages for the unjust dishonor of the check.[7] PCIB replied on March 22, 1999 and stood its ground in freezing Gonzales' accounts due to the outstanding dues of the loans.[8] On May 26, 1999, Gonzales reiterated his demand, reminding PCIB that it knew well that the actual borrowers were the spouses Panlilio and he never benefited from the proceeds of the loans, which were serviced by the PCIB account of the spouses Panlilio.[9]

PCIB's refusal to heed his demands compelled Gonzales to file the instant case for damages with the RTC, on account of the alleged unjust dishonor of the check issued in favor of Unson.

**The Ruling of the RTC**

After due trial, on December 10, 2001, the RTC rendered a Decision in favor of PCIB. The decretal portion reads:

> WHEREFORE, judgment is rendered as follows –
>
> (a) on the first issue, plaintiff is liable to pay defendant Bank as principal under the promissory notes, Exhibits A, B and C;
>
> (b) on the second issue, the Court finds that there is justification on part of the defendant Bank to dishonor the check, Exhibit H;
>
> (c) on the third issue, plaintiff and defendants are not entitled to damages from each other.

[5] *Id.* at 38.

[6] *Id.* at 39.

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

[8] *Id.* at 42.

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

No pronouncement as to costs.

SO ORDERED.[10]

The RTC found Gonzales solidarily liable with the spouses Panlilio on the three promissory notes relative to the outstanding REM loan. The trial court found no fault in the termination by PCIB of the COHLA with Gonzales and in freezing the latter's accounts to answer for the past due PhP 1,800,000 loan. The trial court ruled that the dishonor of the check issued by Gonzales in favor of Unson was proper considering that the credit line under the COHLA had already been terminated or revoked before the presentment of the check.

Aggrieved, Gonzales appealed the RTC Decision before the CA.

**The Ruling of the CA**

On September 26, 2007, the appellate court rendered its Decision dismissing Gonzales' appeal and affirming *in toto* the RTC Decision. The *fallo* reads:

WHEREFORE, in view of the foregoing, the decision, dated December 10, 2001, in Civil Case No. 99-1324 is hereby AFFIRMED *in toto*.

SO ORDERED.[11]

In dismissing Gonzales' appeal, the CA, *first*, confirmed the RTC's findings that Gonzales was indeed solidarily liable with the spouses Panlilio for the three promissory notes executed for the REM loan; *second*, it likewise found neither fault nor negligence on the part of PCIB in dishonoring the check issued by Gonzales in favor of Unson, ratiocinating that PCIB was merely exercising its rights under the contractual stipulations in the COHLA brought about by the outstanding past dues of the REM loan and interests for which Gonzales was solidarily liable with the spouses Panlilio to pay under the promissory notes.

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[10] *Id.* at 760.

[11] *Rollo*, p. 43.

Thus, we have this petition.

**The Issues**

Gonzales, as before the CA, raises again the following assignment of errors:

I - IN NOT CONSIDERING THAT THE LIABILITY ARISING FROM PROMISSORY NOTES (EXHIBITS "A", "B" AND "C", PETITIONER; EXHIBITS "1", "2" AND "3", RESPONDENT) PERTAINED TO BORROWER JOSE MA. PANLILIO AND NOT TO APPELLANT AS RECOGNIZED AND ACKNOWLEDGE[D] BY RESPONDENT PHILIPPINE COMMERCIAL & INDUSTRIAL BANK (RESPONDENT BANK).

II - IN FINDING THAT THE RESPONDENTS WERE NOT AT FAULT NOR GUILTY OF GROSS NEGLIGENCE IN DISHONORING PETITIONER'S CHECK DATED 30 SEPTEMBER 1998 IN THE AMOUNT OF ₱250,000.00 FOR THE REASON "ACCOUNT CLOSED," INSTEAD OF MERELY "REFER TO DRAWER" GIVEN THE FACT THAT EVEN AFTER DISHONOR, RESPONDENT SIGNED A CERTIFICATION DATED 7 DECEMBER 1998 THAT CREDIT ON HAND (COH) LOAN AGREEMENT WAS STILL VALID WITH A COLLATERAL OF FOREIGN CURRENCY DEPOSIT (FCD) OF [USD] 48,715.72.

III - IN NOT AWARDING DAMAGES AGAINST RESPONDENTS DESPITE PRESENTATION OF CLEAR PROOF TO SUPPORT ACTION FOR DAMAGES.[12]

**The Court's Ruling**

The core issues can be summarized, as follows: *first*, whether Gonzales is liable for the three promissory notes covering the PhP 1,800,000 loan he made with the spouses Panlilio where a REM over a parcel of land covered by TCT No. 38012 was constituted as security; and *second*, whether PCIB properly dishonored the check of Gonzales drawn against the COHLA he had with the bank.

The petition is partly meritorious.

[12] *Id.* at 12.

**First Issue: Solidary Liability on Promissory Notes**

A close perusal of the records shows that the courts *a quo* correctly found Gonzales solidarily liable with the spouses Panlilio for the three promissory notes.

The promissory notes covering the PhP 1,800,000 loan show the following:

(1) Promissory Note BD-090-1766-95,[13] dated October 30, 1995, for PhP 500,000 was **signed by Gonzales and his wife**, Jessica Gonzales;

(2) Promissory Note BD-090-2122-95,[14] dated December 26, 1995, for PhP 1,000,000 was **signed by Gonzales and the spouses Panlilio**; and

(3) Promissory Note BD-090-011-96,[15] dated January 3, 1996, for PhP 300,000 was **signed by Gonzales and the spouses Panlilio**.

Clearly, Gonzales is liable for the loans covered by the above promissory notes. *First*, Gonzales admitted that he is an accommodation party which PCIB did not dispute. In his testimony, Gonzales admitted that he merely accommodated the spouses Panlilio at the suggestion of Ocampo, who was then handling his accounts, in order to facilitate the fast release of the loan. Gonzales testified:

ATTY. DE JESUS:

Now in this case you filed against the bank you mentioned there was a loan also applied for by the Panlilio's in the sum of ₱1.8 Million Pesos. Will you please tell this Court how this came about?

GONZALES:

Mr. Panlilio requested his account officer . . . . at that time it is a ₱42.0 Million loan and if he secures another ₱1.8 Million loan the release will be longer because it has to pass to XO.

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[13] Records, pp. 10-11.

[14] *Id.* at 12-13.

[15] *Id.* at 14-15.

Q: After that what happened?
A: So as per suggestion since Mr. Panlilio is a good friend of mine and we co-owned the property I agreed initially to use my name so that the loan can be utilized immediately by Mr. Panlilio.

Q: Who is actually the borrower of this ₱1.8 Million Pesos?
A: Well, in paper me and Mr. Panlilio.

Q: Who received the proceeds of said loan?
A: Mr. Panlilio.

Q: Do you have any proof that it was Mr. Panlilio who actually received the proceeds of this ₱1.8 Million Pesos loan?
A: A check was deposited in the account of Mr. Panlilio.[16]

xxx xxx xxx

Q: By the way upon whose suggestion was the loan of Mr. Panlilio also placed under your name initially?
A: Well it was actually suggested by the account officer at that time Edna Ocampo.

Q: How about this Mr. Rodolfo Noceda?
A: As you look at the authorization aspect of the loan Mr. Noceda is the boss of Edna so he has been familiar with my account ever since its inception.

Q: So these two officers Ocampo and Noceda knew that this was actually the account of Mr. Panlilio and not your account?

A: Yes, sir. In fact even if there is a change of account officer they are always informing me that the account will be debited to Mr. Panlilio's account.[17]

Moreover, the first note for PhP 500,000 was signed by Gonzales and his wife as borrowers, while the two subsequent notes showed the spouses Panlilio sign as borrowers with Gonzales. It is, thus, evident that Gonzales signed, as borrower, the promissory notes covering the PhP 1,800,000 loan despite not receiving any of the proceeds.

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[16] *Id.* at 222-224, TSN, January 13, 2000, pp. 12-14.

[17] *Id.* at 247-248, TSN, January 13, 2000, pp. 37-38.

*Second*, the records of PCIB indeed bear out, and was admitted by Noceda, that the PhP 1,800,000 loan proceeds went to the spouses Panlilio, thus:

ATTY. DE JESUS: [on Cross-Examination]
Is it not a fact that as far as the records of the bank [are] concerned the proceeds of the 1.8 million loan was received by Mr. Panlilio?

NOCEDA:
Yes sir.[18]

The fact that the loans were undertaken by Gonzales when he signed as borrower or co-borrower for the benefit of the spouses Panlilio—as shown by the fact that the proceeds went to the spouses Panlilio who were servicing or paying the monthly dues—is beside the point. For signing as borrower and co-borrower on the promissory notes with the proceeds of the loans going to the spouses Panlilio, Gonzales has extended an accommodation to said spouses.

*Third*, as an accommodation party, Gonzales is solidarily liable with the spouses Panlilio for the loans. In *Ang v. Associated Bank*,[19] quoting the definition of an accommodation party under Section 29 of the Negotiable Instruments Law, the Court cited that an accommodation party is a person "who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person."[20] The Court further explained:

[A]n accommodation party is one who meets all the three requisites, *viz*: (1) he must be a party to the instrument, signing as maker, drawer, acceptor, or indorser; (2) he must not receive value therefor; and (3) he must sign for the purpose of lending his name or credit to some other person. An accommodation party lends his name to enable the accommodated party to obtain credit or to raise money; he receives no part of the consideration for the instrument but assumes liability to the other party/ies thereto. The accommodation party is liable on

[18] *Id.* at 377, TSN, July 6, 2000, p. 4.

[19] G.R. No. 146511, September 5, 2007, 532 SCRA 244.

[20] *Id.* at 272-273.

the instrument to a holder for value even though the holder, at the time of taking the instrument, knew him or her to be merely an accommodation party, as if the contract was not for accommodation.

As petitioner acknowledged it to be, the relation between an accommodation party and the accommodated party is one of principal and surety—the accommodation party being the surety. As such, he is deemed an original promisor and debtor from the beginning; he is considered in law as the same party as the debtor in relation to whatever is adjudged touching the obligation of the latter since their liabilities are interwoven as to be inseparable. Although a contract of suretyship is in essence accessory or collateral to a valid principal obligation, the surety's liability to the creditor is *immediate*, *primary* and *absolute*; he is *directly* and *equally* bound with the principal. As an equivalent of a regular party to the undertaking, a surety becomes liable to the debt and duty of the principal obligor even without possessing a direct or personal interest in the obligations nor does he receive any benefit therefrom.[21]

Thus, the knowledge, acquiescence, or even demand by Ocampo for an accommodation by Gonzales in order to extend the credit or loan of PhP 1,800,000 to the spouses Panlilio does not exonerate Gonzales from liability on the three promissory notes.

*Fourth*, the solidary liability of Gonzales is clearly stipulated in the promissory notes which uniformly begin, "For value received, the undersigned (the "BORROWER") **jointly and severally** promise to pay x x x." Solidary liability cannot be presumed but must be established by law or contract.[22] Article 1207 of the Civil Code pertinently states that "there is solidary liability only when the obligation expressly so states, or when the obligation requires solidarity." This is true in the instant case where Gonzales, as accommodation party, is immediately, equally, and absolutely bound with the spouses Panlilio on the promissory notes which indubitably stipulated solidary liability for all the borrowers. Moreover, the three promissory notes

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[21] *Id.* at 273-274; citations omitted.

[22] *Hi-Cement Corporation v. Insular Bank of Asia and America*, G.R. No. 132403, September 28, 2007, 534 SCRA 269, 283.

serve as the contract between the parties. Contracts have the force of law between the parties and must be complied with in good faith.[23]

**Second Issue: Improper Dishonor of Check**

Having ruled that Gonzales is solidarily liable for the three promissory notes, We shall now touch upon the question of whether it was proper for PCIB to dishonor the check issued by Gonzales against the credit line under the COHLA.

We answer in the negative.

As a rule, an appeal by *certiorari* under Rule 45 of the Rules of Court is limited to review of errors of law.[24] The factual findings of the trial court, especially when affirmed by the appellate court, are generally binding on us unless there was a misapprehension of facts or when the inference drawn from the facts was manifestly mistaken.[25] The instant case falls within the exception.

The courts *a quo* found and held that there was a proper dishonor of the PhP 250,000 check issued by Gonzales against the credit line, because the credit line was already closed prior to the presentment of the check by Unson; and the closing of the credit line was likewise proper pursuant to the stipulations in the promissory notes on the bank's right to set off or apply all moneys of the debtor in PCIB's hand and the stipulations in the COHLA on the PCIB's right to terminate the credit line on grounds of default by Gonzales.

Gonzales argues otherwise, pointing out that he was not informed about the default of the spouses Panlilio and that the September 21, 1998 account statement of the credit line shows a balance of PhP 270,000 which was likewise borne out by the

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[23] *Panlilio v. Citibank, N.A.*, G.R. No. 156335, November 28, 2007, 539 SCRA 69, 82-83; citing CIVIL CODE, Art. 1159.

[24] *Usero v. Court of Appeals*, G.R. No. 152115, January 26, 2005, 449 SCRA 352, 358.

[25] *Casol v. Purefoods Corporation*, G.R. No. 166550, September 22, 2005, 470 SCRA 585, 589.

December 7, 1998 PCIB's certification that he has USD 8,715.72 in his FCD account which is more than sufficient collateral to guarantee the PhP 250,000 check, dated September 30, 1998, he issued against the credit line.

A careful scrutiny of the records shows that the courts *a quo* committed reversible error in not finding negligence by PCIB in the dishonor of the PhP 250,000 check.

**First**. There was no proper notice to Gonzales of the default and delinquency of the PhP 1,800,000 loan. It must be borne in mind that while solidarily liable with the spouses Panlilio on the PhP 1,800,000 loan covered by the three promissory notes, Gonzales is only an accommodation party and as such only lent his name and credit to the spouses Panlilio. While not exonerating his solidary liability, Gonzales has a right to be properly apprised of the default or delinquency of the loan precisely because he is a co-signatory of the promissory notes and of his solidary liability.

We note that it is indeed understandable for Gonzales to push the spouses Panlilio to pay the outstanding dues of the PhP 1,800,000 loan, since he was only an accommodation party and was not personally interested in the loan. Thus, a meeting was set by Gonzales with the spouses Panlilio and the PCIB officers, Noceda and Ocampo, in the spouses Panlilio's jewelry shop in SM Megamall on October 5, 1998. Unfortunately, the meeting did not push through due to the heavy traffic Noceda and Ocampo encountered.

Such knowledge of the default by Gonzales was, however, not enough to properly apprise Gonzales about the default and the outstanding dues. Verily, it is not enough to be merely informed to pay over a hundred thousand without being formally apprised of the exact aggregate amount and the corresponding dues pertaining to specific loans and the dates they became due.

Gonzales testified that he was not duly notified about the outstanding interest dues of the loan:

ATTY. DE JESUS:
Now when Mr. Panlilio's was encountering problems with the bank did the defendant bank [advise] you of any problem with the same account?

GONZALES:
They never [advised] me in writing.

Q: How did you come to know that there was a problem?

A: When my check bounced sir.[26]

On the other hand, the PCIB contends otherwise, as Corazon Nepomuceno testified:

ATTY. PADILLA:
Can you tell this Honorable Court what is it that you told Mr. Gonzales when you spoke to him at the celphone?

NEPOMUCENO:
I just told him to update the interest so that we would not have to cancel the COH Line and he could withdraw the money that was in the deposit because technically, if an account is past due we are not allowed to let the client withdraw funds because they are allowed to offset funds so, just to help him get his money, just to update the interest so that we could allow him to withdraw.

Q: Withdraw what?
A: His money on the COH, whatever deposit he has with us.

Q: Did you inform him that if he did not update the interest he would not be able to withdraw his money?

A: Yes sir, we will be forced to hold on to any assets that he has with us so that's why we suggested just to update the interest because at the end of everything, he would be able to withdraw more funds than the interest that the money he would be needed to update the interest.[27]

From the foregoing testimonies, between the denial of Gonzales and the assertion by PCIB that Gonzales was properly apprised, we find for Gonzales. We find the testimonies of the former

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[26] Records, pp. 384-A-386, TSN, January 13, 2000, pp. 35-36.

[27] *Id.* at 612-614, TSN, July 20, 2000, pp. 9-11.

PCIB employees to be self-serving and tenuous at best, for there was no proper written notice given by the bank. The record is bereft of any document showing that, indeed, Gonzales was formally informed by PCIB about the past due periodic interests.

PCIB is well aware and did not dispute the fact that Gonzales is an accommodation party. It also acted in accordance with such fact by releasing the proceeds of the loan to the spouses Panlilio and likewise only informed the spouses Panlilio of the interest dues. The spouses Panlilio, through their account[28] with PCIB, were paying the periodic interest dues and were the ones periodically informed by the bank of the debiting of the amounts for the periodic interest payments. Gonzales never paid any of the periodic interest dues. PCIB's Noceda admitted as much in his cross-examination:

ATTY. DE JESUS: [on Cross-Examination]
And there was no instance that Mr. Gonzales ever made even interest for this loan, is it not, it's always Mr. Panlilio who was paying the interest for this loan?

NOCEDA:
Yes sir.[29]

Indeed, no evidence was presented tending to show that Gonzales was periodically sent notices or notified of the various periodic interest dues covering the three promissory notes. Neither do the records show that Gonzales was aware of amounts for the periodic interests and the payment for them. Such were serviced by the spouses Panlilio.

Thus, PCIB ought to have notified Gonzales about the status of the default or delinquency of the interest dues that were not paid starting July 1998. And such notification must be formal or in written form considering that the outstanding periodic interests became due at various dates, *i.e.*, on July 8, 17, and 28, 1998,

[28] *Id.* at 26-37, Account No. 00-1423-01005-3 in the name of the spouses Panlilio with the PCIBank Forbes-Edsa Branch (issued in lieu of Passbook 142-868324).

[29] *Id.* at 384-A, TSN, July 6, 2000, p. 13.

and the various amounts have to be certain so that Gonzales is not only properly apprised but is given the opportunity to pay them being solidarily liable for the loans covered by the promissory notes.

It is the bank which computes these periodic interests and such dues must be put into writing and formally served to Gonzales if he were asked to pay them, more so when the payments by the spouses Panlilio were charged through the account of the spouses Panlilio where the interest dues were simply debited. Such arrangement did not cover Gonzales' bank account with PCIB, since he is only an accommodation party who has no personal interest in the PhP 1,800,000 loan. Without a clear and determinate demand through a formal written notice for the exact periodic interest dues for the loans, Gonzales cannot be expected to pay for them.

In business, more so for banks, the amounts demanded from the debtor or borrower have to be definite, clear, and without ambiguity. It is not sufficient simply to be informed that one must pay over a hundred thousand aggregate outstanding interest dues without clear and certain figures. Thus, We find PCIB negligent in not properly informing Gonzales, who is an accommodation party, about the default and the exact outstanding periodic interest dues. Without being properly apprised, Gonzales was not given the opportunity to properly act on them.

It was only through a letter[30] sent by PCIB dated October 2, 1998 but incongruously showing the delinquencies of the PhP 1,800,000 loan at a much later date, *i.e.*, as of October 31, 1998, when Gonzales was formally apprised by PCIB. In it, the interest due was PhP 106,616.71 and penalties for the unpaid interest due of PhP 64,766.66, or a total aggregate due of PhP 171,383.37. But it is not certain and the records do not show when the letter was sent and when Gonzales received it. What is clear is that such letter was belatedly sent by PCIB and received by Gonzales after the fact that the latter's FCD was already frozen, his credit line under the COHLA was terminated

[30] *Id.* at 160.

or suspended, and his PhP 250,000 check in favor of Unson was dishonored.

And way much later, or on May 4, 1999, was a demand letter from the counsel of PCIB sent to Gonzales demanding payment of the PhP 1,800,000 loan. Obviously, these formal written notices sent to Gonzales were too late in the day for Gonzales to act properly on the delinquency and he already suffered the humiliation and embarrassment from the dishonor of his check drawn against the credit line.

To reiterate, a written notice on the default and deficiency of the PhP 1,800,000 loan covered by the three promissory notes was required to apprise Gonzales, an accommodation party. PCIB is obliged to formally inform and apprise Gonzales of the defaults and the outstanding obligations, more so when PCIB was invoking the solidary liability of Gonzales. This PCIB failed to do.

**Second**. PCIB was grossly negligent in not giving prior notice to Gonzales about its course of action to suspend, terminate, or revoke the credit line, thereby violating the clear stipulation in the COHLA.

The COHLA, in its effectivity clause, clearly provides:

> 4. EFFECTIVITY — The COH shall be effective for a period of one (1) year commencing from the receipt by the CLIENT of the COH checkbook issued by the BANK, subject to automatic renewals for same periods unless terminated by the BANK **upon prior notice served on CLIENT**.[31] (Emphasis ours.)

It is undisputed that the bank unilaterally revoked, suspended, and terminated the COHLA without giving Gonzales prior notice as required by the above stipulation in the COHLA. Noceda testified on cross-examination on the Offering Ticket[32] recommending the termination of the credit line, thus:

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[31] *Id.* at 157.

[32] *Id.* at 162.

ATTY. DE JESUS: [on Cross-Examination]
This Exhibit 8, you have not furnished at anytime a copy to the plaintiff Mr. Gonzales is it not?

NOCEDA:
No sir but verbally it was relayed to him.

Q: But you have no proof that Mr. Gonzales came to know about this Exhibit 8?
A: It was relayed to him verbally.

Q: But there is no written proof?
A: No sir.

Q: And it is only now that you claim that it was verbally relayed to him, it's only now when you testified in Court?
A: Before . . .

Q: To whom did you relay this information?

A: It was during the time that we were going to Megamall, it was relayed by Liza that he has to pay his obligations or else it will adversely affect the status of the account.[33]

On the other hand, the testimony of Corazon Nepomuceno shows:

ATTY. DE JESUS: [on Cross-Examination]
Now we go to the other credit facility which is the credit on hand extended solely of course to Mr. Eusebio Gonzales who is the plaintiff here, Mr. Panlilio is not included in this credit on hand facility. Did I gather from you as per your Exhibit 7 as of October 2, 1998 you were the one who recommended the cancellation of this credit on hand facility?

NEPOMUCENO:
It was recommended by the account officer and I supported it.

Q: And you approved it?
A: Yes sir.

Q: Did you inform Mr. Gonzales that you have already cancelled his credit on hand facility?
A: As far as I know, it is the account officer who will inform him.

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[33] *Id.* at 377, TSN, July 6, 2000, pp. 13-16.

Q: But you have no record that he was informed?
A: I don't recall and we have to look at the folder to determine if they were informed.

Q: If you will notice, this letter . . . what do you call this letter of yours?
A: That is our letter advising them or reminding them of their unpaid interest and that if he is able to update his interest he can extend the promissory note or restructure the outstanding.

Q: Now, I call your attention madam witness, there is nothing in this letter to the clients advising them or Mr. Gonzales that his credit on hand facility was already cancelled?
A: I don't know if there are other letters aside from this.

Q: So in this letter there is nothing to inform or to make Mr. Eusebio aware that his credit on hand facility was already cancelled?
A: No actually he can understand it from the last sentence. "If you will be able to update your outstanding interest, we can apply the extention of your promissory note" so in other words we are saying that if you don't, you cannot extend the promissory note.

Q: You will notice that the subject matter of this October 2, 1998 letter is only the loan of 1.8 million is it not, as you can see from the letter? Okay?
A: Ah . . .

Q: Okay. There is nothing there that will show that that also refers to the credit on hand facility which was being utilized by Mr. Gonzales is it not?
A: But I don't know if there are other letters that are not presented to me now.[34]

The foregoing testimonies of PCIB officers clearly show that not only did PCIB fail to give prior notice to Gonzales about the Offering Ticket for the process of termination, suspension, or revocation of the credit line under the COHLA, but PCIB likewise failed to inform Gonzales of the fact that his credit line has been terminated. Thus, we find PCIB grossly negligent in the termination, revocation, or suspension of the credit line

[34] *Id.* at 695-700, TSN, October 26, 2000, pp. 18-23.

under the COHLA. While PCIB invokes its right on the so-called "cross default provisions," it may not with impunity ignore the rights of Gonzales under the COHLA.

Indeed, the business of banking is impressed with public interest and great reliance is made on the bank's sworn profession of diligence and meticulousness in giving irreproachable service. Like a common carrier whose business is imbued with public interest, a bank should exercise extraordinary diligence to negate its liability to the depositors.[35] In this instance, PCIB is sorely remiss in the diligence required in treating with its client, Gonzales. It may not wantonly exercise its rights without respecting and honoring the rights of its clients.

Art. 19 of the New Civil Code clearly provides that "[e]very 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." This is the basis of the principle of abuse of right which, in turn, is based upon the maxim *suum jus summa injuria* (the abuse of right is the greatest possible wrong).[36]

In order for Art. 19 to be actionable, the following elements must be present: "(1) the existence of a legal right or duty, (2) which is exercised in bad faith, and (3) for the sole intent of prejudicing or injuring another."[37] We find that such elements are present in the instant case. The effectivity clause of the COHLA is crystal clear that termination of the COH should be done only **upon prior notice served on the CLIENT**. This is the legal duty of PCIB—to inform Gonzales of the termination. However, as shown by the above testimonies, PCIB failed to give prior notice to Gonzales.

Malice or bad faith is at the core of Art. 19. Malice or bad faith "implies a conscious and intentional design to do a wrongful

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[35] *Solidbank Corporation/Metropolitan Bank and Trust Company v. Tan*, G.R. No. 167346, April 2, 2007, 520 SCRA 123, 129-130; citations omitted.

[36] *Arlegui v. CA*, G.R. No. 126437, March 6, 2002, 378 SCRA 322, 337.

[37] *ABS-CBN Broadcasting Corporation v. CA*, G.R. No. 128690, January 21, 1999, 301 SCRA 572, 603.

act for a dishonest purpose or moral obliquity."[38] In the instant case, PCIB was able to send a letter advising Gonzales of the unpaid interest on the loans[39] but failed to mention anything about the termination of the COHLA. More significantly, no letter was ever sent to him about the termination of the COHLA. The failure to give prior notice on the part of PCIB is already *prima facie* evidence of bad faith.[40] Therefore, it is abundantly clear that this case falls squarely within the purview of the principle of abuse of rights as embodied in Art. 19.

**Third**. There is no dispute on the right of PCIB to suspend, terminate, or revoke the COHLA under the "cross default provisions" of both the promissory notes and the COHLA. However, these cross default provisions do not confer absolute unilateral right to PCIB, as they are qualified by the other stipulations in the contracts or specific circumstances, like in the instant case of an accommodation party.

The promissory notes uniformly provide:

> The **lender is hereby authorized, at its option and without notice, to set off or apply to the payment of this Note any and all moneys which may be in its hands on deposit or otherwise belonging to the Borrower**. The Borrower irrevocably appoint/s the Lender, effective upon the nonpayment of this Note on demand/ at maturity or upon the happening of any of the events of default, but without any obligation on the Lender's part should it choose not to perform this mandate, as the attorney-in-fact of the Borrower, to sell and dispose of any property of the Borrower, which may be in the Lender's possession by public or private sale, and to apply the proceeds thereof to the payment of this Note; the Borrower, however, shall remain liable for any deficiency.[41] (Emphasis ours.)

The above provisos are indeed qualified with the specific circumstance of an accommodation party who, as such, has

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[38] *Id.* at 604.

[39] Records, p. 160.

[40] *Manila Electric Company v. Hon. Navarro-Domingo*, G.R. No. 161893, June 27, 2006, 493 SCRA 363, 371.

[41] Records, p. 10.

not been servicing the payment of the dues of the loans, and must first be properly apprised in writing of the outstanding dues in order to answer for his solidary obligation.

The same is true for the COHLA, which in its default clause provides:

> 16. DEFAULT — The CLIENT shall be considered in default under the COH if any of the following events shall occur:
>
> 1. x x x
>
> 2. Violation of the terms and conditions of this Agreement or any contract of the CLIENT with the BANK or any bank, persons, corporations or entities for the payment of borrowed money, or any other event of default in such contracts.[42]

The above pertinent default clause must be read in conjunction with the effectivity clause (No. 4 of the COHLA, quoted above), which expressly provides for the right of client to prior notice. The rationale is simple: in cases where the bank has the right to terminate, revoke, or suspend the credit line, the client must be notified of such intent in order for the latter to act accordingly—whether to correct any ground giving rise to the right of the bank to terminate the credit line and to dishonor any check issued or to act in accord with such termination, *i.e.*, not to issue any check drawn from the credit line or to replace any checks that had been issued. This, the bank—with gross negligence—failed to accord Gonzales, a valued client for more than 15 years.

**Fourth**. We find the testimony[43] of Ocampo incredible on the point that the principal borrower of the PhP 1,800,000 loan covered by the three promissory notes is Gonzales for which the bank officers had special instructions to grant and that it was through the instructions of Gonzales that the payment of the periodic interest dues were debited from the account of the spouses Panlilio.

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[42] *Id.* at 159.

[43] *Id.* at 470-482, TSN, July 7, 2000, pp. 9-21.

For one, while the first promissory note dated October 30, 1995 indeed shows Gonzales as the principal borrower, the other promissory notes dated December 26, 1995 and January 3, 1996 evidently show that it was Jose Panlilio who was the principal borrower with Gonzales as co-borrower. For another, Ocampo cannot feign ignorance on the arrangement of the payments by the spouses Panlilio through the debiting of their bank account. It is incredulous that the payment arrangement is merely at the behest of Gonzales and at a mere verbal directive to do so. The fact that the spouses Panlilio not only received the proceeds of the loan but were servicing the periodic interest dues reinforces the fact that Gonzales was only an accommodation party.

Thus, due to PCIB's negligence in not giving Gonzales—an accommodation party—proper notice relative to the delinquencies in the PhP 1,800,000 loan covered by the three promissory notes, the unjust termination, revocation, or suspension of the credit line under the COHLA from PCIB's gross negligence in not honoring its obligation to give prior notice to Gonzales about such termination and in not informing Gonzales of the fact of such termination, treating Gonzales' account as closed and dishonoring his PhP 250,000 check, was certainly a reckless act by PCIB. This resulted in the actual injury of PhP 250,000 to Gonzales whose FCD account was frozen and had to look elsewhere for money to pay Unson.

With banks, the degree of diligence required is more than that of a good father of the family considering that the business of banking is imbued with public interest due to the nature of their function. The law imposes on banks a high degree of obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of banking.[44] Had Gonzales been properly notified of the delinquencies of the PhP 1,800,000 loan and the process of terminating his credit line under the COHLA, he could have acted accordingly and the dishonor of the check would have been avoided.

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[44] *Philippine National Bank v. Pike*, G.R. No. 157845, September 20, 2005, 470 SCRA 328, 347.

**Third Issue: Award of Damages**

The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society—banks have attained a ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence, and it is for this reason, banks should guard against injury attributable to negligence or bad faith on its part.[45]

In the instant case, Gonzales suffered from the negligence and bad faith of PCIB. From the testimonies of Gonzales' witnesses, particularly those of Dominador Santos[46] and Freddy Gomez,[47] the embarrassment and humiliation Gonzales has to endure not only before his former close friend Unson but more from the members and families of his friends and associates in the PCA, which he continues to experience considering the confrontation he had with Unson and the consequent loss of standing and credibility among them from the fact of the apparent bouncing check he issued. Credit is very important to businessmen and its loss or impairment needs to be recognized and compensated.[48]

The termination of the COHLA by PCIB without prior notice and the subsequent dishonor of the check issued by Gonzales constitute acts of *contra bonus mores*. Art. 21 of the Civil Code refers to such acts when it says, "Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for damage."

Accordingly, this Court finds that such acts warrant the payment of indemnity in the form of nominal damages. Nominal damages

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[45] *Sandejas v. Ignacio, Jr.*, G.R. No. 155033, December 19, 2007, 541 SCRA 61, 82.

[46] Records, pp. 274-286, TSN, March 9, 2000, pp. 2-13.

[47] *Id.* at 287-298, TSN, March 9, 2000, pp. 13-25.

[48] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 497; citing *Samson v. Bank of the Philippine Islands*, G.R. No. 154087, July 10, 2003, 405 SCRA 607.

"are recoverable where a legal right is technically violated and must be vindicated against an invasion that has produced no actual present loss of any kind x x x."[49] We further explained the nature of nominal damages in *Almeda v. Cariño*:

> x x x Its award is thus not for the purpose of indemnification for a loss but for the recognition and vindication of a right. Indeed, nominal damages are damages in name only and not in fact. When granted by the courts, they are not treated as an equivalent of a wrong inflicted but simply a recognition of the existence of a technical injury. A violation of the plaintiff's right, even if only technical, is sufficient to support an award of nominal damages. **Conversely, so long as there is a showing of a violation of the right of the plaintiff, an award of nominal damages is proper**.[50] (Emphasis Ours.)

In the present case, Gonzales had the right to be informed of the accrued interest and most especially, for the suspension of his COHLA. For failure to do so, the bank is liable to pay nominal damages. The amount of such damages is addressed to the sound discretion of the court, taking into account the relevant circumstances.[51] In this case, the Court finds that the grant of PhP 50,000 as nominal damages is proper.

Moreover, as We held in *MERALCO v. CA*,[52] failure to give prior notice when required, such as in the instant case, constitutes a breach of contract and is a clear violation of Art. 21 of the Code. In cases such as this, Art. 2219 of the Code provides that moral damages may be recovered in acts referred to in its Art. 21. Further, Art. 2220 of the Code provides that "[w]illful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances,

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[49] *Francisco v. Ferrer, Jr.*, G.R. No. 142029, February 28, 2001, 353 SCRA 261, 267.

[50] G.R. No. 152143, January 13, 2003, 395 SCRA 144, 150.

[51] *Ancheta v. Destiny Financial Plans, Inc.*, G.R. No. 179702, February 16, 2010, 612 SCRA 648, 664; citing *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004, 442 SCRA 616.

[52] G.R. No. L-39019, January 22, 1988, 157 SCRA 243, 248.

such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith." Similarly, "every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same."[53] Evidently, Gonzales is entitled to recover moral damages.

Even in the absence of malice or bad faith, a depositor still has the right to recover reasonable moral damages, if the depositor suffered mental anguish, serious anxiety, embarrassment, and humiliation.[54] Although incapable of pecuniary estimation, moral damages are certainly recoverable if they are the proximate result of the defendant's wrongful act or omission. The factual antecedents bolstered by undisputed testimonies likewise show the mental anguish and anxiety Gonzales had to endure with the threat of Unson to file a suit. Gonzales had to pay Unson PhP 250,000, while his FCD account in PCIB was frozen, prompting Gonzales to demand from PCIB and to file the instant suit.

The award of moral damages is aimed at a restoration within the limits of the possible, of the spiritual *status quo ante*—it must always reasonably approximate the extent of injury and be proportional to the wrong committed.[55] Thus, an award of PhP 50,000 is reasonable moral damages for the unjust dishonor of the PhP 250,000 which was the proximate cause of the consequent humiliation, embarrassment, anxiety, and mental anguish suffered by Gonzales from his loss of credibility among his friends, colleagues and peers.

Furthermore, the initial carelessness of the bank's omission in not properly informing Gonzales of the outstanding interest dues—aggravated by its gross neglect in omitting to give prior notice as stipulated under the COHLA and in not giving actual

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[53] CIVIL CODE, Art. 20.

[54] *Bank of Philippine Islands v. Court of Appeals*, G.R. No. 136202, January 25, 2007, 512 SCRA 620, 641.

[55] *Solidbank Corporation v. Arrieta*, G.R. No. 152727, February 17, 2005, 451 SCRA 711, 721-722; citations omitted.

notice of the termination of the credit line—justifies the grant of exemplary damages of PhP 10,000. Such an award is imposed by way of example or correction for the public good.

Finally, an award for attorney's fees is likewise called for from PCIB's negligence which compelled Gonzales to litigate to protect his interest. In accordance with Art. 2208(1) of the Code, attorney's fees may be recovered when exemplary damages are awarded. We find that the amount of PhP 50,000 as attorney's fees is reasonable.

**WHEREFORE,** this petition is *PARTLY GRANTED*. Accordingly, the CA Decision dated October 22, 2007 in CA-G.R. CV No. 74466 is hereby *REVERSED* and *SET ASIDE*. The Philippine Commercial and International Bank (now Banco De Oro) is *ORDERED* to pay Eusebio Gonzales PhP 50,000 as nominal damages, PhP 50,000 as moral damages, PhP 10,000 as exemplary damages, and PhP 50,000 as attorney's fees.

No pronouncement as to costs.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Nachura,*[*] *del Castillo,* and *Perez, JJ.*, concur.

[*] Additional member per Special Order No. 947 dated February 11, 2011.

**THIRD DIVISION**

[G.R. No. 181041. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **FABIAN G. ROMERO,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION.—** In the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. The prosecution for this crime is particularly difficult since the victim can no longer testify against the perpetrator of the crime. Thus, resort to circumstantial evidence is usually unavoidable. Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial evidence is sufficient for conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances unavoidably leads to a finding of guilt beyond reasonable doubt. These circumstances must be consistent with one another, and the only rational hypothesis that can be drawn therefrom must be the guilt of the accused.

**2. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT PERTAINING THERETO ARE ENTITLED TO GREAT RESPECT.—** The prosecution likewise established that the appellant had killed AAA. Joanna positively identified the appellant as the person who repeatedly stabbed AAA. The lower courts found her testimony convincing and credible. We have no reason to doubt Joanna's identification of the appellant, as the records show that she was merely four (4) meters away from the incident and that the area was illuminated by a light coming from the appellant's house. The defense likewise did not impute any ill motive on her part to falsely testify against the appellant. At any rate, findings of the trial court pertaining to the credibility of witnesses are entitled to great respect;

the trial court has the distinct opportunity of viewing the demeanor of the witnesses as they testify, and of judging – based on its firsthand observation – whether their witnesses are telling the truth.

**3. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; FAIL WHEN THERE IS POSITIVE EVIDENCE OF THE PHYSICAL PRESENCE OF THE ACCUSED AT THE CRIME SCENE.—** We do not find the appellant's uncorroborated alibi and denial believable as they contradict the testimonial and physical evidence presented by the prosecution. Alibi and denial necessarily fail when there is positive evidence of the physical presence of the accused at the crime scene, as in this case.

**4. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; AWARD THEREOF REDUCED TO ₱50,000.00.—** [T]he CA committed an overreach in the award of exemplary damages. Pursuant to prevailing jurisprudence, we have to reduce this award from ₱100,000.00 to ₱50,000.00.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**BRION,[*] *J.*:**

We resolve the appeal from the July 3, 2007 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00970. The CA affirmed with modification the decision[2] of the Regional Trial Court (*RTC*), Branch 43, Dagupan City, finding Fabian G. Romero (*appellant*) guilty beyond reasonable doubt of the

[*] Designated Acting Chairperson of the Third Division per Special Order No. 925 dated January 24, 2011.

[1] Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justice Jose C. Mendoza (now a member of this Court) and Associate Justice Ramon M. Bato, Jr.; *rollo*, pp. 2-17.

[2] Penned by Judge Silverio Q. Castillo; CA *rollo*, pp. 17-37.

special complex crime of rape with homicide, and sentencing him to suffer the death penalty.

On the evening of September 5, 2004, Joanna Pasaoa, a Grade 2 student, saw her friend, AAA,[3] walking towards the appellant's house. Joanna followed AAA to the appellant's house, and saw her and the appellant watching television together. Thereafter, the appellant instructed Joanna to buy a bottle of Red Horse beer. Joanna handed the bottle of beer to the appellant when she returned, and then went home.

After a while, Joanna decided to go back to the appellant's house to pickup AAA. When she was about four (4) meters away from the appellant's house, she saw the appellant outside his house repeatedly stabbing AAA. Joanna ran away and reported the incident to her mother.

At around 8:00 p.m. of the same day, BBB, AAA's father, went to his brother-in-law, CCC, and asked the latter to help him search for AAA. When they passed by the appellant's place, they saw the appellant pouring liquid into a fire. They approached the appellant, but the latter fled towards his house.

BBB and CCC inspected what the appellant was burning, and saw partially burnt grasses and clothes. Thereafter, they saw AAA's lifeless body covered with grass, one (1) meter away from the fire. AAA's body was half-naked and partially burnt; it also bore multiple stab wounds.

CCC lifted AAA's body, while BBB stayed and shouted invectives at the appellant. Thereafter, the townspeople and *barangay* officials arrived and surrounded the appellant's house. Soon after, the police came and arrested the appellant.

The prosecution charged the appellant before the RTC with the special complex crime of rape with homicide. The appellant denied the charges against him, and claimed that he was drinking with his buddies until 8:30 p.m. on September 5, 2004.

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[3] See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, citing Section 40, Rule on Violence Against Women and their Children.

The RTC found the appellant guilty beyond reasonable doubt of the crime charged, and imposed the death penalty. It also ordered the appellant to pay the victim's heirs the following amounts: ₱75,000.00 as civil indemnity; ₱50,000.00 as moral damages; and ₱40,000.00 as exemplary damages.

On appeal, the CA affirmed the RTC decision with the following modifications: (1) the penalty of death was reduced to *reclusion perpetua* without eligibility for parole; (2) civil indemnity was increased to ₱100,000.00; (3) moral damages was increased to ₱75,000.00; (4) exemplary damages was increased to ₱100,000.00; and (5) the appellant was further ordered to pay the victim's heirs ₱25,000.00 as temperate damages.

The CA held that Joanna positively identified the appellant as the person who repeatedly stabbed the victim. It also gave weight to the physician's finding that the victim had been sexually abused before she was killed. It further ruled that the pieces of evidence obtained at the appellant's house were admissible.

**We deny the appeal, but reduce the amount of exemplary damages.**

In the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt.[4] The prosecution for this crime is particularly difficult since the victim can no longer testify against the perpetrator of the crime.[5] Thus, resort to circumstantial evidence is usually unavoidable.[6]

Circumstantial evidence consists of proof of collateral facts and circumstances from which the main fact in issue may be inferred based on reason and common experience. Under Section 4, Rule 133 of the Revised Rules of Court, circumstantial

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[4] *People v. Narzabal*, G.R. No. 174066, October 12, 2010.

[5] *People v. Seranilla*, G.R. Nos. 113022-24, December 15, 2000, 348 SCRA 227, 235.

[6] See *People v. Nanas*, G.R. No. 137299, August 21, 2001, 363 SCRA 452, 464.

evidence is sufficient for conviction if the following requisites concur: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; and (c) the combination of all the circumstances unavoidably leads to a finding of guilt beyond reasonable doubt.[7] These circumstances must be consistent with one another, and the only rational hypothesis that can be drawn therefrom must be the guilt of the accused.

In the present case, no one witnessed AAA being raped. Nonetheless, the following circumstances form a solid and unbroken chain of events that leads us to conclude beyond reasonable doubt that the appellant had raped the victim: *first*, AAA and the appellant were seen watching television together at the latter's house; *second*, AAA's half-naked, partially burnt and lifeless body was seen outside the appellant's house, one (1) meter away from where the appellant had been seen burning clothes; *third*, AAA's legs were spread apart, and the labia of her private part was gaping when her body was found; *fourth*, Dr. Jesus Arturo De Vera, the Municipal Health Officer of Calasiao, Pangasinan, testified that AAA had hymenal lacerations at 4, 7 and 10 o'clock positions, and anal lacerations at 7 and 10 o'clock positions; *fifth*, Dr. De Vera stated that AAA's anal and hymenal lacerations could have been caused by a hard object like an erect penis; *sixth*, Nerigo Daciego, the Medico-Legal Officer of the Philippine National Police (*PNP*) Crime Laboratory, saw positive signs of anal and vaginal penetrations on AAA; and *finally*, Daciego testified that AAA had been raped when she was still alive due to the presence of amucosal erosion on her anal and vaginal tissues.

These circumstances, taken together, lead to no other conclusion than that the appellant, to the exclusion of others, had raped AAA.

The prosecution likewise established that the appellant had killed AAA. Joanna positively identified the appellant as the

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[7] See *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 252.

person who repeatedly stabbed AAA. The lower courts found her testimony convincing and credible. We have no reason to doubt Joanna's identification of the appellant, as the records show that she was merely four (4) meters away from the incident and that the area was illuminated by a light coming from the appellant's house. The defense likewise did not impute any ill motive on her part to falsely testify against the appellant. At any rate, findings of the trial court pertaining to the credibility of witnesses are entitled to great respect; the trial court has the distinct opportunity of viewing the demeanor of the witnesses as they testify, and of judging – based on its firsthand observation – whether their witnesses are telling the truth.

Joanna's testimony was also corroborated by Dr. De Vera and Daciego who both stated that the victim suffered, among others, 29 stab wounds.

In addition, the following pieces of physical evidence found at the appellant's house lead to no conclusion other than the appellant's guilt: a kitchen knife with bloodstains; a wet towel stained with blood; bloodstains at the door of his house; and a broomstick, T-shirt, pillow case and blanket, all with bloodstains. The PNP Crime Laboratory found that these bloodstains contained "female genes."

We do not find the appellant's uncorroborated alibi and denial believable as they contradict the testimonial and physical evidence presented by the prosecution. Alibi and denial necessarily fail when there is positive evidence of the physical presence of the accused at the crime scene, as in this case.

While correct in all the above respects, the CA committed an overreach in the award of exemplary damages. Pursuant to prevailing jurisprudence, we have to reduce this award from ₱100,000.00 to ₱50,000.00.[8]

**WHEREFORE,** premises considered, we *AFFIRM* the July 3, 2007 decision of the Court of Appeals in CA-G.R. CR-H.C.

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[8] See *People v. Narzabal*, *supra* note 4; and *People v. Villarino*, G.R. No. 185012, March 5, 2010.

No. 00970, with the *MODIFICATION* that the award of exemplary damages is *REDUCED* to ₱50,000.00.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**SECOND DIVISION**

[G.R. No. 182332. February 23, 2011]

**MILESTONE FARMS, INC.,** *petitioner, vs.* **OFFICE OF THE PRESIDENT,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; ISSUE WHICH WAS NEITHER ALLEGED IN THE COMPLAINT NOR RAISED DURING TRIAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; EXCEPTION; CASE AT BAR. —** While it is true that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process, the same is not without exception, such as this case. The CA, under Section 3, Rule 43 of the Rules of Civil Procedure, can, in the interest of justice, entertain and resolve factual issues. After all, technical and procedural rules are intended to help secure, and not suppress, substantial justice. A deviation from a rigid enforcement of the rules may thus be allowed to attain the prime objective of dispensing justice, for dispensation of justice is the core reason for the existence of courts.

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[*] Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

**2. POLITICAL LAW; EXECUTIVE DEPARTMENT; DEPARTMENT OF AGRARIAN REFORM; THE SECRETARY IS VESTED WITH SUCH JURISDICTION AND AUTHORITY TO EXEMPT AND/OR EXCLUDE A PROPERTY FROM THE COMPREHENSIVE AGRARIAN REFORM PROGRAM; SUSTAINED. —** We cannot, without going against the law, arbitrarily strip the DAR Secretary of his legal mandate to exercise jurisdiction and authority over all Agrarian Law Implementation (ALI) cases. To succumb to petitioner's contention that "*when a land is declared exempt from the CARP on the ground that it is not agricultural as of the time the CARL took effect, the use and disposition of that land is entirely and forever beyond DAR's jurisdiction*" is dangerous, suggestive of self-regulation. Precisely, it is the DAR Secretary who is vested with such jurisdiction and authority to exempt and/or exclude a property from CARP coverage based on the factual circumstances of each case and in accordance with law and applicable jurisprudence. In addition, albeit parenthetically, Secretary Villa had already granted the conversion into residential and golf courses use of nearly one-half of the entire area originally claimed as exempt from CARP coverage because it was allegedly devoted to livestock production.

**APPEARANCES OF COUNSEL**

*Tan & Concepcion Law Offices* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**NACHURA, *J.*:**

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Amended Decision[2] dated October 4, 2006 and its Resolution[3] dated March 27, 2008.

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[1] *Rollo*, pp. 67-98.

[2] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Japar B. Dimaampao, concurring; *id.* at 26-45.

[3] *Id.* at 47-63.

***The Facts***

Petitioner Milestone Farms, Inc. (petitioner) was incorporated with the Securities and Exchange Commission on January 8, 1960.[4] Among its pertinent secondary purposes are: (1) to engage in the raising of cattle, pigs, and other livestock; to acquire lands by purchase or lease, which may be needed for this purpose; and to sell and otherwise dispose of said cattle, pigs, and other livestock and their produce when advisable and beneficial to the corporation; (2) to breed, raise, and sell poultry; to purchase or acquire and sell, or otherwise dispose of the supplies, stocks, equipment, accessories, appurtenances, products, and by-products of said business; and (3) to import cattle, pigs, and other livestock, and animal food necessary for the raising of said cattle, pigs, and other livestock as may be authorized by law.[5]

On June 10, 1988, a new agrarian reform law, Republic Act (R.A.) No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL), took effect, which included the raising of livestock, poultry, and swine in its coverage. However, on December 4, 1990, this Court, sitting *en banc*, ruled in *Luz Farms v. Secretary of the Department of Agrarian Reform*[6] that agricultural lands devoted to livestock, poultry, and/or swine raising are excluded from the Comprehensive Agrarian Reform Program (CARP).

Thus, in May 1993, petitioner applied for the exemption/exclusion of its 316.0422-hectare property, covered by Transfer Certificate of Title Nos. (T-410434) M-15750, (T-486101) M-7307, (T-486102) M-7308, (T-274129) M-15751, (T-486103) M-7309, (T-486104) M-7310, (T-332694) M-15755, (T-486105) M-7311, (T-486106) M-7312, M-8791, (T-486107) M-7313, (T-486108) M-7314, M-8796, (T-486109) M-7315, (T-486110) M-9508, and M-6013, and located in Pinugay, Baras, Rizal,

[4] CA *rollo*, p. 103.

[5] *Id.* at 105-109.

[6] G.R. No. 86889, December 4, 1990, 192 SCRA 51.

from the coverage of the CARL, pursuant to the aforementioned ruling of this Court in *Luz Farms*.

Meanwhile, on December 27, 1993, the Department of Agrarian Reform (DAR) issued Administrative Order No. 9, Series of 1993 (DAR A.O. No. 9), setting forth rules and regulations to govern the exclusion of agricultural lands used for livestock, poultry, and swine raising from CARP coverage. Thus, on January 10, 1994, petitioner re-documented its application pursuant to DAR A.O. No. 9.[7]

Acting on the said application, the DAR's Land Use Conversion and Exemption Committee (LUCEC) of Region IV conducted an ocular inspection on petitioner's property and arrived at the following findings:

> [T]he actual land utilization for livestock, swine and poultry is 258.8422 hectares; the area which served as infrastructure is 42.0000 hectares; ten (10) hectares are planted to corn and the remaining five (5) hectares are devoted to fish culture; that the livestock population are 371 heads of cow, 20 heads of horses, 5,678 heads of swine and 788 heads of cocks; that the area being applied for exclusion is far below the required or ideal area which is 563 hectares for the total livestock population; that the approximate area not directly used for livestock purposes with an area of 15 hectares, more or less, is likewise far below the allowable 10% variance; and, though not directly used for livestock purposes, the ten (10) hectares planted to sweet corn and the five (5) hectares devoted to fishpond could be considered supportive to livestock production.

The LUCEC, thus, recommended the exemption of petitioner's 316.0422-hectare property from the coverage of CARP. Adopting the LUCEC's findings and recommendation, DAR Regional Director Percival Dalugdug (Director Dalugdug) issued an Order dated June 27, 1994, exempting petitioner's 316.0422-hectare property from CARP.[8]

The Southern Pinugay Farmers Multi-Purpose Cooperative, Inc. (Pinugay Farmers), represented by Timiano Balajadia, Sr.

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[7] CA *rollo*, p. 102.

[8] *Id.* at 620-621.

(Balajadia), moved for the reconsideration of the said Order, but the same was denied by Director Dalugdug in his Order dated November 24, 1994.[9] Subsequently, the Pinugay Farmers filed a letter-appeal with the DAR Secretary.

Correlatively, on June 4, 1994, petitioner filed a complaint for Forcible Entry against Balajadia and company before the Municipal Circuit Trial Court (MCTC) of Teresa-Baras, Rizal, docketed as Civil Case No. 781-T.[10] The MCTC ruled in favor of petitioner, but the decision was later reversed by the Regional Trial Court, Branch 80, of Tanay, Rizal. Ultimately, the case reached the CA, which, in its Decision[11] dated October 8, 1999, reinstated the MCTC's ruling, ordering Balajadia and all defendants therein to vacate portions of the property covered by TCT Nos. M-6013, M-8796, and M-8791. In its Resolution[12] dated July 31, 2000, the CA held that the defendants therein failed to timely file a motion for reconsideration, given the fact that their counsel of record received its October 8, 1999 Decision; hence, the same became final and executory.

In the meantime, R.A. No. 6657 was amended by R.A. No. 7881,[13] which was approved on February 20, 1995. Private agricultural lands devoted to livestock, poultry, and swine raising were excluded from the coverage of the CARL. On October 22, 1996, the fact-finding team formed by the DAR Undersecretary for Field Operations and Support Services conducted an actual headcount of the livestock population on the property. The headcount showed that there were 448 heads of cattle and more than 5,000 heads of swine.

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[9] *Id.* at 624-626.

[10] *Id.* at 901.

[11] Docketed as CA-G.R. SP No. 43678, penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Buenaventura J. Guerrero and Remedios A. Salazar-Fernando, concurring; *id.* at 916-929.

[12] *Id.* at 931-932.

[13] Entitled "*An Act Amending Certain Provisions of Republic Act No. 6657, Entitled 'An Act Instituting A Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes.'*"

***The DAR Secretary's Ruling***

On January 21, 1997, then DAR Secretary Ernesto D. Garilao (Secretary Garilao) issued an Order exempting from CARP only 240.9776 hectares of the 316.0422 hectares previously exempted by Director Dalugdug, and declaring 75.0646 hectares of the property to be covered by CARP.[14]

Secretary Garilao opined that, for private agricultural lands to be excluded from CARP, they must already be devoted to livestock, poultry, and swine raising as of June 15, 1988, when the CARL took effect. He found that the Certificates of Ownership of Large Cattle submitted by petitioner showed that only 86 heads of cattle were registered in the name of petitioner's president, Misael Vera, Jr., prior to June 15, 1988; 133 were subsequently bought in 1990, while 204 were registered from 1992 to 1995. Secretary Garilao gave more weight to the certificates rather than to the headcount because "the same explicitly provide for the number of cattle owned by petitioner as of June 15, 1988."

Applying the animal-land ratio (1 hectare for grazing for every head of cattle/carabao/horse) and the infrastructure-animal ratio (1.7815 hectares for 21 heads of cattle/carabao/horse, and 0.5126 hectare for 21 heads of hogs) under DAR A.O. No. 9, Secretary Garilao exempted 240.9776 hectares of the property, as follows:

1. 86 hectares for the 86 heads of cattle existing as of 15 June 1988;

2. 8 hectares for infrastructure following the ratio of 1.7815 hectares for every 21 heads of cattle;

3. 8 hectares for the 8 horses;

4. 0.3809 square meters of infrastructure for the 8 horses; [and]

5. 138.5967 hectares for the 5,678 heads of swine.[15]

Petitioner filed a Motion for Reconsideration,[16] submitting therewith copies of Certificates of Transfer of Large Cattle and

[14] CA *rollo*, pp. 656-662.

[15] *Id.* at 660.

[16] *Id.* at 665-676.

additional Certificates of Ownership of Large Cattle issued to petitioner prior to June 15, 1988, as additional proof that it had met the required animal-land ratio. Petitioner also submitted a copy of a Disbursement Voucher dated December 17, 1986, showing the purchase of 100 heads of cattle by the Bureau of Animal Industry from petitioner, as further proof that it had been actively operating a livestock farm even before June 15, 1988. However, in his Order dated April 15, 1997, Secretary Garilao denied petitioner's Motion for Reconsideration.[17]

Aggrieved, petitioner filed its Memorandum on Appeal[18] before the Office of the President (OP).

***The OP's Ruling***

On February 4, 2000, the OP rendered a decision[19] reinstating Director Dalugdug's Order dated June 27, 1994 and declared the entire 316.0422-hectare property exempt from the coverage of CARP.

However, on separate motions for reconsideration of the aforesaid decision filed by farmer-groups Samahang Anak-Pawis ng Lagundi (SAPLAG) and Pinugay Farmers, and the Bureau of Agrarian Legal Assistance of DAR, the OP issued a resolution[20] dated September 16, 2002, setting aside its previous decision. The dispositive portion of the OP resolution reads:

> WHEREFORE, the Decision subject of the instant separate motions for reconsideration is hereby SET ASIDE and a new one entered REINSTATING the Order dated 21 January 1997 of then DAR Secretary Ernesto D. Garilao, as reiterated in another Order of 15 April 1997, without prejudice to the outcome of the continuing review and verification proceedings that DAR, thru the appropriate Municipal Agrarian Reform Officer, may undertake pursuant to Rule III (D) of DAR Administrative Order No. 09, series of 1993.

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[17] *Id.* at 750-761.

[18] *Id.* at 762-780.

[19] *Id.* at 82-89.

[20] *Id.* at 74-81.

SO ORDERED.[21]

The OP held that, when it comes to proof of ownership, the reference is the Certificate of Ownership of Large Cattle. Certificates of cattle ownership, which are readily available – being issued by the appropriate government office – ought to match the number of heads of cattle counted as existing during the actual headcount. The presence of large cattle on the land, without sufficient proof of ownership thereof, only proves such presence.

Taking note of Secretary Garilao's observations, the OP also held that, before an ocular investigation is conducted on the property, the landowners are notified in advance; hence, mere reliance on the physical headcount is dangerous because there is a possibility that the landowners would increase the number of their cattle for headcount purposes only. The OP observed that there was a big variance between the actual headcount of 448 heads of cattle and only 86 certificates of ownership of large cattle.

Consequently, petitioner sought recourse from the CA.[22]

***The Proceedings Before the CA and Its Rulings***

On April 29, 2005, the CA found that, based on the documentary evidence presented, the property subject of the application for exclusion had more than satisfied the animal-land and infrastructure-animal ratios under DAR A.O. No. 9. The CA also found that petitioner applied for exclusion long before the effectivity of DAR A.O. No. 9, thus, negating the claim that petitioner merely converted the property for livestock, poultry, and swine raising in order to exclude it from CARP coverage. Petitioner was held to have actually engaged in the said business on the property even before June 15, 1988. The CA disposed of the case in this wise:

WHEREFORE, the instant petition is hereby **GRANTED**. The assailed *Resolution* of the Office of the President dated September

[21] *Id.* at 80.

[22] *Id.* at 11-71.

16, 2002 is hereby ***SET ASIDE***, and its *Decision* dated February 4, 2000 declaring the entire 316.0422 hectares exempt from the coverage of the Comprehensive Agrarian Reform Program is hereby ***REINSTATED*** without prejudice to the outcome of the continuing review and verification proceedings which the Department of Agrarian Reform, through the proper Municipal Agrarian Reform Officer, may undertake pursuant to Policy Statement (D) of DAR Administrative Order No. 9, Series of 1993.

SO ORDERED.[23]

Meanwhile, six months earlier, or on November 4, 2004, without the knowledge of the CA – as the parties did not inform the appellate court – then DAR Secretary Rene C. Villa (Secretary Villa) issued DAR Conversion Order No. CON-0410-0016[24] (Conversion Order), granting petitioner's application to convert portions of the 316.0422-hectare property from agricultural to residential and golf courses use. The portions converted – with a total area of 153.3049 hectares – were covered by TCT Nos. M-15755 (T-332694), M-15751 (T-274129), and M-15750 (T-410434). With this Conversion Order, the area of the property subject of the controversy was effectively reduced to 162.7373 hectares.

On the CA's decision of April 29, 2005, Motions for Reconsideration were filed by farmer-groups, namely: the farmers represented by Miguel Espinas[25] (Espinas group), the Pinugay Farmers,[26] and the SAPLAG.[27] The farmer-groups all claimed that the CA should have accorded respect to the factual findings of the OP. Moreover, the farmer-groups unanimously intimated that petitioner already converted and developed a portion of the property into a leisure-residential-commercial estate known as the Palo Alto Leisure and Sports Complex (Palo Alto).

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[23] *Rollo*, pp. 23-24.

[24] CA *rollo*, pp. 1281-1291.

[25] *Id.* at 1099-1108.

[26] *Id.* at 1110-1112.

[27] *Id.* at 1117-1125.

Subsequently, in a Supplement to the Motion for Reconsideration on Newly Secured Evidence pursuant to DAR Administrative Order No. 9, Series of 1993[28] (Supplement) dated June 15, 2005, the Espinas group submitted the following as evidence:

1) Conversion Order[29] dated November 4, 2004, issued by Secretary Villa, converting portions of the property from agricultural to residential and golf courses use, with a total area of 153.3049 hectares; thus, the Espinas group prayed that the remaining 162.7373 hectares (subject property) be covered by the CARP;

2) Letter[30] dated June 7, 2005 of both incoming Municipal Agrarian Reform Officer (MARO) Bismark M. Elma (MARO Elma) and outgoing MARO Cesar C. Celi (MARO Celi) of Baras, Rizal, addressed to Provincial Agrarian Reform Officer (PARO) II of Rizal, Felixberto Q. Kagahastian, (MARO Report), informing the latter, among others, that Palo Alto was already under development and the lots therein were being offered for sale; that there were actual tillers on the subject property; that there were agricultural improvements thereon, including an irrigation system and road projects funded by the Government; that there was no existing livestock farm on the subject property; and that the same was not in the possession and/or control of petitioner; and

3) Certification[31] dated June 8, 2005, issued by both MARO Elma and MARO Celi, manifesting that the subject property was in the possession and cultivation of actual occupants and tillers, and that, upon inspection, petitioner maintained no livestock farm thereon.

Four months later, the Espinas group and the DAR filed their respective Manifestations.[32] In its Manifestation dated November

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[28] *Id.* at 1174-1180.

[29] *Supra* note 24.

[30] CA *rollo*, pp. 1184-1185.

[31] *Id.* at 1186.

[32] *Id.* at 1321-1324 and 1330-1332.

29, 2005, the DAR confirmed that the subject property was no longer devoted to cattle raising. Hence, in its Resolution[33] dated December 21, 2005, the CA directed petitioner to file its comment on the Supplement and the aforementioned Manifestations. Employing the services of a new counsel, petitioner filed a Motion to Admit Rejoinder,[34] and prayed that the MARO Report be disregarded and expunged from the records for lack of factual and legal basis.

With the CA now made aware of these developments, particularly Secretary Villa's Conversion Order of November 4, 2004, the appellate court had to acknowledge that the property subject of the controversy would now be limited to the remaining 162.7373 hectares. In the same token, the Espinas group prayed that this remaining area be covered by the CARP.[35]

On October 4, 2006, the CA amended its earlier Decision. It held that its April 29, 2005 Decision was theoretically not final because DAR A.O. No. 9 required the MARO to make a continuing review and verification of the subject property. While the CA was cognizant of our ruling in *Department of Agrarian Reform v. Sutton*,[36] wherein we declared DAR A.O. No. 9 as unconstitutional, it still resolved to lift the exemption of the subject property from the CARP, not on the basis of DAR A.O. No. 9, but on the strength of evidence such as the MARO Report and Certification, and the *Katunayan*[37] issued by the *Punong Barangay*, Alfredo Ruba (Chairman Ruba), of Pinugay, Baras, Rizal, showing that the subject property was no longer operated as a livestock farm. Moreover, the CA held that the lease agreements,[38] which petitioner submitted to prove that it was compelled to lease a ranch as temporary shelter for its cattle, only reinforced the DAR's finding that there was indeed

[33] *Id.* at 1359-1360.

[34] *Id.* at 1406-1409 and 1410-1416.

[35] *Supra* note 28, at 1180.

[36] 510 Phil. 177 (2005).

[37] CA *rollo*, p. 1353.

[38] *Id.* at 1464-1467.

no existing livestock farm on the subject property. While petitioner claimed that it was merely forced to do so to prevent further slaughtering of its cattle allegedly committed by the occupants, the CA found the claim unsubstantiated. Furthermore, the CA opined that petitioner should have asserted its rights when the irrigation and road projects were introduced by the Government within its property. Finally, the CA accorded the findings of MARO Elma and MARO Celi the presumption of regularity in the performance of official functions in the absence of evidence proving misconduct and/or dishonesty when they inspected the subject property and rendered their report. Thus, the CA disposed:

> WHEREFORE, this Court's *Decision* dated April 29, 2005 is hereby amended in that the exemption of the subject landholding from the coverage of the Comprehensive Agrarian Reform Program is hereby lifted, and the 162.7373 hectare-agricultural portion thereof is hereby declared covered by the Comprehensive Agrarian Reform Program.
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> SO ORDERED.[39]

Unperturbed, petitioner filed a Motion for Reconsideration.[40] On January 8, 2007, MARO Elma, in compliance with the Memorandum of DAR Regional Director Dominador B. Andres, tendered another Report[41] reiterating that, upon inspection of the subject property, together with petitioner's counsel-turned witness, Atty. Grace Eloisa J. Que (Atty. Que), PARO Danilo M. Obarse, Chairman Ruba, and several occupants thereof, he, among others, found no livestock farm within the subject property. About 43 heads of cattle were shown, but MARO Elma observed that the same were inside an area adjacent to Palo Alto. Subsequently, upon Atty. Que's request for reinvestigation, designated personnel of the DAR Provincial and Regional Offices (Investigating Team) conducted another ocular inspection on the subject property on February 20, 2007. The

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[39] *Supra* note 2, at 45.

[40] CA *rollo*, pp.1502-1514.

[41] Exhibit "D-2"; CA's Folder of Exhibits.

Investigating Team, in its Report[42] dated February 21, 2007, found that, per testimony of petitioner's caretaker, Rogelio Ludivices (Roger),[43] petitioner has 43 heads of cattle taken care of by the following individuals: i) Josefino Custodio (Josefino) – 18 heads; ii) Andy Amahit – 15 heads; and iii) Bert Pangan – 2 heads; that these individuals pastured the herd of cattle outside the subject property, while Roger took care of 8 heads of cattle inside the Palo Alto area; that 21 heads of cattle owned by petitioner were seen in the area adjacent to Palo Alto; that Josefino confirmed to the Investigating Team that he takes care of 18 heads of cattle owned by petitioner; that the said Investigating Team saw 9 heads of cattle in the Palo Alto area, 2 of which bore "MFI" marks; and that the 9 heads of cattle appear to have matched the Certificates of Ownership of Large Cattle submitted by petitioner.

Because of the contentious factual issues and the conflicting averments of the parties, the CA set the case for hearing and reception of evidence on April 24, 2007.[44] Thereafter, as narrated by the CA, the following events transpired:

> On May 17, 2007, [petitioner] presented the *Judicial Affidavits* of its witnesses, namely, [petitioner's] counsel, [Atty. Que], and the alleged caretaker of [petitioner's] farm, [Roger], who were both cross-examined by counsel for farmers-movants and SAPLAG. [Petitioner] and SAPLAG then marked their documentary exhibits.
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> On May 24, 2007, [petitioner's] security guard and third witness, Rodolfo G. Febrada, submitted his *Judicial Affidavit* and was cross-examined by counsel for fa[r]mers-movants and SAPLAG. Farmers-movants also marked their documentary exhibits.
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> Thereafter, the parties submitted their respective *Formal Offers of Evidence*. Farmers-movants and SAPLAG filed their *objections* to [petitioner's] *Formal Offer of Evidence*. Later, [petitioner] and farmers-movants filed their respective *Memoranda*.

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[42] Exhibits "E-1 to E-3"; *id.*

[43] Also referred to as Roger Lobedesis in other pleadings and documents.

[44] CA *rollo*, p. 1656.

In December 2007, this Court issued a *Resolution* on the parties' offer of evidence and considered [petitioner's] *Motion for Reconsideration* submitted for resolution.[45]

Finally, petitioner's motion for reconsideration was denied by the CA in its Resolution[46] dated March 27, 2008. The CA discarded petitioner's reliance on *Sutton*. It ratiocinated that the MARO Reports and the DAR's Manifestation could not be disregarded simply because DAR A.O. No. 9 was declared unconstitutional. The *Sutton* ruling was premised on the fact that the *Sutton* property continued to operate as a livestock farm. The CA also reasoned that, in *Sutton*, this Court did not remove from the DAR the power to implement the CARP, pursuant to the latter's authority to oversee the implementation of agrarian reform laws under Section 50[47] of the CARL. Moreover, the CA found:

> Petitioner-appellant claimed that they had 43 heads of cattle which are being cared for and pastured by 4 individuals. To prove its ownership of the said cattle, petitioner-appellant offered in evidence 43 *Certificates of Ownership of Large Cattle.* Significantly, however, the said *Certificates* were all dated and issued on November 24, 2006, nearly 2 months after this Court rendered its *Amended Decision* lifting the exemption of the 162-hectare portion of the subject landholding. The acquisition of such cattle after the lifting of the exemption clearly reveals that petitioner-appellant was no longer operating a livestock farm, and suggests an effort to create a semblance of livestock-raising for the purpose of its *Motion for Reconsideration*.[48]

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[45] *Supra* note 3, at 52-53.

[46] *Supra* note 3.

[47] Sec. 50 of R.A. No. 6657 provides:

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

[48] *Supra* note 3, at 61.

On petitioner's assertion that between MARO Elma's Report dated January 8, 2007 and the Investigating Team's Report, the latter should be given credence, the CA held that there were no material inconsistencies between the two reports because both showed that the 43 heads of cattle were found outside the subject property.

Hence, this Petition assigning the following errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT HELD THAT LANDS DEVOTED TO LIVESTOCK FARMING WITHIN THE MEANING OF *LUZ FARMS* AND *SUTTON*, AND WHICH ARE THEREBY EXEMPT FROM CARL COVERAGE, ARE NEVERTHELESS SUBJECT TO DAR'S CONTINUING VERIFICATION AS TO USE, AND, ON THE BASIS OF SUCH VERIFICATION, MAY BE ORDERED REVERTED TO AGRICULTURAL CLASSIFICATION AND COMPULSORY ACQUISITION[;]

II.

GRANTING THAT THE EXEMPT LANDS AFORESAID MAY BE SO REVERTED TO AGRICULTURAL CLASSIFICATION, STILL THE PROCEEDINGS FOR SUCH PURPOSE BELONGS TO THE EXCLUSIVE ORIGINAL JURISDICTION OF THE DAR, BEFORE WHICH THE CONTENDING PARTIES MAY VENTILATE FACTUAL ISSUES, AND AVAIL THEMSELVES OF USUAL REVIEW PROCESSES, AND NOT TO THE COURT OF APPEALS EXERCISING APPELLATE JURISDICTION OVER ISSUES COMPLETELY UNRELATED TO REVERSION [; AND]

III.

IN ANY CASE, THE COURT OF APPEALS GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT HELD THAT THE PROPERTY IN DISPUTE IS NO LONGER BEING USED FOR LIVESTOCK FARMING.[49]

Petitioner asseverates that lands devoted to livestock farming as of June 15, 1988 are classified as industrial lands, hence, outside the ambit of the CARP; that *Luz Farms*, *Sutton*, and

[49] *Supra* note 1, at 79-80.

R.A. No. 7881 clearly excluded such lands on constitutional grounds; that petitioner's lands were actually devoted to livestock even before the enactment of the CARL; that livestock farms are exempt from the CARL, not by reason of any act of the DAR, but because of their nature as industrial lands; that petitioner's property was admittedly devoted to livestock farming as of June 1988 and the only issue before was whether or not petitioner's pieces of evidence comply with the ratios provided under DAR A.O. No. 9; and that DAR A.O. No. 9 having been declared as unconstitutional, DAR had no more legal basis to conduct a continuing review and verification proceedings over livestock farms. Petitioner argues that, in cases where reversion of properties to agricultural use is proper, only the DAR has the exclusive original jurisdiction to hear and decide the same; hence, the CA, in this case, committed serious errors when it ordered the reversion of the property and when it considered pieces of evidence not existing as of June 15, 1988, despite its lack of jurisdiction; that the CA should have remanded the case to the DAR due to conflicting factual claims; that the CA cannot ventilate allegations of fact that were introduced for the first time on appeal as a supplement to a motion for reconsideration of its first decision, use the same to deviate from the issues pending review, and, on the basis thereof, declare exempt lands reverted to agricultural use and compulsorily covered by the CARP; that the "newly discovered [pieces of] evidence" were not introduced in the proceedings before the DAR, hence, it was erroneous for the CA to consider them; and that piecemeal presentation of evidence is not in accord with orderly justice. Finally, petitioner submits that, in any case, the CA gravely erred and committed grave abuse of discretion when it held that the subject property was no longer used for livestock farming as shown by the Report of the Investigating Team. Petitioner relies on the 1997 LUCEC and DAR findings that the subject property was devoted to livestock farming, and on the 1999 CA Decision which held that the occupants of the property were squatters, bereft of any authority to stay and possess the property.[50]

[50] *Id*.

On one hand, the farmer-groups, represented by the Espinas group, contend that they have been planting rice and fruit-bearing trees on the subject property, and helped the National Irrigation Administration in setting up an irrigation system therein in 1997, with a produce of 1,500 to 1,600 sacks of *palay* each year; that petitioner came to court with unclean hands because, while it sought the exemption and exclusion of the entire property, unknown to the CA, petitioner surreptitiously filed for conversion of the property now known as Palo Alto, which was actually granted by the DAR Secretary; that petitioner's bad faith is more apparent since, despite the conversion of the 153.3049-hectare portion of the property, it still seeks to exempt the entire property in this case; and that the fact that petitioner applied for conversion is an admission that indeed the property is agricultural. The farmer-groups also contend that petitioner's reliance on *Luz Farms* and *Sutton* is unavailing because in these cases there was actually no cessation of the business of raising cattle; that what is being exempted is the activity of raising cattle and not the property itself; that exemptions due to cattle raising are not permanent; that the declaration of DAR A.O. No. 9 as unconstitutional does not at all diminish the mandated duty of the DAR, as the lead agency of the Government, to implement the CARL; that the DAR, vested with the power to identify lands subject to CARP, logically also has the power to identify lands which are excluded and/or exempted therefrom; that to disregard DAR's authority on the matter would open the floodgates to abuse and fraud by unscrupulous landowners; that the factual finding of the CA that the subject property is no longer a livestock farm may not be disturbed on appeal, as enunciated by this Court; that DAR conducted a review and monitoring of the subject property by virtue of its powers under the CARL; and that the CA has sufficient discretion to admit evidence in order that it could arrive at a fair, just, and equitable ruling in this case.[51]

On the other hand, respondent OP, through the Office of the Solicitor General (OSG), claims that the CA correctly held that

[51] *Rollo,* pp. 2223-2237.

the subject property is not exempt from the coverage of the CARP, as substantial pieces of evidence show that the said property is not exclusively devoted to livestock, swine, and/or poultry raising; that the issues presented by petitioner are factual in nature and not proper in this case; that under Rule 43 of the 1997 Rules of Civil Procedure, questions of fact may be raised by the parties and resolved by the CA; that due to the divergence in the factual findings of the DAR and the OP, the CA was duty bound to review and ascertain which of the said findings are duly supported by substantial evidence; that the subject property was subject to continuing review and verification proceedings due to the then prevailing DAR A.O. No. 9; that there is no question that the power to determine if a property is subject to CARP coverage lies with the DAR Secretary; that pursuant to such power, the MARO rendered the assailed reports and certification, and the DAR itself manifested before the CA that the subject property is no longer devoted to livestock farming; and that, while it is true that this Court's ruling in *Luz Farms* declared that agricultural lands devoted to livestock, poultry, and/or swine raising are excluded from the CARP, the said ruling is not without any qualification.[52]

In its Reply[53] to the farmer-groups' and to the OSG's comment, petitioner counters that the farmer-groups have no legal basis to their claims as they admitted that they entered the subject property without the consent of petitioner; that the rice plots actually found in the subject property, which were subsequently taken over by squatters, were, in fact, planted by petitioner in compliance with the directive of then President Ferdinand Marcos for the employer to provide rice to its employees; that when a land is declared exempt from the CARP on the ground that it is not agricultural as of the time the CARL took effect, the use and disposition of that land is entirely and forever beyond DAR's jurisdiction; and that, inasmuch as the subject property was not agricultural from the very beginning, DAR has no power to regulate the same. Petitioner also asserts that the CA cannot

[52] *Id.* at 2512-2558.

[53] *Id.* at 2473-2481 and 2602-2615.

uncharacteristically assume the role of trier of facts and resolve factual questions not previously adjudicated by the lower tribunals; that MARO Elma rendered the assailed MARO reports with bias against petitioner, and the same were contradicted by the Investigating Team's Report, which confirmed that the subject property is still devoted to livestock farming; and that there has been no change in petitioner's business interest as an entity engaged in livestock farming since its inception in 1960, though there was admittedly a decline in the scale of its operations due to the illegal acts of the squatter-occupants.

***Our Ruling***

The Petition is bereft of merit.

Let it be stressed that when the CA provided in its first Decision that continuing review and verification may be conducted by the DAR pursuant to DAR A.O. No. 9, the latter was not yet declared unconstitutional by this Court. The first CA Decision was promulgated on April 29, 2005, while this Court struck down as unconstitutional DAR A.O. No. 9, by way of *Sutton*, on October 19, 2005. Likewise, let it be emphasized that the Espinas group filed the Supplement and submitted the assailed MARO reports and certification on June 15, 2005, which proved to be adverse to petitioner's case. Thus, it could not be said that the CA erred or gravely abused its discretion in respecting the mandate of DAR A.O. No. 9, which was then subsisting and in full force and effect.

While it is true that an issue which was neither alleged in the complaint nor raised during the trial cannot be raised for the first time on appeal as it would be offensive to the basic rules of fair play, justice, and due process,[54] the same is not without exception,[55] such as this case. The CA, under Section 3,[56] Rule 43

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[54] *Dosch v. NLRC, et al.*, 208 Phil. 259, 272 (1983).

[55] *DOH v. C.V. Canchela & Associates, Architects (CVCAA)*, 511 Phil. 654, 670 (2005).

[56] Section 3 of Rule 43 of the 1997 Rules of Civil Procedure provides:

SEC. 3. *Where to appeal.* – An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided,

of the Rules of Civil Procedure, can, in the interest of justice, entertain and resolve factual issues. After all, technical and procedural rules are intended to help secure, and not suppress, substantial justice. A deviation from a rigid enforcement of the rules may thus be allowed to attain the prime objective of dispensing justice, for dispensation of justice is the core reason for the existence of courts.[57] Moreover, petitioner cannot validly claim that it was deprived of due process because the CA afforded it all the opportunity to be heard.[58] The CA even directed petitioner to file its comment on the Supplement, and to prove and establish its claim that the subject property was excluded from the coverage of the CARP. Petitioner actively participated in the proceedings before the CA by submitting pleadings and pieces of documentary evidence, such as the Investigating Team's Report and judicial affidavits. The CA also went further by setting the case for hearing. In all these proceedings, all the parties' rights to due process were amply protected and recognized.

With the procedural issue disposed of, we find that petitioner's arguments fail to persuade. Its invocation of *Sutton* is unavailing. In *Sutton*, we held:

> In the case at bar, we find that the impugned A.O. is invalid as it contravenes the Constitution. The A.O. sought to regulate livestock farms by including them in the coverage of agrarian reform and prescribing a maximum retention limit for their ownership. However, *the deliberations of the 1987 Constitutional Commission show a clear intent to exclude, inter alia,* ***all lands exclusively devoted to livestock, swine and poultry-raising***. The Court clarified in the *Luz Farms* case that livestock, swine and poultry-raising are industrial activities and do not fall within the definition of "agriculture" or "agricultural activity." The raising of livestock, swine and poultry is different from crop or tree farming. It is an industrial, not an

whether the appeal involves questions of fact, of law, or mixed questions of fact and law.

[57] *Phil. Coconut Authority v. Corona International, Inc.*, 395 Phil. 742, 750 (2000), citing *Acme Shoe, Rubber and Plastic Corp. v. CA*, G.R. No. 103576, August 22, 1996, 260 SCRA 714, 719.

[58] *Zacarias v. National Police Commission*, G.R. No. 119847, October 24, 2003, 414 SCRA 387, 393.

agricultural, activity. A great portion of the investment in this enterprise is in the form of industrial fixed assets, such as: animal housing structures and facilities, drainage, waterers and blowers, feedmill with grinders, mixers, conveyors, exhausts and generators, extensive warehousing facilities for feeds and other supplies, anti-pollution equipment like bio-gas and digester plants augmented by lagoons and concrete ponds, deepwells, elevated water tanks, pumphouses, sprayers, and other technological appurtenances.

Clearly, petitioner *DAR has no power to regulate livestock farms which have been exempted by the Constitution from the coverage of agrarian reform*. It has exceeded its power in issuing the assailed A.O.[59]

Indeed, as pointed out by the CA, the instant case does not rest on facts parallel to those of *Sutton* because, in *Sutton*, the subject property remained a livestock farm. We even highlighted therein the fact that "*there has been no change of business interest in the case of respondents*."[60] Similarly, in *Department of Agrarian Reform v. Uy*,[61] we excluded a parcel of land from CARP coverage due to the factual findings of the MARO, which were confirmed by the DAR, that the property was entirely devoted to livestock farming. However, in *A.Z. Arnaiz Realty, Inc., represented by Carmen Z. Arnaiz v. Office of the President; Department of Agrarian Reform; Regional Director, DAR Region V, Legaspi City; Provincial Agrarian Reform Officer, DAR Provincial Office, Masbate, Masbate; and Municipal Agrarian Reform Officer, DAR Municipal Office, Masbate, Masbate*,[62] we denied a similar petition for exemption and/or exclusion, by according respect to the CA's factual findings and its reliance on the findings of the DAR and the OP that the subject parcels of land were not directly, actually, and exclusively used for pasture.[63]

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[59] *Supra* note 36, at 183-184. (Emphasis supplied.)

[60] *Id.* at 185.

[61] G.R. No. 169277, February 9, 2007, 515 SCRA 376, 401-402.

[62] G.R. No. 170623, July 7, 2010.

[63] This Court takes note that DAR, with respect to our ruling in *Sutton*, issued DAR A.O. No. 07, Series of 2008, entitled "*Guidelines relative to the Supreme Court Ruling on the Sutton Case regarding lands which are*

Petitioner's admission that, since 2001, it leased another ranch for its own livestock is fatal to its cause.[64] While petitioner advances a defense that it leased this ranch because the occupants of the subject property harmed its cattle, like the CA, we find it surprising that not even a single police and/or *barangay* report was filed by petitioner to amplify its indignation over these alleged illegal acts. Moreover, we accord respect to the CA's keen observation that the assailed MARO reports and the Investigating Team's Report do not actually contradict one another, finding that the 43 cows, while owned by petitioner, were actually pastured outside the subject property.

Finally, it is established that issues of Exclusion and/or Exemption are characterized as Agrarian Law Implementation (ALI) cases which are well within the DAR Secretary's competence and jurisdiction.[65] Section 3, Rule II of the 2003 Department of Agrarian Reform Adjudication Board Rules of Procedure provides:

> Section 3. *Agrarian Law Implementation Cases*.
>
> The Adjudicator or the Board shall have no jurisdiction over matters involving the administrative implementation of RA No. 6657, otherwise known as the Comprehensive Agrarian Reform Law (CARL) of 1988 and other agrarian laws as enunciated by pertinent rules and administrative orders, which shall be under the exclusive prerogative of and cognizable by the Office of the Secretary of the DAR in accordance with his issuances, to wit:
>
> xxx xxx xxx
>
> 3.8 Exclusion from CARP coverage of agricultural land used for livestock, swine, and poultry raising.

Thus, we cannot, without going against the law, arbitrarily strip the DAR Secretary of his legal mandate to exercise jurisdiction

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*actually, directly and exclusively used for Livestock Raising,"* which provides that the property must be actually, directly and exclusively used as a livestock farm for it to be exempted.

[64] TSN, April 24, 2007, pp. 18 and 76.

[65] *Sta. Ana v. Carpo*, G.R. No. 164340, November 28, 2008, 572 SCRA 463, 482.

and authority over all ALI cases. To succumb to petitioner's contention that "*when a land is declared exempt from the CARP on the ground that it is not agricultural as of the time the CARL took effect, the use and disposition of that land is entirely and forever beyond DAR's jurisdiction*" is dangerous, suggestive of self-regulation. Precisely, it is the DAR Secretary who is vested with such jurisdiction and authority to exempt and/or exclude a property from CARP coverage based on the factual circumstances of each case and in accordance with law and applicable jurisprudence. In addition, albeit parenthetically, Secretary Villa had already granted the conversion into residential and golf courses use of nearly one-half of the entire area originally claimed as exempt from CARP coverage because it was allegedly devoted to livestock production.

In sum, we find no reversible error in the assailed Amended Decision and Resolution of the CA which would warrant the modification, much less the reversal, thereof.

**WHEREFORE,** the Petition is *DENIED* and the Court of Appeals Amended Decision dated October 4, 2006 and Resolution dated March 27, 2008 are *AFFIRMED*. No costs.

**SO ORDERED.**

*Carpio (Chairperson), Peralta, Abad,* and *Villarama, Jr.,*[*] *JJ.,* concur.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated February 21, 2011.

**SECOND DIVISION**

[G.R. Nos. 182539-40. February 23, 2011]

**ANTONIO Y. DE JESUS, SR., ANATOLIO A. ANG and MARTINA S. APIGO,** *petitioners, vs.* **SANDIGANBAYAN-FOURTH DIVISION and PEOPLE OF THE PHILIPPINES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; HAVING DENIED THE ACCUSED LOCAL OFFICIAL'S DEMURRER TO EVIDENCE, THE SANDIGANBAYAN WAS JUSTIFIED IN DENYING THEIR MOTION TO PRESENT EVIDENCE IN THEIR DEFENSE; SUSTAINED.—** The accused local officials assail the Sandiganbayan's refusal to allow them to present evidence of their defense after it denied their demurrer to evidence. But, contrary to their claim, the Sandiganbayan did not grant these officials leave to file their demurrer. It in fact denied them that leave without prejudice, however, to their nonetheless filing one subject to the usual risk of denial. x x x Having denied the accused local officials' demurrer to evidence, the Sandiganbayan was justified in likewise denying their motion to be allowed to present evidence in their defense. The 2000 Rules on Criminal Procedure, particularly Section 23, Rule 119, provide: **Section 23.** ***Demurrer to evidence*****. — x x x If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.**

**2. CRIMINAL LAW; CONSPIRACY; MAY BE PROVED BY A NUMBER OF CIRCUMSTANCES FROM WHICH ONE MAY INFER THAT THE ACCUSED WERE ANIMATED BY A COMMON CRIMINAL PURPOSE; PRESENT IN CASE AT BAR.—** [T]he prosecution is not required to prove conspiracy by evidence that the three local officials sat down and came to an agreement to commit the crimes of which they

were charged. Such conspiracy may be proved by a number of circumstances from which one may infer that the accused were animated by a common criminal purpose. Here, the accused municipal treasurer certified by her signature that a canvass of suppliers was undertaken and that their quotations on the Requests for Quotations were correct. This obviously did not take place since the document lacked the required signatures of two supposed bidders. Besides, the Cuad Lumber's owner testified that he took no part in the canvass and that his business name was Cuad General Merchandise and not Cuad Lumber as stated in the Requests. During pre-trial the defense admitted that the accused local officials signed the Requests for Quotation and the Abstract of Proposal of Canvass despite the absence of bidders' signatures. The accused local officials acted in concert. The Court also finds their signing in two capacities unusual or irregular. Normally, the roles of witnesses are performed by subordinates since superior officers assume the job of assessing the correctness of the transaction. This circumstance is suspicious and supports the belief that the accused local officials conspired to falsify the documents to favor the mayor's son. Further the Court notes that the Purchase Request did not bear the signature of the local auditor, whose task is to examine or inspect transactions, accounts, or books to prevent irregular government expenditures. Additionally, the accused municipal mayor signed the document as "Head of Department/Office" that executed the purchase request in connection with the repair of the municipal building. His signing as such is irregular since it is normally the proper subordinate official in charge of procurement for building repair, the municipal engineer, who signs the same. This circumstance strengthens the Court's belief that the accused local officials limited the signatories among themselves to prevent discovery of the illicit purchase.

**3. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; WHEN THE INTRODUCTION OF SECONDARY EVIDENCE IS ALLOWED.—** The accused local officials seek rejection of the relevant documents presented in court on the ground that these were mere certified copies that were inadmissible under the best evidence rule. But the prosecution established by testimony that the original documents could no longer be found, paving the way for the introduction of

secondary evidence. Indeed, the accused themselves adopted these documents as common exhibits.

**4. POLITICAL LAW; LOCAL GOVERNMENT CODE; PROCUREMENT WITHOUT PUBLIC BIDDING; NOT PROPER IN CASE AT BAR.—** The accused local officials also argue that, since what were involved were emergency purchases, canvassing could be dispensed with. But, although Section 366 of the Local Government Code authorized such kind of purchases, here the documents show on their faces that there was actual resort to canvassing. Indeed, the documents do not recite the supposed circumstances that render the procurement an urgent one that under Section 368 did not require bidding or canvassing. Accused local officials point out that, since the resident auditor did not detect any anomaly in the transaction, they could not be held liable on account of it. But an adverse audit finding by the resident auditor is not a requisite for prosecution for graft. The offense could be proved sans an auditor's report.

**APPEARANCES OF COUNSEL**

*Jovino R.Angel* for petitioners.
*The Solicitor General* for respondents.

**D E C I S I O N**

**ABAD, *J.*:**

These are criminal cases involving a simulated bidding/ canvassing in favor of the municipal mayor's son.

**The Facts and the Case**

The Office of the Ombudsman charged the accused public officers Antonio Y. de Jesus, Sr. (De Jesus, Sr.), Mayor of Anahawan, Southern Leyte, Anatolio A. Ang (Ang), his Vice-Mayor, and Martina S. Apigo (Apigo), the Treasurer, of falsification of public document before the Sandiganbayan in Criminal Case 26764 and all three, along with Antonio de Jesus,

Jr. (De Jesus, Jr.), the mayor's son, of violation of Republic Act (R.A.) 3019 before the same court in Criminal Case 26766.[1]

The first information alleged that De Jesus, Sr., Ang, and Apigo (accused local officials) falsified the Requests for Quotation and Abstract of Proposal of Canvass on January 18, 1994 by making it appear that Cuad Lumber and Hinundayan Lumber submitted quotations for the supply of coco lumber, when they did not in fact do so, in violation of Article 171 of the Revised Penal Code.[2] The second information alleges that, taking advantage of their positions, the three municipal officers gave unwarranted advantage to De Jesus, Jr., who operated under the name Anahawan Coco Lumber Supply, by awarding to him the supply of coco lumber worth ₱16,767.00.[3]

On April 12, 2005, after the prosecution rested its case, all three accused filed a motion for leave to file demurrer to evidence, which motion the Sandiganbayan denied. Rather than present evidence, however, they proceeded to file their demurrer, in effect waiving their right to present evidence.[4] The prosecution opposed the demurrer.

On March 7, 2007 the Sandiganbayan rendered judgment, convicting the accused local officials of the crimes charged. It, however, acquitted accused De Jesus, Jr.[5] Upon denial of their motion for reconsideration in a Resolution dated April 16, 2008, the accused public officers came to this Court on petition for review.[6]

**The Issues Presented**

The petition presents four issues:

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[1] *Rollo*, pp. 148 and 151.

[2] *Id*.

[3] *Id*.

[4] *Id*. at 54-55.

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

[6] *Id*. at 147.

1. Whether or not the Sandiganbayan erred in finding the accused local officials guilty of the two crimes charged when these referred to only one transaction;

2. Whether or not the Sandiganbayan erred in denying the accused local officials the opportunity to present their defense after it denied their demurrer to evidence;

3. Whether or not the Sandiganbayan erred in finding that the accused local officials falsified the pertinent Requests for Quotation and Abstract of Proposal of Canvass when they made it appear that Cuad Lumber and Hinundayan Lumber submitted quotations for the supply of coco lumber, when they did not in fact do so, in violation of Article 171 of the Revised Penal Code;

4. Whether or not the Sandiganbayan erred in finding that the accused local officials, taking advantage of their positions, gave unwarranted advantage to De Jesus, Jr. by awarding to him the supply of coco lumber worth ₱16,767.00 to the detriment of the municipality.

**Rulings of the Court**

The accused municipal mayor, vice-mayor, and treasurer point out that, since the two charges involved only one transaction, the Sandiganbayan made a mistake in finding them guilty of both. But, as the Sandiganbayan and the prosecution point out, Section 3 of R.A. 3019 expressly allows the filing of the two charges based on one transaction. Section 3 provides that the crimes described in it are "in addition to acts or omissions of public officials already penalized by existing laws."

The accused local officials assail the Sandiganbayan's refusal to allow them to present evidence of their defense after it denied their demurrer to evidence. But, contrary to their claim, the Sandiganbayan did not grant these officials leave to file their demurrer. It in fact denied them that leave without prejudice, however, to their nonetheless filing one subject to the usual risk of denial. Based on the Minutes of the Hearing on May 4, 2005,[7] the Sandiganbayan resolved as follows:

[7] Records, Vol. 1, p. 432.

**The defense's *Motion for Leave of Court to File Demurrer to Evidence* dated April 12, 2005 is DENIED, without prejudice, however, to its right to file such demurrer to evidence, without prior leave of court, but subject to the legal consequences stated in Section 23, Rule 119 of the *2000 Rules on Criminal Procedure.***

**WHEREFORE, the defense is hereby given a non-extendible period of ten (10) days from notice within which to file, if it so desires, a demurrer to evidence without prior leave of court. Should this Court fail to hear from the defense within the said period, it shall be understood to mean that the defense will forego the filing of the demurrer to evidence and will forthwith proceed with the presentation of its evidence on May 23, 2005 at 8:30 a.m. and 2:00 p.m. at the Palace of Justice, Cebu City, as previously scheduled.**

On receipt of the above, the accused local officials informed the court that they would file a demurrer to evidence even without leave of court.[8] The Sandiganbayan acknowledged the defense's manifestation and ordered the prosecution to comment on or oppose it.[9]

Having denied the accused local officials' demurrer to evidence, the Sandiganbayan was justified in likewise denying their motion to be allowed to present evidence in their defense. The 2000 Rules on Criminal Procedure, particularly Section 23, Rule 119, provide:

**Section 23. *Demurrer to evidence*. — x x x**

**If the court denies the demurrer to evidence filed with leave of court, the accused may adduce evidence in his defense. When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution.**

The accused local officials contend that the prosecution failed to prove conspiracy among them. The Sandiganbayan itself, they say, did not believe prosecution witness Maria Fe Lakilak's testimony that she saw Ang and Apigo sign the Requests for

[8] *Id*. at 438.

[9] *Id*. at 440.

Quotation for Hinundayan Lumber and Cuad Lumber.

But the prosecution is not required to prove conspiracy by evidence that the three local officials sat down and came to an agreement to commit the crimes of which they were charged. Such conspiracy may be proved by a number of circumstances from which one may infer that the accused were animated by a common criminal purpose.[10]

Here, the accused municipal treasurer certified by her signature that a canvass of suppliers was undertaken and that their quotations on the Requests for Quotations were correct. This obviously did not take place since the document lacked the required signatures of two supposed bidders. Besides, the Cuad Lumber's owner testified that he took no part in the canvass and that his business name was Cuad General Merchandise and not Cuad Lumber as stated in the Requests. During pre-trial the defense admitted that the accused local officials signed the Requests for Quotation and the Abstract of Proposal of Canvass despite the absence of bidders' signatures.[11] The accused local officials acted in concert.

The Court also finds their signing in two capacities unusual or irregular. Normally, the roles of witnesses are performed by subordinates since superior officers assume the job of assessing the correctness of the transaction. This circumstance is suspicious and supports the belief that the accused local officials conspired to falsify the documents to favor the mayor's son.

Further the Court notes that the Purchase Request[12] did not bear the signature of the local auditor, whose task is to examine or inspect transactions, accounts, or books to prevent irregular government expenditures. Additionally, the accused municipal mayor signed the document as "Head of Department/Office" that executed the purchase request in connection with the repair of the municipal building. His signing as such is irregular since it is normally the proper subordinate official in charge of

[10] *People v. Maralit,* 247-A Phil. 505, 514 (1988).

[11] Records, Vol. 2, p. 54.

[12] Folder of Exhibits, Exhibit "A" with sub-markings.

procurement for building repair, the municipal engineer, who signs the same. This circumstance strengthens the Court's belief that the accused local officials limited the signatories among themselves to prevent discovery of the illicit purchase.

The accused local officials point out, citing *Arias v. Sandiganbayan*,[13] that "heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations." But the documents and other circumstances of these cases negate reliance on the competence and good faith of subordinates. First, the accused local officials knew or could have known that the winning supplier was the accused mayor's son. Second, the accused local officials signed the documents both in their official capacities and as witnesses evidently to avoid, as stated above, exposing the deal to other eyes. And third, the rejected suppliers did not sign the quotations they supposedly submitted. Indeed, the space for their signatures was just above the space where the accused local officials signed.[14]

The accused local officials seek rejection of the relevant documents presented in court on the ground that these were mere certified copies that were inadmissible under the best evidence rule. But the prosecution established by testimony that the original documents could no longer be found, paving the way for the introduction of secondary evidence. Indeed, the accused themselves adopted these documents as common exhibits.

The accused local officials also argue that, since what were involved were emergency purchases, canvassing could be dispensed with. But, although Section 366 of the Local Government Code authorized such kind of purchases, here the documents show on their faces that there was actual resort to canvassing. Indeed, the documents do not recite the supposed circumstances that render the procurement an urgent one that under Section 368 did not require bidding or canvassing.

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[13] G.R. Nos. 81563 & 82512, December 19, 1989, 180 SCRA 309.

[14] Folder of Exhibits, Exhibits "C" to "E" with sub-markings.

Accused local officials point out that, since the resident auditor did not detect any anomaly in the transaction, they could not be held liable on account of it.[15] But an adverse audit finding by the resident auditor is not a requisite for prosecution for graft. The offense could be proved sans an auditor's report.

The accused local officials also contend that, although the coco lumber the municipality bought in this case was pricier, it was sturdier being of the best kind. They doubt if Cuad Lumber's products had the same quality.[16] But this argument is based on pure conjecture since Cuad Lumber did not submit a quotation for its products nor did it mention the quality of its inventory.

The Court upholds the Sandiganbayan's conclusion that the accused local officials went along with the evidently falsified quotation documents to favor De Jesus, Jr., the mayor's son. This renders such officials guilty of violation of R.A. 3019.

**WHEREFORE,** the Court *DENIES* the petition and *AFFIRMS* the Sandiganbayan Decision promulgated on March 7, 2007 and its Resolution dated April 16, 2008.

**SO ORDERED.**

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

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[15] *Rollo,* p. 48.

[16] *Id.* at 38-41.

**SECOND DIVISION**

[G.R. No. 183528. February 23, 2011]

**PACIFIC UNION INSURANCE COMPANY,** *petitioner, vs.* **CONCEPTS & SYSTEMS DEVELOPMENT, INCORPORATED and COURT OF APPEALS (FIFTEENTH DIVISION),** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; RULES OF PROCEDURE; WHILE IT IS DESIRABLE THAT THE RULES OF COURT BE FAITHFULLY AND EVEN METICULOUSLY OBSERVED, COURTS SHOULD NOT BE SO STRICT ABOUT PROCEDURAL LAPSES THAT DO NOT REALLY IMPAIR THE ADMINISTRATION OF JUSTICE.—** The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so inevitably leads to the loss of the right to appeal. Nonetheless, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice. This is based, no less, on the Rules of Court which itself calls for a liberal construction of its provisions, with the objective of securing for the parties a just, speedy, and inexpensive disposition of every action and proceeding.

**2. ID.; ID.; THE COURT'S DISCRETIONARY POWER IN DISMISSING AN APPEAL FOR FAILURE TO COMPLY WITH THE RULES SHOULD BE USED IN THE EXERCISE OF SOUND JUDGMENT IN ACCORDANCE WITH THE TENETS OF JUSTICE AND FAIR PLAY WITH A GREAT DEAL OF CIRCUMSPECTION, CONSIDERING ALL ATTENDANT CIRCUMSTANCES, AND MUST BE EXERCISED WISELY AND EVER PRUDENTLY NEVER**

**CAPRICIOUSLY WITH A VIEW TO SUBSTANTIAL JUSTICE.—** The courts' discretionary power in dismissing an appeal for failure to comply with the Rules should be used in the exercise of sound judgment in accordance with the tenets of justice and fair play with a great deal of circumspection, considering all attendant circumstances, and must be exercised wisely and ever prudently, never capriciously, with a view to substantial justice. Here, the CA gravely abused its discretion in disregarding the RTC Order and in giving premium to a technical requirement which is too trifling to prevail over petitioner's right to an opportunity to be heard. The RTC Order convincingly established that petitioner paid the appellate court docket fees; the proof of payment missing from the transmitted records merely detailed the breakdown of the payment and, hence, would be too trivial as to justify the CA's refusal to exercise jurisdiction over the appeal.

**3. ID.; ACTION; LEGAL FEES; RULES ON PAYMENT OF DOCKET FEES RELAXED CONSIDERING THAT THE SAME WAS ACTUALLY PAID AND THAT ONLY THE PROOF OF THE PAYMENT THEREOF IS MISSING.—** We have, in numerous instances, relaxed the Rules when an appellant altogether fails to pay the docket fees; with greater reason should a liberal stance be taken in this case considering that the appellate docket fees were actually paid and the only detail lacking is a specific breakdown of the fees settled. Moreover, the duty of transmitting the proof of payment, together with the original records, is lodged with the RTC clerk of court. Certainly, it would be unjust to chastise an appellant for an error not of his doing by dismissing his appeal. This notwithstanding, it is still imperative for petitioner to submit proof of payment of docket fees — through a copy of the official receipt issued by the clerk of the RTC or a certification to that effect – to enable the CA to assess whether the docket fees paid were the full and correct amounts required.

## APPEARANCES OF COUNSEL

*Ma. Lourdes A. Barbado-Hipe* and *Jose S. Maronilla* for petitioner.

*Chaves Hechanova & Lim Law Offices* for respondents.

## D E C I S I O N

**NACHURA, *J.*:**

This petition for *certiorari* under Rule 65 of the Rules of Court seeks the annulment of the Court of Appeals (CA) Resolution dated May 7, 2008,[1] dismissing petitioner's appeal for failure to pay the docket fees. Likewise assailed is CA Resolution dated June 12, 2008,[2] denying the motion for reconsideration.

A brief factual background of the case:[3]

Concepts & Systems Development, Inc. (private respondent) and a certain Pedro Perez (Perez) entered into an Amended Construction Agreement on February 11, 1997, whereby the latter undertook to construct, build, and complete the civil, architectural, and plumbing works of the former's condominium project. The project was divided into three (3) stages and, in consideration of Perez's undertaking, respondent paid him down payments in the following amounts:

| | | |
|---|---|---|
| STAGE 1 | - | ₱5,690,292.14 |
| STAGE 2 | - | ₱4,985,062.92 |
| STAGE 3 | - | ₱6,135,974.12 |

To secure these amounts in case Perez fails to make good his part of the contract, respondent required him to post, as he did post, surety bonds.

Twenty percent (20%) of the payments for Stages 1 and 2 were secured by a surety bond issued by Philippine Phoenix Surety and Insurance Inc. (Phoenix), while the payment for Stage 3 was secured in full by Surety Bond No. 00054 G (16)

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[1] *Rollo*, p. 87.

[2] *Id.* at 91.

[3] As alleged in the complaint filed by respondent before the Regional Trial Court, Branch 58, Makati City, docketed as Civil Case No. 98-1631; *id.* at 21-32.

015342 issued by herein petitioner Pacific Union Insurance Company (petitioner) on March 19, 1997.

On even date, petitioner also issued Performance Bond No. 00157 G (13) 015341 for the same amount of ₱6,135,974.12 to secure the full and faithful performance of Perez's undertaking under the Amended Construction Agreement.

Perez failed to complete his work; thus, on July 15, 1998, private respondent filed a civil action for *Breach of Contract and Damages with Preliminary Attachment* against petitioner, Phoenix, and Perez before the Regional Trial Court (RTC), Branch 58, Makati City.

In its *Answer with Counterclaims and Cross-claims*,[4] petitioner averred that it issued the surety bonds upon the understanding that the construction for stage 3 of the condominium project was just being started when the Amended Construction Agreement was executed in February 1997, but at the time that the applications for the bonds were filed in the middle part of March 1997, Perez was already in delay. This essential fact was, however, fraudulently concealed and/or withheld by Perez. The bonds issued on March 19, 1997 were intended to secure the performance of the obligor's undertaking as called for in the contract with the obligee, therefore, prospective in character. The bonds were not issued to secure the payment of whatever liabilities the obligor had already incurred or was already subject to on account of its failure to perform its undertaking under the contract.

On February 17, 2007, the RTC rendered a decision[5] in favor of private respondent.[6] Petitioner was ordered to pay ₱12,271,948.24 with a right to claim reimbursement from Perez.

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[4] *Id.* at 50-57.

[5] *Id.* at 59-72.

[6] The dispositive portion of the decision reads:

WHEREFORE, foregoing considered, judgment is rendered in favor of plaintiff as follows:

1. Ordering defendant Perez to pay plaintiff the total amount of ₱28,317,723.00 as of June 30, 1997, exclusive of penalties and other

When its motion for reconsideration[7] was denied,[8] petitioner appealed to the CA. On July 9, 2007, petitioner filed its notice of appeal[9] with the RTC. On July 10, 2007, the RTC issued an Order granting the notice of appeal upon the finding that the same was filed and the appeal docket fee therefor was paid within the reglementary period allowed by law.[10]

In its first assailed resolution, the CA dismissed petitioner's appeal for failure to pay the docket and other legal fees per the April 23, 2008 report of its Judicial Records Division (JRD).[11]

Petitioner moved for reconsideration,[12] averring that it failed to pay the appellate docket fees due to serious financial reverses.

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damages incurred by plaintiff after said date as a result of delays in the completion of the Projects;

2. Ordering defendant Phoenix and Pacific to pay plaintiff the total amount of ₱5,317,040.32 for defendant Phoenix and ₱12,271,948.24 for defendant Pacific;
3. Ordering defendants, jointly and solidarily, to pay plaintiff the amount of ₱200,000.00 as and for attorney's fees; and
4. On the cross-claims of defendants Pacific and Phoenix, defendant Perez is ordered to reimburse them on the amounts adjudicated against them.

SO ORDERED. (*Id.* at 72.)

[7] *Id.* at 74-81.

[8] *Id.* at 82.

[9] *Id.* at 84.

[10] *Id.* at 86.

[11] *Supra* note 1.

"Considering:

April 23, 2008 – JRD updated report;

"No payment of docketing fee for defendant Pacific Union Insurance Company ₱3,030 + ₱1,000.00 Mediation fee. Notice of Appeal filed July 9, 2007.

the Court RESOLVED:

In the light of the JRD report, the appeal of defendant-appellant Pacific Union Insurance Co. is DISMISSED for failure to pay the requisite docketing and other legal fees [Sec 1[c], Rule 50 of the 1995 Revised Rules of Civil Procedure, as amended]."

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

To convince the CA to grant the motion, petitioner expressed its willingness to pay the docket fees, albeit belatedly. The motion was denied;[13] hence, the instant petition arguing that the CA committed grave abuse of discretion in dismissing petitioner's appeal.[14]

Petitioner contends that the dismissal of its appeal has no legal basis because, as shown in the July 10, 2007 RTC Order, petitioner paid the appellate court docket fees within the reglementary period. Petitioner explains that it overlooked the RTC Order during the preparation of the motion for reconsideration of the CA Resolution, and that it only came upon the RTC Order when the present petition was being written. Petitioner also pleads for a liberal application of the rules on perfection of appeal on the ground that it has a meritorious defense against the claim of respondent.

The petition is meritorious.

The right to appeal is neither a natural right nor a part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so

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[13] *Supra* note 2.

[14] I. PUBLIC RESPONDENT HONORABLE COURT OF APPEALS OF THE FIFTEENTH DIVISION ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION AND PALPABLE MISTAKE IN DISMISSING THE PETITIONER'S APPEAL TO THE COURT'S (sic) *A QUO'S* DECISION DATED FEBRUARY 17, 2007 FOR FAILURE TO PAY THE REQUISITE DOCKET AND OTHER LEGAL FEES[;]

II. PUBLIC RESPONDENT HONORABLE COURT OF APPEALS OF THE FIFTEENTH DIVISION ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND COMMITTED GRAVE ABUSE OF DISCRETION AND PALPABLE MISTAKE IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION AND ARBITRARILY DISREGARDED THE MOTION;

III. PETITIONER HAS A VALID AND STRONG DEFENSE IN THE MAIN COMPLAINT. (*Id.* at 8-9.)

inevitably leads to the loss of the right to appeal.[15] Nonetheless, the emerging trend in our jurisprudence is to afford every party-litigant the amplest opportunity for the proper and just determination of his cause free from the constraints of technicalities. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the administration of justice.[16] This is based, no less, on the Rules of Court which itself calls for a liberal construction of its provisions, with the objective of securing for the parties a just, speedy, and inexpensive disposition of every action and proceeding.[17]

The dismissal of petitioner's appeal was based on the absence of the proof of payment of docket fees from the records transmitted by the RTC clerk of court.[18] This procedural lapse is too inconsequential to prejudice the administration of justice,

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[15] *Anadon v. Herrera,* G.R. No. 159153, July 9, 2007, 527 SCRA 90, 95, citing *Neypes v. Court of Appeals*, 506 Phil. 613, 621 (2005).

[16] *Anadon v. Herrera*, *supra*, at 96-97, citing *Cando v. Olazo,* G.R. No. 160741, March 22, 2007, 518 SCRA 741, 749.

[17] *Edillo v. Dulpina*, G.R. No. 188360, January 21, 2010, 610 SCRA 590, 598; 1997 RULES OF CIVIL PROCEDURE, Rule 1, Sec. 6.

[18] Under Rule IV, Section 4 of the 2002 Internal Rules of the Court of Appeals,* the JRD is tasked to process civil cases under ordinary appeal by initially checking the proof of payment of docket fees in the records. The specific provision reads:

"**Section 4.** *Processing of Ordinary Appeals* –

(a) ***In Civil Cases***

1. Upon receipt of the original, whether by personal or [sic] delivery, or by mail, the Civil Cases Section of the Judicial Records Division shall immediately;

(1.1) Check proof of payment of the full amount of the appellate court docket and other lawful fees and deposits for costs to the clerk of court of the court which rendered the appealed judgment or order."

*The prevailing internal rules are the 2010 Internal Rules of the Court of Appeals but the facts of the petition at bar occurred during the effectivity of the 2002 Internal Rules of the Court of Appeals.

considering that the required fees were actually paid, as shown in the July 10, 2007 RTC Order granting the notice of appeal which explicitly declares that the "appeal docket fee therefor was paid within the reglementary period allowed by law." That petitioner's counsel mistakenly thought that no payment was made, and thus prayed, in her motion for reconsideration, for the chance to pay the fees belatedly, is of no moment. The fact is, there was actual payment.

The courts' discretionary power in dismissing an appeal for failure to comply with the Rules should be used in the exercise of sound judgment in accordance with the tenets of justice and fair play with a great deal of circumspection, considering all attendant circumstances, and must be exercised wisely and ever prudently, never capriciously, with a view to substantial justice.[19]

Here, the CA gravely abused its discretion in disregarding the RTC Order and in giving premium to a technical requirement which is too trifling to prevail over petitioner's right to an opportunity to be heard. The RTC Order convincingly established that petitioner paid the appellate court docket fees; the proof of payment missing from the transmitted records merely detailed the breakdown of the payment and, hence, would be too trivial as to justify the CA's refusal to exercise jurisdiction over the appeal.

We have, in numerous instances, relaxed the Rules when an appellant altogether fails to pay the docket fees; with greater reason should a liberal stance be taken in this case considering that the appellate docket fees were actually paid and the only detail lacking is a specific breakdown of the fees settled.

Moreover, the duty of transmitting the proof of payment, together with the original records, is lodged with the RTC clerk of court.[20] Certainly, it would be unjust to chastise an appellant for an error not of his doing by dismissing his appeal.

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[19] See *Andrea Camposagrado v. Pablo Camposagrado*, 506 Phil. 583, 589 (2005).

[20] RULES OF CIVIL PROCEDURE, Rule 41, SEC.12. *Transmittal.* – **The clerk of the trial court shall transmit to the appellate court the**

This notwithstanding, it is still imperative for petitioner to submit proof of payment of docket fees — through a copy of the official receipt issued by the clerk of the RTC or a certification to that effect – to enable the CA to assess whether the docket fees paid were the full and correct amounts required.

**WHEREFORE,** premises considered, the petition is hereby *GRANTED*. The Court of Appeals is *DIRECTED* to give due course to the appeal of Pacific Union Insurance Company upon its submission of a copy of the official receipt evidencing its payment of appellate court docket fees or a certification from the RTC clerk of court confirming such payment and specifying the details thereof.

**SO ORDERED.**

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

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**original record** or the approved record on appeal within thirty (30) days from the perfection of the appeal, **together with the proof of payment of the appellate court docket and other lawful fees**, a certified true copy of the minutes of the proceedings, the order of approval, the certificate of correctness, the original documentary evidence referred to therein, and the original and three (3) copies of the transcripts. Copies of the transcripts and certified true copies of the documentary evidence shall remain in the lower court for the examination of the parties. (Emphasis supplied.)

**SECOND DIVISION**

[G.R. No. 184274. February 23, 2011]

**MARK SOLEDAD *y* CRISTOBAL,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; COMPLAINT OR INFORMATION; GUIDELINES IN DETERMINING THE SUFFICIENCY THEREOF; APPLIED.—** Section 6, Rule 110 of the Rules of Criminal Procedure lays down the guidelines in determining the sufficiency of a complaint or information. It states: SEC. 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. In the Information filed before the RTC, it was clearly stated that the accused is petitioner "Mark Soledad *y* Cristobal *a.k.a*. Henry Yu/Arthur." It was also specified in the preamble of the Information that he was being charged with Violation of R.A. No. 8484, Section 9(e) for possessing a counterfeit access device or access device fraudulently applied for. In the accusatory portion thereof, the acts constituting the offense were clearly narrated in that "[petitioner], together with other persons[,] willfully, unlawfully and feloniously defrauded private complainant by applying [for] a credit card, an access device defined under R.A. [No.] 8484, from Metrobank Card Corporation, using the name of complainant Henry C. Yu and his personal documents fraudulently obtained from him, and which credit card in the name of Henry Yu was successfully issued, and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu." Moreover, it was identified that the offended party was private complainant Henry Yu and the crime was committed on or about the 13th day of August 2004 in the City of Las Piñas. Undoubtedly, the Information contained all the necessary details of the offense committed, sufficient to apprise petitioner of

the nature and cause of the accusation against him. As aptly argued by respondent People of the Philippines, through the Office of the Solicitor General, although the word "possession" was not used in the accusatory portion of the Information, the word "possessing" appeared in its preamble or the first paragraph thereof. Thus, contrary to petitioner's contention, he was apprised that he was being charged with violation of R.A. No. 8484, specifically Section 9(e) thereof, for possession of the credit card fraudulently applied for.

**2. ID.; ID.; ID.; RELATIONSHIP BETWEEN THE PREAMBLE AND THE ACCUSATORY PORTION OF THE INFORMATION, EXPOUNDED.—** The Court's discussion in *People v. Villanueva* on the relationship between the preamble and the accusatory portion of the Information is noteworthy, and we quote: The preamble or opening paragraph should not be treated as a mere aggroupment of descriptive words and phrases. It is as much an essential part [of] the Information as the accusatory paragraph itself. The preamble in fact complements the accusatory paragraph which draws its strength from the preamble. It lays down the predicate for the charge in general terms; while the accusatory portion only provides the necessary details. The preamble and the accusatory paragraph, together, form a complete whole that gives sense and meaning to the indictment. x x x. x x x Moreover, the opening paragraph bears the operative word "accuses," which sets in motion the constitutional process of notification, and formally makes the person being charged with the commission of the offense an accused. Verily, without the opening paragraph, the accusatory portion would be nothing but a useless and miserably incomplete narration of facts, and the entire Information would be a functionally sterile charge sheet; thus making it impossible for the state to prove its case. The Information sheet must be considered, not by sections or parts, but as one whole document serving one purpose, *i.e.*, to inform the accused why the full panoply of state authority is being marshaled against him. Our task is not to determine whether allegations in an indictment could have been more artfully and exactly written, but solely to ensure that the constitutional requirement of notice has been fulfilled x x x. Besides, even if the word "possession" was not repeated in the accusatory portion of the Information, the acts constituting it were clearly described in the statement "[that

the] credit card in the name of Henry Yu was successfully issued, and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu." Without a doubt, petitioner was given the necessary data as to why he was being prosecuted.

**3. CRIMINAL LAW; ACCESS DEVICES REGULATIONS ACT OF 1998 (R.A. NO. 8484); POSSESSING A COUNTERFEIT ACCESS DEVICE; TERM "POSSESSION," CONSTRUED; POSSESSION OF CREDIT CARD FRAUDULENTLY APPLIED FOR, ESTABLISHED.—** The trial court convicted petitioner of possession of the credit card fraudulently applied for, penalized by R.A. No. 8484. The law, however, does not define the word "possession." Thus, we use the term as defined in Article 523 of the Civil Code, that is, "possession is the holding of a thing or the enjoyment of a right." The acquisition of possession involves two elements: the *corpus* or the material holding of the thing, and the *animus possidendi* or the intent to possess it. *Animus possidendi* is a state of mind, the presence or determination of which is largely dependent on attendant events in each case. It may be inferred from the prior or contemporaneous acts of the accused, as well as the surrounding circumstances. x x x. Petitioner materially held the envelope containing the credit card with the intent to possess. Contrary to petitioner's contention that the credit card never came into his possession because it was only delivered to him, the narration shows that he, in fact, did an active part in acquiring possession by presenting the identification cards purportedly showing his identity as Henry Yu. Certainly, he had the intention to possess the same. Had he not actively participated, the envelope would not have been given to him. Moreover, his signature on the acknowledgment receipt indicates that there was delivery and that possession was transferred to him as the recipient. Undoubtedly, petitioner knew that the envelope contained the Metrobank credit card, as clearly indicated in the acknowledgment receipt, coupled with the fact that he applied for it using the identity of private complainant.

**4. ID.; ID.; ID.; PROPER PENALTY.—** [W]e find no reason to alter the penalty imposed by the RTC as modified by the CA. Section 10 of R.A. No. 8484 prescribes the penalty of imprisonment for not less than six (6) years and not more than ten (10) years, and a fine of ₱10,000.00 or twice the value of

the access device obtained, whichever is greater. Thus, the CA aptly affirmed the imposition of the indeterminate penalty of six years to not more than ten years imprisonment, and a fine of ₱10,000.00.

**APPEARANCES OF COUNSEL**

*Leonardo C. Darantinao, Jr.* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**NACHURA, *J.*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated June 18, 2008 and Resolution[2] dated August 22, 2008 in CA-G.R. CR. No. 30603. The assailed Decision affirmed with modification the September 27, 2006 decision[3] of the Regional Trial Court (RTC), Branch 202, Las Piñas City, finding petitioner Mark C. Soledad guilty beyond reasonable doubt of Violation of Section 9(e), Republic Act (R.A.) No. 8484, or the Access Devices Regulations Act of 1998; while the assailed Resolution denied petitioner's motion for reconsideration.

The facts of the case, as narrated by the CA, are as follows:

Sometime in June 2004, private complainant Henry C. Yu received a call on his mobile phone from a certain "Tess" or "Juliet Villar" (later identified as Rochelle Bagaporo), a credit card agent, who offered a Citifinancing loan assistance at a low interest rate. Enticed by the offer, private complainant invited Rochelle Bagaporo to go to his office in Quezon City. While in his office, Rochelle Bagaporo indorsed private complainant to her immediate boss, a certain

[1] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Edgardo P. Cruz and Ricardo R. Rosario, concurring; *rollo*, pp. 52-68.

[2] *Id.* at 71.

[3] Penned by Judge Elizabeth Yu Guray; *id.* at 33-47.

"Arthur" [later identified as petitioner]. In their telephone conversation, [petitioner] told private complainant to submit documents to a certain "Carlo" (later identified as Ronald Gobenchiong). Private complainant submitted various documents, such as his Globe handyphone original platinum gold card, identification cards and statements of accounts. Subsequently, private complainant followed up his loan status but he failed to get in touch with either [petitioner] or Ronald Gobenchiong.

During the first week of August 2004, private complainant received his Globe handyphone statement of account wherein he was charged for two (2) mobile phone numbers which were not his. Upon verification with the phone company, private complainant learned that he had additional five (5) mobile numbers in his name, and the application for said cellular phone lines bore the picture of [petitioner] and his forged signature. Private complainant also checked with credit card companies and learned that his Citibank Credit Card database information was altered and he had a credit card application with Metrobank Card Corporation (Metrobank).

Thereafter, private complainant and Metrobank's junior assistant manager Jefferson Devilleres lodged a complaint with the National Bureau of Investigation (NBI) which conducted an entrapment operation.

During the entrapment operation, NBI's Special Investigator (SI) Salvador Arteche [Arteche], together with some other NBI operatives, arrived in Las Piñas around 5:00 P.M. [Arteche] posed as the delivery boy of the Metrobank credit card. Upon reaching the address written on the delivery receipt, [Arteche] asked for Henry Yu. [Petitioner] responded that he was Henry Yu and presented to [Arteche] two (2) identification cards which bore the name and signature of private complainant, while the picture showed the face of [petitioner]. [Petitioner] signed the delivery receipt. Thereupon, [Arteche] introduced himself as an NBI operative and apprehended [petitioner]. [Arteche] recovered from [petitioner] the two (2) identification cards he presented to [Arteche] earlier.[4]

Petitioner was thus charged with Violation of Section 9(e), R.A. No. 8484 for "possessing a counterfeit access device or access device fraudulently applied for." The accusatory portion of the Information reads:

[4] *Id.* at 53-54.

That on or about the 13th day of August 2004, or prior thereto, in the City of Las Piñas, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with certain Rochelle Bagaporo *a.k.a.* Juliet Villar/Tess and a certain Ronald Gobenciong *a.k.a*. Carlo and all of them mutually helping and aiding each other, did then and there willfully, unlawfully and feloniously defraud complainant HENRY YU by applying a credit card, an access device defined under R.A. 8484, from METROBANK CARD CORPORATION, using the name of complainant Henry C. Yu and his personal documents fraudulently obtained from him, and which credit card in the name of Henry Yu was successfully issued and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu.

CONTRARY TO LAW.[5]

Upon arraignment, petitioner pleaded "not guilty." Trial on the merits ensued. After the presentation of the evidence for the prosecution, petitioner filed a Demurrer to Evidence, alleging that he was not in physical and legal possession of the credit card presented and marked in evidence by the prosecution. In an Order dated May 2, 2006, the RTC denied the Demurrer to Evidence as it preferred to rule on the merits of the case.[6]

On September 27, 2006, the RTC rendered a decision finding petitioner guilty as charged, the dispositive portion of which reads:

**In the light of the foregoing,** the Court finds **accused Mark Soledad *y* Cristobal** *a.k.a.* **"Henry Yu", "Arthur"** ***GUILTY*** beyond reasonable doubt of violation of Section 9(e), Republic Act 8484 (Access Device Regulation Act of 1998). Accordingly, pursuant to Section 10 of Republic Act 8484 and applying the Indeterminate Sentence Law, said accused is hereby sentenced to suffer an imprisonment penalty of six (6) years of *prision correccional*, as *minimum*, to not more than ten (10) years of *prision mayor*, as maximum. Further, accused is also ordered to pay a fine of Ten Thousand Pesos (₱10,000.00) for the offense committed.

SO ORDERED.[7]

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[5] *Id.* at 33.

[6] *Id.* at 40.

[7] *Id.* at 47.

On appeal, the CA affirmed petitioner's conviction, but modified the penalty imposed by the RTC by deleting the terms *prision correccional* and *prision mayor*.

Hence, this petition raising the following issues:

(1) Whether or not the Information is valid;

(2) Whether or not the Information charges an offense, or the offense petitioner was found guilty of;

(3) Whether or not petitioner was sufficiently informed of the nature of the accusations against him;

(4) Whether or not petitioner was legally in "possession" of the credit card subject of the case.[8]

The petition is without merit.

Petitioner was charged with Violation of R.A. No. 8484, specifically Section 9(e), which reads as follows:

Section 9. *Prohibited Acts.* – The following acts shall constitute access device fraud and are hereby declared to be unlawful:

xxx xxx xxx

(e) possessing one or more counterfeit access devices or access devices fraudulently applied for.

Petitioner assails the validity of the Information and claims that he was not informed of the accusation against him. He explains that though he was charged with "possession of an access device fraudulently applied for," the act of "possession," which is the gravamen of the offense, was not alleged in the Information.

We do not agree.

Section 6, Rule 110 of the Rules of Criminal Procedure lays down the guidelines in determining the sufficiency of a complaint or information. It states:

[8] *Id.* at 16.

SEC. 6. *Sufficiency of complaint or information.* – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

In the Information filed before the RTC, it was clearly stated that the accused is petitioner "Mark Soledad *y* Cristobal *a.k.a.* Henry Yu/Arthur." It was also specified in the preamble of the Information that he was being charged with Violation of R.A. No. 8484, Section 9(e) for possessing a counterfeit access device or access device fraudulently applied for. In the accusatory portion thereof, the acts constituting the offense were clearly narrated in that "[petitioner], together with other persons[,] willfully, unlawfully and feloniously defrauded private complainant by applying [for] a credit card, an access device defined under R.A. [No.] 8484, from Metrobank Card Corporation, using the name of complainant Henry C. Yu and his personal documents fraudulently obtained from him, and which credit card in the name of Henry Yu was successfully issued, and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu." Moreover, it was identified that the offended party was private complainant Henry Yu and the crime was committed on or about the 13th day of August 2004 in the City of Las Piñas. Undoubtedly, the Information contained all the necessary details of the offense committed, sufficient to apprise petitioner of the nature and cause of the accusation against him. As aptly argued by respondent People of the Philippines, through the Office of the Solicitor General, although the word "possession" was not used in the accusatory portion of the Information, the word "possessing" appeared in its preamble or the first paragraph thereof. Thus, contrary to petitioner's contention, he was apprised that he was being charged with violation of R.A. No. 8484, specifically Section 9(e) thereof, for possession of the credit card fraudulently applied for.

The Court's discussion in *People v. Villanueva*[9] on the relationship between the preamble and the accusatory portion of the Information is noteworthy, and we quote:

> The preamble or opening paragraph should not be treated as a mere aggroupment of descriptive words and phrases. It is as much an essential part [of] the Information as the accusatory paragraph itself. The preamble in fact complements the accusatory paragraph which draws its strength from the preamble. It lays down the predicate for the charge in general terms; while the accusatory portion only provides the necessary details. The preamble and the accusatory paragraph, together, form a complete whole that gives sense and meaning to the indictment. x x x.
>
> xxx xxx xxx
>
> Moreover, the opening paragraph bears the operative word "accuses," which sets in motion the constitutional process of notification, and formally makes the person being charged with the commission of the offense an accused. Verily, without the opening paragraph, the accusatory portion would be nothing but a useless and miserably incomplete narration of facts, and the entire Information would be a functionally sterile charge sheet; thus making it impossible for the state to prove its case.
>
> The Information sheet must be considered, not by sections or parts, but as one whole document serving one purpose, *i.e.*, to inform the accused why the full panoply of state authority is being marshaled against him. Our task is not to determine whether allegations in an indictment could have been more artfully and exactly written, but solely to ensure that the constitutional requirement of notice has been fulfilled x x x.[10]

Besides, even if the word "possession" was not repeated in the accusatory portion of the Information, the acts constituting it were clearly described in the statement "[that the] credit card in the name of Henry Yu was successfully issued, and delivered to said accused using a fictitious identity and addresses of Henry Yu, to the damage and prejudice of the real Henry Yu." Without

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[9] 459 Phil. 856 (2003).

[10] *Id.* at 870-871.

a doubt, petitioner was given the necessary data as to why he was being prosecuted.

Now on the sufficiency of evidence leading to his conviction.

Petitioner avers that he was never in possession of the subject credit card because he was arrested immediately after signing the acknowledgement receipt. Thus, he did not yet know the contents of the envelope delivered and had no control over the subject credit card.[11]

Again, we find no value in petitioner's argument.

The trial court convicted petitioner of possession of the credit card fraudulently applied for, penalized by R.A. No. 8484. The law, however, does not define the word "possession." Thus, we use the term as defined in Article 523 of the Civil Code, that is, "possession is the holding of a thing or the enjoyment of a right." The acquisition of possession involves two elements: the *corpus* or the material holding of the thing, and the *animus possidendi* or the intent to possess it.[12] *Animus possidendi* is a state of mind, the presence or determination of which is largely dependent on attendant events in each case. It may be inferred from the prior or contemporaneous acts of the accused, as well as the surrounding circumstances.[13]

In this case, prior to the commission of the crime, petitioner fraudulently obtained from private complainant various documents showing the latter's identity. He, thereafter, obtained cellular phones using private complainant's identity. Undaunted, he fraudulently applied for a credit card under the name and personal circumstances of private complainant. Upon the delivery of the credit card applied for, the "messenger" (an NBI agent) required two valid identification cards. Petitioner thus showed two identification cards with his picture on them, but bearing the name and forged signature of private complainant. As evidence

[11] *Rollo,* pp. 17-26.

[12] Arturo M. Tolentino, *COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES,* Vol. Two, p. 229.

[13] *People v. Esparas*, 354 Phil. 342, 354-355 (1998); *People v. Lian*, 325 Phil. 881, 889 (1996).

of the receipt of the envelope delivered, petitioner signed the acknowledgment receipt shown by the messenger, indicating therein that the content of the envelope was the Metrobank credit card.

Petitioner materially held the envelope containing the credit card with the intent to possess. Contrary to petitioner's contention that the credit card never came into his possession because it was only delivered to him, the above narration shows that he, in fact, did an active part in acquiring possession by presenting the identification cards purportedly showing his identity as Henry Yu. Certainly, he had the intention to possess the same. Had he not actively participated, the envelope would not have been given to him. Moreover, his signature on the acknowledgment receipt indicates that there was delivery and that possession was transferred to him as the recipient. Undoubtedly, petitioner knew that the envelope contained the Metrobank credit card, as clearly indicated in the acknowledgment receipt, coupled with the fact that he applied for it using the identity of private complainant.

Lastly, we find no reason to alter the penalty imposed by the RTC as modified by the CA. Section 10 of R.A. No. 8484 prescribes the penalty of imprisonment for not less than six (6) years and not more than ten (10) years, and a fine of ₱10,000.00 or twice the value of the access device obtained, whichever is greater. Thus, the CA aptly affirmed the imposition of the indeterminate penalty of six years to not more than ten years imprisonment, and a fine of ₱10,000.00.

**WHEREFORE,** premises considered, the petition is *DENIED* for lack of merit. The Court of Appeals Decision dated June 18, 2008 and Resolution dated August 22, 2008 in CA-G.R. CR. No. 30603 are *AFFIRMED*.

**SO ORDERED**.

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

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[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 949 dated February 11, 2011.

**FIRST DIVISION**

[G.R. No. 184879. February 23, 2011]

**REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS),** *petitioner, vs.* **CITY OF MANDALUYONG,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; JUDGMENTS; WRIT OF POSSESSION; IT IS PREMATURE TO ISSUE A WRIT OF POSSESSION WHERE THE OWNERSHIP OF THE SUBJECT PROPERTIES IS DERIVED FROM AN AUCTIONS SALE, THE VALIDITY OF WHICH IS STILL BEING THRESHED OUT IN THE COURT OF APPEALS; THE DENIAL OF THE INJUNCTION DOES NOT AUTOMATICALLY GIVE RESPONDENT THE LIBERTY TO PROCEED WITH THE ACTIONS SOUGHT TO BE ENJOINED.—** A writ of possession is a mere incident in the transfer of title. In the instant case, it stemmed from the exercise of alleged ownership by respondent over EDSA MRT III properties by virtue of a tax delinquency sale. The issue of whether the auction sale should be enjoined is still pending before the Court of Appeals. Pending determination, it is premature for respondent to have conducted the auction sale and caused the transfer of title over the real properties to its name. The denial by the RTC to issue an injunction or TRO does not automatically give respondent the liberty to proceed with the actions sought to be enjoined, especially so in this case where a *certiorari* petition assailing the denial is still being deliberated in the Court of Appeals. All the more it is premature for the RTC to issue a writ of possession where the ownership of the subject properties is derived from an auction sale, the validity of which is still being threshed out in the Court of Appeals. The RTC should have held in abeyance the issuance of a writ of possession. At this juncture, the writ issued is premature and has no force and effect.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Mandaluyong City Legal Department* for respondent.

**R E S O L U T I O N**

**PEREZ, *J.*:**

The subject of this petition for review on *certiorari* is the writ of possession issued in favor of respondent City of Mandaluyong by the Regional Trial Court (RTC Branch 213), Branch 213, Mandaluyong City of real properties forming part of the EDSA Metro Rail Transit (MRT) III.

Petitioner Republic of the Philippines (Republic) is represented in this suit by the Department of Transportation and Communications (DOTC), which is the primary policy, planning, programming, regulating and administrative entity of the executive branch of the government in the promotion, development, and regulation of dependable and coordinated networks of transportation and communications systems, as well as in the fast, safe, efficient, and reliable postal, transportation and communications services; while respondent City Government of Mandaluyong is a local government unit tasked, among others, with meeting the priority needs and service requirements of its constituents in Mandaluyong City.[1]

The material facts and events leading to this controversy are as follows:

On 8 August 1997, the DOTC entered into a Revised and Restated Agreement to Build, Lease and Transfer a Light Rail System for EDSA (BLT) with Metro Rail Transit Corporation Limited (Metro Rail), a foreign corporation. Under the BLT Agreement, Metro Rail shall be responsible for the design, construction, equipping, completion, testing, and commissioning of the Light Rail Transit System-LRTS Phase I

[1] Petition for Review on *Certiorari. Rollo*, pp. 4-5.

(EDSA MRT III).[2] The DOTC shall operate the same but ownership of the EDSA MRT III shall remain with Metro Rail during the Revenue and Construction periods. At the end of the Revenue Period,[3] Metro Rail shall transfer to DOTC its title to and all of its rights and interests therein, in exchange for US$1.00.[4]

On even date, Metro Rail then assigned all its rights and obligations under the BLT Agreement to Metro Rail Transit Corporation (MRTC), a domestic corporation.

In an agreement dated 15 July 2000, Metro Rail turned over the EDSA MRT III System to the DOTC for its operation.[5]

In a joint resolution dated 5 April 2001, the City Assessors of Mandaluyong City, Quezon City, Makati City and Pasay City fixed the current and market value of EDSA MRT III at US$655 Million or ₱32.75 Billion, and which will be divided proportionately according to distance traversed among these cities.[6]

On 4 June 2001, the Office of the City Assessor of Mandaluyong issued Tax Declaration No. D-013-06267 in the

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[2] LRTS Phase I means the rail transport system comprising about 16.9 line kilometers extending from Taft Avenue, Pasay City, to North Avenue, Quezon City, occupying a strip in the center of EDSA approximately 10.5 meters wide (approximately 12 meters wide at or around the Boni Avenue, Santolan and Buendia Stations), plus about 0.1 to 0.2 line kilometers extending from the North Avenue Station to the Depot, together with the Stations, 73 Light Rail Vehicles and all ancillary plant, equipment and facilities, as more particularly detailed in the specifications. See BLT Agreement. *Rollo*, p. 67.

[3] Revenue Period means the period commencing on the Completion Date and ending on the twenty-fifth anniversary thereof, unless earlier terminated pursuant hereto. *Id.* at 70.

[4] *Id.* at 100.

[5] *Id.* at 120-123.

[6] Resolution Adopting a Common Approach in Determining the Current and Fair Market Value of Rail Transport System (LRTS Phase I) Also Known as EDSA MRT III Extending from North Avenue, Quezon City, to Taft Avenue, Pasay City. *Id.* at 125.

name of MRTC, fixing the market value of the railways, train cars, three (3) stations and miscellaneous expenses at ₱5,974,365,000.00 and the assessed value at ₱4,779,492,000.00.[7] Subsequently on 18 June 2001, the said Office of the City Assessor of Mandaluyong City demanded payment of real property taxes due under the aforesaid tax declaration.[8]

The computation of real property tax of MRTC was pegged at ₱317,250,730.23 from the taxable year 2000 until August 2001.[9] Two (2) years later or on August 2003, another demand was made on MRTC placing the deficiency real estate tax due to the City of Mandaluyong at ₱769,784,981.52.[10]

Initially, a Notice of Delinquency dated 24 June 2005 was sent to MRTC wherein the assessed deficiency real property tax amounted to ₱12,843,928.79,[11] however the City Treasurer of Mandaluyong issued another Notice of Delinquency on 7 September 2005 rectifying the 24 June 2005 notice by increasing the deficiency real property tax to ₱1,306,617,522.96.[12]

On the same date, the City Treasurer issued and served a Warrant of Levy upon MRTC with the corresponding Notices of Levy upon the City Assessor and the Registrar of Deeds of Mandaluyong City.[13]

On 5 December 2005, petitioner Republic filed a case for Declaration of Nullity of Real Property Tax Assessment and Warrant of Levy with a prayer for a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction before the Regional Trial Court (RTC Branch 208), Branch 208, Mandaluyong City, docketed as Civil Case No. MC05-2882.

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[7] *Id.* at 126-127.

[8] *Id.* at 128.

[9] *Id.* at 129.

[10] *Id.* at 130.

[11] *Id.* at 133.

[12] *Id.* at 134.

[13] *Id.* at 354.

Petitioner Republic alleged that since Metro Rail had transferred to the DOTC the actual use, possession and operation of the EDSA MRT III System, Metro Rail or MRTC does not have actual or beneficial use and possession of the EDSA MRT III properties as to subject it to payment of real estate taxes. On the other hand, notwithstanding the transfer to DOTC of the actual use, possession and operation of the EDSA MRT III, petitioner Republic is not liable because local government units are legally proscribed from imposing taxes of any kind on it under Section 133(o) of Republic Act No. 7160. Likewise, under Section 234 of the same law, petitioner is exempted from payment of real property tax.[14]

MRTC filed a complaint-in-intervention and sought to declare the nullity of the real property tax assessments.

The posting and publication of the Notice of Auction were made on 26 February 2006 and 5 March 2006.[15]

On 22 March 2006, the RTC Branch 208, through Presiding Judge Esteban A. Tacla, Jr., denied both petitioner Republic's and MRTC's applications for TRO.[16]

Consequently, on 24 March 2006, a public auction was conducted. For lack of bidders, the real properties were forfeited in favor of the City of Mandaluyong for the price of ₱1,483,700,100.18.[17]

On 15 September 2006, the RTC Branch 208 issued an order denying petitioner and MRTC's application for issuance of a writ of preliminary injunction. A motion for reconsideration was filed but it was eventually denied on 9 March 2007. The issue on the validity of tax assessment however is pending before that court.

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[14] Complaint in Civil Case No. MC05-2882. *Id.* at 143-146.

[15] *Id.* at 355-371.

[16] *Id.* at 710-720.

[17] Petition for Review on *Certiorari*. *Id.* at 13-14.

Petitioner Republic filed a petition for *certiorari* before the Court of Appeals challenging the denial of both the TRO and injunction by RTC Branch 208.

Meanwhile, respondent manifested before the Court of Appeals that due to the failure of MRTC to exercise the right of redemption, the City Treasurer of Mandaluyong executed a Final Deed of Sale in favor of the purchaser in the auction sale. Subsequently, Tax Declaration No. D-013-06267 in MRTC's name was cancelled and Tax Declaration No. D-013-10636 was issued in its place.[18]

On 11 April 2008, respondent filed an *ex parte* petition praying for the issuance of a writ of possession before RTC Branch 213 of Mandaluyong and docketed as LRC Case No. MC-08-460.[19] Petitioner Republic countered that the instant petition does not fall within the cases when a writ of possession may be issued. Moreover, petitioner argued that the pendency of Civil Case No. MC05-2882 assailing the validity of the tax assessment and the subsequent auction sale of the properties pre-empts the issuance of said writ.[20]

On 30 July 2008, the RTC Branch 213, through Judge Carlos A. Valenzuela, granted the petition for the issuance of a writ of possession.[21] A subsequent motion for reconsideration filed by petitioner was denied for lack of merit.[22]

While MRTC appealed said order to the Court of Appeals, petitioner Republic filed the instant case raising a question of law, *i.e.* the propriety of the issuance of a writ of possession. To support its main thesis that the RTC Branch 213 erred in issuing a writ of possession, petitioner claims that since EDSA MRT properties are beneficially owned by DOTC, it should not have been assessed for payment of real property taxes.

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[18] *Id.* at 865.

[19] *Id.* at 851-855.

[20] Opposition. *Id.* at 871-872 and 875-876.

[21] *Id.* at 44-52.

[22] *Id.* at 53-54.

Being a governmental entity, it is exempt from payment of real property tax under Section 234 of the Local Government Code. Therefore, no tax delinquency exist authorizing respondent to sell the subject properties through public auction. It then follows that respondent has no legal right to a writ of possession.[23]

Petitioner Republic then asserts that the auction sale conducted by respondent cannot be likened to an extrajudicial foreclosure sale of a real estate mortgage under Act No. 3135 as a justification for the issuance of a writ of possession. Petitioner Republic reasons that the EDSA MRT properties were not put up as a collateral or security for a loan or indebtedness which was secured from respondent, nor was there any mortgage contract voluntarily entered into by petitioner or even by MRTC.[24]

Finally, petitioner Republic adds that all requisites of *litis pendencia* exist in CA-G.R. SP No. 98334, which is a case for denial of injunction and TRO and in the present case, concerning the issuance of a writ of possession because there is identity of parties, rights asserted and reliefs prayed for. Respondent seeks to acquire possession over the EDSA MRT III properties on the basis of its tax assessments and auction sale, which petitioner Republic seeks to permanently enjoin respondent from enjoying when it initiated Civil Case No. MC05-2882. The pendency of CA-G.R. SP No. 98334 before the Court of Appeals, assailing the Orders denying respondent's prayer for a TRO and injunction should have pre-empted the issuance of the writ of possession by reason of *litis pendencia*.[25]

In a Resolution dated 10 November 2008, this Court directed the parties to maintain the status *quo* and enjoined the enforcement and implementation of the Order and Writ of Possession dated 22 October 2008.[26]

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[23] Petition for Review on *Certiorari. Id.* at 21-25.

[24] *Id.* at 27.

[25] *Id.* at 31-32.

[26] *Id.* at 952.

Respondent filed its comment refuting the allegations of petitioner. Respondent does not contest petitioner's immunity from local taxes. In fact, it has assessed MRTC, and not petitioner, for real property tax. Respondent defends the RTC's issuance of a writ of possession after it was established that there was a valid foreclosure sale of MRTC's properties for non-payment of real property taxes and after the title had been consolidated in respondent's name. Respondent also avers that the subject public auction sale is an execution sale within the purview of Section 33, Rule 39 of the Rules of Court, thus a writ of possession was validly issued. Respondent subscribes to this Court's ruling in *Ong v. Court of Appeals*[27] which clarified that there is no forum shopping where a petition for the issuance of a writ of possession is filed despite the pendency of an action for annulment of mortgage and foreclosure sale.[28]

This case is, ultimately, between a local government's power to tax and the national government's privilege of tax exemption. That issue needs full hearing and deliberation, as indeed, the issue pends before the RTC, at first instance. Such trial of facts and issues must proceed. It should not be pre-empted by the present petition that deals with precisely the herein respondent's intended end result.

A writ of possession is a mere incident in the transfer of title.[29] In the instant case, it stemmed from the exercise of alleged ownership by respondent over EDSA MRT III properties by virtue of a tax delinquency sale. The issue of whether the auction sale should be enjoined is still pending before the Court of Appeals. Pending determination, it is premature for respondent to have conducted the auction sale and caused the transfer of title over the real properties to its name. The denial by the RTC to issue an injunction or TRO does not automatically give

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[27] 388 Phil. 857 (2000).

[28] Comment. *Id.* at 965-970.

[29] See *Bon-Mar Realty and Sport Corporation v. Spouses De Guzman*, G.R. Nos. 182136-37, 29 August 2008, 563 SCRA 737, 751.

respondent the liberty to proceed with the actions sought to be enjoined, especially so in this case where a *certiorari* petition assailing the denial is still being deliberated in the Court of Appeals. All the more it is premature for the RTC to issue a writ of possession where the ownership of the subject properties is derived from an auction sale, the validity of which is still being threshed out in the Court of Appeals. The RTC should have held in abeyance the issuance of a writ of possession. At this juncture, the writ issued is premature and has no force and effect.

**WHEREFORE,** the petition is *GRANTED*. The Decision and Order dated 30 July 2008 and 6 October 2008, respectively of RTC Branch 213 of Mandaluyong City in LRC Case No. M-08-460 are hereby *VACATED and SET ASIDE*. The status *quo* Order dated 10 November 2008 is *MAINTAINED.* The Court of Appeals is *ORDERED* to resolve CA-G.R. SP No. 98334 with deliberate dispatch.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Velasco, Jr., Nachura,*[*] and *del Castillo, JJ.,* concur.

[*] Per Special Order No. 947, Associate Justice Antonio Eduardo B. Nachura is hereby designated as additional member in place of Associate Justice Teresita J. Leonardo-De Castro who is on official leave.

**THIRD DIVISION**

[G.R. No. 184922. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **PORFERIO MASAGCA, JR.** ***y*** **PADILLA,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT OF THE TRIAL COURT ACCORDED GREAT RESPECT.—** We find no reason to disturb the findings of the RTC, as affirmed by the CA. As we have repeatedly ruled, the trial court's assessment of the credibility of witnesses must be given great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial evidence, including the demeanor of the witnesses, and is in the best position to rule on their weight and credibility. The rule finds greater application when the CA sustains the findings of the trial court.

**2. CRIMINAL LAW; RAPE; ELEMENTS, ESTABLISHED IN CASE AT BAR.—** We find that the prosecution successfully established the elements of rape. AAA positively identified the appellant as her rapist. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, convincing, and consistent with human nature and the normal course of things. Our examination of the records shows no indication that we should view AAA's testimony in a suspicious light.

**3. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; CANNOT PREVAIL OVER THE TESTIMONY AND POSITIVE IDENTIFICATION OF THE VICTIM-WITNESS.—** The appellant's defenses of **denial** (for the October 6 and 14, 2001 incidents) **and alibi** (for the September 10, 2000 incident) cannot prevail over AAA's testimony that she had been raped and her positive identification of the appellant as her rapist. Denial and alibi are the weakest of all defenses because they are easy to concoct and fabricate. To be believed, denial must be supported by a strong evidence of innocence;

otherwise, it is regarded as purely self-serving. Alibi, on the other hand, is *rejected when the prosecution sufficiently establishes the identity of the accused*. The facts in this case do not present any exceptional circumstance warranting a deviation from these established rules.

**4. CRIMINAL LAW; QUALIFIED RAPE; PROPER PENALTY.—** The prosecution firmly established that AAA was under eighteen (18) years of age when the rape incidents occurred, having been born on September 15, 1987. The prosecution likewise proved – and the defense admitted – that the appellant is AAA's father. The proper penalty for each of the three (3) counts of such qualified rape would be death were it not for Republic Act No. 9346 which reduced the death penalty to *reclusion perpetua*.

**5. ID.; ID.; PROPER INDEMNITY.—** The Court affirms the award of civil indemnity made by the trial court for each count of rape. Civil indemnity is mandatory when rape is found to have been committed. Based on prevailing jurisprudence, we affirm the award of ₱75,000.00 to the rape victim as civil indemnity for each count. We, likewise, affirm the award of moral damages made by the trial court for each count of rape. Moral damages are awarded to rape victims without need of proof other than the fact of rape, on the assumption that the victim suffered moral injuries from the experience she underwent. We, however, increase the award of ₱50,000.00 to ₱75,000.00 based on the prevailing jurisprudence on the award of moral damages in cases of qualified rape. We also affirm the award of exemplary damages made by the CA for each count of rape. The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth. Following jurisprudence on the award of exemplary damages in qualified rape cases, the award of ₱25,000.00 as exemplary damages should be increased to ₱30,000.00.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**BRION,[*] *J.*:**

On appeal is the Decision[1] of the Court of Appeals (*CA*) affirming with modification the Judgment[2] of the Regional Trial Court (*RTC*) of Virac, Catanduanes finding Porferio Masagca, Jr. (*appellant*) guilty beyond reasonable doubt of three (3) counts of rape committed against his own daughter, and sentencing him to suffer the penalty of *reclusion perpetua* for each count.

## THE FACTS

The appellant (a widower) and four of his children (including the private complainant [AAA][3]) lived in *Barangay* Sto. Domingo, Virac, Catanduanes. At around seven o'clock on the evening of September 10, 2000, after his other children had left to watch a TV program, the appellant laid down beside his daughter AAA, removed her blanket, and held her right hand. He, thereafter, removed her short pants and underwear, laid on top of her, and inserted his penis into her vagina for about one minute. Throughout the incident, AAA did not say anything as the

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[*] Designated Acting Chairperson of the Thrid Divison per Special Order No. 925 dated January 24, 2011.

[1] In CA-G.R. CR-H.C. No. 02607, dated April 23, 2008, and penned by CA Associate Justice Estela M. Perlas-Bernabe, with the concurrence of CA Associate Justice Portia Aliño-Hormachuelos and CA Associate Justice Rosmari D. Carandang.

[2] In Criminal Case Nos. 3004, 3005 and 3006, dated December 5, 2006, and penned by Presiding Judge Lelu Contreras of Branch 43, RTC, Virac, Catanduanes.

[3] The Court shall withhold the real name of the victim-survivor and shall use fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall not be disclosed. (*People v. Cabalguinto*, GR No. 167693, September 19, 2006, 502 SCRA 419, 425-426, citing Section 40, Rule on Violence Against Women and Their Children; Section 63, Rule XI, Rules and Regulations Implementing Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004.")

appellant threatened to hit her on the mouth if she would make any noise.[4]

On October 6, 2001, the appellant and his children this time resided at his parents' home in *Barangay* J.M. Alberto (Poniton), Virac, Catanduanes. At around ten o'clock in the evening, AAA was awakened by her father's arrival. He removed her shorts and underwear as he lowered his own shorts and underwear to his knees, and managed to insert at least an inch of his penis into her vagina for one minute. AAA's struggle proved fruitless as he tightly held her right hand. Again, he threatened to hit her on the mouth if she reported the incident to anyone.[5]

AAA's experience with her father was repeated on October 14, 2001, at around ten o'clock in the evening in the same house. AAA recalled that her father again inserted his penis into her vagina for one minute and moved his buttocks. She struggled, but her father was far stronger. This time, the appellant did not say anything to her. Seven days later, AAA revealed her ordeals to her aunt (the appellant's sister). This disclosure led to charges against the appellant for three (3) counts of rape.[6]

**THE RULING OF THE TRIAL COURT**

At the trial, the prosecution presented AAA[7] and the Virac Rural Health Physician who testified that AAA had healed hymenal lacerations.[8] The appellant interposed the defenses of denial and alibi. He claimed that he could not have raped AAA on September 10, 2000 as she was then living in Tabaco City (Albay) and he was living in *Barangay* Sto. Domingo (Catanduanes). He claimed that he could not have raped her on October 6 and 14, 2001 as AAA slept then with his parents in their room. The appellant claimed that AAA made up the rape charges after he

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[4] CA *rollo*, p. 30; TSN dated November 14, 2002, pp. 6-18.

[5] CA *rollo*, pp. 30-31; TSN dated December 3, 2002, pp. 3-9.

[6] CA *rollo*, p. 31; TSN dated December 3, 2002, pp. 9-14.

[7] TSNs dated November 14, 2002, December 3, 2002 and December 10, 2002.

[8] TSN dated November 12, 2002.

spanked her for having gone to the river with a male stranger. He also claimed that this was the first time he hurt any of his children.[9]

After the trial, the RTC found AAA's testimony to be "steadfast and unequivocal," and convicted appellant for three (3) counts of rape. It sentenced him to suffer the penalty of *reclusion perpetua* for each count and to pay the amounts of ₱75,000 and ₱50,000 as civil liability and moral damages, respectively, for each of the three (3) cases.[10]

**THE RULING OF THE APPELLATE COURT**

The CA affirmed the RTC Judgment. It ruled that as AAA was a child victimized by her own father, her testimony should be given full weight and credit, more so since it was categorical, straightforward and corroborated by the findings of a medico-legal officer. It held that the lack of contusions on AAA's body did not negate rape; the fact that the appellant is AAA's father who exercised moral ascendancy over her substituted for actual violence. It observed that lust is no respecter of time and place; hence, rape could be committed even in the bedroom of the appellant's parents. Finally, the CA, citing *People v. Cresencia Tabugoca*,[11] agreed with the RTC that it was unbelievable that AAA would make up rape charges against her own father just because he had spanked her. The CA agreed with the RTC that the appellant's claim (*i.e.*, that he had never hurt any of his children until the spanking incident) was belied by his own son BBB, a defense witness, who testified that appellant was cruel and would hurt his children arbitrarily, especially when he was drunk. The CA affirmed the RTC's Judgment and additionally

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[9] TSN dated January 26, 2006.

[10] CA *rollo*, pp. 36-38.

[11] G.R. No. 125334, January 28, 1998, 285 SCRA 312. "Mere disciplinary chastisement is not strong enough to make daughters in a Filipino family invent a charge that would only bring shame and humiliation upon them and their own family and make them the object of gossip among their classmates and friends."

required the appellant pay the private complainant ₱25,000 as exemplary damages for each count of rape.[12]

**THE COURT'S RULING**

**We affirm the appellant's guilt, but modify the awards of moral and exemplary damages.**

We find no reason to disturb the findings of the RTC, as affirmed by the CA. As we have repeatedly ruled, the trial court's assessment of the credibility of witnesses must be given great respect in the absence of any attendant grave abuse of discretion; the trial court had the advantage of actually examining both real and testimonial evidence, including the demeanor of the witnesses, and is in the best position to rule on their weight and credibility. The rule finds greater application when the CA sustains the findings of the trial court.[13]

We find that the prosecution successfully established the elements of rape. AAA positively identified the appellant as her rapist. In rape cases, the accused may be convicted solely on the testimony of the victim, provided it is credible, convincing, and consistent with human nature and the normal course of things.[14] Our examination of the records shows no indication that we should view AAA's testimony in a suspicious light. The doctrine in *People v. Efren Maglente y Cervantes*[15] finds particular application in this case:

> When the offended party is a young and immature girl testifying against a parent, courts are inclined to lend credence to her version of what transpired. Youth and immaturity are given full weight and credit. Incestuous rape is not an ordinary crime that can be easily invented because of its heavy psychological toll. It is unlikely that

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

[13] *People v. Tablang*, G.R. No. 174859, October 30, 2009, 604 SCRA 757; citing *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363.

[14] *People v. Glivano*, G.R. No. 177565, January 28, 2008, 542 SCRA 656.

[15] G.R. No. 179712, June 27, 2008, 556 SCRA 447, 460-461.

a young woman of tender years would be willing to concoct a story which would subject her to a lifetime of gossip and scandal among neighbors and friends and even condemn her father to death.

The appellant's defenses of **denial** (for the October 6 and 14, 2001 incidents) **and alibi** (for the September 10, 2000 incident) cannot prevail over AAA's testimony that she had been raped and her positive identification of the appellant as her rapist. Denial and alibi are the weakest of all defenses because they are easy to concoct and fabricate.[16] To be believed, denial must be supported by a strong evidence of innocence; otherwise, it is regarded as purely self-serving. Alibi, on the other hand, is *rejected when the prosecution sufficiently establishes the identity of the accused*.[17] The facts in this case do not present any exceptional circumstance warranting a deviation from these established rules.

**The Proper Penalty**

The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B, which provide:

Article 266-A. Rape. When and How Committed. — Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

xxx xxx xxx

Article 266-B. Penalty. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

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[16] *People v. Ayade*, G.R. No. 188561, January 15, 2010, 610 SCRA 246.

[17] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233.

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[.]

The prosecution firmly established that AAA was under eighteen (18) years of age when the rape incidents occurred, having been born on September 15, 1987.[18] The prosecution likewise proved – and the defense admitted[19] – that the appellant is AAA's father.[20] The proper penalty for each of the three (3) counts of such qualified rape would be death were it not for Republic Act No. 9346[21] which reduced the death penalty to *reclusion perpetua*.

**The Proper Indemnity**

The Court affirms the award of civil indemnity made by the trial court for each count of rape.[22] Civil indemnity is mandatory when rape is found to have been committed.[23] Based on prevailing jurisprudence, we affirm the award of ₱75,000.00 to the rape victim as civil indemnity for each count.[24]

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[18] TSN dated November 14, 2002, pp. 3-5.

[19] *Id.* at 3.

[20] *Certificate of Live Birth* of AAA, records, p. 82.

[21] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Section 3 – "Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended."

[22] The dispositive portion of the decision of the trial court in Criminal Case Nos. 3004, 3005, and 3006, dated 5 December 2006, reads: "WHEREFORE, this Court, (*sic*) hereby, (*sic*) finds accused, Porferio Masagca GUILTY on three (3) counts as charged, and sentences him to suffer the penalty of *reclusion perpetua* for each count, and to pay the amount of SEVENTY-FIVE THOUSAND (₱75,000.00) PESOS as civil liability and FIFTY THOUSAND (₱50,000.00) PESOS as moral damages in each of the three (3) cases. SO ORDERED." CA *rollo*, p. 80.

[23] See *People v. Begino*, G.R. No. 181246, March 20, 2009, 582 SCRA 189.

[24] *People v. Alejandro*, G.R. No. 186232, September 27, 2010.

We, likewise, affirm the award of moral damages made by the trial court for each count of rape. Moral damages are awarded to rape victims without need of proof other than the fact of rape, on the assumption that the victim suffered moral injuries from the experience she underwent.[25] We, however, increase the award of ₱50,000.00 to ₱75,000.00 based on the prevailing jurisprudence on the award of moral damages in cases of qualified rape.[26]

We also affirm the award of exemplary damages made by the CA for each count of rape.[27] The award of exemplary damages is justified under Article 2229 of the Civil Code to set a public example and serve as deterrent against elders who abuse and corrupt the youth.[28] Following jurisprudence on the award of exemplary damages in qualified rape cases,[29] the award of ₱25,000.00 as exemplary damages should be increased to ₱30,000.00.

**WHEREFORE,** in view of these considerations, we *AFFIRM* the April 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02607, subject to the following *MODIFICATIONS*:

1. The award of ₱50,000.00 as moral damages is increased to ₱75,000.00; and
2. The award of ₱25,000.00 as exemplary damages is increased to ₱30,000.00.

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[25] *People v. Nieto*, G.R. No. 177756, March 3, 2008, 547 SCRA 511.

[26] *People v. Alejandro*, *supra* note 24.

[27] The dispositive portion of the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02607, dated April 23, 2008, reads: "WHEREFORE, premises considered, the assailed *Decision* of the RTC of Virac, Catanduanes, Branch 43, dated December 5, 2006 in *Criminal Case Nos. 3004, 3005 and 3006*, is hereby AFFIRMED with MODIFICATION ordering accused-appellant to additionally pay private complainant the amount of ₱25,000.00 as exemplary damages for each count of rape. The rest of the *Decision* stands. SO ORDERED." *Rollo*, p. 10.

[28] See *People v. Tormis*, G.R. No. 183456, December 18, 2008, 574 SCRA 903.

[29] *People v. Alejandro*, *supra* note 24.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**THIRD DIVISION**

[G.R. No. 186271. February 23, 2011]

**CHATEAU DE BAIE CONDOMINIUM CORPORATION,** *petitioner, vs.* **SPS. RAYMOND and MA. ROSARIO MORENO,** *respondents.*

**SYLLABUS**

**REMEDIAL LAW; ACTIONS; AN ACTION QUESTIONING THE VALIDITY OF THE FORECLOSURE SALE OF A CONDOMINIUM UNIT IS DIFFERENT FROM A CASE ASKING FOR AN ACCOUNTING OF THE ASSOCIATION DUES ASSESSED ON THE SAME UNIT.—** The case before the RTC involved an intra-corporate dispute – the Moreno spouses were asking for an accounting of the association dues and were questioning the manner the petitioner calculated the dues assessed against them. These issues are alien to the first case that was initiated by Salvacion – a third party to the petitioner-Moreno relationship – to stop the extrajudicial sale on the basis of the lack of the requirements for a valid foreclosure sale. Although the extrajudicial sale of the Moreno properties to the petitioner has been fully effected and the Salvacion petition has been dismissed with finality, the completion of the sale does not bar the Moreno spouses from

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[**] Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

questioning the amount of the unpaid dues that gave rise to the foreclosure and to the subsequent sale of their properties. The propriety and legality of the sale of the condominium unit and the parking spaces questioned by Salvacion are different from the propriety and legality of the unpaid assessment dues that the Moreno spouses are questioning in the present case.

**APPEARANCES OF COUNSEL**

*Antonio Z. Carpio* for petitioner.
*Pelagio Lawrence N. Cuison* for respondents.

**D E C I S I O N**

**BRION,[*] *J.*:**

Before us is the petition for review on *certiorari* with prayer for a temporary restraining order filed by Chateau de Baie Condominium Corporation (*petitioner*) challenging the decision[1] of the Court of Appeals (*CA*) that dismissed its petition for *certiorari*, prohibition and *mandamus*. The petition, the CA ruled upon, questioned the ruling[2] of the Regional Trial Court (*RTC*), Branch 258, Parañaque City, that denied the petitioner's motion to dismiss the complaint filed by respondent spouses Raymond and Ma. Rosario Moreno.

This case is the second of two related cases submitted to us involving the condominium unit of Ma. Rosario Moreno. We had decided the first case – *Oscar S. Salvacion v. Chateau de Baie Condominium Corporation, G.R. No. 178549*[3] – and our ruling has attained finality.

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[*] Designated Acting Chairperson of the Third Divsion effective February 16, 2011, per Special Order No. 925 dated January 24, 2011.

[1] Penned by Associate Justice Rosmari D. Carandang, and concurred in by Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Mariflor P. Punzalan Castillo; *rollo*, pp. 24-33.

[2] Annex "C", Petition; *id.* at 37-38.

[3] January 24, 2008.

**The Facts**

Mrs. Moreno is the registered owner of a penthouse unit and two parking slots in Chateau de Baie Condominium (*Chateau Condominium*) in Roxas Boulevard, Manila. These properties are covered by Condominium Certificates of Title (*CCT*) Nos. 4153, 4154, and 4155 (*Moreno properties*). As a registered owner in Chateau Condominium, Mrs. Moreno is a member/ stockholder of the condominium corporation.

Mrs. Moreno obtained a loan of ₱16,600,000.00 from Oscar Salvacion, and she mortgaged the Moreno properties as security; the mortgage was annotated on the CCTs.

Under Section 20 of Republic Act (*R.A.*) No. 4726 (*the Condominium Act*),[4] when a unit owner fails to pay the association dues, the condominium corporation can enforce a lien on the

[4] Section 20. An assessment upon any condominium made in accordance with a duly registered declaration of restrictions shall be an obligation of the owner thereof at the time the assessment is made. The amount of any such assessment plus any other charges thereon, such as interest, costs (including attorney's fees) and penalties, as such may be provided for in the declaration of restrictions, shall be and become a lien upon the condominium assessed when the management body causes a notice of assessment to be registered with the Register of Deeds of the city or province where such condominium project is located. The notice shall state the amount of such assessment and such other charges thereon as may be authorized by the declaration of restrictions, a description of the condominium unit against which same has been assessed, and the name of the registered owner thereof. Such notice shall be signed by an authorized representative of the management body or as otherwise provided in the declaration of restrictions. Upon payment of said assessment and charges or other satisfaction thereof, the management body shall cause to be registered a release of the lien.

Such lien shall be superior to all other liens registered subsequent to the registration of said notice of assessment except real property tax liens and except that the declaration of restrictions may provide for the subordination thereof to any other liens and encumbrances.

Such liens may be enforced in the same manner provided for by law for the judicial or extra-judicial foreclosure of mortgages of real property. Unless otherwise provided for in the declaration of restrictions, the management body shall have power to bid at the foreclosure sale. The condominium owner shall have the same right of redemption as in cases of judicial or extra-judicial foreclosure of mortgages.

condominium unit by selling the unit in an extrajudicial foreclosure sale.

On November 23, 2001, the petitioner caused the annotation of a Notice of Assessment on the CCTs of the Moreno properties for unpaid association dues amounting to ₱323,870.85. It also sent a demand letter to the Moreno spouses who offered to settle their obligation, but the petitioner declined the offer.

Subsequently, to enforce its lien, the president of the petitioner wrote the Clerk of Court/*Ex-Officio* Sheriff of Parañaque City for the extrajudicial public auction sale of the Moreno properties. The extrajudicial sale was scheduled on February 10, 2005.[5]

**The first case - the Salvacion Case (Civil Case No. 05-0061; CA-G.R. SP No. 90339; and G.R. No. 178549)**

To stop the extrajudicial sale, Salvacion, as mortgagee, filed, on February 3, 2005, a petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction before the RTC, Branch 196, Parañaque City. The case was docketed as Civil Case No. 05-0061.[6] The petition sought to prohibit the scheduled extrajudicial sale for lack of a special power to sell from the registered owner as mandated by Act No. 3135,[7] and to declare the lien to be excessive.

On February 9, 2005, the RTC dismissed Salvacion's petition and denied the injunctive relief for lack of merit. The extrajudicial sale proceeded as scheduled, and the Moreno properties were sold to the petitioner, the lone bidder, for ₱1,328,967.12. The RTC denied Salvacion's motion for reconsideration.

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[5] *Rollo*, p. 43.

[6] Entitled *Oscar S. Salvacion v. Atty. Clemente E. Boloy*, in his capacity as *Ex-Officio* Sheriff, Office of the Clerk of Court, Regional Trial Court, Parañaque City, Branch 196, and Chateau de Baie Condominium Corporation.

[7] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed to Real Estate Mortgages (approved on March 6, 1924).

Salvacion went to the CA *via* a petition for *certiorari* and prohibition (CA-G.R. SP No. 90339) and, among others, submitted the issue of whether the RTC erred in finding Section 5, Article 4 of the By-Laws of the petitioner as blanket authority to institute an extrajudicial foreclosure, contrary to Section 20 of R.A. No. 4726 and Section 1 of Act No. 3135.

On February 27, 2007, the CA's Third Division ruled that Act No. 3135 covers only real estate mortgages and is intended merely to regulate the extrajudicial sale of mortgaged properties. It held that R.A. No. 4726 is the applicable law because it is a special law that exclusively applies to condominiums. Thus, the CA upheld the validity of the extrajudicial sale.[8] It ruled that R.A. No. 4726 does not require a special authority from the condominium owner before a condominium corporation can initiate a foreclosure proceeding. It additionally observed that Section 5 of the By-Laws of the petitioner provides that it has the authority to avail of the remedies provided by law, whether judicial or extrajudicial, to collect unpaid dues and other charges against a condominium owner. The CA's Third Division also denied Salvacion's motion for reconsideration.[9]

Salvacion appealed to this Court through a petition for review on *certiorari*.[10] The Court's Third Division denied the petition for technical infirmities and for failing to show that the CA committed any reversible error. An entry of judgment was made on January 24, 2008.[11]

**The present case – the Moreno Case**

**(Civil Case No. 05-0183 and CA-G.R. SP No. 93217)**

While the Salvacion case was pending before the CA, the Moreno spouses filed before the RTC, Parañaque City, a

[8] *Rollo,* pp. 42-49; penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Portia Aliño-Hormachuelos and Associate Justice Mario L. Guariña III.

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

[10] G.R. No. 178549, entitled *Oscar S. Salvacion v. Chateau de Baie Condominium Corporation*.

[11] *Rollo,* p. 53.

complaint for intra-corporate dispute against the petitioner[12] to question how it calculated the dues assessed against them, and to ask an accounting of the association dues. They asked for damages and the annulment of the foreclosure proceedings, and prayed for the issuance of a writ of preliminary injunction. The case was raffled to Branch 258 and was docketed as Civil Case No. 05-0183.

The petitioner moved to dismiss the complaint on the ground of lack of jurisdiction, alleging that since the complaint was against the owner/developer of a condominium whose condominium project was registered with and licensed by the Housing and Land Use Regulatory Board (*HLURB*), the HLURB has the exclusive jurisdiction.

In an order dated October 15, 2005,[13] the RTC denied the motion to dismiss because it was a prohibited pleading under the Interim Rules of Procedure Governing Intra-Corporate Controversies.[14] It likewise ordered the motion to dismiss expunged from the records, and declared the petitioner in default for failing to answer within the reglementary period. The RTC denied the petitioner's motion for reconsideration in its order of January 20, 2006.[15]

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[12] On May 11, 2005.

[13] *Rollo*, pp. 37-38.

[14] Rule 1, Section 8. Prohibited pleadings. — The following pleadings are prohibited:

(1) Motion to dismiss;

(2) Motion for a bill of particulars;

(3) Motion for new trial, or for reconsideration of judgment or order, or for re-opening of trial;

(4) Motion for extension of time to file pleadings, affidavits or any other paper, except those filed due to clearly compelling reasons. Such motion must be verified and under oath; and

(5) Motion for postponement and other motions of similar intent, except those filed due to clearly compelling reasons. Such motion must be verified and under oath.

[15] *Rollo*, pp. 39-40.

The petitioner went to the CA *via* a petition for *certiorari*, prohibition and *mandamus* under Rule 65 of the Rules of Court. It alleged grave abuse of discretion on the part of the RTC for not dismissing the Moreno spouses' complaint because (1) the Moreno spouses are guilty of forum shopping, (2) of *litis pendencia*, and (3) the appeal pending before the CA (CA-G.R. SP No. 90339 [SPL CV No. 05-0061]).

The CA's First Division denied the petition in its decision of August 29, 2008.[16] It found no grave abuse of discretion on the part of the RTC because the complaint involved an intra-corporate dispute. It ruled:

> Since the instant civil case involves an intra-corporate controversy, it is the RTC which has jurisdiction over the same pursuant to R.A. 8799 otherwise known as the Securities Regulation Code and Section 9 of the Interim Rules. The public respondent indeed correctly applied the provisions of the Interim Rules. And under Section 8(1), Rule 1 thereof, it is expressly stated that a Motion to Dismiss is a prohibited pleading. Thus, the motion to dismiss on the ground of lack of jurisdiction filed by petitioner must necessarily be denied and expunged from the record. Petitioner should have instead averred its defense of lack of jurisdiction and even the issue of forum shopping in its Answer. Section 6, par. (4), Rule 2 of the Interim Rules, explicitly provides that in the Answer, the defendant can state the defenses, including the grounds for a motion to dismiss under the Rules of Court.
>
> Considering that the motion to dismiss filed by private respondent is a prohibited pleading, hence, it did not toll the running of the period for filing an Answer, the public respondent properly declared the petitioner in default for its failure to file its Answer within fifteen (15) days from its receipt of summons.[17]

The CA's First Division also denied the petitioner's motion for reconsideration;[18] hence, this appeal by way of a Rule 45 petition.

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[16] *Id.* at 24-33.

[17] *Id.* at 31-32.

[18] In its February 5, 2009 Resolution; *id.* at 35-36.

**The Issue**

The petitioner submits this sole issue for our consideration:

WITH DUE RESPECT, THE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT IN VIEW OF THE DECISION RENDERED BY ANOTHER DIVISION OF THE COURT OF APPEALS IN CA-G.R. SP. NO. 90339 ENTITLED *OSCAR S. SALVACION VS. ATTY. CLEMENTE E. BOLOY, IN HIS CAPACITY AS EX-OFFICIO SHERIFF, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, PARAÑAQUE CITY, BRANCH 196 AND CHATEAU DE BAIE CONDOMINIUM CORPORATION* SUSTAINING THE VALIDITY OF THE [EXTRAJUDICIAL] PUBLIC AUCTION OF THE CONDOMINIUM UNIT AND PARKING SLOTS OWNED BY RESPONDENT MA. ROSARIO MORENO, WHICH DECISION BECAME FINAL AND EXECUTORY ON JANUARY 24, 2008.[19]

**The Court's Ruling**

**We deny the petition for lack of merit.** The CA did not err when it did not dismiss the Moreno spouses' complaint despite the full completion of the extrajudicial sale.

The case before the RTC involved an intra-corporate dispute – the Moreno spouses were asking for an accounting of the association dues and were questioning the manner the petitioner calculated the dues assessed against them. These issues are alien to the first case that was initiated by Salvacion – a third party to the petitioner-Moreno relationship – to stop the extrajudicial sale on the basis of the lack of the requirements for a valid foreclosure sale. Although the extrajudicial sale of the Moreno properties to the petitioner has been fully effected and the Salvacion petition has been dismissed with finality, the completion of the sale does not bar the Moreno spouses from questioning the amount of the unpaid dues that gave rise to the foreclosure and to the subsequent sale of their properties. The propriety and legality of the sale of the condominium unit and the parking spaces questioned by Salvacion are different from the propriety and legality of the unpaid assessment dues that the Moreno spouses are questioning in the present case.

[19] *Id.* at 14.

The facts of this case are similar to the facts in *Wack Wack Condominium Corporation, et al. v. Court of Appeals, et al.*,[20] where we held that *the dispute as to the validity of the assessments is purely an intra-corporate matter between Wack Wack Condominium Corporation and its stockholder, Bayot, and is, thus, within the exclusive original jurisdiction of the Securities and Exchange Commission* (*SEC*).[21] We ruled in that case that since the extrajudicial sale was authorized by Wack Wack Condominium Corporation's by-laws and was the result of the nonpayment of the assessments, the legality of the foreclosure was necessarily an issue within the exclusive original jurisdiction of the SEC. We added that:

> Just because the property has already been sold extrajudicially does not mean that the questioned assessments have now become legal and valid or that they have become immaterial. In fact, the validity of the foreclosure depends on the legality of the assessments and the issue must be determined by the SEC if only to insure that the private respondent was not deprived of her property without having been heard. If there were no valid assessments, then there was no lien on the property, and if there was no lien, what was there to foreclose? Thus, SEC Case No. 2675 has not become moot and academic and the SEC retains its jurisdiction to hear and decide the case despite the extrajudicial sale.[22]

Based on the foregoing, we affirm the decision of the CA's First Division dismissing the petitioner's petition. The way is now clear for the RTC to continue its proceedings on the Moreno case.

**WHEREFORE,** premises considered, we *DENY* the petition for review on *certiorari* and *AFFIRM* the Decision, dated August 29, 2008, and the Resolution, dated February 5, 2009, of the Court of Appeals in CA-G.R. SP No. 93217. The

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[20] G.R. No. 78490, November 23, 1992, 215 SCRA 850.

[21] Section 5.2 of the Securities Regulation Code (R.A. No. 8799) transferred exclusive and original jurisdiction of the SEC over actions involving intra-corporate controversies to the courts of general jurisdiction or the appropriate RTC.

[22] *Supra* note 20, at 856.

Regional Trial Court, Branch 258, Parañaque City is directed to continue its proceedings in Civil Case No. 05-0183. Costs against the petitioner.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* no part.

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**SECOND DIVISION**

[G.R. No. 186614. February 23, 2011]

**NATIONWIDE SECURITY AND ALLIED SERVICES, INC.,** *petitioner, vs.* **RONALD P. VALDERAMA,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; A RELIEF AND TRANSFER ORDER DOES NOT SEVER EMPLOYMENT RELATIONSHIP BETWEEN A SECURITY GUARD AND HIS AGENCY.—** In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does

[**] Designated additional Member of the Third Divison in lieu of Justice Conchita Carpio Morales per Raffle dated December 15, 2010.

not constitute constructive dismissal, so long as such status does not continue beyond six months.

**2. ID.; ID.; ID.; ELEMENTS OF ABANDONMENT, NOT ESTABLISHED.—** The jurisprudential rule on abandonment is constant. It is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship. In this case, petitioner failed to establish clear evidence of respondent's intention to abandon his employment. Except for petitioner's bare assertion that respondent did not report to the office for reassignment, no proof was offered to prove that respondent intended to sever the employer-employee relationship.

**3. ID.; ID.; ID.; RESIGNATION, EXPLAINED.—** Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, he or she, in fact, intended to sever his or her employment.

**4. ID.; ID.; ID.; ID.; RESIGNATION, NOT ESTABLISHED; WITHDRAWAL OF CASH AND FIREARM BONDS DOES NOT PROVE INTENTION TO TERMINATE EMPLOYMENT.—** Petitioner was also firm in asserting that respondent voluntarily resigned. Oddly, it failed to present the alleged resignation letter of respondent. We also note that, in its March 24, 2006 letter, petitioner required respondent to report at its office for reassignment. It strains credulity that petitioner would require respondent to report for reassignment if the latter already tendered his resignation effective February 10, 2006. Petitioner capitalizes on the withdrawal of the cash and firearm bonds by respondent. It contends that the withdrawal of bonds sufficiently proved respondent's intention to terminate

his employment contract with petitioner. In support of its argument, petitioner cited *Roberta Gaa v. Nationwide Security and Allied Services, Inc. and Romeo Nolasco*, which declared that *cash bond and firearm bond are never withdrawable for as long as the security guard intends to remain an employee of the security agency*. Petitioner's reliance on *Gaa* is misplaced. We note that the declaration that *cash bond and firearm bond are never withdrawable for as long as the security guard intends to remain an employee of the security agency* was made by the NLRC. Although this Court affirmed the NLRC in a Minute Resolution dated September 26, 2007, still, the said NLRC ruling cannot be considered a binding precedent that can be invoked by petitioner in its favor.

**5. ID.; ID.; DISMISSAL OF EMPLOYEE; TEMPORARY INACTIVITY OR "FLOATING STATUS" OF A SECURITY GUARD FOR MORE THAN 6 MONTHS CONSTITUTES CONSTRUCTIVE DISMISSAL.—** Indubitably, respondent remained on "floating status" for more than six months. He was relieved on January 30, 2006, and was not given a new assignment at the time he filed the complaint on August 2, 2006. Jurisprudence is trite with pronouncements that the temporary inactivity or "floating status" of security guards should continue only for six months. Otherwise, the security agency concerned could be liable for constructive dismissal. The failure of petitioner to give respondent a work assignment beyond the reasonable six-month period makes it liable for constructive dismissal. The CA was correct in sustaining respondent's claim.

**6. ID.; ID.; ID.; BENEFITS OF AN UNJUSTLY DISMISSED EMPLOYEE.—** Under Article 279 of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full backwages, inclusive of allowances; and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Therefore, the CA committed no reversible error in sustaining the LA's award of backwages and ordering respondent's reinstatement.

**APPEARANCES OF COUNSEL**

*Vic P. Alvaro* for petitioner.
*Public Attorney's Office* for respondent.

**R E S O L U T I O N**

**NACHURA, *J.*:**

Petitioner Nationwide Security and Allied Services, Inc. (petitioner) appeals by *certiorari* under Rule 45 of the Rules of Court the December 9, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 104966, and the February 24, 2009 Resolution[2] denying its reconsideration.

Respondent Ronald Valderama (Valderama) was hired by petitioner as security guard on April 18, 2002. He was assigned at the Philippine Heart Center (PHC), Quezon City, until his relief on January 30, 2006. Valderama was not given any assignment thereafter. Thus, on August 2, 2006, he filed a complaint for constructive dismissal and nonpayment of 13th month pay, with prayer for damages against petitioner and Romeo Nolasco.

Petitioner presented a different version. It alleged that respondent was not constructively or illegally dismissed, but had voluntarily resigned. Its version of the facts was summarized by the National Labor Relations Commission (NLRC) in this wise:

> [Petitioner] x x x averred that [respondent] has committed serious violations of the security rules in the workplace. On January 31, 2004, he was charged with conduct unbecoming for which he was required to explain. Months after, he and four (4) other co-security guards failed to attend a mandatory seminar. For this, he was suspended for seven (7) days. On June 5, 2004, [respondent] displayed his discourteous and rude attitude upon his superior. He said to him in a high pitch of (sic) voice, "*ano ba sir, personalan ba ito, sabihin*

[1] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Mario L. Guariña III and Sesinando E. Villon, concurring*; rollo*, pp. 46-63.

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

*mo lang kung ano gusto mo.*" On June 8, 2004, [petitioner] required him to explain why no disciplinary action should be meted against him.

Again, on January 22, 2005, seven security guards, including [respondent], were made to explain their failure to report for duty without informing the office despite the instruction during their formation day which was held a day before. On January 31, 2006, Roy Datiles, Detachment Commander, reported that [respondent] confronted and challenged him in a high pitch and on top of his voice rudely showing discourtesy and rudeness. Being his superior, Datiles recommended the relief of [respondent] in the detachment effective January 31, 2006. By order of the Operations Manager, he was relieved from his post at the Philippine Heart Center. He was directed to report to the office. On February 10, 2006, he got his cash bond and firearm deposit. Despite his voluntary resignation, [petitioner] sent him a letter through registered mail to report for the office and give information on whether or not he was still interested for report for duty or not. [Respondent] did not bother to reply. Neither did he report to the office.[3]

After due proceedings, the Labor Arbiter (LA) rendered a decision, *viz.*:

This office is of the view that [respondent] was constructively dismissed. [Petitioner's] defense that [respondent] voluntarily resigned on February 10, 2006 is unsubstantiated (Annex "G"). What appears on record is the pro-forma resignation dated 04 October 2004 (Annex "D") long before this complaint was filed. It is a basic rule in evidence that the burden of proof is on the part of the party who makes the allegation. [Petitioner] failed to discharge the burden.

The general rule is that the filing of a complaint for illegal dismissal is inconsistent with resignation. The Supreme Court in *Shie Jie Corp. vs. National Federation of Labor*, G.R. No. 153148, July 15, 2005, held:

> "By vigorously pursuing the litigation of his action against petitioner, private respondent clearly manifested that he has no intention of relinquishing his employment which is, wholly incompatible [with] petitioner[']s assertion, that he voluntarily resigned."

[3] *Id.* at 156-157.

In *Great Southern Maritime Services Corp. vs. Acuña*, G.R. No. 140189, Feb. 28, 2005, it was ruled that the execution of the alleged "resignation letters cum release and quitclaim" to support the employer's claim that respondents voluntarily resigned is unavailing as the filing of the complaint for illegal dismissal is inconsistent with resignation.

Further it is significant to note that [respondent] was even required by [petitioner] to undergo a "Re-Training Course" conducted from February 20, 2006 to March 1, 2006 (Annex "F"). It is not only absurd but unbelievable that [respondent] who according to [petitioner] voluntarily resigned on February 10, 2006 and yet participated in the said "Re-Training Course" after his alleged resignation.

In this case, [respondent] was not posted since he was relieved from his post on January 30, 2006 until the filing of the instant complaint on August 2, 2006 or for a period of more than six (6) months. In *Valdez vs. NLRC*, 286 SCRA 87, the Supreme Court held that, However, it must be emphasized that such temporary activity should continue for six months. Otherwise, the security agency concerned could be held liable for constructive dismissal.

This office is in accord with [respondent's] argument that the letter sent to the latter to report for work is an absurdity considering [petitioner's] claim that [respondent] voluntarily resigned. x x x.[4]

The LA disposed thus:

WHEREFORE, the foregoing considered, judgment is hereby rendered declaring [respondent] to have been constructively dismissed. [Petitioner is] ordered to reinstate [respondent] to his former position without loss of seniority rights and other benefits. Further, [petitioner] Nationwide Security & Allied Services, Inc. is ordered to pay [respondent] the following monetary awards[:]

| | |
|---|---|
| 1. Backwages (see computation) | 148, 125.00 |
| 2. Prop. 13th Month Pay<br>1/06 - 1/30/06 = 97 mo.<br>₱450 x 30 x 1/12 x .97 | 1,091.25 |
| TOTAL AWARD | 149,216.25 |

[4] *Id.* at 110-112.

xxx xxx xxx

SO ORDERED.[5]

On appeal, the NLRC modified the LA decision. It declared that respondent was neither constructively terminated nor did he voluntarily resign. As such, respondent remained an employee of petitioner. The NLRC thus ordered respondent to immediately report to petitioner and assume his duty. It also deleted the award of backwages and the order of reinstatement by the LA for lack of basis.[6]

The NLRC decreed that:

> WHEREFORE, the foregoing considered, the instant appeal is PARTIALLY GRANTED deleting the award of backwages and order of reinstatement. [Respondent] is directed to report immediately and [petitioner is] ordered to accept him. [Petitioner is] also ordered to pay his 13th month pay in the amount of ₱1,091.25 as ordered in the Decision.
>
> SO ORDERED.[7]

Respondent filed a motion for reconsideration, but the NLRC denied it on June 11, 2008.

Respondent went to the CA via *certiorari*. On December 9, 2008, the CA rendered a Decision[8] setting aside the resolutions of the NLRC and reinstating that of the LA. In gist, the CA sustained respondent's claim of constructive dismissal. It pointed out that respondent remained on floating status for more than six (6) months, and petitioner offered no credible explanation why it failed to provide a new assignment to respondent after he was relieved from PHC. It likewise rejected petitioner's claim that respondent voluntarily resigned, holding that no convincing evidence was offered to prove it. The CA found it odd that

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

[6] *Id*. at 155-159.

[7] *Id*. at 158.

[8] *Supra* note 1.

respondent attended the re-training course conducted by petitioner from February 20, 2006 to March 1, 2006, if respondent indeed resigned on February 10, 2006. The CA, therefore, ruled against the legality of respondent's dismissal and sustained the LA's award of backwages and order of reinstatement in favor of respondent.

The CA decreed, thus:

> WHEREFORE, premises considered, the Petition is GRANTED. The Resolutions dated 27 March 2008 and 11 June 2008 of the National Labor Relations Commission (Third Division) in NLRC NCR CASE NO. 00-08-06365-06; NLRC CA NO. 051626-07 are **REVERSED** and **SET ASIDE**. The Decision dated 29 November 2006 of Labor Arbiter Enrique L. Flores, Jr. is hereby REINSTATED. Costs against [petitioner].
>
> SO ORDERED.[9]

Petitioner filed a motion for reconsideration, but the CA denied it on February 24, 2009.[10]

Hence, this appeal by petitioner faulting the CA for sustaining respondent's claim of constructive dismissal.

The appeal lacks merit.

In cases involving security guards, a relief and transfer order in itself does not sever employment relationship between a security guard and his agency. An employee has the right to security of tenure, but this does not give him a vested right to his position as would deprive the company of its prerogative to change his assignment or transfer him where his service, as security guard, will be most beneficial to the client. Temporary "off-detail" or the period of time security guards are made to wait until they are transferred or assigned to a new post or client does not constitute constructive dismissal, so long as such status does not continue beyond six months.[11]

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[9] *Id*. at 63.

[10] *Supra* note 2.

[11] *Megaforce Security and Allied Services, Inc. v. Lactao*, G.R. No. 160940, July 21, 2008, 559 SCRA 110, 116-117.

The *onus* of proving that there is no post available to which the security guard can be assigned rests on the employer, *viz.*:

> When a security guard is placed on a "floating status," he does not receive any salary or financial benefit provided by law. Due to the grim economic consequences to the employee, the employer should bear the burden of proving that there are no posts available to which the employee temporarily out of work can be assigned.[12]

Respondent claims that he was relieved from PHC on January 30, 2006; thereafter, he was not given a new assignment. Petitioner, on the other hand, asserts that respondent refused to report to petitioner for his reassignment. Otherwise stated, petitioner claims that respondent abandoned his job.

The jurisprudential rule on abandonment is constant. It is a matter of intention and cannot lightly be presumed from certain equivocal acts. To constitute abandonment, two elements must concur: (1) the failure to report for work or absence without valid or justifiable reason; and (2) a clear intent, manifested through overt acts, to sever the employer-employee relationship.[13]

In this case, petitioner failed to establish clear evidence of respondent's intention to abandon his employment. Except for petitioner's bare assertion that respondent did not report to the office for reassignment, no proof was offered to prove that respondent intended to sever the employer-employee relationship.

Besides, the fact that respondent filed the instant complaint negates any intention on his part to forsake his work. It is a settled doctrine that the filing of a complaint for illegal dismissal is inconsistent with the charge of abandonment, for an employee who takes steps to protest his dismissal cannot by logic be said to have abandoned his work.[14]

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[12] *Pido v. National Labor Relations Commission*, G.R. No. 169812, February 23, 2007, 516 SCRA 609, 616-617.

[13] *CRC Agricultural Trading v. National Labor Relations Commission*, G.R. No. 177664, December 23, 2009, 609 SCRA 138, 148.

[14] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003).

Similarly, we cannot accept petitioner's argument that respondent voluntarily resigned.

Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether, he or she, in fact, intended to sever his or her employment.[15]

In *Mobile Protective & Detective Agency v. Ompad*[16] and *Mora v. Avesco Marketing Corporation*,[17] we ruled that should the employer interpose the defense of resignation, it is incumbent upon the employer to prove that the employee voluntarily resigned. On this point, petitioner failed to discharge the burden.

Petitioner was also firm in asserting that respondent voluntarily resigned. Oddly, it failed to present the alleged resignation letter of respondent. We also note that, in its March 24, 2006 letter,[18] petitioner required respondent to report at its office for reassignment. It strains credulity that petitioner would require respondent to report for reassignment if the latter already tendered his resignation effective February 10, 2006.

Petitioner capitalizes on the withdrawal of the cash and firearm bonds by respondent. It contends that the withdrawal of bonds sufficiently proved respondent's intention to terminate his employment contract with petitioner. In support of its argument, petitioner cited *Roberta Gaa v. Nationwide Security and Allied*

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[15] *BMG Records (Phils.), Inc. v. Aparecio*, G.R. No. 153290, September 5, 2007, 532 SCRA 300, 313-314.

[16] 497 Phil. 621 (2005).

[17] G.R. No. 177414, November 14, 2008, 571 SCRA 226.

[18] *Rollo*, p. 221.

*Services, Inc. and Romeo Nolasco*,[19] which declared that *cash bond and firearm bond are never withdrawable for as long as the security guard intends to remain an employee of the security agency*.

Petitioner's reliance on *Gaa* is misplaced. We note that the declaration that *cash bond and firearm bond are never withdrawable for as long as the security guard intends to remain an employee of the security agency* was made by the NLRC.[20] Although this Court affirmed the NLRC in a Minute Resolution dated September 26, 2007,[21] still, the said NLRC ruling cannot be considered a binding precedent that can be invoked by petitioner in its favor.

As explained by this Court in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*:[22]

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter

[19] NLRC NCR 00-08-09249-04 (CA No. 046155-05); *rollo*, pp. 142-153.

[20] *Id.* at 153.

[21] G.R. No. 179206, September 26, 2007.

[22] G.R. No. 167330, September 18, 2009, 600 SCRA 413, 446-447.

case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the *proviso* of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.

Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor.

Furthermore, the filing of the complaint belies petitioner's claim that respondent voluntarily resigned. As held by this Court in *Valdez v. NLRC*:[23]

It would have been illogical for herein petitioner to resign and then file a complaint for illegal dismissal. Resignation is inconsistent with the filing of the said complaint.

Indubitably, respondent remained on "floating status" for more than six months. He was relieved on January 30, 2006, and was not given a new assignment at the time he filed the complaint on August 2, 2006. Jurisprudence is trite with pronouncements that the temporary inactivity or "floating status" of security guards should continue only for six months. Otherwise, the security agency concerned could be liable for constructive

[23] 349 Phil. 760, 767 (1998).

dismissal.[24] The failure of petitioner to give respondent a work assignment beyond the reasonable six-month period makes it liable for constructive dismissal. The CA was correct in sustaining respondent's claim.

If there is a surplus of security guards caused by lack of clients or projects, the security agency may resort to retrenchment upon compliance with the requirements set forth in the Labor Code. In this way, the security agency will not to be held liable for constructive dismissal and be burdened with the payment of backwages.

Under Article 279[25] of the Labor Code, an employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges; to his full backwages, inclusive of allowances; and to other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[26] Therefore, the CA committed no reversible error in sustaining the LA's award of backwages and ordering respondent's reinstatement.

**WHEREFORE,** the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 104966 are *AFFIRMED*.

**SO ORDERED.**

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

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[24] *Soliman Security Services, Inc. v. Court of Appeals*, 433 Phil. 902, 910 (2002); *Valdez v. NLRC*, *supra*, at 765-766; *Superstar Security Agency, Inc. v. NLRC*, G.R. No. 81493, April 3, 1990, 184 SCRA 74, 77.

[25] ART. 279. Security of Tenure. — In cases of regular employment, the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

[26] *Megaforce Security and Allied Services, Inc. v. Lactao*, *supra* note 11, at 118-119.

**SECOND DIVISION**

[G.R. No. 187077. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ALEX CONDES *Y* GUANZON,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; GUIDING PRINCIPLES IN REVIEWING RAPE CASES.—** In the disposition and review of rape cases, the Court is guided by three settled principles: *First*, an accusation for rape can be made with facility and it is difficult to prove but more difficult for the accused, though innocent, to disprove; *Second*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and *Third*, the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. Corollary to the above principles is the rule that the credibility of the victim is always the single most important issue in the prosecution of a rape case. Conviction or acquittal in a rape case more often than not depends almost entirely on the credibility of the complainant's testimony because, by the very nature of this crime, it is usually the victim alone who can testify as to its occurrence.

**2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSIONS THEREON GENERALLY DESERVE GREAT RESPECT AND ARE OFTEN ACCORDED FINALITY.—** Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath" are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore,

can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying. The rule finds an even more stringent application where said findings are sustained by the CA.

**3. CRIMINAL LAW; RAPE; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.—** When offended parties are young and immature girls from 12 to 16 years of age, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the public humiliation to which they would be exposed by a court trial, if their accusation were not true. Youth and immaturity are generally badges of truth and sincerity. It bears stressing that not an iota of evidence was presented by the defense showing that AAA's account of her defilement was not true.

**4. ID.; ID.; INTIMIDATION; WHEN A VICTIM IS THREATENED WITH BODILY INJURY, SUCH CONSTITUTES INTIMIDATION SUFFICIENT TO BRING THE VICTIM TO SUBMISSION TO THE LUSTFUL DESIRES OF THE RAPIST.—** The Court is convinced that the accused did employ threat and intimidation to subjugate AAA's will and break her resistance. She categorically stated that he poked a bolo at her neck and threatened to kill her if she would make a noise and resist his advances. Undoubtedly, fear and helplessness gripped her. To an innocent girl who was only 14 years old, his menacing acts engendered in her a well-grounded fear that if she would resist or not yield to his bestial demands, he would make good his threats. She was obviously cowed into submission by the real and present threat of physical harm on her person. Obviously, she was silenced to do his bidding. Her submission was re-enforced by the fact that the accused was her stepfather who exercised moral ascendancy and influence over her. When a victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a knife or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.

**5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY THE DELAY IN REPORTING THE INCIDENT OF RAPE.—** AAA's failure to immediately report to anyone what she had suffered in the hands of her stepfather does not vitiate the integrity of her claim. Apparently, the accused succeeded in instilling fear upon her young mind when he threatened to kill her and her siblings should she say a word about the incident. Thus, paralyzed by the fear that he would make good his threats, she remained silent and only broke it when he tried to repeat the sexual assault. The subsequent attack brought her silence to the breaking point and forced her to come out in the open to prevent and avoid further assaults. Delay in reporting an incident of rape is not an indication of a fabricated charge. Neither does it necessarily cast doubt on the credibility of the complainant.

**6. ID.; ID.; ID.; WHERE THE TESTIMONY OF A RAPE VICTIM IS CREDIBLE, SUCH TESTIMONY MAY BE THE SOLE BASIS OF CONVICTION.—** 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 steadfast throughout their direct and cross-examination. After all, ill motive is never an essential element of a crime. It becomes irrelevant and of no significance where there are affirmative, nay, categorical declarations towards the culpability of the accused for the felony. Well-entrenched is the doctrine which is founded on reason and experience that when the victim testifies that she has been raped, and her testimony is credible, such testimony may be the sole basis of conviction. In this case, there could not have been a more powerful testament to the truth than her public outpouring of her unspoken grief.

**7. CRIMINAL LAW; RAPE; CAN BE COMMITTED IN EVEN THE UNLIKELIEST PLACES AND CIRCUMSTANCES AND BY THE MOST UNLIKELY PERSONS.—** According to AAA, her siblings were all outside the house while her grandmother was doing an errand in the market when the accused molested her. Granting *arguendo* that there were other people in the house when the rape was committed, rapists are not deterred from committing their odious act by the presence of people nearby or the members of the family. Lust, being a very powerful human urge, is, to borrow from *People v. Virgilio*

*Bernabe,* "no respecter of time and place." Rape can be committed in even the unlikeliest places and circumstances and by the most unlikely persons. The beast in a man bears no respect for time and place, driving him to commit rape anywhere — even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.

**8. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE AND FORTHRIGHT IDENTIFICATION OF THE ACCUSED AS THE PERPETRATOR OF THE CRIME.—** Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility. It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence. The barefaced denial of the charge by the accused cannot prevail over the positive and forthright identification of him as the perpetrator of the dastardly act.

**9. ID.; ID.; ALIBI; TO PROSPER, THE ACCUSED MUST PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED AND THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.—** Alibi x x x is the weakest of all defenses for it can be easily contrived. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. In this case, not a shred of evidence was adduced by the accused to substantiate his alibi.

**10. CRIMINAL LAW; RAPE; QUALIFYING CIRCUMSTANCES OF MINORITY AND RELATIONSHIP; SHOULD BE ALLEGED IN THE INFORMATION AND PROVEN DURING THE TRIAL.—** The twin requisites of minority of the victim and her relationship with the offender being special qualifying circumstances, which increase the penalty as opposed to a generic aggravating circumstance which only affects the

period of the penalty, should be alleged in the information because of the right of the accused to be informed of the nature and cause of the accusation against him. The Revised Rules on Criminal Procedure which took effect on December 1, 2000, explicitly mandates that the information must state in ordinary and concise language the qualifying and aggravating circumstances attending an offense. Although the crime of rape in this case was committed before the effectivity of the new rules, it should be applied retroactively, as the same is favorable to an accused.

**11. ID.; RAPE WITH THE USE OF A DEADLY WEAPON; PENALTY.—** The Court notes x x x that the Information also alleged that the accused committed the rape "while conveniently armed with a bolo through force, violence and intimidation." The prosecution was able to prove during trial his use of a deadly weapon and threatening words which caused the victim to submit to his will for fear for her life and personal safety. When the accused commits rape with the use of a deadly weapon, the penalty is the range of two indivisible penalties of *reclusion perpetua* to death. In this connection, Article 63 of the Revised Penal Code provides that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

**12. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; MANDATORY UPON THE FINDING OF THE FACT OF RAPE.—** Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.

**13. ID.; ID.; MORAL DAMAGES; SHOULD BE AWARDED IN RAPE CASES WITHOUT NEED OF PROOF.—** Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma, with mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital by the victim at the trial.

**14. ID.; ID.; EXEMPLARY DAMAGES; JUSTIFIED WHEN THE CRIME IS ATTENDED BY AN AGGRAVATING CIRCUMSTANCE, WHETHER ORDINARY OR QUALIFYING.—** The award of exemplary damages is likewise

called for because the rape was committed with the use of a deadly weapon. In *People v. Silverio Montemayor*, the Court has stated that "exemplary damages are justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. Since the qualifying circumstance of the use of a deadly weapon was present in the commission of the rapes subject of these cases, exemplary damages x x x may be awarded to the offended party in each case."

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**MENDOZA, *J.*:**

This is an appeal from the July 31, 2008 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CR-H.C. No. 00926, which affirmed the July 21, 2003 Decision[2] of the Regional Trial Court, Branch 34, Calamba City *(RTC)*, in Criminal Case No. 7383-2000-C, finding the accused guilty beyond reasonable doubt of the crime of rape committed against AAA.[3]

Accused Alex Condes *y* Guanzon *(accused)* was charged with the crime of rape in an information[4] dated February 23, 2000, the accusatory portion of which reads:

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[1] CA *rollo*, pp. 92-103. Penned by Associate Justice Ricardo R. Rosario with Rebecca De Guia-Salvador and Associate Justice Vicente S.E. Veloso, concurring.

[2] Records, pp. 313-320. Penned by Judge Jesus A. Santiago.

[3] Per this Court's Resolution dated 19 September 2006 in A.M. No. 04-11-09-SC, as well as our ruling in *People v. Cabalquinto* (G.R. No. 167693, 19 September 2006, 502 SCRA 419), pursuant to Republic Act No. 9262 or the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victims and their immediate family members other than the accused are to be withheld and fictitious initials are to be used instead. Likewise, the exact addresses of the victims are to be deleted.

[4] Records, p. 61.

That on or about February 14, 1999 at Brgy. Bitin, Municipality of Bay, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused while conveniently armed with a bolo through force, violence and intimidation and with lewd design, did then and there willfully, unlawfully and feloniously have carnal relation with one AAA, a fourteen (14) year old minor, against her will and consent, to her damage and prejudice.

CONTRARY TO LAW.

**Version of the Prosecution**

The thrust of the prosecution's evidence has been summarized by the Office of the Solicitor General *(OSG)* in its Brief[5] as follows:

On the eve[ning] of February 14, 1999, the 14-year old victim, AAA, was left alone with her stepfather, appellant Alex Condes, at their house in Brgy. Bitin, Laguna. She was cleaning the upstairs area of the house, when appellant entered the room, pointed a bolo at her neck, and warned her not to shout. He pulled her down to the floor, removed her clothes, and when she tried to push him away – subdued her with a threat of a cut from his bolo. Appellant removed his own garments, positioned himself on top of his stepdaughter, and succeeded in inserting his penis into the victim. He made push and pull movement for about ten minutes. The pain the victim felt in her sex organ was excruciating.

After satisfying himself, appellant wiped his sex organ. Threatening to kill her brothers and sister, he made AAA promise not to tell anyone about the incident. She kept the unpalatable promise until December 30, 1999, when appellant tried to rape her again. Determined to obtain justice, the victim called her aunt in San Pablo City and disclosed the revolting incident. On January 4, 2000, accompanied by her aunt, AAA was taken to the PNP Regional Crime Laboratory Office, Camp Vicente Lim, Canlubang Calamba, Laguna, where she was examined by Dr. Joselito Rodrigo whose findings revealed the following:

> "…scanty growth of pubic hair. Labia majora are full, convex and coapted with pinkish brown labia minora presenting in between. On separating the same is disclosed an elastic fleshy

[5] CA *rollo*, pp. 73-85.

type hymen with deep-healed laceration at 6 o'clock position. External vaginal orifice offers strong resistance to the introduction of the examining index finger. Vaginal canal is narrow with prominent rugosities. Cervix is soft…. Findings are compatible with 9 to 10 weeks pregnant already…"

**Version of the Defense**

In his Brief,[6] the accused denied the charges against him and presented his own version of the circumstances before and during the alleged incident. Thus:

Rose Catalan is a lady guard of the Guzent Incorporated in Tiwi, Albay, where the accused used to work since 1991. She is in-charge of the time records of all the employees in the said establishment.

On February 13, 1999, the accused reported for work, which was indicated in their logbook. The accused left the company at 11:10 in the morning but proceeded to Tiwi Hot Spring.

Alex Condes vehemently denied the accusation hurled against him. He recalled that in the morning of February 14, 1999, he returned the service vehicle to his office at No. 1237 EDSA, Quezon City. He went home soon thereafter to take a short nap in his house in Quezon City. At 5:00 o'clock in the morning, he decided to go to his house in Brgy. Bitin, Bay, Laguna. Upon reaching home, he went to sleep again until his brother-in-law and a companion arrived. They had a drinking spree. The complainant asked permission to attend a fiesta at her friend's house.

At 7:00 o'clock in the evening, he asked his mother-in-law and the complainant to prepare his things as he would return to Manila the following day. He left his house on February 15, 1999 at 3:30 in the morning.

Alberto Navarette, *barangay* captain of Bitin, in Bay, Laguna, averred that he saw the accused inside the latter's house in the morning of February 14, 1999. He also saw the complainant washing dishes in their kitchen. Then, in the afternoon, he passed by the house of the accused and saw him carrying a child while the complainant was in front of their house. He did not notice anything unusual.

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[6] *Id.* at 75-87.

On July 21, 2003, the RTC rendered its judgment convicting the accused guilty beyond reasonable doubt of simple rape. It rejected the defenses of denial and alibi proffered by the accused stating that said defenses fell flat in the face of the testimony of AAA on her harrowing ordeal in the hands of the accused. It found her testimony to be credible, natural, convincing, consistent with human nature, and in the normal course of events.[7] The lower court, however, ruled that the accused can only be convicted of simple rape and not in its qualified form. It reasoned out that while the prosecution was able to establish the aggravating/qualifying circumstances of minority and relationship which would warrant the imposition of death penalty under Article 266-B of the Revised Penal Code, the circumstance of stepfather-daughter relationship was not alleged in the information. Thus, the dispositive portion of the RTC Decision reads:

> WHEREFORE, for the foregoing reasons, the herein accused ALEX CONDES *Y* GUANZON is found GUILTY beyond reasonable doubt as principal by direct participation of the crime of rape. There being no modifying circumstances properly alleged in the Information to be appreciated, the accused is hereby sentenced to suffer the indivisible penalty of *RECLUSION PERPETUA*. The accused is hereby ordered to indemnify the victim AAA ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages.
>
> SO ORDERED.[8]

The records of the case were originally transmitted to this Court on appeal. Pursuant to *People v. Efren Mateo*,[9] the Court issued a resolution[10] dated January 19, 2005 transferring this case to the CA for appropriate action and disposition.

The CA eventually affirmed[11] the guilty verdict on the basis of AAA's testimony which it found credible and sufficient to

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[7] Records, p. 318.

[8] *Id.* at 320.

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

[10] CA *rollo*, p. 28.

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

sustain a conviction. It debunked the defense of alibi of the accused holding that it was not satisfactorily established and not at all persuasive when pitted against the positive and convincing identification by the victim.

On August 29, 2008, the accused filed the Notice of Appeal,[12] which was given due course by the CA in its Minute Resolution[13] dated September 8, 2008.

On June 1, 2009, the Court issued the Resolution[14] requiring the parties to submit their respective supplemental briefs. On July 7, 2009, the OSG manifested[15] that it would forego the filing of a supplemental brief if appellant should opt not to file one. On October 12, 2009, the Court dispensed[16] with the filing by the Public Attorney's Office of a supplemental brief for appellant when it did not file one during the prescribed period.

From the Appellant's Brief of the accused filed with the CA, he prayed for the reversal and setting aside of the guilty verdict anchored on the following:

**ASSIGNMENT OF ERRORS**

**I**

**THE TRIAL COURT GRAVELY ERRED IN FAILING TO CONSIDER THE MOTIVE BEHIND THE FILING OF THE INSTANT CASE AGAINST THE ACCUSED-APPELLANT.**

**II**

**THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED ALTHOUGH HIS ACTUAL PARTICIPATION IN THE ALLEGED ACT WAS NOT PROVEN WITH CERTAINTY.**

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[12] *Id.* at 104-105.

[13] *Id.* at 107.

[14] *Rollo*, p. 19.

[15] *Id.* at 21-22.

[16] *Id.* at 35.

In essence, the accused claims that AAA merely concocted the accusation of rape out of hatred because she resented the hard discipline imposed by him and she feared that he would punish her once he would learn that she had a boyfriend and pregnant at that. He tags AAA's story of defloration as both preposterous and ridiculous conjured by an overly imaginative individual anchored on ill motives.

Professing innocence, he insists that he could not have possibly committed the offense charged as he was pre-occupied and even left the house on the day of the alleged commission of the sexual assault. He discredits AAA's testimony stressing that it would be difficult for him to commit the crime considering that her siblings and grandmother were staying in the same house. Thus, he concludes that the evidence for the prosecution failed to meet that quantum of proof necessary to warrant his conviction.

The OSG, on the other hand, counters that AAA's testimony was credible and sufficient to convict and that the culpability of the accused for the crime of rape was proven beyond reasonable doubt.

**The Court's Ruling**

The appeal must fail.

In the disposition and review of rape cases, the Court is guided by three settled principles: *First*, an accusation for rape can be made with facility and it is difficult to prove but more difficult for the accused, though innocent, to disprove; *Second*, in view of the intrinsic nature of the crime of rape where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and *Third*, the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[17] Corollary to the above principles is the rule that the credibility of the victim is always the single

[17] *People v. Herminigildo Salle Sobusa*, G.R. No. 181083, January 21, 2010, 610 SCRA 538, 551.

most important issue in the prosecution of a rape case.[18] Conviction or acquittal in a rape case more often than not depends almost entirely on the credibility of the complainant's testimony because, by the very nature of this crime, it is usually the victim alone who can testify as to its occurrence.

In his Brief, the accused put in issue the credibility of AAA's testimony contending that she merely fabricated the accusation to place him behind bars and rid him out of her life forever. This contention deserves scant consideration.

Time and again, the Court has held that when the decision hinges on the credibility of witnesses and their respective testimonies, the trial court's observations and conclusions deserve great respect and are often accorded finality. The trial judge has the advantage of observing the witness' deportment and manner of testifying. Her "furtive glance, blush of conscious shame, hesitation, flippant or sneering tone, calmness, sigh, or the scant or full realization of an oath"[19] are all useful aids for an accurate determination of a witness' honesty and sincerity. The trial judge, therefore, can better determine if witnesses are telling the truth, being in the ideal position to weigh conflicting testimonies. Unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case, its assessment must be respected for it had the opportunity to observe the conduct and demeanor of the witnesses while testifying and detect if they were lying.[20] The rule finds an even more stringent application where said findings are sustained by the CA.[21]

In the case at bench, the Court finds no cogent reason to depart from the trial court's findings and its calibration of private complainant's credibility.

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[18] *People v. Enrique Ceballos, Jr.*, G.R.No.169642, September 14, 2007, 533 SCRA 493, 508.

[19] *People v. Grande,* G.R. No. 170476, December 23, 2009, 609 SCRA 93.

[20] *People v. Wenceslao Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682, 696-697.

[21] *People v. Boisan Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 547.

A meticulous review of the transcript of stenographic notes would show that AAA narrated in the painstaking and degrading public trial her unfortunate and painful ordeal in the hands of the accused in a logical, straightforward, spontaneous, and frank manner. There were no perceptible artificialities or pretensions that tarnished the veracity of her testimony. She recounted the tragic experience, unflawed by inconsistencies or contradictions in its material points and unshaken by the tedious and grueling cross-examination. Her declaration revealed each and every detail of the incident and gave no impression whatsoever that her testimony was a mere fabrication. Had her story been contrived, she would not have been so consistent throughout her testimony in the face of intense and lengthy interrogation.

When offended parties are young and immature girls from 12 to 16 years of age, courts are inclined to lend credence to their version of what transpired, considering not only their relative vulnerability, but also the public humiliation to which they would be exposed by a court trial, if their accusation were not true.[22] Youth and immaturity are generally badges of truth and sincerity.[23] It bears stressing that not an iota of evidence was presented by the defense showing that AAA's account of her defilement was not true.

Without hesitation, AAA pointed an accusing finger against the accused, her stepfather no less, as the person who sexually assaulted her on that fateful night of February 14, 1999. She vividly recalled that he poked a bolo at her neck and told her not to shout or else he would kill her. Bent on satisfying his lust, he embraced and pulled her down on the floor. He took off her pajamas, undressed himself and placed himself on top of her. She resisted by pushing him away but he again pointed the bolo and ordered her not to move or shout. He then succeeded in penetrating her organ with his own causing her excruciating pain. Thereafter, he warned her that he would kill her and her

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[22] *People v. Jaime Antonio*, G.R. No. 157269, June 3, 2004, 430 SCRA 619, 627.

[23] *People v. Domingo Araojo*, G.R. No. 185203, September 17, 2009, 600 SCRA 295, 307.

siblings if she would tell anyone about what happened. The following excerpts from the Transcript of Stenographic Notes are revealing:

> Fiscal Loreto M. Masa
> (On Direct Examination)
>
> Q: On February 14, 1999, tell us where you were?
> A: In the house, sir.
>
> Q: When you said "in the house," are you referring to the house in Bitin?
> A: Yes, sir.
>
> Q: Do you recall of any unusual incident that happened to you on February 14, 1999?
> A: Yes, sir.
>
> Q: Tell us what was that unusual incident you said you experienced?
> A: Alex Condes raped me, sir.
>
> Q: Where were you raped by Alex Condes?
> A: In our house in the evening in Bitin.
>
> Q: And how did he rape you?
> A: Because at that time, my grandmother and my brothers and sisters, except my youngest sister, were not in the house and I was alone upstairs and was cleaning the house when he pointed a bolo at me.
>
> Q: In what portion of your body this bolo was pointed at you?
> A: In my neck, sir.
>
> Q: Where were you? What portion of the house were you at that time he pointed a bolo in your neck?
> A: Upstairs sir, he was also there.
>
> Q: What did the accused tell you when he pointed a bolo at your neck?
> A: He told me not to shout or else he will kill me.
>
> Q: What did you do when he told you not to shout or else he would kill you?
> A: I just asked him "*Papa, bakit po*?" and because he was pointing a bolo at me I was frightened.

Q: And when you ask her [*sic*] "*Papa, bakit po*?" what did he do?
A: Nothing, sir, he continued.

Q: When you said he continued, what do you mean? What did he do to you?
A: Because I was then at the door and was then about to go to the other room when he pulled me and embraced me.

Q: When you said he pulled you where were you pulled by the accused?
A: To the bed, sir.

Q: At the time you were being pulled and being embraced, what did you do?
A: I was resisting, sir.

Q: What happened after you said the accused was pulling you and embracing you and you were resisting? What happened next?
A: Nothing, sir. I was not able to do anything because he embraced me.

Q: You said you were not able to evade him when he was embracing you, what did he do next to you?
A: He removed my clothes.

Q: What did you do when the accused removed your clothes?
A: I was pushing him.

Q: What happened when you were pushing him?
A: He again pointed the bolo and told me not to move or to shout.

Q: What did he do after he again threatened you?
A: Because I was very frightened, he forced me to do what he wanted me to do.

Q: Was the accused able to remove your clothes?
A: Yes, sir.

Q: What clothes?
A: Pajamas, sir.

Q: How about the accused?
A: His sando and shorts, sir.

Q: What was your position at the time you said the accused was able to do it from you?
A: I was lying down, sir.

Q: Where were you lying down, on the bed or on the floor?
A: On the floor, sir.

Q: How did the accused rape you after removing your clothes?
A: He was forcing "*yung ano nya sa ari ko*."

Q: Was he able to insert his penis to your private organ?
A: Yes, sir.

Q: What did you feel when your stepfather was able to insert his private organ to yours?
A: It was painful, sir.

Q: For how long was he on top of you?
A: Five to ten minutes, sir.

Q: What were you doing at the time your stepfather was doing it to you when he was inserting his private organ against your will?
A: I was pushing him.

Q: What happened after you said you were pushing him?
A: Nothing, sir.

Q: And you said he was able to rape you and inserted his private organ to you, what did he do next after he was able to insert your (sic) private organ to your vagina?
A: He was pumping me.

Q: When you said "pump," will you explain?
A: He was "*kinakadyot ako*."

Q: That was while he was on top of you?
A: Yes, sir.

Q: After pumping you, what did he do next?
A: He was kissing me, sir.

Q: When he was kissing you, what were you doing?
A: I was pushing his face, sir.

Q: What happened next?
A: Because I cannot do anything he was able to finish.

Q: Why were you able to say that he was able to finish?
A: Because when he removed his private organ from my private part, he wiped it.

Q: After he removed his private organ from your organ what did he do next?
A: He told me not to complain or else he would kill us.

Q: What did you feel by his threatening against you and your brothers and sisters that you would be killed?
A: I was frightened, sir.

Q: After threatening you that you and your brothers and sisters would be killed, what did he do next?
A: So he told me to go down.

Q: How about the accused, where was he?
A: He stayed inside.

Q: Where was your mother at that time?
A: She was in Dubai, sir.

Q: How about your grandmother, where was she?
A: She was in the market, sir.

Q: You said your brothers and sisters were not in your house, where were they?
A: They were outside the house. I do not know what were they doing outside the house.

Q: You said you went down, what did you do when you went down?
A: Because "*diring-diri ako*" I went inside the bathroom, sir.

Q: What did you do there?
A: I took a bath, sir.[24]

The Court is convinced that the accused did employ threat and intimidation to subjugate AAA's will and break her resistance. She categorically stated that he poked a bolo at her neck and threatened to kill her if she would make a noise and resist his advances. Undoubtedly, fear and helplessness gripped her. To an innocent girl who was only 14 years old, his menacing acts engendered in her a well-grounded fear that if she would resist

[24] TSN dated June 14, 2000, pp. 4-8.

or not yield to his bestial demands, he would make good his threats. She was obviously cowed into submission by the real and present threat of physical harm on her person. Obviously, she was silenced to do his bidding. Her submission was re-enforced by the fact that the accused was her stepfather who exercised moral ascendancy and influence over her. When a victim is threatened with bodily injury, as when the rapist is armed with a deadly weapon, such as a knife or bolo, such constitutes intimidation sufficient to bring the victim to submission to the lustful desires of the rapist.[25]

In the present case, it appears that AAA chose to suffer the February 14, 1999 rape in silence had it not been for the second attempt to defile her on December 30, 1999. After he mauled her when she resisted, she was compelled to seek her aunt's assistance. This was apparent from her testimony when she declared:

Fiscal Masa to Witness:
(Redirect Examination)

Q: You said that you were not able to report to anybody that you were raped by your stepfather because of that threat[s] that your brothers and sister will be killed, why did you report or give statement to the police on January 1, 2000?

The Fiscal: May I manifest for the record, your Honor that the witness is crying.

A: Because on December 30, he was again about to rape me but I resisted so he mauled me and poked a bolo at me and told me that he will kill my aunt so the following day I went to San Pablo to my aunt, who is near to me, and told her what happened and what he has done to me that he mauled me and will kill my aunt.

Q: And what did your aunt in San Pablo do after you confided to her what the accused did to you?
A: She immediately reported the incident to Sgt. Manaog.

Q: Do you know what Sgt. Manaog did after your aunt confided to him what happened to you?

[25] *People v. Capt. Marcial Llanto*, 443 Phil. 580, 597 (2003).

A: He was arrested, sir.

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Atty. Ingente:
Recross, your Honor.

Q: When you told the incident to your aunt you were also thinking of your brothers and sisters?
A: Yes, sir.

Q: And in fact perhaps at that time you were afraid that your aunt will report the incident to the police?
A: No, sir because at that time I was also prepared to report the incident.

Q: But you know that the accused made threats that he will kill your brothers and sister?
A: Yes, sir but I was then ready because I was thinking then that may be he was threatening me because he want to rape me so I decided to file a complaint. And I was also thinking that how would he kill his own children?[26]

AAA's failure to immediately report to anyone what she had suffered in the hands of her stepfather does not vitiate the integrity of her claim. Apparently, the accused succeeded in instilling fear upon her young mind when he threatened to kill her and her siblings should she say a word about the incident. Thus, paralyzed by the fear that he would make good his threats, she remained silent and only broke it when he tried to repeat the sexual assault. The subsequent attack brought her silence to the breaking point and forced her to come out in the open to prevent and avoid further assaults. Delay in reporting an incident of rape is not an indication of a fabricated charge. Neither does it necessarily cast doubt on the credibility of the complainant.[27]

Any insinuation of ill motive on the part of AAA in the filing of the rape case against her stepfather does not merit any consideration. It is highly improbable that she would concoct a sordid tale of sexual abuse against the accused, whom she called

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[26] TSN dated June 15, 2000, pp. 21-22.

[27] *People v. Adriano Leonardo*, G.R. No. 181036, July 6, 2010.

"Papa," simply because she was reproved or censured for her irresponsible ways and was afraid that he would punish her for getting pregnant by her boyfriend. Parental punishment is not enough reason for a young girl to falsely accuse her stepfather of a crime so grave as rape. Reverence and respect for the elders are two values deeply ingrained in Filipino children.[28]

Granting AAA indeed resented his stepfather, the Court does not necessarily cast doubt on AAA's credibility as witness. 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[29] who remained steadfast throughout their direct and cross-examination.[30] After all, ill motive is never an essential element of a crime. It becomes irrelevant and of no significance where there are affirmative, nay, categorical declarations towards the culpability of the accused for the felony. Well-entrenched is the doctrine which is founded on reason and experience that when the victim testifies that she has been raped, and her testimony is credible, such testimony may be the sole basis of conviction.[31] In this case, there could not have been a more powerful testament to the truth than her public outpouring of her unspoken grief.

In an attempt at exculpation, the accused claims that it is difficult to commit the crime of rape inasmuch as AAA's siblings and grandmother were staying in the same house at Barangay Bitin, Municipality of Bay, Laguna.

The argument fails.

According to AAA, her siblings were all outside the house while her grandmother was doing an errand in the market when the accused molested her. Granting *arguendo* that there were other people in the house when the rape was committed, rapists are not deterred from committing their odious act by the presence

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[28] *People v. Castro Geraban*, 410 Phil. 450, 461 (2001).

[29] *People v. Martin Alejo*, 458 Phil. 461, 476 (2003).

[30] *People v. Eduardo Rata*, 463 Phil. 619, 631 (2003).

[31] *People v. Melanio Bolatete*, 363 Phil. 336, 357-358 (1999).

of people nearby or the members of the family.[32] Lust, being a very powerful human urge, is, to borrow from *People v. Virgilio Bernabe*,[33] "no respecter of time and place." Rape can be committed in even the unlikeliest places and circumstances and by the most unlikely persons.[34] The beast in a man bears no respect for time and place, driving him to commit rape anywhere — even in places where people congregate, in parks, along the roadsides, in school premises, in a house where there are other occupants, in the same room where other members of the family are also sleeping, and even in places which to many would appear unlikely and high risk venues for its commission. Besides, there is no rule that rape can be committed only in seclusion.[35]

In stark contrast to AAA's firm declaration, the defenses of denial and alibi invoked by the accused rest on shaky grounds. The accused insists that "the accusation is a lie"[36] and claims that "I did not do that."[37] He avers that he could not have committed the offense because he was preoccupied and was not in their house at Barangay Bitin, Bay, Laguna on the date and time the alleged rape was perpetrated.

Judicial experience has taught this Court that denial and alibi are the common defenses in rape cases. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[38] It is a negative self-serving assertion that deserves no weight in law if unsubstantiated by clear and convincing evidence. The barefaced denial of the charge by the accused cannot prevail over the positive and

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[32] *People v. Jerry Cantuba*, 440 Phil. 557, 565 (2002).

[33] 421 Phil. 805, 812 (2001).

[34] *People v. Adelado Anguac*, G.R. No. 176744, June 5, 2009, 588 SCRA 716, 724.

[35] *People v. Cristino Cañada*, G.R. No. 175317, October 2, 2009, 602 SCRA 378, 393-394.

[36] TSN dated August 31, 2001, p. 8.

[37] TSN dated August 31, 2001, p. 17.

[38] *People v. Alvin Abulon*, G.R. No. 174473, August 17, 2007, 530 SCRA 675, 696.

forthright identification of him as the perpetrator of the dastardly act.

Alibi, on the other hand, is the weakest of all defenses for it can be easily contrived. For alibi to prosper, it is not enough for the accused to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[39] In this case, not a shred of evidence was adduced by the accused to substantiate his alibi.

A perusal of his own testimony discloses that he arrived at their house at Barangay Bitin, Bay, Laguna at past 9:00 o'clock in the morning; that he had visitors who came to attend their town fiesta and they had a drinking spree; that after his visitors and AAA left at past 12:00 o'clock noon, he took a slumber; that he woke up at around 7:00 o'clock in the evening and asked AAA and her grandmother to prepare his things as he would return to Manila; and that he left for Manila at 3:30 o'clock in the morning of February 15, 1999.[40] From the foregoing, it is clear that he was at home in the evening of February 14, 1999. Alibi necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene.[41] Taken in this light, the plausible and emphatic testimony of AAA must prevail.

Finally, the Court sustains the two courts below in imposing the penalty of *reclusion perpetua* on the accused. The applicable provisions of the Revised Penal Code, as amended by Republic Act No. 8353 (effective October 22, 1997), covering the crime of Rape are Articles 266-A and 266-B which provide:

Article 266-A. *Rape; When and How Committed.* – Rape is committed:

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[39] *People v. Jesus Paragas Cruz*, G.R. No. 186129, August 4, 2009, 595 SCRA 411, 421.

[40] TSN dated August 31, 2001, pp. 5-8.

[41] *People v. Catalino Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509, 531.

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

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Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death.

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

The Information in Criminal Case No. 7383-2000-C specifically alleged that AAA was 14 years old at the time of the commission of the rape. In proving her minority, the prosecution presented a birth certificate[42] issued by the Office of City Civil Registrar of San Pablo City showing that she was born on January 2, 1985. Hence, she was 14 years old when she was raped by the accused on February 14, 1999. However, the courts below correctly noted that the qualifying circumstance of her relationship with the accused as his stepdaughter was not alleged in the Information, although proven during the trial and not even contested by the accused.[43] This omission prevents the transformation of the crime in its qualified form.

The twin requisites of minority of the victim and her relationship with the offender being special qualifying circumstances, which

[42] Records, p. 87.

[43] TSN dated August 31, 2001, p. 11.

increase the penalty as opposed to a generic aggravating circumstance which only affects the period of the penalty, should be alleged in the information because of the right of the accused to be informed of the nature and cause of the accusation against him.[44] The Revised Rules on Criminal Procedure which took effect on December 1, 2000, explicitly mandates that the information must state in ordinary and concise language the qualifying and aggravating circumstances attending an offense. Although the crime of rape in this case was committed before the effectivity of the new rules, it should be applied retroactively, as the same is favorable to an accused.[45]

The Court notes, however, that the Information also alleged that the accused committed the rape "while conveniently armed with a bolo through force, violence and intimidation." The prosecution was able to prove during trial his use of a deadly weapon and threatening words which caused the victim to submit to his will for fear for her life and personal safety.

When the accused commits rape with the use of a deadly weapon, the penalty is the range of two indivisible penalties of *reclusion perpetua* to death. In this connection, Article 63 of the Revised Penal Code provides that when the law prescribes a penalty composed of two indivisible penalties and there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

The Court also sustains the monetary awards granted by the RTC and the CA in favor of AAA, except for the exemplary damages which is increased from ₱25,000.00 to ₱30,000.00 in line with our ruling in *People v. Gilbert Castro*[46] and earlier cases.

Civil indemnity, which is actually in the nature of actual or compensatory damages, is mandatory upon the finding of the fact of rape.[47] Moral damages in rape cases should be awarded

[44] *People v. Benjamin Lim*, 371 Phil. 468, 489 (1999).

[45] *People v. Levi Sumarago*, 466 Phil. 956, 980 (2004).

[46] G.R. No. 188901, December 15, 2010.

[47] *People v. Salustiano Callos*, 424 Phil. 506, 516 (2002).

without need of showing that the victim suffered trauma, with mental, physical, and psychological sufferings constituting the basis thereof. These are too obvious to still require their recital by the victim at the trial.[48]

The award of exemplary damages is likewise called for because the rape was committed with the use of a deadly weapon. In *People v. Silverio Montemayor*,[49] the Court has stated that "exemplary damages are justified under Article 2230 of the Civil Code if there is an aggravating circumstance, whether ordinary or qualifying. Since the qualifying circumstance of the use of a deadly weapon was present in the commission of the rapes subject of these cases, exemplary damages x x x may be awarded to the offended party in each case."

**WHEREFORE,** the July 31, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00926 is hereby *AFFIRMED* except as to the exemplary damages which is hereby increased from ₱25,000.00 to ₱30,000.00.

**SO ORDERED.**

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

[48] *People v. Medardo Crespo*, G.R. No. 180500, September 11, 2008, 564 SCRA 613, 643.

[49] 444 Phil. 169, 190 (2003).

**FIRST DIVISION**

[G.R. No. 187208. February 23, 2011]

**CEFERINA LOPEZ TAN,** *petitioner, vs.* **SPOUSES APOLINAR P. ANTAZO and GENOVEVA O. ANTAZO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIREMENTS.—** A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.

**2. ID.; ID.; ID.; CAN PROSPER ONLY IF GRAVE ABUSE OF DISCRETION IS MANIFESTED; GRAVE ABUSE OF DISCRETION, DEFINED.—** [A] petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

**3. ID.; ID.; ID.; WILL NOT ISSUE WHERE THE REMEDY OF APPEAL IS AVAILABLE TO THE AGGRIEVED PARTY.—** [A] writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The party aggrieved by a decision of the Court of Appeals is proscribed from assailing the decision or final order of said court *via* Rule 65 of the Rules of Court because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law. Furthermore, *certiorari* cannot be availed of as a substitute for the lost remedy of an ordinary appeal.

**APPEARANCES OF COUNSEL**

*Marc Terry C. Perez* for petitioner.
*Abner O. Antazo* for respondents.

**D E C I S I O N**

**PEREZ, *J.*:**

In this petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Ceferina Lopez Tan seeks to nullify the Resolution[1] of the Court of Appeals in CA-G.R. SP No. 105514 which dismissed her petition for *certiorari* for being the wrong mode of appeal.

The factual antecedents follow.

Respondent Spouses Apolinar and Genoveva Antazo are the registered owners of two parcels of land, namely: (1) a 1,024-square meter lot identified as Lot No. 2190, Cad 609-D, Case-17, AP-04-004442, situated at *Barangay* Pilapila, Binangonan, Rizal and covered by Original Certificate of Title (OCT) No. M-11592; and (2) a 100-square meter portion of a 498-square meter lot identified as Lot 2175, Cad 609-D. An *accion reinvindicatoria* suit with damages, docketed as Civil Case No. 06-019, was filed by respondents against petitioner for

[1] Penned by Associate Justice Mariflor P. Punzalan Castillo with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Rosmari D. Carandang, concurring. *Rollo,* pp. 46-48.

encroaching on their properties. On 25 July 2008, the Regional Trial Court (RTC), Branch 68, Binangonan, Rizal, rendered judgment favoring respondents, the dispositive portion of which reads:

> WHEREFORE, judgment is rendered as follows:
>
> A. That the defendant encroached on the property of the plaintiffs by 114 square meters.
>
> B. The defendant is hereby ordered to vacate the 114 square meters of the plaintiffs' property illegally occupied by the defendant and to turn over its full possession and ownership in favor of the plaintiffs. To remove the fence constructed on the encroached area.
>
> C. The plaintiffs are awarded attorney's fees in the amount of 50,000 pesos.[2]

Petitioner filed a motion for reconsideration but was later denied by the RTC on 21 August 2008.

Aggrieved, petitioner filed a petition for *certiorari* before the Court of Appeals on 2 October 2008.

On 6 November 2008, the Court of Appeals dismissed the petition for adopting a wrong remedy or mode of appeal. Petitioner filed a motion for reconsideration but it was subsequently denied in a Resolution dated 10 March 2009.

Hence, the instant recourse grounded on a sole assigned error – that the Court of Appeals has decided a question of substance in a way not in accord with law or with applicable decisions of the Supreme Court.[3]

Petitioner maintains that she rightfully filed a petition for *certiorari* before the Court of Appeals on the ground of grave abuse of discretion on the part of the trial court. While conceding that *certiorari* is available only if there is no appeal nor any

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[2] Decision of the Regional Trial Court. *Rollo,* p. 86.

[3] Petition for Review on *Certiorari* filed with the Supreme Court. *Rollo,* p. 16.

plain, speedy and adequate remedy in the ordinary course of law, petitioner avers that her case presents an exception to such general rule because the decision rendered by the trial court is an example of an oppressive exercise of judicial authority. Petitioner justifies the mode of appeal she adopted before the Court of Appeals in that under the Rules of Court, no appeal may be taken from an order denying a motion for reconsideration, *i.e.*, the 21 August 2008 Resolution of the RTC. Petitioner now prays for a liberal interpretation of the rules of procedure.

On the other hand, respondents contend that the instant petition deserves outright dismissal for being fatally defective due to failure to show competent evidence of the identities of the affiants who signed the affidavit of service and the verification and certification against forum shopping. Respondents also assert that *certiorari* is not the proper remedy to assail the decision issued by the RTC. Being improper, respondents argue that the filing of the *certiorari* petition before the Court of Appeals did not toll the running of the appeal period. Consequently, the RTC judgment had already lapsed into finality. Respondents also emphasize that petitioner raises questions of facts which are beyond the purview of this Court to resolve.

The pivotal issue in this case is the correctness of a special civil action for *certiorari* before the Court of Appeals as a remedy against the Decision and Resolution of the Regional Trial Court.

A petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess

of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[4]

Only the first requisite is here present. Petitioner correctly impleaded the trial court judge in her *certiorari* petition.

Regarding to the second requisite, it is well-settled that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.[5]

The petitioner lists the particulars of the alleged grave abuse of discretion, thus –

THE RESPONDENT JUDGE OR TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN ISSUING THE QUESTIONED ORDERS ANNEXES "A" AND "B".

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[4] *Equitable-PCI Bank Inc. v. Apurillo,* G.R. No. 168746, 5 November 2009, 605 SCRA 30, 42-43 citing *People v. Court of Appeals*, 468 Phil. 1, 10 (2004); *Salvacion v. Sandiganbayan,* G.R. No. 175006, 27 November 2008, 572 SCRA 163, 180-181.

[5] *Office of the Ombudsman v. Magno,* G.R. No. 178923, 27 November 2008, 572 SCRA 272, 286-287 citing *Microsoft Corporation v. Best Deal Computer Center Corporation*, 438 Phil. 408, 414 (2002); *Suliguin v. Commission on Elections*, G.R. No. 166046, 23 March 2006, 485 SCRA 219, 233; *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 19-20 (2002); *Philippine Rabbit Bus Lines, Inc. v. Goimco, Sr.*, 512 Phil. 729, 733-734 (2005) citing *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 786 (2003); *Duero v. Court of Appeals*, 424 Phil. 12, 20 (2002) citing *Cuison v. Court of Appeals,* G.R. No. 128540, 15 April 1998, 289 SCRA 159, 171.

Under this heading, the following are disputed as tantamount to grave abuse of discretion amounting to lack of jurisdiction and/or without jurisdiction that led to the questioned orders Annexes "A" and "B", *viz*:

I. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN FAILING TO APPRECIATE THE DEFENSES AND ARGUMENTS ADVANCED BY THE PETITIONER;

II. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN FINDING THAT THE EVIDENCE IS SUFFICIENT TO PROVE THAT SPOUSES ANTAZO'S PROPERTY WAS ENCROACHED BY THE PETITIONER BY 114 SQUARE METERS;

III. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN ORDERING THE PETITIONER TO VACATE AND TURNOVER THE FULL POSSESSION AND OWNERSHIP OF SAID 114 SQUARE METERS TO RESPONDENTS SPOUSES ANTAZO DESPITE THE LATTER'S ABSENCE OF A CLEAR TITLE THERETO;

IV. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN NOT SUMMARILY DISMISSING THE INSTANT COMPLAINT FOR VIOLATION OF THE RULES ON NON-FORUM SHOPPING;

V. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN AWARDING RESPONDENTS SPOUSES ANTAZO WITH ATTORNEY'S FEES IN THE AMOUNT OF 50,000.00 PESOS IN THE ABSENCE OF FACTUAL AND LEGAL BASES THEREFOR;

VI. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK

OF JURISDICTION AND/OR WITHOUT JURISDICTION IN NOT AWARDING PETITIONER'S COUNTER-CLAIMS DESPITE THE EVIDENCE AND ARGUMENTS TO SUPPORT THE SAME;

VII. THE HONORABLE JUDGE/TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION AND/OR WITHOUT JURISDICTION IN RENDERING A JUDGMENT WHICH DOES NOT CONTAIN FACTUAL AND LEGAL BASES, HENCE, THE SAME IS A VOID DECISION.[6]

Item VII argues that the trial court's judgment is void for lack of factual and legal bases. This allegation is worthy only if it is read to mean that the questioned judgment did not state the facts and the law on which it is based, *i.e.*, that it violates Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

After perusing the trial court's decision, we find that the assailed decision substantially complied with the constitutional mandate. While the decision is admittedly brief, it however contains all factual bases to support its conclusion. The first two (2) paragraphs of the decision established the ownership of respondents through certificates of title. The fact of encroachment was proven by the relocation survey conducted by the geodetic engineer, which the trial court found to be credible. The trial court held that these evidence are more than sufficient to prove two matters—ownership by respondents and encroachment by petitioner.

Petitioner herself disproved the absence of the required statements. She questioned the trial court's appreciation of her arguments and defenses; the sufficiency of evidence to prove encroachment; and the existence of a clear title to the alleged encroached properties in Errors (I), (II), and (III). Errors (IV),

[6] Petition for *Certiorari* filed with the Court of Appeals. *Rollo*, pp. 65-67.

(V), and (VI) pertain to legal questions such as whether there was violation of forum-shopping; whether the award of attorney's fees is proper; and the validity of the counterclaims. A petition for the writ of *certiorari* does not deal with errors of judgment. Nor does it include a mistake in the appreciation of the contending parties' respective evidence or the evaluation of their relative weight.[7] Verily, the errors ascribed by petitioner are not proper subjects of a petition for *certiorari*.

Anent the third requisite, a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. The party aggrieved by a decision of the Court of Appeals is proscribed from assailing the decision or final order of said court *via* Rule 65 of the Rules of Court because such recourse is proper only if the party has no plain, speedy and adequate remedy in the course of law.[8] Furthermore, *certiorari* cannot be availed of as a substitute for the lost remedy of an ordinary appeal.[9]

In this case, the remedy of appeal under Rule 42 of the Rules of Court was clearly available to petitioner. She however chose to file a petition for *certiorari* under Rule 65. As the Court of Appeals correctly surmised and pointed out, petitioner availed of the remedy of *certiorari* to salvage her lost appeal, thus:

> In the instant case, petitioner filed a motion for reconsideration of the decision dated 25 July 2008. Public respondent denied said motion on 21 August 2008, a copy of which petitioner received on 28 August 2008. Petitioner had fifteen (15) days or until 12 September

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[7] *Romy's Freight Service v. Castro*, G.R. No. 141637, 8 June 2006, 490 SCRA 160, 166 citing *Land Bank of the Philippines v. Court of Appeals*, *supra* note 5 at 787 citing further *Cruz v. People*, 363 Phil. 156 (1999).

[8] *California Bus Lines, Inc. v. Court of Appeals*, G.R. No. 145408, 20 August 2008, 562 SCRA 403, 413 citing *Cathay Pacific Steel Corporation v. Court of Appeals*, G.R. No. 164561, 30 August 2006, 500 SCRA 226, 236-237; *Hanjin Engineering and Construction Co., Ltd. v. Court of Appeals*, G.R. No. 165910, 10 April 2006, 487 SCRA 78, 96-97.

[9] *Cua, Jr. v. Tan*, G.R. Nos. 181455-56, 4 December 2009, 607 SCRA 645, 687.

2008 within which to file her appeal, but none was made. In an effort to salvage her lost appeal, petitioner comes before this Court via a petition for *certiorari* filed on 2 October 2008.[10]

In her final attempt to reinstate the case, petitioner invokes a liberal interpretation of the procedural rules in the interest of substantial justice. We are not persuaded. Aside from citing cases wherein this Court disregarded procedural infirmities to pave the way for substantial justice, petitioner failed to specifically cite any justification how and why a normal application of procedural rules would frustrate her quest for justice. Indeed, petitioner has not been forthright in explaining why she chose the wrong mode of appeal.

Based on the foregoing, a denial of the petition is in order.

**WHEREFORE,** the petition is *DENIED*.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Velasco, Jr., Nachura,*[*] and *del Castillo, JJ.,* concur.

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[10] Resolution of the Court of Appeals dated 6 November 2008. *Rollo*, pp. 47-48.

[*] Per Special Order No. 947, Associate Justice Antonio Eduardo B. Nachura is hereby designated as additional member in place of Associate Justice Teresita J. Leonardo-De Castro who is on official leave.

**FIRST DIVISION**

[G.R. No. 187256. February 23, 2011]

**CONSTANCIO F. MENDOZA and SANGGUNIANG BARANGAY OF BALATASAN, BULALACAO, ORIENTAL MINDORO,** *petitioners, vs.* **MAYOR ENRILO VILLAS and BRGY. KAGAWAD LIWANAG HERATO and MARLON DE CASTRO, Manager, Pinamalayan Branch, Land Bank of the Philippines,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE FILING OF A PETITION FOR *CERTIORARI* DIRECTLY WITH THE SUPREME COURT VIOLATES THE PRINCIPLE OF HIERARCHY OF COURTS.—** The instant petition is a direct recourse to this Court from the assailed orders of the RTC. Notably, petitioners did not cite the rule under the Rules of Court by which the petition was filed. If the petition is to be treated as a petition filed under Rule 65 of the Rules of Court, the petition must be dismissed outright for having been filed prematurely. In *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, a petition for *certiorari* filed under Rule 65 was dismissed for having been filed directly with the Court, violating the principle of hierarchy of courts x x x.

**2. ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* DIRECT RECOURSE TO THE SUPREME COURT IS ALLOWED WHEN ONLY QUESTIONS OF LAW ARE RAISED.—** [D]irect recourse to this Court has been allowed for petitions filed under Rule 45 when only questions of law are raised, as in this case.

**3. ID.; COURTS; SUPREME COURT; HAS THE DISCRETION TO DETERMINE WHETHER A PETITION WAS FILED UNDER RULE 45 OR 65 OF THE RULES OF COURT.—** In *Artistica Ceramica, Inc. v. Ciudad Del Carmen Homeowner's Association, Inc.*, citing *Republic v. Court of Appeals*, the Court noted that it has the discretion to determine whether a

petition was filed under Rule 45 or 65 of the Rules of Court: "Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review."

**4. ID.; ACTIONS; MOOT AND ACADEMIC CASE; DEFINED.—** In *Gunsi, Sr. v. Commissioners, The Commission on Elections*, the Court defined a moot and academic case as follows: "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness." With the conduct of the 2010 *barangay* elections, a supervening event has transpired that has rendered this case moot and academic and subject to dismissal. This is because, as stated in *Fernandez v. Commission on Elections*, "whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced." Mendoza's term of office has expired with the conduct of last year's local elections. As such, Special Civil Action No. 08-10, where the assailed Orders were issued, can no longer prosper. Mendoza no longer has any legal standing to further pursue the case, rendering the instant petition moot and academic.

**APPEARANCES OF COUNSEL**

*Samuel M. Salas* for petitioners.
*Edgardo Aceron* for Mayor Villas, *et al.*
*Legal Services Group (LBP)* for Land Bank of the Phils.

**R E S O L U T I O N**

**VELASCO, JR., *J.*:**

Before this Court is a Petition dated April 7, 2009[1] filed by Constancio F. Mendoza and *Sangguniang Barangay* of Balatasan, Bulalacao, Oriental Mindoro. In the Petition, it is prayed that

[1] *Rollo*, pp. 3-27.

the Court: (1) set aside the Order dated February 2, 2009[2] of the Regional Trial Court (RTC), Branch 43 in Roxas, Oriental Mindoro and its Order dated March 17, 2009[3] denying petitioners' motion for reconsideration of the Order dated February 2, 2009; and (2) direct the RTC to continue with the proceedings in Special Civil Action No. 08-10 entitled *Constancio Mendoza v. Mayor Enrilo Villas*.

The factual antecedents of the case are as follows:

In the 2007 *barangay* elections, Mendoza obtained the highest votes for the position of *Punong Barangay* of *Barangay* Balatasan, Bulalacao, Oriental Mindoro, while respondent Liwanag Herato obtained the highest number of votes for the position of *Barangay Kagawad*. Notably, Mayor Enrilo Villas was the incumbent Mayor of Bulalacao, Oriental Mindoro at the time of the *barangay* elections.[4]

After the elections, the Commission on Elections (COMELEC) proclaimed Mendoza as the duly-elected *Punong Barangay* of Balatasan. Thus, the losing candidate, Thomas Pajanel, filed a petition for *quo warranto* with the Municipal Trial Court (MTC) of Mansalay-Bulalacao which was docketed as Election Case No. 407-B. The MTC issued a Decision dated February 23, 2008, disqualifying Mendoza and declaring that Herato was entitled to succeed him as *Punong Barangay* with Herato garnering the highest number of votes as a *Barangay Kagawad*. Mendoza appealed the MTC Decision to the COMELEC.

On February 28, 2008, Villas administered the Oath of Office to Herato.[5] Then, Villas issued Memorandum No. 2008-03-010 dated March 3, 2008,[6] directing all department heads of the Municipal Government to act only on documents signed or authorized by Herato.

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[2] *Id*. at 43-46.

[3] *Id*. at 69.

[4] *Id*. at 71.

[5] *Id*. at 72.

[6] *Id*. at 73

Meanwhile, Mendoza sought the advice of the Department of the Interior and Local Government (DILG) as to who should exercise the powers of *Punong Barangay* of Balatasan given the prevailing controversy.

In a letter dated April 11, 2008,[7] DILG Undersecretary Austere A. Panadero responded to Mendoza's inquiry informing Villas that Mendoza should occupy the post of *Punong Barangay* as there was no Writ of Execution Pending Appeal of the MTC Decision dated February 23, 2008.

Nevertheless, the Bulalacao Municipal Administrator, Edezer Aceron, by the authority of Villas, issued a letter dated April 23, 2008[8] to respondent Marlon de Castro, Manager, Pinamalayan Branch, Land Bank of the Philippines (LBP), requesting that transactions entered into by Mendoza in behalf of *Barangay* Bulalacao should not be honored. In the same letter, Aceron dismissed the DILG letter dated April 11, 2008, saying that it is merely advisory and not binding on the municipal government of Bulalacao and the LBP.

In response, de Castro issued Villas and Mendoza a letter dated April 24, 2008,[9] advising both parties that the LBP shall not honor any transaction with regard the accounts of *Barangay* Balatasan.

Thereafter, petitioners filed a Petition dated May 5, 2008 for *Mandamus* with Damages and Prayer for the Writ of Preliminary Mandatory Injunction, docketed as Special Civil Action No. 08-10 pending with the Regional Trial Court, Branch 43 in Roxas, Oriental Mindoro. Petitioners prayed that the LBP be directed to release the funds of *Barangay* Balatasan to them in order to render necessary, basic public services to the inhabitants of the *barangay*.

Thus, Villas and Herato filed an Answer dated May 16, 2008 interposing the following affirmative defenses: (1) that the petition

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[7] *Id*. at 75-78.

[8] *Id*. at 79.

[9] *Id*. at 80.

for *mandamus* was defective, being directed against two or more different entities and requiring to perform different acts; and (2) that Mendoza does not have any clear and legal right for the writ of *mandamus*.

On the other hand, the LBP also filed its Answer dated June 5, 2008, stating that its decision of withholding the *barangay* funds was a mere act of prudence given the controversy surrounding the true *Punong Barangay* of Balatasan while manifesting that it will release the funds to whom the Court directs it to.

Thereafter, Villas and Herato filed a Motion to Dismiss dated November 7, 2008. In the Motion, a copy of the COMELEC Resolution dated September 8, 2008 in COMELEC Case No. SPA-07-243-BRGY was attached. This case originated from a disqualification case against Mendoza filed with the COMELEC by Senen Familara before the conduct of the 2007 *barangay* elections. In the Resolution, the COMELEC disqualified Mendoza as a candidate for *Punong Barangay* of *Barangay* Balatasan in the 2007 *barangay* elections for having already served three (3) consecutive terms for the same position. In response, Mendoza presented a Certification dated February 27, 2009[10] from the COMELEC which stated that COMELEC Case No. SPA-07-243-BRGY is still pending with the Commission.

In an attempt to clarify the issues on the matter, Mendoza again sought the opinion of the DILG regarding the controversy. Thus, the DILG issued another letter, denominated as DILG Opinion No. 5, Series of 2009 dated January 2009,[11] reiterating its stance that the MTC Decision dated February 23, 2008 has not yet become final and executory.

Nevertheless, the RTC issued the assailed order dated February 2, 2009 dismissing the petition on the strength of the COMELEC Resolution dated September 8, 2008 disqualifying Mendoza from running in the 2007 elections. As stated, petitioners' motion for reconsideration of the Order dated February 2, 2009 was denied in an Order dated March 17, 2009.

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[10] *Id*. at 68.

[11] *Id*. at 81-82.

From such orders the petitioners went directly to this Court.

The instant petition is a direct recourse to this Court from the assailed orders of the RTC. Notably, petitioners did not cite the rule under the Rules of Court by which the petition was filed. If the petition is to be treated as a petition filed under Rule 65 of the Rules of Court, the petition must be dismissed outright for having been filed prematurely.

In *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*,[12] a petition for *certiorari* filed under Rule 65 was dismissed for having been filed directly with the Court, violating the principle of hierarchy of courts, to wit:

> Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements:
>
> > This Court's original jurisdiction to issue writs of *certiorari* is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. **This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed**. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. **A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the**

[12] G.R. No. 183409, June 18, 2010, 621 SCRA 295, 309-310.

> **petition.** This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied.)

Similarly, there are no special and important reasons that petitioners cite to justify their direct recourse to this Court under Rule 65.

On the other hand, direct recourse to this Court has been allowed for petitions filed under Rule 45 when only questions of law are raised, as in this case. Thus, the Court ruled in *Barcenas v. Tomas*:[13]

> Section 1 of Rule 45 clearly states that the following may be appealed to the Supreme Court through a petition for review by *certiorari*: 1) judgments; 2) final orders; or 3) resolutions of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or similar courts, whenever authorized by law. The appeal must involve only questions of law, not of fact.
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> This Court has, time and time again, pointed out that it is not a trier of facts; and that, save for a few exceptional instances, its function is not to analyze or weigh all over again the factual findings of the lower courts. There is a question of law when doubts or differences arise as to what law pertains to a certain state of facts, and a question of fact when the doubt pertains to the truth or falsity of alleged facts.
>
> Under the principle of the hierarchy of courts, decisions, final orders or resolutions of an MTC should be appealed to the RTC exercising territorial jurisdiction over the former. On the other hand, RTC judgments, final orders or resolutions are appealable to the CA through either of the following: an ordinary appeal if the case was originally decided by the RTC; or a petition for review under Rule 42, if the case was decided under the RTC's appellate jurisdiction.
>
> Nonetheless, a direct recourse to this Court can be taken for a review of the decisions, final orders or resolutions of the RTC, but only on questions of law. Under Section 5 of Article VIII of the Constitution, the Supreme Court has the power to

[13] G.R. No. 150321, March 31, 2005, 454 SCRA 593, 606-607.

(2) Review, revise, reverse, modify, or affirm on appeal or *certiorari* as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

xxx xxx xxx

(e) All cases in which only an error or question of law is involved.

This kind of direct appeal to this Court of RTC judgments, final orders or resolutions is provided for in Section 2(c) of Rule 41, which reads:

SEC. 2. Modes of appeal.—

xxx xxx xxx

(c) Appeal by *certiorari*.—In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45.

**Procedurally then, petitioners could have appealed the RTC Decision affirming the MTC (1) to this Court on questions of law only**; or (2) if there are factual questions involved, to the CA — as they in fact did. Unfortunately for petitioners, the CA properly dismissed their petition for review because of serious procedural defects. This action foreclosed their only available avenue for the review of the factual findings of the RTC. (Emphasis supplied.)

Thus, the Court shall exercise liberality and consider the instant petition as one filed under Rule 45. In *Artistica Ceramica, Inc. v. Ciudad Del Carmen Homeowner's Association, Inc.*,[14] citing *Republic v. Court of Appeals*,[15] the Court noted that it has the discretion to determine whether a petition was filed under Rule 45 or 65 of the Rules of Court:

Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review.

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[14] G.R. Nos. 167583-84, June 16, 2010, 621 SCRA 22, 34.

[15] G.R. No. 95533, November 20, 2000, 345 SCRA 63, 70.

Nevertheless, even providing that the petition was not filed prematurely, it must still be dismissed for having become moot and academic.

In *Gunsi, Sr. v. Commissioners, The Commission on Elections*,[16] the Court defined a moot and academic case as follows:

> A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.

With the conduct of the 2010 *barangay* elections, a supervening event has transpired that has rendered this case moot and academic and subject to dismissal. This is because, as stated in *Fernandez v. Commission on Elections*,[17] "whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced." Mendoza's term of office has expired with the conduct of last year's local elections. As such, Special Civil Action No. 08-10, where the assailed Orders were issued, can no longer prosper. Mendoza no longer has any legal standing to further pursue the case, rendering the instant petition moot and academic.

**WHEREFORE,** the Petition is *DENIED*.

**SO ORDERED.**

*Corona, C.J. (Chairperson), Nachura,*[*] *del Castillo,* and *Perez, JJ.,* concur.

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[16] G.R. No. 168792, February 23, 2009, 580 SCRA 70, 76.

[17] G.R. No. 176296, June 30, 2008, 556 SCRA 765, 771.

[*] Additional member per Special Order No. 947 dated February 11, 2011.

**SECOND DIVISION**

[G.R. No. 188630. February 23, 2011]

**FILOMENA L. VILLANUEVA,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; SANDIGANBAYAN; EXCLUSIVE APPELLATE JURISDICTION. —** Under R.A. No. 8249, the Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. Thus: Sec. 4. Jurisdiction. — The Sandiganbayan shall exercise exclusive original jurisdiction in all cases involving: A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense: x x x In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended. The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. Pursuant thereto, the Sandiganbayan promulgated its own internal rules. Section 2, Rule XI, Part III of the Revised Internal Rules of the Sandiganbayan reads: SEC. 2. *Petition for Review.* – Appeal to the Sandiganbayan from a decision of the Regional Trial Court in the exercise of its appellate jurisdiction shall be by a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure.

**2. REMEDIAL LAW; CIVIL PROCEDURE; COURT OF APPEALS; APPEAL ERRONEOUSLY TAKEN THEREIN SHALL BE DISMISSED.**— Section 2 of Rule 50 of the 1997 Revised Rules of Court provides, among others, that "an appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright." This has been the consistent holding of the Court.

**3. LEGAL ETHICS; ATTORNEY-CLIENT RELATIONSHIP; THAT CLIENT BOUND BY THE MISTAKE OF HER COUNSEL; RELAXED IN THE INTEREST OF SUBSTANTIAL JUSTICE.**— [T]he rule which states that the mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interests of justice so require. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, this Court is not without power to exercise its judicial discretion in relaxing the rules of procedure. xxx The Court also takes note that the petitioner has no participatory negligence. The resulting dismissal by the CA was utterly attributable to the gross negligence of her counsel. For said reason, the Court is not averse to suspending its own rules in the pursuit of justice. "Where reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require, relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence."

**4. REMEDIAL LAW; CIVIL PROCEDURE; LIBERAL APPLICATION OF THE RULES; PROPRIETY THEREOF; CASE AT BAR.**— Aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that are to be considered are the following: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought

is merely frivolous and dilatory, (5) the other party will not be unjustly prejudiced thereby." All these factors are attendant in this case.

**5. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; PROOF BEYOND REASONABLE DOUBT.**— Our legal culture requires the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property, not merely substantial evidence. It is not enough that the evidence establishes a strong suspicion or a probability of guilt. The primary consideration is whether the guilt of an accused has been proven beyond reasonable doubt. It has been consistently held that: In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. On the whole, the meager evidence for the prosecution casts serious doubts as to the guilt of accused. It does not pass the test of moral certainty and is insufficient to rebut the constitutional presumption of innocence.

**6. LEGAL ETHICS; ATTORNEY-CLIENT RELATIONSHIP; DUTY TO CLIENT, EMPHASIZED.**— It need not be overemphasized that the trust and confidence necessarily reposed by clients in their counsel requires from the latter a high standard and appreciation of his duty to his clients, his profession, the courts and the public. Every lawyer should, therefore, serve his client in a meticulous, careful and competent manner. He is bound to protect the client's interests and to do all steps necessary therefor as his client reasonably expects him to discharge his obligations diligently.

**APPEARANCES OF COUNSEL**

*J.O.B. Lorenzo and Associates Law Firm* for petitioner.
*The Solicitor General* for respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a petition for review on *certiorari* under Rule 45 filed by petitioner Filomena L. Villanueva *(petitioner)* seeking to reverse and set aside the ***(1)*** November 13, 2008 Resolution[1] of the Court of Appeals *(CA)* which dismissed her petition for review for lack of jurisdiction; and ***(2)*** its June 25, 2009 Resolution[2] denying her motion for reconsideration.

**The Facts:**

Petitioner was the Assistant Regional Director of the Cooperative Development Authority *(CDA)* of Region II, a position lower than Salary Grade 27.

Records show that on various dates in 1998, the petitioner and her husband Armando Villanueva *(Armando)* obtained several loans from the Cagayan Agri-Based Multi-Purpose Cooperative, Inc. *(CABMPCI)*. Armando defaulted in the payment of his own loan. Because of this, CABMPCI, represented by its General Manager, Petra Martinez *(Martinez)*, filed a *civil case* for collection of sum of money against Armando before the Regional Trial Court of Sanchez Mira, Cagayan *(RTC)*, docketed as Civil Case No. 2607-S. To support its claim, CABMPCI presented a certification, received and signed by petitioner, attesting that she and Armando promised to settle their obligation on or before February 28, 2001.[3]

During the pendency of the civil case before the RTC, Martinez filed an *administrative complaint* for Willful Failure to Pay Just Debt against petitioner before the CDA. It was docketed as CDA-Administrative Case No. 2002-002.[4]

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[1] *Rollo*, pp. 32-35. Penned by Associate Justice Magdangal M. de Leon with Associate Justice Josefina Guevara-Salonga and Associate Justice Ramon R. Garcia, concurring.

[2] *Id.* at 36-37.

[3] *Id.* at 40.

[4] *Id.*

On October 16, 2001, in Civil Case No. 2607-S, the trial court declared Armando in default and rendered a decision ordering him to pay the total amount of ₱1,107,210.90, plus fine and interest at the rate of 3% per month and the cost of collection. Armando filed a petition for prohibition before the CA alleging that he should not be made to pay said loan as the same had long been fully paid as shown by 1] Official Receipt No. 141084 in the name of petitioner evidencing payment of the amount of ₱764,865.25, and 2] the Certification issued by Martinez. When directed to file its comment, CABMPCI failed to comply. Its non-compliance was deemed to have been a waiver to refute the claim of payment contained in the petition.[5] Thus, on October 30, 2002, the CA promulgated a decision nullifying the RTC decision on the ground that the obligation had already been settled.[6]

On December 9, 2002, Martinez filed an *administrative case* with the Office of the Ombudsman *(Ombudsman)* charging petitioner with Violation of Section 7(d) in relation to Section 11 of Republic Act *(R.A.)* No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.[7]

In the end, the Ombudsman rendered a decision finding petitioner guilty of Grave Misconduct and imposed the penalty of dismissal with forfeiture of benefits and disqualification for re-employment in the government service.

Petitioner filed a motion for reconsideration but the Ombudsman denied it.

Aggrieved, the petitioner filed a petition for review before the CA. The CA found merit in the petition and reversed and set aside the assailed decision of the Ombudsman. The CA ruled that the Ombudsman erred in applying R.A. No. 6713, without recognizing the fact of membership and its privileges.

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[5] *Id.*

[6] *Id.* at 12, 40.

[7] *Id.* at 41, 210-213.

It further stated that Martinez failed to prove that petitioner had used undue influence in soliciting the loan. It noted that Martinez, in her capacity as the general manager of CABMPCI, allowed the petitioner to obtain a loan, much less obtain a passbook, although she was allegedly not qualified to become a member.[8]

Martinez filed a motion for reconsideration while the Ombudsman filed an Omnibus Motion to Intervene and For Reconsideration. The CA denied both motions in its August 8, 2005 Resolution.[9]

Aside from those cases, a criminal case was also filed against the petitioner for violation of Section 2(d) of R.A. No. 6713 before the Municipal Circuit Trial Court of Claveria, Cagayan (*MCTC*), docketed as Criminal Case No. 3111-CL.

On March 24, 2006, the MCTC promulgated its decision in Criminal Case No. 3111-CL convicting the petitioner and imposing the penalty of five (5) years of imprisonment and disqualification to hold office (Section 11, R.A. No. 6713).

Petitioner appealed the MCTC Decision to the Regional Trial Court of Sanchez Mira, Cagayan (*RTC*). The case was docketed as Criminal Case No. 3082. On November 22, 2007, the RTC affirmed the MCTC Decision.

Aggrieved, petitioner filed a petition for review before the CA.

The Office of the Solicitor General (OSG) then filed a Manifestation and Motion contending that the Sandiganbayan had exclusive appellate jurisdiction over the petition.

Petitioner, in her Comment, argued that the issue of jurisdiction could not be raised for the first time before the CA in view of the failure of the Provincial Prosecutor to bring out the same when she appealed the MCTC Decision to the RTC. She claimed to have availed of the remedy provided under Rule 122 of the Rules of Court in good faith. Finally, she contended that the

[8] *Id.* at 38-46.

[9] *Id.* at 47.

essence of true justice would be served if the case would be decided on the merits.

The CA, however, agreed with the OSG. In its November 13, 2008 Resolution,[10] the CA dismissed the petition. The CA made the following justification:

> (1) At the time petitioner committed the crime charged, she was holding a position lower than salary grade "27." The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction. (CA cited *Moll v. Buban*, G.R. No. 136974, August 27, 2002);
>
> (2) The OSG had timely raised the issue of lack of jurisdiction considering that the law does not contemplate the remedy of appeal from the decision of the MTCC [*sic*] directly to the Sandiganbayan; and
>
> (3) Petitioner's good faith and the merits of her case cannot in any way vest CA with jurisdiction.

After the CA denied petitioner's motion for reconsideration on June 25, 2009, she filed the subject petition for review on *certiorari* under Rule 45.

On October 14, 2009, the Court resolved to deny the petition.[11] Thus:

> The Court resolves to ***NOTE*** petitioner's Compliance and Explanation dated 22 September 2009 with Resolution dated 12 August 2009, apologizing to this Court for the clerical error on the date mentioned in paragraph 2 of the affidavit of service of the motion for extension of time to file petition for review on *certiorari* which was typed as 21 July 2009 instead of 23 July 2009, and submitting documents relative thereto.
>
> Acting on the petition for review on *certiorari* assailing the Resolutions dated 13 November 2008 and 25 June 2009 of the Court of Appeals in CA-G.R. CR No. 31240, the Court further resolves

[10] *Id.* at 32-35.

[11] *Id.* at 66-67.

to ***DENY*** the petition for failure to sufficiently show that the appellate court committed any reversible error in the challenged resolutions as to warrant the exercise by this Court of its discretionary appellate jurisdiction.

Moreover, pursuant to Rule 45 and other related provision of the 1997 Rules of Civil Procedure, as amended, governing appeals by *certiorari* to the Supreme Court, only petitions which comply strictly with the requirements specified therein shall be entertained. Herein petitioner failed to state the material date of filing of the motion for reconsideration of the assailed resolution in violation of Section 4[b] and 5, Rule 45 in relation to Section 5[d], Rule 56.

The petitioner filed a motion for reconsideration but it was denied by the Court on February 1, 2010.[12]

On March 29, 2010, petitioner filed her Motion for Leave and to Admit attached Second Motion for Reconsideration.[13]

On April 28, 2010,[14] the Court granted said motion and further resolved to: (1) grant the motion and set aside the Resolution dated October 14, 2009; and (2) reinstate the petition and require the OSG to comment thereon within 10 days from notice.

The OSG then filed a Manifestation and Motion[15] stating, among others, that it is the Sandiganbayan which has exclusive appellate jurisdiction over petitioner's case, thus, it is the Office of the Special Prosecutor (*OSP*) that has the duty and responsibility to represent the People in cases within the jurisdiction of the Sandiganbayan and in all cases elevated from the Sandiganbayan to the Supreme Court. The OSG prayed that: (***1***) the Manifestation be noted; (***2***) it be excused from further participating in this case; (***3***) petitioner be ordered to furnish the OSP with a copy of the petition together with its annexes; and (***4***) the OSP be given a fresh period within which to file its comment.

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[12] *Id.* at 86.

[13] *Id.* at 88-116.

[14] Before the effectivity of the new Internal Rules of the Supreme Court (May 4, 2010).

[15] *Rollo*, pp. 119-127.

On August 25, 2010, the Court resolved to: (***1***) note the OSG's Manifestation and Motion and grant its prayer to be excused from further participating in the present case; (***2***) direct the Division Clerk of Court to furnish the OSP with a copy of the petition and its annexes; and (***3***) require the OSP to file a comment on the petition within ten (10) days from receipt of copy of the petition and its annexes.[16]

Eventually, the OSP filed its Comment.[17] Primarily, it pointed out that the dismissal of petitioner's appeal by the CA was proper as it was indeed the Sandiganbayan which has jurisdiction over the case; that the negligence of counsel binds the client; and that the right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by law. As the petitioner failed to perfect her appeal in accordance with law, the RTC resolution affirming the MCTC Decision was rendered final and executory.

**The Court's Ruling**

There is no quibble that petitioner, through her former counsel, had taken a wrong procedure. After the RTC rendered an adverse decision, she should have sought relief from the Sandiganbayan in conformity with R.A. No. 8249.[18] Under R.A. No. 8249, the Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. Thus:

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

A. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act

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[16] *Id.* at 128-129.

[17] *Id.* at 184-210.

[18] "An Act Further Defining the Jurisdiction of the Sandiganbayan, Amending for the Purpose Presidential Decree No. 1606, as Amended, Providing Funds Thereof, and for other Purposes."

No. 1379, and Chapter II, Section 2, Title VII, Book II of the Revised Penal Code, where one or more of the accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense:

xxx xxx xxx

In cases where none of the accused are occupying positions corresponding to Salary Grade '27' or higher, as prescribed in the said Republic Act No. 6758, or military and PNP officer mentioned above, exclusive original jurisdiction thereof shall be vested in the proper regional trial court, metropolitan trial court, municipal trial court, and municipal circuit trial court, as the case may be, pursuant to their respective jurisdictions as provided in Batas Pambansa Blg. 129, as amended.

The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided. (Emphases supplied)[19]

Pursuant thereto, the Sandiganbayan promulgated its own internal rules. Section 2, Rule XI, Part III of the Revised Internal Rules of the Sandiganbayan reads:

SEC. 2. *Petition for Review.* – Appeal to the Sandiganbayan from a decision of the Regional Trial Court in the exercise of its appellate jurisdiction shall be by a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure.

This was strictly applied by the Court in the cases of *Melencion v. Sandiganbayan*[20] and *Estarija v. People*,[21] where it ruled that the CA committed no grave abuse of discretion in dismissing the petitions erroneously filed before it.

Thus, in this case, the CA was correct in dismissing the appeal for lack of jurisdiction. Section 2 of Rule 50 of the 1997 Revised

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[19] See the case of *Moll v. Hon. Buban*, 436 Phil. 627, 635-636 (2002).

[20] G.R. No. 150684, June 12, 2008, 554 SCRA 345.

[21] G.R. No. 173990, October 27, 2009, 604 SCRA 464.

Rules of Court provides, among others, that "an appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright." This has been the consistent holding of the Court.

The peculiar circumstances of the case, however, constrain the Court to reconsider its position and give the petitioner a chance to bring her case to the Sandiganbayan. The Court notes that the CA eventually decided the administrative case filed against petitioner in her favor.[22] This administrative case (*where only substantial evidence is required*) is so intertwined with this criminal case (*where evidence beyond reasonable doubt is required*). The CA pointed out that Martinez had issued an Official Receipt and Certification that petitioner had indeed paid her loan. The said receipt was signed by Martinez herself as the General Manager of CABMPCI, attesting to the payment of the loan.[23] The CA further ruled that Martinez failed to prove that the petitioner exerted undue influence in obtaining the loans.

Records also bear out that the earlier civil case against Armando, the petitioner's husband, was also finally resolved in his favor since the obligation had already been settled.[24] This civil case is also intertwined with the administrative and criminal cases filed against petitioner.

Thus, it appears that the filing of the criminal case against petitioner was merely an afterthought considering that the civil case against her husband and the administrative case against her were resolved in the couple's favor.

In light of what has been shown, the Court is inclined to suspend the rules to give the petitioner a chance to seek relief from the Sandiganbayan. The Court likewise makes exception to the general rule that the mistakes and negligence of counsel bind the client. Doubtless, the filing of the appeal before the

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[22] *Rollo*, pp. 38-46.

[23] *Id.* at 45.

[24] *Id.* at 40.

CA by the petitioner's former counsel was not simple negligence. It constituted gross negligence.

It bears stressing at this point, that the rule which states that the mistakes of counsel bind the client may not be strictly followed where observance of it would result in outright deprivation of the client's liberty or property, or where the interests of justice so require. In rendering justice, procedural infirmities take a backseat against substantive rights of litigants. Corollarily, if the strict application of the rules would tend to frustrate rather than promote justice, this Court is not without power to exercise its judicial discretion in relaxing the rules of procedure.[25] The Court takes note of settled jurisprudence which holds that:

> The function of the rule that negligence or mistake of counsel in procedure is imputed to and binding upon the client, as any other procedural rule, is to serve as an instrument to advance the ends of justice. When in the circumstances of each case the rule desert[s] its proper office as an aid to justice and becomes its great hindrance and chief enemy, its rigors must be relaxed to admit exceptions thereto and to prevent a manifest miscarriage of justice.
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> xxx xxx xxx
>
> The court has the power to except a particular case from the operation of the rule whenever the purposes of justice require it.[26]

The Court also takes note that the petitioner has no participatory negligence. The resulting dismissal by the CA was utterly attributable to the gross negligence of her counsel. For said reason, the Court is not averse to suspending its own rules in the pursuit of justice. "Where reckless or gross negligence of counsel deprives the client of due process of law, or when its application will result in outright deprivation of the client's liberty or property or where the interests of justice so require,

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[25] See the case of *Rutaquio v. Court of Appeals*, G.R. No. 143786, October 17, 2008, 569 SCRA 312, 320.

[26] *Aguilar v. CA*, 320 Phil. 456, 462 (1995).

relief is accorded to the client who suffered by reason of the lawyer's gross or palpable mistake or negligence."[27]

"Aside from matters of life, liberty, honor or property which would warrant the suspension of the rules of the most mandatory character and an examination and review by the appellate court of the lower court's findings of fact, the other elements that are to be considered are the following: (1) the existence of special or compelling circumstances, (2) the merits of the case, (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (4) a lack of any showing that the review sought is merely frivolous and dilatory, (5) the other party will not be unjustly prejudiced thereby."[28] All these factors are attendant in this case. In the case of *Tiangco v. Land Bank of the Philippines*,[29] it was written:

> Dismissal of appeals on purely technical grounds is not encouraged. The rules of procedure ought not to be applied in a very rigid and technical sense, for they have been adopted to help secure, not override, substantial justice. Judicial action must be guided by the principle that a party-litigant should be given the fullest opportunity to establish the merits of his complaint or defense rather than for him to lose life, liberty, honor or property on technicalities. When a rigid application of the rules tends to frustrate rather than promote substantial justice, this Court is empowered to suspend their operation.

Petitioner's liberty here is at stake. The MCTC convicted her and imposed upon her the penalty of five (5) years imprisonment and the disqualification to hold office. This MCTC decision was affirmed by the RTC.[30] If she has to suffer in prison, her guilt must be established beyond reasonable doubt, availing all the remedies provided for under the law to protect her right. It is highly unjust for her to lose her liberty only because of the gross negligence of her former counsel.

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[27] *People v. Almendras*, 449 Phil. 587, 609 (2003).

[28] *Sanchez v. Court of Appeals*, 452 Phil 665, 674 (2003); and *Ginete v. Court of Appeals*, 357 Phil. 36, 54 (1998).

[29] G.R. No. 153998, October 6, 2010.

[30] *Rollo*, pp. 49-50.

With the dismissal of the administrative case against the petitioner, it is in the interest of substantial justice that the criminal case against her should be reviewed on the merits by the proper tribunal following the appropriate procedures under the rules. Our legal culture requires the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property, not merely substantial evidence. It is not enough that the evidence establishes a strong suspicion or a probability of guilt. The primary consideration is whether the guilt of an accused has been proven beyond reasonable doubt. It has been consistently held that:

> In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. On the whole, the meager evidence for the prosecution casts serious doubts as to the guilt of accused. It does not pass the test of moral certainty and is insufficient to rebut the constitutional presumption of innocence.[31]

At this juncture, the Court takes opportunity to state that it is not countenancing the inexcusable negligence committed by petitioner's former counsel, Atty. Santos M. Baculi, in handling petitioner's case. He is, accordingly, warned to be more careful and meticulous in the discharge of his duties to his clients.

It need not be overemphasized that the trust and confidence necessarily reposed by clients in their counsel requires from the latter a high standard and appreciation of his duty to his clients, his profession, the courts and the public. Every lawyer should, therefore, serve his client in a meticulous, careful and competent manner. He is bound to protect the client's interests and to do all steps necessary therefor as his client reasonably expects him to discharge his obligations diligently.[32]

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[31] *People v. Bansil*, 364 Phil. 22, 34 (1999).

[32] *Villaflores v. Limos*, A.C. No. 7504, November 23, 2007, 538 SCRA 140, 148.

**WHEREFORE,** the petition is *GRANTED*. The Resolutions of the Court of Appeals in CA-G.R. CR No. 31240 dated November 13, 2008 and June 25, 2009, are hereby *SET ASIDE*. In the interest of justice, petitioner Filomena L. Villanueva is given the chance to file the necessary petition for review before the Sandiganbayan, within ten (10) days from receipt hereof.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 189281. February 23, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **ROMEO ANCHES,** *appellant.*

**SYLLABUS**

**CRIMINAL LAW; MURDER; TREACHERY PRESENT ALTHOUGH ATTACK WAS FRONTAL AS IT WAS SUDDEN AND UNEXPECTED GIVING THE VICTIM NO OPPORTUNITY OF ANY DEFENSE; PENALTY.**— Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery; although the attack on the victim was frontal, it was deliberate, sudden and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or to defend himself. The appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* since there was no aggravating circumstance attending the commission of the crime. To conform to recent jurisprudence, however, we increase the awarded exemplary damages from ₱25,000.00 to ₱30,000.00.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**BRION,[*] *J.*:**

We resolve in this Decision the appeal of appellant Romeo Anches from the March 25, 2009 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 00205-MIN.

**THE FACTUAL ANTECEDENTS**

On October 30, 1990, the appellant was accused of murder[2] before the Regional Trial Court (*RTC*), Branch 6, Iligan City, under the following Information:

> That on or about the 30th day of May, 1990, at Bacolod, Lanao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping one another with Pat. Edgardo Gedo Cruz, whose case is now pending before the Office of the Judge Advocate General, Parang, Maguindanao, with intent to kill, did then and there willfully, unlawfully and feloniously, with treachery, evident premeditation, taking advantage of superior strength and nighttime, assault, attack and use personal violence upon one Vicente Pabalay by then and there shooting the latter with firearms thereby inflicting upon him multiple gunshot wounds which were the direct and immediate cause of his death soon thereafter.

CONTRARY to and in violation of Article 248 of the Revised Penal Code with the qualifying circumstance of treachery and

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[*] Designated Acting Chairperson of the Third Division per Special Order No. 925 dated January 24, 2011.

[1] Decision penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Mario V. Lopez of the Special Twenty-Second Division of the Court of Appeals. *Rollo*, pp. 4-20.

[2] See REVISED PENAL CODE, Article 248.

attendance of the aggravating circumstances of evident premeditation, taking advantage of superior strength & nighttime.[3]

On April 4, 2002, the appellant was arrested. He pleaded not guilty upon arraignment and was brought to trial.

The case for the prosecution is summarized below.

At about 11:00 p.m. of May 30, 1990, Manuel Pomicpic was standing at the balcony of his house near the corner of the National Highway and the Municipal Road of Bacolod. It was a moonlit night, and the electric light at the ceiling of a nearby house also illuminated the area. From the balcony, he saw the victim, Vicente Pabalay, standing in front of the waiting shed along the National Highway. He also saw the appellant and Edgardo Gedo Cruz, on board a motorcycle, stop in front of the victim. The appellant said, "*Vicente sakay sa motor kay ako ka nga ihatud*" (Vicente ride on the motorcycle and I will bring you to where you're going). The victim declined the appellant's offer, walked away and crossed the national highway. While Edgardo remained on the motorcycle, the appellant alighted and followed the victim. Upon reaching the other side of the national highway, the victim stopped. As he turned around, the appellant shot him several times. The victim fell on the ground while the appellant simply turned around and fled towards the municipal road. The wounded victim stood up and sought help from the nearby house of Nida Pomicpic.[4]

Nida, who was awakened by the gunshots, saw the victim through her window and heard him shout – "*Help, Martin, Andres*." Nida told her husband Olimpio to go and get the local Civilian Home Defense Force (*CHDF*). When Olimpio returned minutes later with the CHDF members, Nida opened their front door. They saw the victim sitting on the floor of their foyer, bleeding from his shoulder, abdomen and thigh. Roger Paracale, the CHDF team leader, asked the victim – "*Dong, who shot you*?"; the latter replied that it was the appellant who shot him. The victim was then brought to the Mercy Community Hospital.

[3] CA *rollo,* p. 14.

[4] TSN, June 23, 2002, pp. 17-18; CA *rollo*, p. 58.

When Dr. Daniel Rigor performed an exploratory laparatomy on the victim on May 31, 1990, he found the victim's small intestine severed and his liver injured by 9 gunshot wounds. The victim died 10 hours later.[5]

The appellant, interposing alibi, claimed that he was at PC Camp in Kolambugan together with his fellow policemen on the night of the killing; they were not allowed to leave the camp because the replacement commanding officer was expected that day.[6]

**THE RTC RULING**

In its April 21, 2003 decision, the RTC found the appellant guilty of murder. The trial court gave credence to Manuel Pomicpic's positive identification of the appellant as the perpetrator, as corroborated by the victim's *antemortem* statement less than an hour after the shooting. It noted that the appellant's flight from the crime scene and his arrest 12 years later were evidence of his guilt. In rejecting the appellant's alibi, the RTC noted that the 20-kilometer distance between Kolambugan and Bacolod can be traveled by motor vehicle in just 20 minutes. The RTC appreciated the qualifying circumstance of treachery because the appellant shot the victim by surprise and without giving him any opportunity to defend himself. However, it disregarded the qualifying circumstances of evident premeditation and abuse of superior strength for lack of proof. It also noted that nighttime was absorbed by treachery. The RTC sentenced the appellant to suffer the penalty of *reclusion perpetua,* and to pay the heirs of the victim ₱50,000 as civil indemnity, ₱50,000 as moral damages, ₱15,000 as nominal damages and ₱25,000 as exemplary damages.[7]

**THE CA RULING**

On intermediate appellate review, the CA affirmed the judgment of the RTC, giving full respect to the RTC's assessment of the

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[5] CA *rollo,* p. 59.

[6] *Ibid.*

[7] CA *rollo,* pp. 60-64.

testimonies. However, it deleted the award of nominal damages and awarded ₱25,000 as temperate damages.[8]

## OUR RULING

***We affirm the appellant's conviction.***

We find no reason to disturb the findings of the RTC, as affirmed by the CA. The records are replete with evidence establishing the appellant's guilt beyond reasonable doubt. The eyewitness account of Manuel Pomicpic, supported by the victim's *antemortem* statement, is more plausible than the appellant's alibi. Both the RTC and the CA correctly appreciated the qualifying circumstance of treachery; although the attack on the victim was frontal, it was deliberate, sudden and unexpected, affording the hapless, unarmed and unsuspecting victim no opportunity to resist or to defend himself.[9] The appellant was correctly sentenced to suffer the penalty of *reclusion perpetua* since there was no aggravating circumstance attending the commission of the crime. To conform to recent jurisprudence, however, we increase the awarded exemplary damages from ₱25,000.00 to ₱30,000.00.[10]

**WHEREFORE,** the March 25, 2009 decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00205-MIN is hereby *AFFIRMED* with *MODIFICATION*. Appellant Romeo Anches is found guilty of murder, as defined and penalized in Article 248 of the Revised Penal Code, and is sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay the heirs of Vicente Pabalay ₱50,000 as civil indemnity *ex delicto,* ₱50,000 as moral damages, ₱25,000 as temperate damages, and ₱30,000 as exemplary damages.

**SO ORDERED.**

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[8] *Supra* note 1.

[9] *People v. Lacaden*, G.R. No. 187682, November 25, 2009, 605 SCRA 784, 805; and *Gandol v. People*, G.R. Nos. 178233 & 180510, December 4, 2008, 573 SCRA 108, 124.

[10] *People v. Lacaden*, *supra* note 9, at 805; and *People v. Gidoc*, G.R. No. 185162, April 24, 2009, 586 SCRA 825, 837.

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**THIRD DIVISION**

[A.M. No. P-07-2325. February 28, 2011]
(Formerly A.M. No. 06-3-208-RTC)

**OFFICE OF THE COURT ADMINISTRATOR,** *complainant, vs.* **Atty. ROSARIO E. GASPAR, Regional Trial Court, Branch 2, Balanga City, Bataan,** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; CODE OF CONDUCT FOR COURT PERSONNEL; DUTY TO PERFORM OFFICIAL DUTIES PROPERLY AND WITH DILIGENCE AT ALL TIMES; VIOLATED WHEN BRANCH CLERK OF COURT FAILED TO IMMEDIATELY ISSUE WRITS OF EXECUTION IN TWO CRIMINAL CASES.—** Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and with diligence at all times. As the image of the courts, as the administrators and dispensers of justice, is not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions. In this case, the duty of Atty. Gaspar, as Branch Clerk of Court, to issue the corresponding writs of

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[**] Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

execution to implement judgments of forfeiture against surety bonds is expressly provided in the 2002 Revised Manual for Clerks of Court. The records of the case and Atty. Gaspar's own admission show that she fell short of complying with the above standard. She failed to efficiently perform her duty to immediately issue the writs of execution in Criminal Case No. 8333 and Criminal Case No. 8194.

**2. ID.; ID.; SIMPLE NEGLECT OF DUTY COMMITTED IN CASE AT BAR; PENALTY UNDER THE UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE.** — We find [respondent] liable for simple neglect of duty, bearing in mind our ruling in *Ligaya V. Reyes v. Mario Pablico, etc.* where we defined simple neglect of duty as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. As distinguished from gross neglect of duty which is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty, there is nothing in the records to show that Atty. Gaspar willfully and intentionally omitted to issue the subject writs of execution. On the contrary, she candidly admitted that her omissions were caused by plain oversight. She also undertook immediate rectification in compliance with our directives, thereby demonstrating her sincerity and lack of malice in committing her lapses. Simple neglect of duty under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. However, under Section 19, Rule XIV of the Omnibus Civil Service Rules and Regulations, a fine may be imposed instead of the penalty of suspension. The OCA recommended that Atty. Gaspar be fined in the amount of Three Thousand Pesos (₱3,000.00). We modify this recommendation and reduce the amount of the fine to ₱1,500.00, considering Atty. Gaspar's candid admission of her lapses and her apologies.

## D E C I S I O N

**BRION,[*] *J.*:**

We resolve the administrative charge against Atty. Rosario E. Gaspar, Branch Clerk of Court of the Regional Trial Court (*RTC*), Branch 2, Balanga City, for gross neglect of duty for failing to issue the writs of execution in court judgments rendered against forfeited surety bonds.

The charge arose out of the physical inventory of cash, property and surety bonds conducted on February 20 to 25, 2006 by the audit team of the Office of the Court Administrator (*OCA*) in Branches 1, 2, 3, 4 and 5 of the RTC in Bataan. The audit team found the following lapses in procedure committed by the respective Officers-in-Charge Branch Clerks of Court[1] and the Branch Clerks of Courts[2] (*respondents*) of the audited RTC branches: *first*, the failure of the respondents to comply with A.M. No. 04-7-02-SC regarding the new guidelines on the documentary requirements for surety bail bond applications; and *second*, the failure of the respondents to issue the corresponding writs of execution on cancelled or forfeited bail bonds.

We initially referred the matter to the OCA for investigation, report and recommendation.[3] We also directed the respondents to file their comments and ordered them to issue the corresponding writs of execution on the forfeited surety bonds.[4]

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[*] Designated Acting Chairperson of the Third Division per Special Order No. 925 dated January 24, 2011.

[1] They are (1) Mr. Gilbert S. Argonza for RTC-Branch 1, Balanga City, Bataan; (2) Mrs. Margarita H. Quicho for RTC-Branch 3, Balanga City, Bataan; and (3) Mr. Joey A. Astorga for RTC-Branch 5, Dinalupihan, Bataan.

[2] They are (1) Atty. Gaspar; and (2) Atty. Rovelyn B. Baluyot for RTC-Branch 4, Mariveles, Bataan.

[3] Minute Resolution dated September 20, 2006; *rollo*, p. 97.

[4] Minute Resolution dated July 5, 2006; *id.* at 20-25.

In their respective Comments, the respondents commonly claimed the lack of knowledge of A.M. No. 04-7-02-SC. They asserted that they came to know the existence of this guideline during the audit of February 20 to 25, 2006. The respondents for Branches 1, 2 (Atty. Gaspar) and 3 also asserted that in multiple sala courts, the applications for surety bonds were processed by Atty. Romeo Delemos of the Office of the Clerk of Court. The respondents offered their respective explanations and apologies on the second charge.

In its Report and Recommendation, the OCA made the following recommendations:

1. The (*sic*) respondents Gilbert A. Argonza, Margarita R. Quicho, Rovelyn B. Baluyot and Joey Astorga we absolved of administrative liability in connection with the non-issuance of the Writs of Execution in the criminal cases mentioned in the audit report. However, for representing that the surety bond for the accused in Criminal Case No. 8780, RTC, Branch 1, Balanga City had expired on September 20, 2003 which is not borne by the surety bond itself attached as Annex C to his Letter Explanation, Mr. Astorga should be admonished to be more careful in the discharge of his duties and in his official communications specially to the Supreme Court.

2. Respondent Rosario E. Gaspar be FINED in the amount of Three Thousand Pesos (₱3,000.00) for neglect of duty in issuing the writs of execution in Criminal [Case] Nos. 8333 and 8194, RTC, Branch 2, Balanga City, only on August 4, 2006 when the judgments against the bonds in the cases were rendered almost 2 years earlier.

3. All the respondents be absolved of liability for non-compliance with A.M. No. 04-7-02-SC in connection with the corporate surety bonds posted in the criminal cases enumerated in the audit report, for lack of "*working information on the new guidelines*" as found by the audit team.

4. Atty. Romeo Delemos, Clerk of Court of the RTC, Balanga City, be furnished a copy of the audit report and required to explain why administrative action should not be taken against him for non-compliance with A.M. No. 04-7-02-SC.

Except for Atty. Gaspar, the Court resolved to adopt the above recommendations and absolved the respondents from any administrative liability. Thereafter, we charged Atty. Gaspar with neglect of duty based on the Report and Recommendation of the OCA considering her admission that she overlooked and/or inadvertently failed to issue the writs of execution.[5] In the Minute Resolution dated June 13, 2007, we declared:

(2) ***RE-DOCKET*** the instant case as a regular administrative matter against respondent Rosario Gaspar;

(3) to require Rosario Gaspar to ***MANIFEST*** within ten (10) days from notice hereof if she is willing to submit the case for decision on the basis of the records and pleadings filed;

Atty. Gaspar does not deny her shortcomings but pleads that a lighter penalty be imposed than what the OCA recommended in view of the following circumstances: (a) she was a new employee at the time of the incidents complained of, and was not familiar with the case records; (b) the order for cancellation and forfeiture of the bond in Criminal Case No. 8333 did not specifically mention the issuance of the writ of execution; (c) she did not believe that there was an immediate need to issue the writ of execution in the case since the bondsmen were given three (3) days to produce the accused in court instead of the thirty (30)-day statutory period; and (d) the writ of execution against the surety in Criminal Case No. 8194 was issued just over six (6) months from the date of the order and not two (2) years as reported by the judicial audit team.

## OUR RULING

**Except for the recommended penalty, we agree with the findings and recommendations of the OCA and hold Atty. Gaspar liable for simple neglect of duty.**

Section 1, Canon IV of the Code of Conduct for Court Personnel commands court personnel to perform their official duties properly and with diligence at all times. As the image of the courts, as the administrators and dispensers of justice, is

[5] Page 15 of the OCA Report and Recommendation.

not only reflected in their decisions, resolutions or orders but also mirrored in the conduct of court personnel, it is incumbent upon every court personnel to observe the highest degree of efficiency and competency in his or her assigned tasks. The failure to meet these standards warrants the imposition of administrative sanctions.

In this case, the duty of Atty. Gaspar, as Branch Clerk of Court, to issue the corresponding writs of execution to implement judgments of forfeiture against surety bonds is expressly provided in the 2002 Revised Manual for Clerks of Court. The records of the case and Atty. Gaspar's own admission show that she fell short of complying with the above standard. She failed to efficiently perform her duty to immediately issue the writs of execution in Criminal Case No. 8333 and Criminal Case No. 8194. The records show that Atty. Gaspar issued the writs of execution in these criminal cases more than two (2) years after the judgments were issued against the forfeited surety bonds. In Criminal Case No. 8333, the judgment against the surety bond was rendered on April 24, 2003 and the writ of execution to implement the same was issued by Atty. Gaspar only on August 6, 2006. In Criminal Case No. 8194, the RTC rendered judgment against the surety bond as early as June 8, 2004 when the bondsman failed to produce the accused in court. Atty. Gaspar issued the writ of execution only on August 6, 2006.

We find her liable for simple neglect of duty, bearing in mind our ruling in *Ligaya V. Reyes v. Mario Pablico, etc.*[6] where we defined simple neglect of duty as the failure of an employee to give proper attention to a required task or to discharge a duty due to carelessness or indifference. As distinguished from gross neglect of duty which is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty, there is nothing in the records to show that Atty. Gaspar willfully and intentionally omitted to issue the subject writs of execution.[7] On the contrary, she candidly admitted that her omissions were caused by plain

[6] A.M. No. P-06-2109, November 27, 2006, 508 SCRA 146.

[7] *Brucal v. Desierto*, G.R. No. 152188, July 8, 2005, 463 SCRA 151.

oversight. She also undertook immediate rectification in compliance with our directives, thereby demonstrating her sincerity and lack of malice in committing her lapses.

Simple neglect of duty under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. However, under Section 19, Rule XIV of the Omnibus Civil Service Rules and Regulations, a fine may be imposed instead of the penalty of suspension.[8] The OCA recommended that Atty. Gaspar be fined in the amount of Three Thousand Pesos (₱3,000.00). We modify this recommendation and reduce the amount of the fine to ₱1,500.00, considering Atty. Gaspar's candid admission of her lapses and her apologies.[9]

**ACCORDINGLY,** premises considered, Atty. Rosario E. Gaspar, Branch Clerk of Court, Regional Trial Court, Branch 2, Balanga City, Bataan, is *FINED* in the amount of One Thousand Pesos (₱1,000.00) for simple neglect of duty in failing to immediately issue the writs of execution of court judgments rendered on forfeited surety bonds. She is hereby *WARNED* that a repetition of the same or similar offense shall be dealt with more severely.

**SO ORDERED.**

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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[8] Sec. 19. The penalty of transfer, or demotion, or fine may be imposed instead of suspension from one (1) day to one (1) year except in case of fine which shall not exceed six (6) months.

[9] *Seangio v. Parce*, A.M. No. P-06-2252, July 9, 2007, 527 SCRA 24.

[*] Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

**SECOND DIVISION**

[A.M. No. RTJ-10-2247. March 2, 2011]
(Formerly OCA I.P.I. No. 09-3143-RTJ)

**JOCELYN DATOON,** *complainant, vs.* **JUDGE BETHANY G. KAPILI, Presiding Judge of Regional Trial Court, Branch 24, Maasin City, Southern Leyte,** *respondent.*

**SYLLABUS**

**1. JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGES AGAINST JUDGES ARE HIGHLY PENAL IN CHARACTER; CASE AT BAR.—** Administrative charges against judges have been viewed by this Court with utmost care, as the respondent stands to face the penalty of dismissal or disbarment. Thus, proceedings of this character are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. The charges in such case must, therefore, be proven beyond reasonable doubt. In light of the evidence submitted in this case, the Court is of the view that the charges against Judge Kapili were not sufficiently substantiated by Datoon who has the burden of proof in administrative proceedings. The evidence presented was not sufficient to compel the Court to exercise its disciplinary powers over the respondent judge as mandated under Article VIII, Section 6 of the 1987 Constitution.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF COMPLAINANT WAS UNCORROBORATED IN CASE AT BAR.—** Datoon's testimony was uncorroborated. She failed to present any witness to support her charges. Although she presented the affidavit of her father, Gagan, who allegedly witnessed the incident, she did not present him as a witness to corroborate her testimony, or to refute Judge Kapili's testimony that they had attempted to extort money from him, despite the fact that he was present during the hearing. Neither did she present the old woman who, she claimed, was also in the room at the time of the incident.

**3. ID.; ID.; ADMISSIBILITY; ADMISSIONS OF A PARTY MAY BE GIVEN IN EVIDENCE AGAINST THAT PARTY.—** Section 26, Rule 130 of the Rules of Evidence provides that admissions of a party may be given in evidence against him or her. Datoon's admission against her interest, as narrated by two credible and neutral witnesses, militates against the credibility of her charges. The presumption is that no person would declare anything against himself unless such declaration were true.

**D E C I S I O N**

**MENDOZA, *J.*:**

Before this Court is a verified Complaint[1] filed on March 17, 2009, by complainant Jocelyn Datoon *(Datoon)* charging respondent Judge Bethany G. Kapili *(Judge Kapili)*, Presiding Judge of Regional Trial Court Branch 24, Maasin City *(RTC)*, with Conduct Unbecoming a Member of the Judiciary, and Gross Misconduct amounting to Violation of the Code of Judicial Conduct, relative to an incident which occured at the Salvacion Oppus Yñiguez Memorial Hospital *(SOYMH)* in Maasin City, Southern Leyte.

On August 16, 2010, the administrative complaint was referred to the Executive Justice of the Court of Appeals, Cebu Station, for raffle among the Associate Justices thereat for investigation, report and recommendation in accordance with the recommendation of the Office of the Court Administrator *(OCA)*.

Datoon testified on her own behalf but presented no other witnesses. She also submitted the following documents: her verified Complaint to which were attached the Incident Report of the guard-on-duty, her Affidavit, the Affidavit of her father, Jose Gagan; her verified Reply;[2] and verified Sur-Rejoinder.[3]

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[1] *Rollo,* pp. 1-11.

[2] *Id.* at 28-39.

[3] *Id.* at 90-99.

Judge Kapili also testified on his own behalf and presented, as additional witnesses, Judge Ma. Daisy Paler-Gonzales *(Judge Paler-Gonzales)*, Efledo Hernandez *(Hernandez)*, and Rodulfo Orit *(Orit)*. He also submitted the following documents: the Affidavit[4] of Judge Paler-Gonzales, the Affidavit[5] of Hernandez and the Affidavit[6] of Orit.

The facts as borne out by the records and findings of the Investigating Justice are as follows:

Datoon averred that on December 11, 2008, at around 3:00 o'clock in the morning, she was in the labor room of SOYMH waiting to give birth. She was accompanied by her father, Jose Gagan *(Gagan)*. Suddenly, they were disturbed by the appearance of Judge Kapili who appeared to her to be drunk as his face was reddish and his eyes were sleepy. She noticed a gun at his waist over his tucked-in t-shirt and she became nervous. Judge Kapili entered the labor room calling "Lor, Lor," looking for his wife, Dr. Lorna Kapili *(Dr. Kapili)*, a practicing obstetrician-gynecologist. Not seeing his wife around, Judge Kapili left and entered the delivery room, but returned to the labor room a few minutes later. Datoon was crying, as she was already having labor pains at the time. Judge Kapili then pointed his gun at her and asked "What's your problem?" This caused her to start crying hysterically while saying "Please don't sir, have pity." At this time, she was lying in bed while Judge Kapili was standing at the left side of the bed near her head. At that moment, a woman entered the room and informed Judge Kapili of the whereabouts of Dr. Kapili, after which he left. Datoon claimed that because of this incident, she was unable to go through normal delivery of her baby and had to undergo caesarian operation instead. Her testimony appeared in the records as follows:

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[4] *Id.* at 55-56.

[5] *Id.* at 53-54.

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

Q: When you saw the man who was carrying a gun, what was your reaction?
A: I was frightened.

Q: You said earlier he went inside the delivery room. Before he went inside the labor room and then he went inside the delivery room. After the delivery room, what happened next?
A: A little later, he went inside the labor room.

Q: What happened next when the man went back inside the labor room?
A: I looked at the man and he pointed the gun at me and uttered the words, "*Unsa man, ha*?" So I pleaded, "*Ayaw tawon, sir, maluoy ka*." Then I heard someone saying, "Dra. was in the other room."

Q: After uttering those words, "Unsa man, ha," your reply was?
A: "*Ayaw tawon, sir, maluoy ka*."

Q: When the man pointed the gun at you, where were you then?
A: I was in bed, lying.

Q: Where was the man positioned when he pointed the gun at you?
A: He was standing at the left side of the bed near my head.

Q: When the man pointed the gun at you and you said, "A*yaw tawon, sir, maluoy ka*," what happened next?
A: The gun was still pointing at me when I heard somebody said, "*Si doctora, toa sa pikas nga room*."

Q: When you heard the voice saying, "*si doctora, toa sa pikas nga room*," what happened next?
A: He went outside.

Q: You said your father was inside the labor room. Where was your father at that time?
A: He was opposite my bed.[7]

In his Comment,[8] Judge Kapili admitted being at SOYMH on December 11, 2008, but denied having a gun. He related

[7] *Id.* at 127-128.

[8] *Id.* at 18-22.

that he received several phone calls from a woman patient who was looking for his wife, Dr. Lorna Kapili. He tried to contact his wife by telephone, but she failed to answer, prompting him to proceed to the hospital to look for her with his security escort, PO2 Jimmy Ganosa *(PO2 Ganosa)*, whose Affidavit[9] was attached to the Comment. At the hospital, Judge Kapili instructed PO2 Ganosa to proceed to his mother-in-law's house to check if his wife was there. He then proceeded to the labor room where he saw Datoon who appeared to be in pain and was surprised by his appearance. He was irked by her reaction so he approached her to ask what her problem was.

Judge Kapili further asserted that he did not have a gun and was only carrying a clutch bag, which Datoon might have mistaken as containing a firearm. He also stated that Gagan was not in the labor room and the only persons present were Datoon and a midwife named Ermelinda Costillas, who was the woman who informed him that his wife was resting in the doctors' lounge and whose Affidavit[10] was attached to the Comment. He was unaware that he had created any disturbance as he had not received any notice of such until more than four months later, or on April 16, 2009, when he received a copy of the Complaint.

Judge Kapili was of the belief that the complaint might have been orchestrated and financed by the hospital administrator, Cielveto Almario *(Almario)*, in retaliation for the various letters he wrote to the hospital management and to various government agencies criticizing the services of the hospital.

In her verified Reply, Datoon stated that Judge Kapili came from an influential family and had been sending emissaries to convince her to drop the complaint. She noted that Judge Kapili did not make any categorical denial of her claim that he was drunk on the night of the incident.

In his Rejoinder, Judge Kapili claimed that Datoon told a co-worker, Flordeliza Marcojos *(Marcojos)*, that he did not really

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[9] *Id.* at 23.

[10] *Id.* at 24-25.

point a gun at her and that Datoon was made to sign a prepared complaint in exchange for employment in the government office in the Province of Southern Leyte. He admitted sending persons to contact Datoon and her father, but explained that it was for the purpose of meeting them, and not to harass or bribe them. He added that, according to Orit, it was Gagan who insinuated that they be paid ₱150,000.00 for the dropping of the case. The affidavits of Marcojos[11] and Orit[12] were attached to his Rejoinder.

In her Verified Sur-Rejoinder, Datoon denied entering into any agreement with the hospital administrator, Almario, in exchange for the filing of the complaint. She insisted that she fully understood the allegations in the complaint and denied the assertion that she was only trying to extort money from Judge Kapili.

Judge Paler-Gonzales of RTC, Branch 25, Maasin City, testified that she went to see Datoon in the Provincial Library where the latter was working at the time; that Datoon told her that the Complaint and Affidavit were already prepared by Almario; and that she could not be certain if what was stated in her affidavit was true because she was experiencing labor pains at that time.

In support of Judge Kapili's position, Hernandez, Executive Assistant to the Governor of Maasin City, stated in his Affidavit and testified that he talked to Datoon upon the Governor's instructions to verify the report that certain persons were extorting money from Judge Kapili. During their conversation, Datoon was said to have stated that Judge Kapili was carrying a clutch bag but never pointed a gun at her and she did not know who prepared the affidavit for it was only brought to her for her signature.

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[11] *Id.* at 47.

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

Orit,[13] a Kagawad of Brgy. Mantahan, Maasin City, testified that he went to the house of Datoon's father, Gagan, to convey Judge Kapili's wish to talk with them. At said meeting, Gagan told him that if Judge Kapili had ₱150,000.00, then they would meet him.

On February 7, 2011, Investigating Justice Portia Alino-Hormachuelos submitted her Final Report and Recommendation,[14] wherein she recommended the dismissal of the complaint for lack of merit after finding that Datoon failed to prove her charges both by clear, convincing and satisfactory evidence and beyond reasonable doubt.

The Court adopts the findings and recommendation of the Investigating Justice.

Administrative charges against judges have been viewed by this Court with utmost care, as the respondent stands to face the penalty of dismissal or disbarment. Thus, proceedings of this character are in their nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. The charges in such case must, therefore, be proven beyond reasonable doubt.[15]

In light of the evidence submitted in this case, the Court is of the view that the charges against Judge Kapili were not sufficiently substantiated by Datoon who has the burden of proof in administrative proceedings.[16] The evidence presented was not sufficient to compel the Court to exercise its disciplinary powers over the respondent judge as mandated under Article VIII, Section 6 of the 1987 Constitution.[17]

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[13] *Id.* at 156.

[14] *Id.* at 239-248.

[15] *Verginesa-Suarez v. Dilag*, A.M. Nos. RTJ-06-2014 and 06-07-415-RTC, March 4, 2009, 580 SCRA 491, 509.

[16] *San Buenaventura v. Judge Malaya*, 435 Phil. 19, 37 (2002); citing *Narag v. Narag*, 353 Phil. 643, 655-656 (1998).

[17] Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Datoon's testimony was uncorroborated. She failed to present any witness to support her charges. Although she presented the affidavit of her father, Gagan, who allegedly witnessed the incident, she did not present him as a witness to corroborate her testimony, or to refute Judge Kapili's testimony that they had attempted to extort money from him, despite the fact that he was present during the hearing. Neither did she present the old woman[18] who, she claimed, was also in the room at the time of the incident.

The Court cannot help but notice that Datoon's testimony was also replete with inconsistencies. As to where the gun was at the time Judge Kapili first entered the labor room, her Complaint[19] and Affidavit[20] stated that while she "was waiting to give birth in the labor room of the hospital, a man, who was drunk and **holding a gun** suddenly barged into the room looking for one Dr. Lorna Kapili." On the other hand, during her testimony,[21] she stated that he was "**carrying a gun on his waist**" when he first entered the labor room. She further testified that Judge Kapili was later holding a gun and pointing it at her when he came back into the labor room.

Furthermore, it was highly unlikely that her crying would have caused Judge Kapili to pull out his gun and point it at her, considering that he knew he was in the labor room of the hospital where pregnant patients would be in labor and understandably in pain. Datoon's testimony is contradictory, inconsistent and contrary to human nature and experience.

As to Judge Kapili's alleged intoxicated state, Datoon only surmised that he was drunk because his face was flushed and his eyes were sleepy.[22] This was an unfounded conclusion. His sleepy eyes could be attributed to the fact that it was 3:00 o'clock in the morning, while his reddish face could be explained

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[18] *Rollo*, p. 126.

[19] *Id.* at 2.

[20] *Id.* at 13.

[21] *Id.* at 124.

[22] *Id.*

by his natural coloration, as observed by the Investigating Justice.[23] Moreover, Datoon admitted that Judge Kapili did not smell of alcohol or liquor at the time of the incident.[24]

Lastly, both Judge Paler-Gonzales[25] and Hernandez[26] testified that Datoon admitted to them that she signed the Complaint and Affidavit without meeting the lawyers who prepared the same. Hernandez further bared that Datoon admitted to him that Judge Kapili never pointed a gun at her.[27] On her part, Judge Paler-Gonzales testified that Datoon admitted that she was not sure if the contents of her Complaint and Affidavit were true because she was in pain at the time of the incident.[28]

Datoon failed to address these accusations as she was not presented for rebuttal. Section 26, Rule 130 of the Rules of Evidence provides that admissions of a party may be given in evidence against him or her. Datoon's admission against her interest, as narrated by two credible and neutral witnesses, militates against the credibility of her charges. The presumption is that no person would declare anything against himself unless such declaration were true.[29]

From all the foregoing, it is clear that Datoon failed to prove her charges against Judge Kapili.

**WHEREFORE,** the complaint against Judge Bethany G. Kapili is *DISMISSED*.

**SO ORDERED.**

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[23] *Id.* at 247.

[24] *Id.* at 126.

[25] *Id.* at 142.

[26] *Id.* at 148-149.

[27] *Id.* at 148.

[28] *Id.* at 142.

[29] *Heirs of Bernardo Ulep v. Ducat*, G.R. No. 159284, January 27, 2009, 577 SCRA 6, 18; citing, *Rufina Patis Factory v. Alusitain*, 478 Phil. 544, 558 (2004).

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

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**FIRST DIVISION**

[G.R. No. 167751. March 2, 2011]

**HARPOON MARINE SERVICES, INC. and JOSE LIDO T. ROSIT,** *petitioners, vs.* **FERNAN H. FRANCISCO,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; ESTABLISHED IN CASE AT BAR; GROSS AND HABITUAL ABSENTEEISM AND TARDINESS, NOT PROVEN.—** We find no merit in petitioners' contention that respondent incurred unexplained and habitual absences and tardiness. A scrutiny of the time card and payroll discloses that respondent incurred only three days of absence and no record of tardiness. As aptly held by the NLRC, the time card and payroll presented by petitioners do not show gross and habitual absenteeism and tardiness especially since respondent's explanation of his three-day absence was not denied by petitioners at the first instance before the Labor Arbiter. No other evidence was presented to show the alleged absences and tardiness. On the other hand, Solares, a co-worker of respondent has stated under oath that, as their supervisor, respondent was diligent in reporting for work until June 20,

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 954 dated January 24, 2011.

2001 when they heard the news concerning respondent's termination from his job.

**2. ID.; ID.; ID.; JUST CAUSES; ABANDONMENT OF WORK; TWO ESSENTIAL REQUIREMENTS; NOT PROVEN IN CASE AT BAR.—** Jurisprudence provides for two essential requirements for abandonment of work to exist. The "failure to report for work or absence without valid or justifiable reason" and "clear intention to sever the employer-employee relationship x x x manifested by some overt acts" should both concur. Further, the employee's deliberate and unjustified refusal to resume his employment without any intention of returning should be established and proven by the employer. Petitioners failed to prove that it was respondent who voluntarily refused to report back for work by his defiance and refusal to accept the memoranda and the notices of absences sent to him. The CA correctly ruled that petitioners failed to present evidence that they sent these notices to respondent's last known address for the purpose of warning him that his continued failure to report would be construed as abandonment of work. The affidavit of petitioner Harpoon's liaison officer that the memoranda/ notices were duly sent to respondent is insufficient and self-serving. Despite being stamped as received, the memoranda do not bear any signature of respondent to indicate that he actually received the same. There was no proof on how these notices were given to respondent. Neither was there any other cogent evidence that these were properly received by respondent. The fact that respondent never prayed for reinstatement and has sought employment in another company which is a competitor of petitioner Harpoon cannot be construed as his overt acts of abandoning employment.

**3. ID.; ID.; ID.; ILLEGAL DISMISSAL; AWARD OF BACKWAGES AND SEPARATION PAY, PROPER.—** [B]oth the NLRC and the CA did not commit manifest error in finding that there was illegal dismissal. The award of backwages and separation pay in favor of respondent is therefore proper.

**4. ID.; ID.; MONEY CLAIMS; ENTITLEMENT TO COMMISSION, NOT SUFFICIENTLY PROVED IN CASE AT BAR.—** Examination of the check vouchers presented by respondent reveals that an amount of ₱30,000.00 and ₱10,000.00 alleged as commissions were paid to respondent

on June 9, 2000 and September 28, 2000, respectively. Although the veracity and genuineness of these documents were not effectively disputed by petitioners, nothing in them provides that commissions were paid to respondent on account of a repair or construction of a vessel. It cannot also be deduced from said documents for what or for how many vessels the amounts stated therein are for. In other words, the check vouchers contain very scant details and can hardly be considered as sufficient and substantial evidence to conclude that respondent is entitled to a commission of ₱10,000.00 for every vessel repaired or constructed by the company. At most, these vouchers only showed that respondent was paid on two occasions but were silent as to the specific purpose of payment. The list of vessels supposedly repaired/constructed by the company neither validates respondent's monetary claim as it merely contains an enumeration of 17 names of vessels and nothing more. No particulars, notation or any clear indication can be found on the list that the repair or complete construction of seven of the seventeen boats listed therein was supervised or managed by respondent. Worse, the list is written only on a piece of paper and not on petitioners' official stationery and is unverified and unsigned. Verily, its patent vagueness makes it unworthy of any credence to be used as basis for awarding respondent compensations as alleged commissions. Aside from these documents, no other competent evidence was presented by respondent to determine the value of what is properly due him, much less his entitlement to a commission. Respondent's claim cannot be based on allegations and unsubstantiated assertions without any competent document to support it. Certainly, the award of commissions in favor of respondent in the amount of ₱70,000.00 should not be allowed as the claim is founded on mere inferences, speculations and presumptions.

**5. MERCANTILE LAW; CORPORATION LAW; AS A RULE, CORPORATE OFFICERS ARE NOT JOINTLY AND SOLIDARILY LIABLE WITH THE CORPORATION; EXCEPTIONS.—** As held in the case of *MAM Realty Development Corporation v. National Labor Relations Commission*, "obligations incurred by [corporate officers], acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent." As such, they should not be generally held jointly and solidarily liable

with the corporation. The Court, however, cited circumstances when solidary liabilities may be imposed, as exceptions: 1. When directors and trustees or, in appropriate cases, the officers of a corporation – (a) vote for or assent to [patently] unlawful acts of the corporation; (b) act in bad faith or with gross negligence in directing the corporate affairs; (c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons. 2. When the director or officer has consented to the issuance of watered stock or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto. 3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation. 4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action. The general rule is grounded on the theory that a corporation has a legal personality separate and distinct from the persons comprising it.

**6. ID.; ID.; ID.; ID.; CORPORATE OFFICER'S BAD FAITH IN TERMINATING THE EMPLOYEE, NOT PROVEN IN CASE AT BAR; SOLIDARY LIABILITY WITH THE CORPORATION FOR ILLEGAL DISMISSAL DOES NOT ATTACH.—** To warrant the piercing of the veil of corporate fiction, the officer's bad faith or wrongdoing "must be established clearly and convincingly" as "[b]ad faith is never presumed." In the case at bench, the CA's basis for petitioner Rosit's liability was that he acted in bad faith when he approached respondent and told him that the company could no longer afford his salary and that he will be paid instead his separation pay and accrued commissions. This finding, however, could not substantially justify the holding of any personal liability against petitioner Rosit. The records are bereft of any other satisfactory evidence that petitioner Rosit acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of his authority as company president. Indeed, petitioner Rosit informed respondent that the company wishes to terminate his services since it could no longer afford his salary. Moreover, the promise of separation pay, according to petitioners, was out of goodwill and magnanimity. At the most, petitioner Rosit's actuations only show the illegality of the manner of effecting respondent's termination from service due to absence of just

or valid cause and non-observance of procedural due process but do not point to any malice or bad faith on his part. Besides, good faith is still presumed. In addition, liability only attaches if the officer has assented to *patently* unlawful acts of the corporation. Thus, it was error for the CA to hold petitioner Rosit solidarily liable with petitioner Harpoon for illegally dismissing respondent.

**APPEARANCES OF COUNSEL**

*Reu Lawrence Agustin* for petitioners.

*Law Firm of Andrei Bon C. Tagum & Associates* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

Satisfactory evidence of a valid or just cause of dismissal is indispensably required in order to protect a laborer's right to security of tenure. In the case before us, the employer presented none despite the burden to prove clearly its cause.

This Petition for Review on *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction[1] assails the Decision[2] dated January 26, 2005 and Resolution[3] dated April 12, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 79630, which affirmed the Decision[4] of the National Labor Relations Commission (NLRC) dated March 31, 2003, as well as the NLRC modified Decision[5]

[1] *Rollo*, pp. 52-165.

[2] Annex "A" of the Petition, *id*. at 166-178; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao.

[3] Annex "B" of the Petition, *id*. at 180.

[4] Annex "C" of the Petition, *id.* at 182-185; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.

[5] Annex "D" of the Petition, *id.* at 187-193; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ernesto C. Verceles and Tito F. Genilo.

dated June 30, 2003, declaring petitioners Harpoon Marine Services, Incorporated (Harpoon) and Jose Lido T. Rosit (Rosit) solidarily liable to pay respondent Fernan H. Francisco (respondent) separation pay, backwages and unpaid commissions for illegally dismissing him.

***Factual Antecedents***

Petitioner Harpoon, a company engaged in ship building and ship repair, with petitioner Rosit as its President and Chief Executive Officer (CEO), originally hired respondent in 1992 as its Yard Supervisor tasked to oversee and supervise all projects of the company. In 1998, respondent left for employment elsewhere but was rehired by petitioner Harpoon and assumed his previous position a year after.

On June 15, 2001, respondent averred that he was unceremoniously dismissed by petitioner Rosit. He was informed that the company could no longer afford his salary and that he would be paid his separation pay and accrued commissions. Respondent nonetheless continued to report for work. A few days later, however, he was barred from entering the company premises. Relying on the promise of petitioner Rosit, respondent went to the office on June 30, 2001 to receive his separation pay and commissions, but petitioner Rosit offered only his separation pay. Respondent refused to accept it and also declined to sign a quitclaim. After several unheeded requests, respondent, through his counsel, sent a demand letter dated September 24, 2001[6] to petitioners asking for payment of ₱70,000.00, which represents his commissions for the seven boats[7] constructed and repaired by the company under his supervision. In a letter-reply dated September 28, 2001,[8] petitioners denied that it owed respondent any commission, asserting that they never entered into any contract or agreement for the payment of commissions.

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[6] Annex "A" of respondent's position paper before the Labor Arbiter, CA *rollo*, p.109.

[7] See Annex "C", *id.* at 111.

[8] Annex "B", *id.* at 110.

Hence, on October 24, 2001, respondent filed an illegal dismissal complaint praying for the payment of his backwages, separation pay, unpaid commissions, moral and exemplary damages and attorney's fees.

Petitioners presented a different version of the events and refuted the allegations of respondent. They explained that petitioner Rosit indeed talked to respondent on June 15, 2001 not to dismiss him but only to remind and warn him of his excessive absences and tardiness, as evinced by his Time Card covering the period June 1-15, 2001.[9] Instead of improving his work behavior, respondent continued to absent himself and sought employment with another company engaged in the same line of business, thus, creating serious damage in the form of unfinished projects. Petitioners denied having terminated respondent as the latter voluntarily abandoned his work after going on Absence Without Official Leave (AWOL) beginning June 22, 2001. Petitioners contended that when respondent's absences persisted, several memoranda[10] informing him of his absences were sent to him by ordinary mail and were duly filed with the Department of Labor and Employment (DOLE) on August 13, 2001. Upon respondent's continuous and deliberate failure to respond to these memoranda, a Notice of Termination dated July 30, 2001[11] was later on issued to him.

Respondent, however, denied his alleged tardiness and excessive absences. He claimed that the three-day absence appearing on his time card cannot be considered as habitual absenteeism. He claimed that he incurred those absences because petitioner Rosit, who was hospitalized at those times, ordered them not to report for work until he is discharged from the hospital. In fact, a co-worker, Nestor Solares (Solares), attested that respondent always goes to work and continued to report until June 20, 2001.[12] Respondent further denied having received

[9] Annex "1" of petitioners' reply to respondent's position paper, *id.* at 99.

[10] Annexes "1", "2" and "3" of petitioners' position paper before the Labor Arbiter, *id.* at 85-87.

[11] Annex "4", *id.* at 88.

[12] See Nestor Solares' *Sinumpaang Salaysay*, Annex "A" of respondent's reply, *id.* at 117.

the memoranda that were allegedly mailed to him, asserting that said documents were merely fabricated to cover up and justify petitioners' act of illegally terminating him on June 15, 2001. Respondent absolved himself of fault for defective works, justifying that he was illegally terminated even before the company projects were completed. Finally, respondent denied petitioners' asseveration that he abandoned his job without any formal notice in 1998 as he wrote a resignation letter which petitioners received.

As regards the commissions claimed, respondent insisted that in addition to his fixed monthly salary of ₱18,200.00, he was paid a commission of ₱10,000.00 for every ship repaired or constructed by the company. As proof, he presented two check vouchers[13] issued by the company showing payment thereof.

Petitioners, on the other hand, contended that respondent was hired as a regular employee with a fixed salary and not as an employee paid on commission basis. The act of giving additional monetary benefit once in a while to employees was a form of recognizing employees' efforts and cannot in any way be interpreted as commissions. Petitioners then clarified that the word "commission" as appearing in the check vouchers refer to "additional money" that employees receive as differentiated from the usual "*vale*" and is written for accounting and auditing purposes only.

***Ruling of the Labor Arbiter***

On May 17, 2002, the Labor Arbiter rendered a Decision[14] holding that respondent was validly dismissed due to his unjustified absences and tardiness and that due process was observed when he was duly served with several memoranda relative to the cause of his dismissal. The Labor Arbiter also found respondent entitled to the payment of commissions by giving credence to the check vouchers presented by respondent as well as attorney's fees for withholding the payment of commissions pursuant to

[13] Check Vouchers dated June 9, 2000 and September 28, 2000, Annexes "B" and "C", respectively, *id.* at 118-119.

[14] Annex "E" of the Petition, *rollo*, pp. 195-206; penned by Labor Arbiter Natividad M. Roma.

Article 111 of the Labor Code. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the dismissal of complainant Fernan H. Francisco legal; ordering respondents Harpoon Marine Services Inc., and Jose Lido T. Rosit, to pay complainant his commission in the sum of PHP70,000.00; as well as attorney's fees of ten percent (10%) thereof; and dismissing all other claims for lack of merit.
>
> SO ORDERED.[15]

***Proceedings before the National Labor Relations Commission***

Both parties appealed to the NLRC. Petitioners alleged that the Labor Arbiter erred in ruling that respondent is entitled to the payment of commissions and attorney's fees. They questioned the authenticity of the check vouchers for being photocopies bearing only initials of a person who remained unidentified. Also, according to petitioners, the vouchers did not prove that commissions were given regularly as to warrant respondent's entitlement thereto.[16]

Respondent, on the other hand, maintained that his dismissal was illegal because there is no sufficient evidence on record of his alleged gross absenteeism and tardiness. He likewise imputed bad faith on the part of petitioners for concocting the memoranda for the purpose of providing a semblance of compliance with due process requirements.[17]

In its Decision dated March 31, 2003,[18] the NLRC affirmed the Labor Arbiter's award of commissions in favor of respondent for failure of petitioners to refute the validity of his claim. The NLRC, however, deleted the award of attorney's fees for lack of evidence showing petitioners' bad faith in terminating respondent.

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[15] *Id.* at 205-206.

[16] See Petitioners' Appeal-Memorandum, CA *rollo*, pp. 126-134.

[17] See Respondent's Memorandum on Appeal; *id.* at 139-148.

[18] Annex "C" of the Petition, *rollo*, pp. 182-185.

As the NLRC only resolved petitioners' appeal, respondent moved before the NLRC to resolve his appeal of the Labor Arbiter's Decision.[19] For their part, petitioners filed a Verified Motion for Reconsideration[20] reiterating that there was patent error in admitting, as valid evidence, photocopies of the check vouchers without substantial proof that they are genuine copies of the originals.

The NLRC, in its Decision dated June 30, 2003,[21] modified its previous ruling and held that respondent's dismissal was illegal. According to the NLRC, the only evidence presented by the petitioners to prove respondent's habitual absenteeism and tardiness is his time card for the period covering June 1-15, 2001. However, said time card reveals that respondent incurred only three absences for the said period, which cannot be considered as gross and habitual. With regard to the award of commissions, the NLRC affirmed the Labor Arbiter because of petitioners' failure to question the authenticity of the check vouchers in the first instance before the Labor Arbiter. It, nevertheless, sustained the deletion of the award of attorney's fees in the absence of proof that petitioners acted in bad faith. Thus, for being illegally dismissed, the NLRC granted respondent backwages and separation pay in addition to the commissions, as contained in the dispositive portion of its Decision, as follows:

WHEREFORE, the decision dated 31 March 2003 is further MODIFIED. Respondents are found to have illegally dismissed complainant Fernan H. Francisco and are ordered to pay him the following:

1. Backwages = ₱218,066.33
(15 June 2001 – 17 May 2002)
a) Salary – ₱18,200.00 x 11.06 months = ₱201,292.00
b) 13th month pay: ₱201,292.00/12 = 16,774.33

[19] See Respondent's Motion for Reconsideration and Motion to Resolve Complainant's Appeal of the Labor Arbiter's Decision Dated June 2, 2002, CA *rollo*, pp. 62-65.

[20] *Id.* at 57-61.

[21] Annex "D" of the Petition, *rollo*, pp. 187-193.

| | | |
|---|---|---|
| 2. Separation Pay of one month salary for every year of service (October 1999 – 17 May 2002) ₱18,200.00 x 3 yrs. | = | 54,600.00 |
| 3. Commission | = | 70,000.00 |
| TOTAL | | ₱342,666.33 |

The Motion for Reconsideration filed by complainant and respondents are hereby DISMISSED for lack of merit.

SO ORDERED.[22]

### *Ruling of the Court of Appeals*

Petitioners filed a petition for *certiorari*[23] with the CA, which on January 26, 2005, affirmed the findings and conclusions of the NLRC. The CA agreed with the NLRC in not giving any probative weight to the memoranda since there is no proof that the same were sent to respondent. It also upheld respondent's right to the payment of commissions on the basis of the check vouchers and declared petitioners solidarily liable for respondent's backwages, separation pay and accrued commissions.

Petitioners moved for reconsideration which was denied by the CA. Hence, this petition.

### Issues

**WHETHER THE COURT OF APPEALS COMMITTED ERROR IN RENDERING ITS DECISION AND ITS RESOLUTION DISMISSING AND DENYING THE PETITION FOR *CERTIORARI A QUO* WHEN IT FAILED TO RECTIFY AND CORRECT THE FINDINGS AND CONCLUSIONS OF THE NLRC (AND OF THE LABOR ARBITER *A QUO*), WHICH WERE ARRIVED AT WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. IN PARTICULAR:**

**I**

**WHETHER THE COURT OF APPEALS ERRED WHEN IT FAILED TO REVERSE THE FINDINGS OF THE NLRC AND OF THE LABOR ARBITER *A QUO* BECAUSE THESE FINDINGS**

[22] *Id.* at 191-192.

[23] Annex "F" of the Petition, *id.* at 207-249.

**ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE[;] ARE CONFLICTING AND CONTRADICTORY; GROUNDED UPON SPECULATION, CONJECTURES, AND ASSUMPTIONS; [AND] ARE MERE CONCLUSIONS FOUNDED UPON A MISAPPREHENSION OF FACTS, AMONG OTHERS.**

**II**

**WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS AN ILLEGAL DISMISSAL IN THE SEPARATION FROM EMPLOYMENT OF FERNAN H. FRANCISCO NOTWITHSTANDING THE FACT THAT HE WAS HABITUALLY ABSENT, SUBSEQUENTLY WENT ON AWOL, AND HAD ABANDONED HIS WORK AND CORRELATIVELY, WHETHER HE IS ENTITLED TO BACKWAGES AND SEPARATION PAY.**

**III**

**WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT FERNAN H. FRANCISCO IS ENTITLED TO COMMISSIONS IN THE AMOUNT OF ₱70,000 EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS SHOWN TO SUPPORT THE CLAIM.**

**IV**

**WHETHER THE COURT OF APPEALS ERRED WHEN IT RULED THAT THERE WAS BAD FAITH ON THE PART OF PETITIONER ROSIT EVEN THOUGH NO SUBSTANTIAL EVIDENCE WAS PRESENTED TO PROVE THIS AND CORRELATIVELY, WHETHER PETITIONER ROSIT CAN BE HELD SOLIDARILY LIABLE WITH PETITIONER HARPOON.**[24]

Petitioners submit that there was no basis for the CA to rule that respondent was illegally dismissed since more than sufficient proof was adduced to show his habitual absenteeism and abandonment of work as when he further incurred additional absences after June 15, 2001 and subsequently went on AWOL; when he completely ignored all the notices/memoranda sent to him; when he never demanded for reinstatement in his September 24, 2001 demand letter, complaint and position paper before the Labor Arbiter; when it took him four months before

[24] *Id.* at 87-89.

filing an illegal dismissal complaint; and when he was later found to have been working for another company.

Petitioners also question the veracity of the documents presented by respondent to prove his entitlement to commissions, to wit: the two check vouchers[25] and the purported list[26] of vessels allegedly constructed and repaired by the company. Petitioners insist that the check vouchers neither prove that commissions were paid on account of a repair or construction of a vessel nor were admissible to prove that a regular commission is given for every vessel that is constructed/repaired by the company under respondent's supervision. The list of the vessels, on the other hand, cannot be used as basis in arriving at the amount of commissions due because it is self-serving, unsigned, unverified and merely enumerates a list of names of vessels which does not prove anything. Therefore, the award of commissions was based on unsupported assertions of respondent.

Petitioners also insist that petitioner Rosit, being an officer of the company, has a personality distinct from that of petitioner Harpoon and that no proof was adduced to show that he acted with malice or bad faith hence no liability, solidary or otherwise, should be imposed on him.

**Our Ruling**

The petition is partly meritorious.

*Respondent was illegally dismissed for failure of petitioners to prove the existence of a just cause for his dismissal.*

Petitioners reiterate that respondent was a habitual absentee as indubitably shown by his time card for the period covering June 1-15, 2001,[27] payroll[28] for the same period as well as the

[25] *Supra* note 13.

[26] *Supra* note 7.

[27] *Supra* note 9.

[28] Annex "7" of Petitioners' Position Paper before the Labor Arbiter, CA *rollo*, p. 91.

memoranda[29] enumerating his absences subsequent to June 15, 2001.

Respondent belies these claims and explained that his absence for three days as reflected in the time card was due to petitioner Rosit's prohibition for them to report for work owing to the latter's hospitalization. He claims that he was illegally terminated on June 15, 2001 and was subsequently prevented from entering company premises. In defense, petitioners deny terminating respondent on June 15, 2001, maintaining that petitioner Rosit merely reminded him of his numerous absences. However, in defiance of the company's order, respondent continued to absent himself, went on AWOL and abandoned his work.

We find no merit in petitioners' contention that respondent incurred unexplained and habitual absences and tardiness. A scrutiny of the time card and payroll discloses that respondent incurred only three days of absence and no record of tardiness. As aptly held by the NLRC, the time card and payroll presented by petitioners do not show gross and habitual absenteeism and tardiness especially since respondent's explanation of his three-day absence was not denied by petitioners at the first instance before the Labor Arbiter. No other evidence was presented to show the alleged absences and tardiness. On the other hand, Solares, a co-worker of respondent has stated under oath that, as their supervisor, respondent was diligent in reporting for work until June 20, 2001 when they heard the news concerning respondent's termination from his job.

Likewise, we are not persuaded with petitioners' claim that respondent incurred additional absences, went on AWOL and abandoned his work. It is worthy to note at this point that petitioners never denied having offered respondent his separation pay. In fact, in their letter-reply dated September 28, 2001,[30] petitioners intimated that respondent may pick up the amount of ₱27,584.37 any time he wants, which amount represents his separation and 13th month pays. Oddly, petitioners deemed it

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[29] *Supra* note 10.

[30] *Supra* note 8.

fit to give respondent his separation pay despite their assertion that there is just cause for his dismissal on the ground of habitual absences. This inconsistent stand of petitioners bolsters the fact that they wanted to terminate respondent, thus giving more credence to respondent's protestation that he was barred and prevented from reporting for work.

Jurisprudence provides for two essential requirements for abandonment of work to exist. The "failure to report for work or absence without valid or justifiable reason" and "clear intention to sever the employer-employee relationship x x x manifested by some overt acts" should both concur.[31] Further, the employee's deliberate and unjustified refusal to resume his employment without any intention of returning should be established and proven by the employer.[32]

Petitioners failed to prove that it was respondent who voluntarily refused to report back for work by his defiance and refusal to accept the memoranda and the notices of absences sent to him. The CA correctly ruled that petitioners failed to present evidence that they sent these notices to respondent's last known address for the purpose of warning him that his continued failure to report would be construed as abandonment of work. The affidavit of petitioner Harpoon's liaison officer that the memoranda/notices were duly sent to respondent is insufficient and self-serving. Despite being stamped as received, the memoranda do not bear any signature of respondent to indicate that he actually received the same. There was no proof on how these notices were given to respondent. Neither was there any other cogent evidence that these were properly received by respondent.

The fact that respondent never prayed for reinstatement and has sought employment in another company which is a competitor of petitioner Harpoon cannot be construed as his overt acts of abandoning employment. Neither can the delay of four months be taken as an indication that the respondent's filing of a complaint

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[31] *Henlin Panay Company v. National Labor Relations Commission*, G.R. No. 180718, October 23, 2009, 604 SCRA 362, 369.

[32] *Samarca v. Arc-Men Industries, Inc.*, 459 Phil. 506, 515 (2003).

for illegal dismissal is a mere afterthought. Records show that respondent first attempted to get his separation pay and alleged commissions from the company. It was only after his requests went unheeded that he resorted to judicial recourse.

In fine, both the NLRC and the CA did not commit manifest error in finding that there was illegal dismissal. The award of backwages and separation pay in favor of respondent is therefore proper.

*Respondent is not entitled to the payment of commissions since the check vouchers and purported list of vessels show vagueness as to sufficiently prove the claim.*

The Labor Arbiter, the NLRC and the CA unanimously held that respondent is entitled to his accrued commissions in the amount of ₱10,000.00 for every vessel repaired/constructed by the company or the total amount of ₱70,000.00 for the seven vessels repaired/constructed under his supervision.

The Court, however, is inclined to rule otherwise. Examination of the check vouchers presented by respondent reveals that an amount of ₱30,000.00 and ₱10,000.00 alleged as commissions were paid to respondent on June 9, 2000 and September 28, 2000, respectively. Although the veracity and genuineness of these documents were not effectively disputed by petitioners, nothing in them provides that commissions were paid to respondent on account of a repair or construction of a vessel. It cannot also be deduced from said documents for what or for how many vessels the amounts stated therein are for. In other words, the check vouchers contain very scant details and can hardly be considered as sufficient and substantial evidence to conclude that respondent is entitled to a commission of ₱10,000.00 for every vessel repaired or constructed by the company. At most, these vouchers only showed that respondent was paid on two occasions but were silent as to the specific purpose of payment. The list of vessels supposedly repaired/constructed by the company neither validates respondent's monetary claim as it merely contains an enumeration of 17 names of vessels and nothing more. No particulars, notation or any clear indication

can be found on the list that the repair or complete construction of seven of the seventeen boats listed therein was supervised or managed by respondent. Worse, the list is written only on a piece of paper and not on petitioners' official stationery and is unverified and unsigned. Verily, its patent vagueness makes it unworthy of any credence to be used as basis for awarding respondent compensations as alleged commissions. Aside from these documents, no other competent evidence was presented by respondent to determine the value of what is properly due him, much less his entitlement to a commission. Respondent's claim cannot be based on allegations and unsubstantiated assertions without any competent document to support it. Certainly, the award of commissions in favor of respondent in the amount of ₱70,000.00 should not be allowed as the claim is founded on mere inferences, speculations and presumptions.

*Rosit could not be held solidarily liable with Harpoon for lack of substantial evidence of bad faith and malice on his part in terminating respondent.*

Although we find no error on the part of the NLRC and the CA in declaring the dismissal of respondent illegal, we, however, are not in accord with the ruling that petitioner Rosit should be held solidarily liable with petitioner Harpoon for the payment of respondent's backwages and separation pay.

As held in the case of *MAM Realty Development Corporation v. National Labor Relations Commission*,[33] "obligations incurred by [corporate officers], acting as such corporate agents, are not theirs but the direct accountabilities of the corporation they represent."[34] As such, they should not be generally held jointly and solidarily liable with the corporation. The Court, however, cited circumstances when solidary liabilities may be imposed, as exceptions:

1. When directors and trustees or, in appropriate cases, the officers of a corporation –

[33] 314 Phil. 838 (1995).

[34] *Id.* at 844.

(a) vote for or assent to [patently] unlawful acts of the corporation;

(b) act in bad faith or with gross negligence in directing the corporate affairs;

(c) are guilty of conflict of interest to the prejudice of the corporation, its stockholders or members, and other persons.

2. When the director or officer has consented to the issuance of watered stock or who, having knowledge thereof, did not forthwith file with the corporate secretary his written objection thereto.

3. When a director, trustee or officer has contractually agreed or stipulated to hold himself personally and solidarily liable with the corporation.

4. When a director, trustee or officer is made, by specific provision of law, personally liable for his corporate action.[35]

The general rule is grounded on the theory that a corporation has a legal personality separate and distinct from the persons comprising it.[36] To warrant the piercing of the veil of corporate fiction, the officer's bad faith or wrongdoing "must be established clearly and convincingly" as "[b]ad faith is never presumed."[37]

In the case at bench, the CA's basis for petitioner Rosit's liability was that he acted in bad faith when he approached respondent and told him that the company could no longer afford his salary and that he will be paid instead his separation pay and accrued commissions. This finding, however, could not substantially justify the holding of any personal liability against petitioner Rosit. The records are bereft of any other satisfactory evidence that petitioner Rosit acted in bad faith with gross or inexcusable negligence, or that he acted outside the scope of

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[35] *Id.* at 844-845.

[36] *Petron Corporation v. National Labor Relations Commissions*, G.R. No. 154532, October 27, 2006, 505 SCRA 596, 613.

[37] *Carag v. National Labor Relations Commission*, G.R. No. 147590, April 2, 2007, 520 SCRA 28, 49.

his authority as company president. Indeed, petitioner Rosit informed respondent that the company wishes to terminate his services since it could no longer afford his salary. Moreover, the promise of separation pay, according to petitioners, was out of goodwill and magnanimity. At the most, petitioner Rosit's actuations only show the illegality of the manner of effecting respondent's termination from service due to absence of just or valid cause and non-observance of procedural due process but do not point to any malice or bad faith on his part. Besides, good faith is still presumed. In addition, liability only attaches if the officer has assented to *patently* unlawful acts of the corporation.

Thus, it was error for the CA to hold petitioner Rosit solidarily liable with petitioner Harpoon for illegally dismissing respondent.

**WHEREFORE,** the petition is *PARTLY GRANTED*. The Decision dated January 26, 2005 and Resolution dated April 12, 2005 of the Court of Appeals in CA-G.R. SP No. 79630 finding respondent Fernan H. Francisco to have been illegally dismissed and awarding him backwages and separation pay are *AFFIRMED*. The award of commissions in his favor is, however, *DELETED*. Petitioner Jose Lido T. Rosit is *ABSOLVED* from the liability adjudged against co-petitioner Harpoon Marine Services, Incorporated.

**SO ORDERED.**

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

**SECOND DIVISION**

[G.R. No. 172161. March 2, 2011]

**SLL INTERNATIONAL CABLES SPECIALIST and SONNY L. LAGON,** *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISSION, 4TH DIVISION, ROLDAN LOPEZ, EDGARDO ZUÑIGA and DANILO CAÑETE,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF LABOR OFFICIALS, WHO ARE DEEMED TO HAVE ACQUIRED EXPERTISE IN MATTERS WITHIN THEIR RESPECTIVE JURISDICTION, ARE GENERALLY ACCORDED NOT ONLY RESPECT BUT EVEN FINALITY; PRESENT CASE INVOLVES FACTUAL ISSUES WHICH THE SUPREME COURT CANNOT ENTERTAIN.—** This petition generally involves factual issues, such as, whether or not there is evidence on record to support the findings of the LA, the NLRC and the CA that private respondents were project or regular employees and that their salary differentials had been paid. This calls for a re-examination of the evidence, which the Court cannot entertain. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. It is not the Court's function to assess and evaluate the evidence all over again, particularly where the findings of both the Labor tribunals and the CA concur.

**2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; MONETARY CLAIMS; BURDEN OF PROVING PAYMENT OF MONETARY CLAIMS RESTS ON THE EMPLOYER; RATIONALE.—** As a general rule, on payment of wages, a party who alleges payment as a defense has the burden of proving it. Specifically with respect to labor cases, the burden of proving payment of monetary claims rests on the employer, the rationale being that the pertinent personnel

files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. In this case, petitioners, aside from bare allegations that private respondents received wages higher than the prescribed minimum, failed to present any evidence, such as payroll or payslips, to support their defense of payment. Thus, petitioners utterly failed to discharge the *onus probandi*.

**3. ID.; LABOR CODE; RULES TO IMPLEMENT THE LABOR CODE; RULE VII, SECTION 3 THEREOF; PAYMENT OF MINIMUM WAGE; COVERAGE; PROJECT EMPLOYEES ARE NOT INCLUDED.—** Private respondents, xxx are entitled to be paid the minimum wage, whether they are regular or non-regular employees. Section 3, Rule VII of the Rules to Implement the Labor Code specifically enumerates those who are not covered by the payment of minimum wage. Project employees are not among them.

**4. ID.; LABOR STANDARDS; WAGES; DEPARTMENT OF LABOR AND EMPLOYMENT MEMORANDUM CIRCULAR NO. 2; INCLUSION OF VALUE OF FACILITIES IN THE COMPUTATION OF WAGES, EXPLAINED.—** On whether the value of the facilities should be included in the computation of the "wages" received by private respondents, Section 1 of DOLE Memorandum Circular No. 2 provides that an employer may provide subsidized meals and snacks to his employees provided that the subsidy shall not be less than 30% of the fair and reasonable value of such facilities. In such cases, the employer may deduct from the wages of the employees not more than 70% of the value of the meals and snacks enjoyed by the latter, provided that such deduction is with the written authorization of the employees concerned.

**5. ID.; ID.; ID.; REQUISITES BEFORE VALUE OF FACILITIES CAN BE DEDUCTED FROM EMPLOYEES' WAGES; NOT MET IN CASE AT BAR.—** [B]efore the value of facilities can be deducted from the employees' wages, the following requisites must all be attendant: *first*, proof must be shown that such facilities are customarily furnished by the trade; s*econd*, the provision of deductible facilities must be voluntarily accepted in writing by the employee; and *finally*, facilities must

be charged at reasonable value. Mere availment is not sufficient to allow deductions from employees' wages. These requirements, however, have not been met in this case. SLL failed to present any company policy or guideline showing that provisions for meals and lodging were part of the employee's salaries. It also failed to provide proof of the employees' written authorization, much less show how they arrived at their valuations.

**6. ID.; ID.; ID.; FACILITIES DISTINGUISHED FROM SUPPLEMENTS; CASE AT BAR.—** The Court xxx makes a distinction between "facilities" and "supplements." It is of the view that the food and lodging, or the electricity and water allegedly consumed by private respondents in this case were not facilities but supplements. In the case of *Atok-Big Wedge Assn. v. Atok-Big Wedge Co.,* the two terms were distinguished from one another in this wise: "Supplements," therefore, constitute extra remuneration or special privileges or benefits given to or received by the laborers *over* and *above their ordinary earnings or wages*. "Facilities," on the other hand, are items of expense necessary for the laborer's and his family's existence and subsistence so that by express provision of law (Sec. 2[g]), they form part of the wage and when furnished by the employer are deductible therefrom, since if they are not so furnished, the laborer would spend and pay for them just the same. In short, the benefit or privilege given to the employee which constitutes an extra remuneration above and over his basic or ordinary earning or wage is supplement; and when said benefit or privilege is part of the laborers' basic wages, it is a facility. The distinction lies not so much in the kind of benefit or item (food, lodging, bonus or sick leave) given, but in the purpose for which it is given. In the case at bench, the items provided were given freely by SLL for the purpose of maintaining the efficiency and health of its workers while they were working at their respective projects.

**APPEARANCES OF COUNSEL**

*Felino C. Torrente, Jr.* for petitioners.
*Armando M. Alforque* for respondents.

## D E C I S I O N

**MENDOZA, *J.*:**

Assailed in this petition for review on *certiorari* are the January 11, 2006 Decision[1] and the March 31, 2006 Resolution[2] of the Court of Appeals *(CA)*, in CA-G.R. SP No. 00598 which affirmed with modification the March 31, 2004 Decision[3] and December 15, 2004 Resolution[4] of the National Labor Relations Commission *(NLRC)*. The NLRC Decision found the petitioners, SLL International Cables Specialist *(SLL)* and its manager, Sonny L. Lagon *(petitioners)*, not liable for the illegal dismissal of Roldan Lopez, Danilo Cañete and Edgardo Zuñiga *(private respondents)* but held them jointly and severally liable for payment of certain monetary claims to said respondents.

A chronicle of the factual antecedents has been succinctly summarized by the CA as follows:

> Sometime in 1996, and January 1997, private respondents Roldan Lopez (Lopez for brevity) and Danilo Cañete (Cañete for brevity), and Edgardo Zuñiga (Zuñiga for brevity) respectively, were hired by petitioner Lagon as apprentice or trainee cable/lineman. The three were paid the full minimum wage and other benefits but since they were only trainees, they did not report for work regularly but came in as substitutes to the regular workers or in undertakings that needed extra workers to expedite completion of work. After their training, Zuñiga, Cañete and Lopez were engaged as project employees by the petitioners in their Islacom project in Bohol. Private respondents started on March 15, 1997 until December 1997. Upon the completion of their project, their employment was also terminated. Private respondents received the amount of ₱145.00, the minimum prescribed daily wage for Region VII. In July 1997, the amount of

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[1] *Rollo*, pp. 48-60. Penned by Associate Justice Vicente L. Yap and concurred in by Associate Justice Arsenio J. Magpale and Associate Justice Apolinario D. Bruselas, Jr.

[2] *Id.* at 62-63.

[3] *Id.* at 155-164.

[4] *Id.* at 171-172.

₱145 was increased to ₱150.00 by the Regional Wage Board (RWB) and in October of the same year, the latter was increased to ₱155.00. Sometime in March 1998, Zuñiga and Cañete were engaged again by Lagon as project employees for its PLDT Antipolo, Rizal project, which ended sometime in (sic) the late September 1998. As a consequence, Zuñiga and Cañete's employment was terminated. For this project, Zuñiga and Cañete received only the wage of ₱145.00 daily. The minimum prescribed wage for Rizal at that time was ₱160.00.

Sometime in late November 1998, private respondents re-applied in the Racitelcom project of Lagon in Bulacan. Zuñiga and Cañete were re-employed. Lopez was also hired for the said specific project. For this, private respondents received the wage of ₱145.00. Again, after the completion of their project in March 1999, private respondents went home to Cebu City.

On May 21, 1999, private respondents for the 4th time worked with Lagon's project in Camarin, Caloocan City with Furukawa Corporation as the general contractor. Their contract would expire on February 28, 2000, the period of completion of the project. From May 21, 1997-December 1999, private respondents received the wage of ₱145.00. At this time, the minimum prescribed rate for Manila was ₱198.00. In January to February 28, the three received the wage of ₱165.00. The existing rate at that time was ₱213.00.

For reasons of delay on the delivery of imported materials from Furukawa Corporation, the Camarin project was not completed on the scheduled date of completion. Face[d] with economic problem[s], Lagon was constrained to cut down the overtime work of its worker[s][,] including private respondents. Thus, when requested by private respondents on February 28, 2000 to work overtime, Lagon refused and told private respondents that if they insist, they would have to go home at their own expense and that they would not be given anymore time nor allowed to stay in the quarters. This prompted private respondents to leave their work and went home to Cebu. On March 3, 2000, private respondents filed a complaint for illegal dismissal, non-payment of wages, holiday pay, 13th month pay for 1997 and 1998 and service incentive leave pay as well as damages and attorney's fees.

In their answers, petitioners admit employment of private respondents but claimed that the latter were only project employees[,] for their services were merely engaged for a specific project or

undertaking and the same were covered by contracts duly signed by private respondents. Petitioners further alleged that the food allowance of ₱63.00 per day as well as private respondents allowance for lodging house, transportation, electricity, water and snacks allowance should be added to their basic pay. With these, petitioners claimed that private respondents received higher wage rate than that prescribed in Rizal and Manila.

Lastly, petitioners alleged that since the workplaces of private respondents were all in Manila, the complaint should be filed there. Thus, petitioners prayed for the dismissal of the complaint for lack of jurisdiction and utter lack of merit. (Citations omitted.)

On January 18, 2001, Labor Arbiter Reynoso Belarmino *(LA)* rendered his decision[5] declaring that his office had jurisdiction to hear and decide the complaint filed by private respondents. Referring to Rule IV, Sec. 1 (a) of the NLRC Rules of Procedure prevailing at that time,[6] the LA ruled that it had jurisdiction because the "workplace," as defined in the said rule, included the place where the employee was supposed to report back after a temporary detail, assignment or travel, which in this case was Cebu.

As to the status of their employment, the LA opined that private respondents were regular employees because they were repeatedly hired by petitioners and they performed activities which were usual, necessary and desirable in the business or trade of the employer.

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[5] *Id.* at 123-134.

[6] Section 1. Venue. — (a) All cases which Labor Arbiters have authority to hear and decide may be filed in the Regional Arbitration Branch having jurisdiction over the workplace of the complaint/petitioner.

For purposes of venue, workplace shall be understood as the place or locality where the employee is regularly assigned when the cause of action arose. It shall include the place where the employee is supposed to report back after a temporary detail, assignment or travel. In the case of field employees, as well as ambulant or itinerant workers, their workplace is where they are regularly assigned, or where they are supposed to regularly receive their salaries/ wages or work instructions from, and report the results of their assignment to, their employers.

With regard to the underpayment of wages, the LA found that private respondents were underpaid. It ruled that the free board and lodging, electricity, water, and food enjoyed by them could not be included in the computation of their wages because these were given without their written consent.

The LA, however, found that petitioners were not liable for illegal dismissal. The LA viewed private respondents' act of going home as an act of indifference when petitioners decided to prohibit overtime work.[7]

In its March 31, 2004 Decision, the NLRC affirmed the findings of the LA. In addition, the NLRC noted that not a single report of project completion was filed with the nearest Public Employment Office as required by the Department of Labor and Employment (DOLE) Department Order No. 19, Series of 1993.[8] The NLRC later denied[9] the motion for reconsideration[10] subsequently filed by petitioners.

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[7] *Rollo,* p. 130.

[8] 2.2 Indicators of project employment. – Either one or more of the following circumstances, among other, may be considered as indicators that an employee is a project employee.

(a) The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.

(b) Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.

(c) The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

(d) The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.

(e) The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.

(f) An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

[9] *Rollo,* pp. 171-172.

[10] *Id.* at 165-170.

When the matter was elevated to the CA on a petition for *certiorari*, it affirmed the findings that the private respondents were regular employees. It considered the fact that they performed functions which were the regular and usual business of petitioners. According to the CA, they were clearly members of a work pool from which petitioners drew their project employees.

The CA also stated that the failure of petitioners to comply with the simple but compulsory requirement to submit a report of termination to the nearest Public Employment Office every time private respondents' employment was terminated was proof that the latter were not project employees but regular employees.

The CA likewise found that the private respondents were underpaid. It ruled that the board and lodging, electricity, water, and food enjoyed by the private respondents could not be included in the computation of their wages because these were given without their written consent. The CA added that the private respondents were entitled to 13th month pay.

The CA also agreed with the NLRC that there was no illegal dismissal. The CA opined that it was the petitioners' prerogative to grant or deny any request for overtime work and that the private respondents' act of leaving the workplace after their request was denied was an act of abandonment.

In modifying the decision of the labor tribunal, however, the CA noted that respondent Roldan Lopez did not work in the Antipolo project and, thus, was not entitled to wage differentials. Also, in computing the differentials for the period January and February 2000, the CA disagreed in the award of differentials based on the minimum daily wage of ₱223.00, as the prevailing minimum daily wage then was only ₱213.00. Petitioners sought reconsideration but the CA denied it in its March 31, 2006 Resolution.[11]

In this petition for review on *certiorari*,[12] petitioners seek the reversal and setting aside of the CA decision anchored on this lone:

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[11] *Id.* at 62-63.

[12] *Id.* at 10-172.

**GROUND/**
**ASSIGNMENT OF ERROR**

**THE PUBLIC RESPONDENT NLRC COMMITTED A SERIOUS ERROR IN LAW IN AWARDING WAGE DIFFERENTIALS TO THE PRIVATE COMPLAINANTS ON THE BASES OF MERE TECHNICALITIES, THAT IS, FOR LACK OF WRITTEN CONFORMITY x x x AND LACK OF NOTICE TO THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE)[,] AND THUS, THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING WITH MODIFICATION THE NLRC DECISION IN THE LIGHT OF THE RULING IN THE CASE OF *JENNY M. AGABON and VIRGILIO AGABON vs. NLRC, ET AL.*, GR NO. 158963, NOVEMBER 17, 2004, 442 SCRA 573, [AND SUBSEQUENTLY IN THE CASE OF *GLAXO WELLCOME PHILIPPINES, INC. VS. NAGKAKAISANG EMPLEYADO NG WELLCOME-DFA (NEW –DFA), ET AL.*, GR NO. 149349, 11 MARCH 2005], WHICH FINDS APPLICATION IN THE INSTANT CASE BY ANALOGY.**[13]

Petitioners reiterated their position that the value of the facilities that the private respondents enjoyed should be included in the computation of the "wages" received by them. They argued that the rulings in *Agabon v. NLRC*[14]and *Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado Ng Wellcome-DFA*[15] should be applied by analogy, in the sense that the lack of written acceptance of the employees of the facilities enjoyed by them should not mean that the value of the facilities could not be included in the computation of the private respondents' "wages."

On November 29, 2006, the Court resolved to issue a Temporary Restraining Order *(TRO)* enjoining the public respondent from enforcing the NLRC and CA decisions until further orders from the Court.

After a thorough review of the records, however, the Court finds no merit in the petition.

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[13] *Id.* at 22.

[14] 485 Phil. 248 (2004).

[15] 493 Phil. 410 (2005).

This petition generally involves factual issues, such as, whether or not there is evidence on record to support the findings of the LA, the NLRC and the CA that private respondents were project or regular employees and that their salary differentials had been paid. This calls for a re-examination of the evidence, which the Court cannot entertain. Settled is the rule that factual findings of labor officials, who are deemed to have acquired expertise in matters within their respective jurisdiction, are generally accorded not only respect but even finality, and bind the Court when supported by substantial evidence. It is not the Court's function to assess and evaluate the evidence all over again, particularly where the findings of both the Labor tribunals and the CA concur. [16]

As a general rule, on payment of wages, a party who alleges payment as a defense has the burden of proving it.[17] Specifically with respect to labor cases, the burden of proving payment of monetary claims rests on the employer, the rationale being that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer.[18]

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[16] *Stamford Marketing Corp. v. Julian*, 468 Phil. 34 (2004).

[17] *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721 (2002); *Sevillana v. I.T. (International) Corp.*, 408 Phil. 570 (2001); *Villar v. National Labor Relations Commission*, 387 Phil. 706 (2000); *Audion Electric Co., Inc. v. NLRC*, 367 Phil. 620 (1999); *Ropali Trading Corporation v. National Labor Relations Commission*, 357 Phil. 314 (1998); *National Semiconductor (HK) Distribution, Ltd. v. National Labor Relations Commission (4th Division)*, 353 Phil. 551 (1998); *Pacific Maritime Services, Inc. v. Ranay*, 341 Phil. 716 (1997); *Jimenez v. National Labor Relations Commission*, 326 Phil. 89 (1996); *Philippine National Bank v. Court of Appeals*, 326 Phil. 46 (1996); *Good Earth Emporium, Inc. v. Court of Appeals*, G.R. No. 82797, February 27, 1991, 194 SCRA 544, 552; *Villaflor v. Court of Appeals*, G.R. No. L-46210, December 26, 1990, 192 SCRA 680, 690; *Biala v. Court of Appeals*, G.R. No. L-43503, October 31, 1990, 191 SCRA 50, 59; *Servicewide Specialists, Inc. v. Intermediate Appellate Court*, 255 Phil. 787 (1989).

[18] *Dansart Security Force & Allied Services Company v. Bagoy*, G.R. No. 168495, July 2, 2010; *G & M Philippines, Inc. v. Cruz*, 496 Phil. 119 (2005); *Villar v. National Labor Relations Commission*, 387 Phil. 706.

In this case, petitioners, aside from bare allegations that private respondents received wages higher than the prescribed minimum, failed to present any evidence, such as payroll or payslips, to support their defense of payment. Thus, petitioners utterly failed to discharge the *onus probandi*.

Private respondents, on the other hand, are entitled to be paid the minimum wage, whether they are regular or non-regular employees. Section 3, Rule VII of the Rules to Implement the Labor Code[19] specifically enumerates those who are not covered by the payment of minimum wage. Project employees are not among them.

On whether the value of the facilities should be included in the computation of the "wages" received by private respondents, Section 1 of DOLE Memorandum Circular No. 2 provides that an employer may provide subsidized meals and snacks to his employees provided that the subsidy shall not be less than 30% of the fair and reasonable value of such facilities. In such cases, the employer may deduct from the wages of the employees not more than 70% of the value of the meals and snacks enjoyed by the latter, provided that such deduction is with the written authorization of the employees concerned.

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[19] Sec. 3. *Coverage.* – This Rule shall not apply to the following persons:

(a) Household or domestic helpers, including family drivers and persons in the personal service of another;

(b) Homeworkers who are engaged in needlework;

(c) Workers employed in any establishment duly registered with the National Cottage Industries and Development Authority in accordance with R.A. 3470, provided that such workers perform the work in their respective homes;

(d) Workers in any duly registered cooperative when so recommended by the Bureau of Cooperative Development and upon approval of the Secretary of Labor; *Provided, however,* That such recommendation shall be given only for the purpose of making the cooperative viable and upon finding and certification of said Bureau, supported by adequate proof, that the cooperative cannot resort to other remedial measures without serious loss or prejudice to its operation except through its exemption from the requirements of this Rule. The exemption shall be subject to such terms and conditions and for such period of time as the Secretary of Labor may prescribe.

Moreover, before the value of facilities can be deducted from the employees' wages, the following requisites must all be attendant: *first*, proof must be shown that such facilities are customarily furnished by the trade; s*econd*, the provision of deductible facilities must be voluntarily accepted in writing by the employee; and *finally*, facilities must be charged at reasonable value.[20] Mere availment is not sufficient to allow deductions from employees' wages.[21]

These requirements, however, have not been met in this case. SLL failed to present any company policy or guideline showing that provisions for meals and lodging were part of the employee's salaries. It also failed to provide proof of the employees' written authorization, much less show how they arrived at their valuations. At any rate, it is not even clear whether private respondents actually enjoyed said facilities.

The Court, at this point, makes a distinction between "facilities" and "supplements." It is of the view that the food and lodging, or the electricity and water allegedly consumed by private respondents in this case were not facilities but supplements. In the case of *Atok-Big Wedge Assn. v. Atok-Big Wedge Co.*,[22] the two terms were distinguished from one another in this wise:

> "Supplements," therefore, constitute extra remuneration or special privileges or benefits given to or received by the laborers *over* and *above their ordinary earnings or wages*. "Facilities," on the other hand, are items of expense necessary for the laborer's and his family's existence and subsistence so that by express provision of law (Sec. 2[g]), they form part of the wage and when furnished by the employer are deductible therefrom, since if they are not so furnished, the laborer would spend and pay for them just the same.

In short, the benefit or privilege given to the employee which constitutes an extra remuneration above and over his basic or ordinary earning or wage is supplement; and when said benefit

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[20] *Mayon Hotel & Restaurant v. Adana,* G.R. No. 157634, 492 Phil. 892 (2005); *Mabeza v. NLRC*, 338 Phil. 386 (1997).

[21] *Mayon Hotel & Restaurant v. Adana, supra*.

[22] 97 Phil. 294 (1955).

or privilege is part of the laborers' basic wages, it is a facility. The distinction lies not so much in the kind of benefit or item (food, lodging, bonus or sick leave) given, but in the purpose for which it is given.[23] In the case at bench, the items provided were given freely by SLL for the purpose of maintaining the efficiency and health of its workers while they were working at their respective projects.

For said reason, the cases of *Agabon* and *Glaxo* are inapplicable in this case. At any rate, these were cases of dismissal with just and authorized causes. The present case involves the matter of the failure of the petitioners to comply with the payment of the prescribed minimum wage.

The Court sustains the deletion of the award of differentials with respect to respondent Roldan Lopez. As correctly pointed out by the CA, he did not work for the project in Antipolo.

**WHEREFORE,** the petition is *DENIED*. The temporary restraining order issued by the Court on November 29, 2006 is deemed, as it is hereby ordered, *DISSOLVED*.

**SO ORDERED.**

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

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[23] *States Marine Corporation and Royal Line, Inc. v. Cebu Seamen's Association, Inc.*, 117 Phil. 307 (1963).

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per Special Order No. 954 dated February 21, 2011.

**SECOND DIVISION**

[G.R. No. 178159. March 2, 2011]

**SPS. VICENTE DIONISIO AND ANITA DIONISIO,** *petitioners, vs.* **WILFREDO LINSANGAN,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; AMENDMENT OF PLEADINGS; AN AMENDMENT WHICH DOES NOT ALTER THE CAUSE OF ACTION BUT MERELY SUPPLEMENTS OR AMPLIFIES THE FACTS PREVIOUSLY ALLEGED DOES NOT AFFECT THE RECKONING DATE OF FILING BASED ON THE ORIGINAL COMPLAINT.—** An amended complaint that changes the plaintiff's cause of action is technically a new complaint. Consequently, the action is deemed filed on the date of the filing of such amended pleading, not on the date of the filing of its original version. Thus, the statute of limitation resumes its run until it is arrested by the filing of the amended pleading. The Court acknowledges, however, that an amendment which does not alter the cause of action but merely supplements or amplifies the facts previously alleged, does not affect the reckoning date of filing based on the original complaint. The cause of action, unchanged, is not barred by the statute of limitations that expired after the filing of the original complaint.

**2. ID.; ID.; ID.; ID.; TEST TO DETERMINE IF AN AMENDMENT INTRODUCES A DIFFERENT CAUSE OF ACTION.—** To determine if an amendment introduces a different cause of action, the test is whether such amendment now requires the defendant to answer for a liability or obligation which is completely different from that stated in the original complaint. Here, both the original and the amended complaint required Wilfredo to defend his possession based on the allegation that he had stayed on the land after Emiliana left out of the owner's mere tolerance and that the latter had demanded that he leave. Indeed, Wilfredo did not find the need to file a new answer.

**3. ID.; ID.; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION IS DETERMINED**

**BY THE ALLEGATIONS OF THE COMPLAINT.—** Wilfredo points out that the MTC has no jurisdiction to hear and decide the case since it involved tenancy relation which comes under the jurisdiction of the DARAB. But the jurisdiction of the court over the subject matter of the action is determined by the allegations of the complaint. Besides, the records show that Wilfredo failed to substantiate his claim that he was a tenant of the land. The MTC records show that aside from the assertion that he is a tenant, he did not present any evidence to prove the same. To consider evidence presented only during appeal is offensive to the idea of fair play.

**4. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; REQUISITES; ESTABLISHED IN CASE AT BAR.—** An action is for unlawful detainer if the complaint sufficiently alleges the following: (1) initially, the defendant has possession of property by contract with or by tolerance of the plaintiff; (2) eventually, however, such possession became illegal upon plaintiff's notice to defendant, terminating the latter's right of possession; (3) still, the defendant remains in possession, depriving the plaintiff of the enjoyment of his property; and (4) within a year from plaintiff's last demand that defendant vacate the property, the plaintiff files a complaint for defendant's ejectment. If the defendant had possession of the land upon mere tolerance of the owner, such tolerance must be present at the beginning of defendant's possession. Here, based on the allegations of the amended complaint, the Dionisios allowed Emiliana, tenant Romualdo's widow, to stay on the land for the meantime and leave when asked to do so. But, without the knowledge or consent of the Dionisios, she sold her "right of tenancy" to Wilfredo. When the Dionisios visited the land in April 2002 and found Wilfredo there, they demanded that he leave the land. They did so in writing on April 22, 2002 but he refused to leave. The Dionisios filed their eviction suit within the year.

**5. ID.; APPEALS; FINDINGS OF FACT OF THE LOWER COURTS ARE RESPECTED BY THE SUPREME COURT.—** The Dionisios alleged in their complaint that they were the ones who allowed Emiliana (and all persons claiming right under her) to stay on the land meantime that they did not need it. The MTC and the RTC gave credence to the Dionisios' version. The Court will respect their judgment on a question of fact.

**APPEARANCES OF COUNSEL**

*Socrates C. Pigao* for petitioners.
*Manuel Law Office* for respondent.

**D E C I S I O N**

**ABAD, *J.*:**

The case is about a) amendments in the complaint that do not alter the cause of action and b) the effect in an unlawful detainer action of the tolerated possessor's assignment of his possession to the defendant.

**The Facts and the Case**

Gorgonio M. Cruz (Cruz) owned agricultural lands in San Rafael, Bulacan, that his tenant, Romualdo San Mateo (Romualdo) cultivated. Upon Romualdo's death, his widow, Emiliana, got Cruz's permission to stay on the property provided she would vacate it upon demand.

In September 1989 spouses Vicente and Anita Dionisio (the Dionisios) bought the property from Cruz.[1] In April 2002, the Dionisios found out that Emiliana had left the property and that it was already Wilfredo Linsangan (Wilfredo) who occupied it under the strength of a "*Kasunduan ng Bilihan ng Karapatan*"[2] dated April 7, 1977.

The Dionisios wrote Wilfredo on April 22, 2002, demanding that he vacate the land but the latter declined, prompting the Dionisios to file an eviction suit[3] against him before the Municipal Trial Court (MTC) of San Rafael, Bulacan. Wilfredo filed an answer with counterclaims in which he declared that he had been a tenant of the land as early as 1977.

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[1] *Rollo*, p. 92.

[2] *Id.* at 94.

[3] Docketed as Civil Case 1160-SRB-2003.

At the pre-trial, the Dionisios orally asked leave to amend their complaint. Despite initial misgivings over the amended complaint, Wilfredo asked for time to respond to it. The Dionisios filed their amended complaint on August 5, 2003; Wilfredo maintained his original answer.

The MTC issued a pre-trial order[4] specifying the issues. For the plaintiffs: (1) whether or not the defendant can be ejected from the property and (2) whether or not the plaintiffs are entitled to reasonable rent for the use of the property, damages, and attorney's fees. For the defendant: (1) whether or not the MTC has jurisdiction to try this case; (2) whether or not the defendant can be ejected from the questioned property; and (3) whether or not the defendant is entitled to damages and attorney's fees.

On May 3, 2004 the MTC rendered judgment, ordering Wilfredo to vacate the land and remove his house from it. Further, the MTC ordered Wilfredo to pay the Dionisios ₱3,000.00 a month as reasonable compensation for the use of the land and ₱20,000.00 as attorney's fees and to pay the cost of suit.

On appeal,[5] the Regional Trial Court (RTC) of Malolos, Bulacan, affirmed the MTC decision, holding that the case was one for forcible entry. On review,[6] however, the Court of Appeals (CA) rendered judgment on July 6, 2006, reversing the decisions of the courts below, and ordering the dismissal of the Dionisios' action. The CA held that, by amending their complaint, the Dionisios effectively changed their cause of action from unlawful detainer to recovery of possession which fell outside the jurisdiction of the MTC. Further, since the amendment introduced a new cause of action, its filing on August 5, 2003 marked the passage of the one year limit from demand required in ejectment suits. More, since jurisdiction over actions for possession depended on the assessed value of the property and since such assessed value was not alleged, the CA cannot determine what court has jurisdiction over the action.

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[4] *Rollo*, pp. 133-134.

[5] Docketed as Civil Case 381-M0-04.

[6] Docketed as CA-G.R. SP 92643.

**The Issues Presented**

The issues presented in this case are:

1. Whether or not the Dionisios' amendment of their complaint effectively changed their cause of action from one of ejectment to one of recovery of possession; and

2. Whether or not the MTC had jurisdiction over the action before it.

**The Rulings of the Court**

**One**. An amended complaint that changes the plaintiff's cause of action is technically a new complaint. Consequently, the action is deemed filed on the date of the filing of such amended pleading, not on the date of the filing of its original version. Thus, the statute of limitation resumes its run until it is arrested by the filing of the amended pleading. The Court acknowledges, however, that an amendment which does not alter the cause of action but merely supplements or amplifies the facts previously alleged, does not affect the reckoning date of filing based on the original complaint. The cause of action, unchanged, is not barred by the statute of limitations that expired after the filing of the original complaint.[7]

Here, the original complaint alleges that the Dionisios bought the land from Cruz on September 30, 1989; that Romualdo used to be the land's tenant; that when he died, the Dionisios allowed his widow, Emiliana, to stay under a promise that she would leave the land upon demand; that in April 2002 the Dionisios discovered on visit to the land that Emiliana had left it and that Wilfredo now occupied it under a claim that he bought the right to stay from Emiliana under a "*Kasunduan ng Bilihan ng Karapatan*"; that the Dionisios did not know of and gave no consent to this sale which had not been annotated on their title; that the Dionisios verbally told Wilfredo to leave the property by April 30, 2002; that their lawyer reiterated such demand in writing on April 22, 2002; that Wilfredo did not heed the demand;

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[7] *Wallem Philippines Shipping, Inc. v. S.R. Farms, Inc.*, G.R. No. 161849, July 9, 2010.

that the Dionisios wanted to get possession so they could till the land and demolish Wilfredo's house on it; that Wilfredo did not give the Dionisios' just share in the harvest; and that the Dionisios were compelled to get the services of counsel for ₱100,000.00.

The amended complaint has essentially identical allegations. The only new ones are that the Dionisios allowed Emiliana, Romualdo's widow to stay "out of their kindness, tolerance, and generosity"; that they went to the land in April 2002, after deciding to occupy it, to tell Emiliana of their plan; that Wilfredo cannot deny that Cruz was the previous registered owner and that he sold the land to the Dionisios; and that a person occupying another's land by the latter's tolerance or permission, without contract, is bound by an implied promise to leave upon demand, failing which a summary action for ejectment is the proper remedy.

To determine if an amendment introduces a different cause of action, the test is whether such amendment now requires the defendant to answer for a liability or obligation which is completely different from that stated in the original complaint.[8] Here, both the original and the amended complaint required Wilfredo to defend his possession based on the allegation that he had stayed on the land after Emiliana left out of the owner's mere tolerance and that the latter had demanded that he leave. Indeed, Wilfredo did not find the need to file a new answer.

**Two.** Wilfredo points out that the MTC has no jurisdiction to hear and decide the case since it involved tenancy relation which comes under the jurisdiction of the DARAB.[9] But the jurisdiction of the court over the subject matter of the action is

[8] Regalado, F., *Remedial Law Compendium*, Vol I, 8th ed., p. 189, citing *Rubio v. Mariano,* 151 Phil. 418 (1973).

[9] The elements of tenancy agreement are: (1) The parties are the landowner and the tenant or agricultural lessee; (2) The subject matter of the relationship is an agricultural land; (3) There is consent between the parties to the relationship; (4) The purpose of the relationship is to bring about agricultural production; (5) There is personal cultivation on the part of the tenant or agricultural lessee; and (6) The harvest is shared between the landowner and the tenant or agricultural lessee. See *Escariz v. Revilleza*, G.R. No. 155544, August 24, 2007, 531 SCRA 116, 121.

determined by the allegations of the complaint.[10] Besides, the records show that Wilfredo failed to substantiate his claim that he was a tenant of the land. The MTC records show that aside from the assertion that he is a tenant, he did not present any evidence to prove the same. To consider evidence presented only during appeal is offensive to the idea of fair play.

The remaining question is the nature of the action based on the allegations of the complaint. The RTC characterized it as an action for forcible entry, Wilfredo having entered the property and taken over from widow Emiliana on the sly. The problem with this characterization is that the complaint contained no allegation that the Dionisios were in possession of the property before Wilfredo occupied it either by force, intimidation, threat, strategy, or stealth, an element of that kind of eviction suit.[11] Nowhere in the recitation of the amended complaint did the Dionisios assert that they were in prior possession of the land and were ousted from such possession by Wilfredo's unlawful occupation of the property.

Is the action one for unlawful detainer? An action is for unlawful detainer if the complaint sufficiently alleges the following: (1) initially, the defendant has possession of property by contract with or by tolerance of the plaintiff; (2) eventually, however, such possession became illegal upon plaintiff's notice to defendant, terminating the latter's right of possession; (3) still, the defendant remains in possession, depriving the plaintiff of the enjoyment of his property; and (4) within a year from plaintiff's last demand that defendant vacate the property, the plaintiff files a complaint for defendant's ejectment.[12] If the defendant had possession of the land upon mere tolerance of the owner, such tolerance must be present at the beginning of defendant's possession.[13]

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[10] *Encarnacion v. Amigo*, G.R. No. 169793, September 15, 2006, 502 SCRA 172, 178.

[11] *Dela Cruz v. Court of Appeals*, G.R. No. 139442, December 6, 2006, 510 SCRA 103, 115.

[12] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 157-158.

[13] *Heirs of Melchor v. Melchor*, 461 Phil. 437, 445 (2003).

Here, based on the allegations of the amended complaint, the Dionisios allowed Emiliana, tenant Romualdo's widow, to stay on the land for the meantime and leave when asked to do so. But, without the knowledge or consent of the Dionisios, she sold her "right of tenancy" to Wilfredo. When the Dionisios visited the land in April 2002 and found Wilfredo there, they demanded that he leave the land. They did so in writing on April 22, 2002 but he refused to leave. The Dionisios filed their eviction suit within the year.

It is pointed out that the original complaint did not allege that the Dionisios "tolerated" Emiliana's possession of the land after her husband died, much less did it allege that they "tolerated" Wilfredo's possession after he took over from Emiliana. But the rules do not require the plaintiff in an eviction suit to use the exact language of such rules. The Dionisios alleged that Romualdo used to be the land's tenant and that when he died, the Dionisios allowed his widow, Emiliana, to stay under a promise that she would leave upon demand. These allegations clearly imply the Dionisios' "tolerance" of her stay meantime that they did not yet need the land.

As for Wilfredo, it is clear from the allegations of the complaint that Emiliana assigned to him her right to occupy the property. In fact that assignment was in writing. Consequently, his claim to the land was based on the Dionisios' "tolerance" of the possession of Emiliana and, impliedly, of all persons claiming right under her.

True, the "*Kasunduan ng Bilihan ng Karapatan*" under which Emiliana transferred her tenancy right to Wilfredo appears to have been executed in 1977, years before Cruz sold the land to the Dionisios, implying that Wilfredo had already been in possession of the property before the sale. But what is controlling in ascertaining the jurisdiction of the court are the allegations of the complaint. The Dionisios alleged in their complaint that they were the ones who allowed Emiliana (and all persons claiming right under her) to stay on the land meantime that they did not need it. The MTC and the RTC gave credence to the Dionisios'

version. The Court will respect their judgment on a question of fact.

**WHEREFORE,** the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the Decision of the Court of Appeals in CA-G.R. SP 92643 dated July 6, 2006, and *REINSTATES* the Decision of the Municipal Trial Court of San Rafael, Bulacan, in Civil Case 1160-SRB-2003 dated May 3, 2004.

**SO ORDERED.**

*Carpio (Chairperson), Velasco, Jr.,*[*] *del Castillo,*[**] and *Mendoza, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 181298. March 2, 2011]

**BELLE CORPORATION,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

**SYLLABUS**

**TAXATION; NATIONAL INTERNAL REVENUE CODE; SECTION 76 THEREOF APPLIES; OPTION TO CARRY-OVER IS IRREVOCABLE; UNUTILIZED EXCESS INCOME TAX PAYMENTS MAY BE APPLIED AS A TAX CREDIT TO THE SUCCEEDING TAXABLE YEARS UNTIL FULLY UTILIZED.—** In our Decision, we held that Section 76 of the 1997 National Internal Revenue Code (NIRC) and not

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 954 dated February 21, 2011.

Section 69 of the old NIRC applies. Section 76 provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over, however, is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied pursuant to Section 76 of the NIRC. In our Decision, we denied petitioner's claim for refund because it has earlier opted to carry over its 1997 excess income tax payments by marking the tax credit option box in its 1997 income tax return. We must clarify, however, that while petitioner may no longer file a claim for refund, it properly carried over its 1997 excess income tax payments by applying portions thereof to its 1998 and 1999 Minimum Corporate Income Tax in the amounts of ₱25,596,210.00 and ₱14,185,874.00, respectively. Pursuant to our ruling, petitioner **may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until fully utilized.** Thus, as of the taxable year 1999, petitioner still has an unutilized excess income tax payments of ₱92,261,444.00 which may be carried over to the succeeding taxable years until fully utilized.

**APPEARANCES OF COUNSEL**

*Tan Venturanza Valdez* for petitioner.
*The Solicitor General* for respondent.

**R E S O L U T I O N**

**DEL CASTILLO, *J.*:**

For Resolution is the Motion for Clarification[1] filed by petitioner Belle Corporation. In the Motion, petitioner prays that our Decision dated January 10, 2011 be modified or clarified to indicate petitioner's entitlement to a tax credit of unutilized excess income tax payments for the taxable year 1997.

[1] *Rollo,* pp. 280-286.

In our Decision, we held that Section 76 of the 1997 National Internal Revenue Code (NIRC) and not Section 69 of the old NIRC applies. Section 76 provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over, however, is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied pursuant to Section 76 of the NIRC.

In our Decision, we denied petitioner's claim for refund because it has earlier opted to carry over its 1997 excess income tax payments by marking the tax credit option box in its 1997 income tax return. We must clarify, however, that while petitioner may no longer file a claim for refund, it properly carried over its 1997 excess income tax payments by applying portions thereof to its 1998 and 1999 Minimum Corporate Income Tax in the amounts of ₱25,596,210.00 and ₱14,185,874.00, respectively. Pursuant to our ruling, petitioner **may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until fully utilized.** Thus, as of the taxable year 1999, petitioner still has an unutilized excess income tax payments of ₱92,261,444.00 which may be carried over to the succeeding taxable years until fully utilized.

**IN VIEW OF THE FOREGOING,** it is hereby clarified that although petitioner may no longer file a claim for refund, it may, however, apply the excess income tax payments for the taxable year 1997 as a tax credit to the succeeding taxable years until fully utilized.

**SO ORDERED.**

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

**FIRST DIVISION**

[G.R. No. 181371. March 2, 2011]

**CENTRAL LUZON DRUG CORPORATION,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; INTERNAL RULES OF THE SUPREME COURT; SECTION 1, RULE 13 THEREOF; WHEN CASE DEEMED SUBMITTED FOR DECISION OR RESOLUTION; MOTION TO WITHDRAW IN CASE AT BAR, GRANTED.—** Section 1, Rule 13 of the Internal Rules of the Supreme Court provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." In the instant case, records show that on August 19, 2009, we resolved to require petitioner to file a reply. Instead of complying, petitioner opted to file a motion to withdraw. Clearly, by requiring petitioner to file its Reply, the Court has not yet deemed the case submitted for decision or resolution. Thus, we resolve to grant petitioner's Motion to Withdraw.

**2. ID.; ID.; DISMISSAL OF ACTIONS; DISMISSAL UPON MOTION OF PLAINTIFF; DISMISSAL WITH PREJUDICE, A CASE OF; EXPLAINED.—** [W]e agree with the OSG that the dismissal of the instant case should be with prejudice. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CTA. And since the CTA had already denied petitioner's request for the issuance of a tax credit certificate in the amount of ₱32,170,409 for insufficiency of evidence, it may no longer be included in petitioner's future claims. Petitioner cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. To reiterate, "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."

**APPEARANCES OF COUNSEL**

*Joy Ann Marie N. Garcia* for petitioner.
*The Solicitor General* for respondent.

**R E S O L U T I O N**

**DEL CASTILLO, *J.*:**

*When an appeal is withdrawn, the assailed decision becomes final and executory.*

For Resolution is the Motion to Withdraw[1] filed by petitioner Central Luzon Drug Corporation, praying for the dismissal of the instant case without prejudice.

***Factual Antecedents***

Petitioner is a duly registered corporation engaged in the retail of medicines and other pharmaceutical products.[2] It operates 22 drugstores located in Central Luzon under the business name and style of "Mercury Drug."[3]

On April 13, 2005, petitioner filed with respondent Commissioner of Internal Revenue (CIR) a request for the issuance of a tax credit certificate in the amount of ₱32,170,409, representing the 20% sales discounts allegedly granted to senior citizens for the year 2002.[4]

On April 14, 2005, petitioner filed with the Court of Tax Appeals (CTA) a Petition for Review[5] which was docketed as CTA Case No. 7206 and raffled to the First Division of the CTA.

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[1] *Rollo*, pp. 107-110.

[2] *Id.* at 11.

[3] *Id.*

[4] *Id.* at 38.

[5] *Id.*

On July 23, 2007, the First Division of the CTA rendered a Decision[6] denying petitioner's claim for insufficiency of evidence. The pertinent portion of the Decision reads:

> Under petitioner's Annual ITR and audited financial statements, it had gross sales amounting to ₱674,877,125.00. However, the Court cannot ascertain from the documents submitted by petitioner such as *Schedule of Sales (net), Schedule of Prepaid Tax-OSCA, and Special Record Books* for the year 2002, whether its gross sales of ₱674,877,125.00 included its gross sales to senior citizens of ₱26,681,354.59. The *Schedule of Prepaid Tax-OSCA*, taken from the *Special Record Books*, showed its daily sales to qualified senior citizens and the corresponding twenty percent (20%) discount granted by each of the twenty-two branches of petitioner. Meanwhile, the *Schedule of Sales* showed only its total monthly sales without indicating which portion therein were sales to senior citizens. Petitioner should have presented its daily net sales as reflected in the general ledger, cash receipt books, sales book or any other document whereby the Court can trace or verify that petitioner's gross sales of ₱674,877,125.00 for the year 2002 included its gross sales to senior citizens for the same year.
>
> In sum, though the twenty percent (20%) sales discounts granted to senior citizens on their purchase of medicines should be treated as a tax credit and petitioner was able to substantiate the same, the instant petition will not prosper for petitioner's failure to show that its gross sales to senior citizens were declared as part of its taxable income.
>
> IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> SO ORDERED.[7]

Aggrieved, petitioner moved for reconsideration[8] but the First Division of the CTA denied the same in a Resolution[9] dated September 12, 2007.

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[6] *Id.* at 37-45.

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

[8] *Id.* at 46-51.

[9] *Id.* at 52-54.

On October 3, 2007, petitioner filed a Motion for Extension of Time to File Petition for Review on *Certiorari*[10] with the CTA *En Banc*.

On October 19, 2007, petitioner filed with the CTA *En Banc* a Petition for Review,[11] docketed as CTA *En Banc* Case No. 316.

On December 4, 2007, the CTA *En Banc* resolved to deny due course, and accordingly, dismissed the Petition for Review for failure of petitioner to attach a Verification, a Certification of Non-Forum Shopping, as well as a Special Power of Attorney and a Secretary's Certificate, authorizing petitioner's counsel to file the Petition for Review.[12]

Petitioner sought reconsideration,[13] arguing that the Petition for Review was sufficient in form because the Verification and Certification of Non-Forum Shopping was already attached to the Motion for Extension of Time to File Petition for Review on *Certiorari*. Petitioner submitted a Secretary's Certificate to show that Mr. Jacinto J. Concepcion was authorized by petitioner to sign the Verification attached to the Motion for Extension of Time to File Petition for Review on *Certiorari*.

On January 17, 2008, the CTA *En Banc* denied reconsideration. It said:

> The Court resolves to deny the Motion for Reconsideration.
>
> The Verification and Certification of Non-Forum Shopping dated October 2, 2007 attached to petitioner's Motion for Extension of Time cannot replace the Verification and Certification of Non-Forum Shopping required to be attached to the Petition for Review as this would contravene the very purpose for which it is required. It is well to note that in the Verification and Certification of Non-Forum Shopping dated October 2, 2007, the affiant declared under oath, among others, that he has read the contents of the Petition and that they are true and correct of his own knowledge and belief; and that

[10] *Id.* at. 24-27.

[11] *Id.* at 28-36.

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

[13] *Id.* at 58-61.

petitioner has not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency and that there is no such action or proceeding pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency. For this reason, the same cannot be used in the Petition for Review dated October 18, 2007 as the affiant could not have read the Petition as it was not yet prepared at the time he executed the Verification and Certification of Non-Forum Shopping on October 2, 2007. It may not be amiss to stress that verification is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.

Moreover, the subsequent filing of a Secretary's Certificate serves no purpose as the instant Petition is not verified and does not contain a Certification of Non-Forum Shopping required by Section 2 of Rule 6 of the Revised Rules of the Court of Tax Appeals.

As the Supreme Court has said: "[o]bedience to the requirements of procedural rules is needed if we are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harking on the policy of liberal construction. Time and again, the Supreme Court has strictly enforced the requirement of verification and certification of non-forum shopping under the Rules of Court."

As a final note, the Court finds it necessary to reiterate that under prevailing procedural rules and jurisprudence, non-compliance with these requirements is a sufficient ground for the dismissal of the petition.

WHEREFORE, the Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[14]

This prompted petitioner to file before us a Petition for Review on *Certiorari*[15] under Rule 45 of the Rules of Court to set aside the Resolutions[16] dated December 4, 2007 and January 17, 2008 of the CTA *En Banc*.

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[14] *Id.* at 63-64.

[15] *Id.* at 10-65, with Annexes "A" to "E", inclusive.

[16] *Id.* at 55-57 and 62-65.

In response, comments[17] were filed by the respondent and the Office of the Solicitor General (OSG), as counsel for respondent.

However, instead of filing a reply to the comments, petitioner filed a Motion to Withdraw, praying that the case be dismissed without prejudice. According to petitioner, the amount of tax credit being claimed for 2002 would just be included in its future claims for issuance of a tax credit certificate since the said amount was carried over to its 2003 Income Tax Return (ITR).[18]

The OSG does not oppose the Motion to Withdraw. However, citing Section 2,[19] Rule 17 of the Rules of Court, the OSG argues that the withdrawal of the instant case is no longer a matter of right on the part of petitioner, but is discretionary upon the Court.[20] The OSG also calls attention to the failure of Mr. Jacinto J. Concepcion, the person who signed the Verification and Certification of Non-forum Shopping, to exhibit before the notary public a valid Identification Card.[21] The OSG insists that such failure renders the instant Petition defective.[22] Thus, it should be dismissed with prejudice.[23]

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[17] *Id.* at 76-84 and 92-104.

[18] *Id.* at 107.

[19] SEC. 2. *Dismissal upon motion of plaintiff.* — Except as provided in the preceding section, a complaint shall not be dismissed at the plaintiff's instance save upon approval of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion for dismissal, the dismissal shall be limited to the complaint. The dismissal shall be without prejudice to the right of the defendant to prosecute his counterclaim in a separate action unless within fifteen (15) days from notice of the motion he manifests his preference to have his counterclaim resolved in the same action. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class suit shall not be dismissed or compromised without the approval of the court.

[20] *Rollo,* p. 126.

[21] *Id.* at 127-128.

[22] *Id.*

[23] *Id.* at 128.

**Our Ruling**

We grant the Motion to Withdraw.

Section 1, Rule 13 of the Internal Rules of the Supreme Court[24] provides that "[a] case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require." In the instant case, records show that on August 19, 2009,[25] we resolved to require petitioner to file a reply. Instead of complying, petitioner opted to file a motion to withdraw. Clearly, by requiring petitioner to file its Reply, the Court has not yet deemed the case submitted for decision or resolution. Thus, we resolve to grant petitioner's Motion to Withdraw.

However, we agree with the OSG that the dismissal of the instant case should be with prejudice. By withdrawing the appeal, petitioner is deemed to have accepted the decision of the CTA. And since the CTA had already denied petitioner's request for the issuance of a tax credit certificate in the amount of ₱32,170,409 for insufficiency of evidence, it may no longer be included in petitioner's future claims. Petitioner cannot be allowed to circumvent the denial of its request for a tax credit by abandoning its appeal and filing a new claim. To reiterate, "an appellant who withdraws his appeal x x x must face the consequence of his withdrawal, such as the decision of the court *a quo* becoming final and executory."[26]

**WHEREFORE,** the Motion to Withdraw is hereby *GRANTED.* The Petition for Review is hereby *DISMISSED* and the case is hereby declared *CLOSED* and *TERMINATED.* No further pleadings or motions shall be entertained herein. Let an entry of judgment in this case be made in due course.

**SO ORDERED.**

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

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[24] A.M. No. 10-4-20-SC.

[25] *Rollo,* p. 106.

[26] Southwestern University v. Hon. Salvador, 179 Phil. 252, 257 (1979).

**FIRST DIVISION**

[G.R. No. 182525. March 2, 2011]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **BERTHA PRESAS *y* TOLENTINO,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** In every prosecution for illegal sale of *shabu* under Section 5, Art. II of Republic Act No. 9165 or the "*Comprehensive Dangerous Drugs Act of 2002*," the following elements must be sufficiently proved: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. All these elements were duly established. Appellants were caught in *flagrante delicto* selling *shabu* through a buy-bust operation conducted by MADAC operatives.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ARE ACCORDED RESPECT WHEN NO GLARING ERRORS, GROSS MISAPPREHENSION OF FACTS OR SPECULATIVE, ARBITRARY, AND UNSUPPORTED CONCLUSIONS CAN BE GATHERED FROM SUCH FINDINGS.—** [W]e affirm the findings of the trial court with respect to the credibility of the prosecution witnesses considering that the trial court had the opportunity to observe the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.

**3. ID.; ID.; NON-PRESENTATION OF THE FORENSIC CHEMIST IS NOT FATAL; EXPLAINED.—** Assuming *arguendo* that there is no stipulation of facts, the non-presentation of the forensic chemist is not fatal to the

prosecution's case. In *People v. Quebral*, this Court explained: The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential. Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state.

**4. ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY; UPHELD IN CASE AT BAR.—** Appellant's defense, which is predicated on a bare denial, deserves scant consideration in light of the positive testimonies of MADAC operatives. Appellant failed to impute any ill-motives on their part to falsely testify against her. Hence, their testimonies and actuations enjoy the presumption of regularity.

**5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); NON-COMPLIANCE WITH THE PHYSICAL INVENTORY AND PHOTOGRAPH OF THE EVIDENCE CONFISCATED IS NOT FATAL AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED.—** The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, does not automatically render accused's arrest illegal or the items seized from him inadmissible. A *proviso* was added in the implementing rules that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items." The same provision also states that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved. It is no longer necessary to dwell on the justifiable reasons that might have been offered for the failure to comply with the outlined procedure since it was never asked nor raised as an issue by the defense during the trial. Pertinently,

it is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the *corpus delicti*. In this case, the failure on the part of the MADAC operatives to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. The concurrence of all elements of the illegal sale of *shabu* was proven by the prosecution. The chain of custody did not appear to be broken. The recovery and handling of the seized drugs were satisfactorily established. Fariñas was able to put the necessary markings on the plastic sachet of *shabu* bought from appellant immediately after the consummation of the drug sale. This was done in the presence of appellant and the other operatives, and while in the crime scene. The seized items were then brought to the PNP Crime Laboratory for examination on the same day. Both prosecution witnesses were able to identify and explain said markings in court.

**6. ID.; ID.; ILLEGAL SALE OF *SHABU*; PROVEN BEYOND REASONABLE DOUBT; PENALTY.—** [I]t has been established by proof beyond reasonable doubt that appellants sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**PEREZ, *J.*:**

Subject of this appeal is the Decision[1] of the Court of Appeals in CA G.R. CR-H.C. No. 02361 dated 22 October 2007, affirming the Judgment[2] dated 9 May 2006 of the Regional Trial Court (RTC), Branch 64 of Makati City, finding appellant Bertha Presas *y* Tolentino guilty of illegal sale of *shabu*.

Two separate Informations were filed before the RTC. In Criminal Case No. 03-2795, appellant was accused of illegal sale of *shabu* which reads:

> That on or about the 30th day of July 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell[,] distribute and transport, weighing zero point zero six (0.06) gram of Methamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.[3]

In Criminal Case No. 03-2796, appellant was charged with illegal possession of *shabu* allegedly committed as follows:

> That on or about the 30th day of July 2003, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control weighing zero point zero seven (0.07) gram of Methamphetamine Hydrochloride (*Shabu*), which is a dangerous drug, in violation of the above-cited law.[4]

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[1] Penned by Associate Justice Ramon R. Garcia with Associate Justices Josefina Guevara-Salonga and Vicente Q. Roxas, concurring. *Rollo*, pp. 2-17.

[2] Presided by Judge Delia H. Panganiban. Records, pp. 121-128.

[3] Records, p. 2.

[4] *Id.* at 4.

On arraignment, appellant pleaded not guilty to both charges. In a joint pre-trial conference conducted on 9 September 2003, the following facts were stipulated:

1. That these cases were investigated by PO1 Alex Inopia;
2. That after the investigation of PO1 Alex Inopia, he prepared the Final Investigation Report;
3. That the PNP Anti Illegal Drug Special Operation Sub-Task Force through P/Supt. Jose Ramon Salido made a Request for Laboratory Examination addressed to the PNP Crime Laboratory Office, Camp Crame, Quezon City;
4. That the specimen submitted for examination were duly received by the PNP Crime Laboratory Office, Camp Crame, Quezon City as evidenced by the stamp mark at the lower left portion of the Request for Laboratory Examination;
5. That the PNP Crime Laboratory Office through Police Inspector Abraham Verde Tecson conducted an examination on the specimen submitted;
6. That per examination, the specimen submitted for examination gave positive result for the test of Methylamphetamine Hydrochloride;
7. That after examination of the specimen submitted, the PNP Crime Laboratory Office through the Forensic Chemist prepared the Initial Laboratory Report; and
8. The qualification of the Forensic Chemist.

xxx xxx xxx

With the stipulation entered into by the prosecution and the defense, the testimony of the Forensic Chemist, P/Insp. Abraham Verde Tecson, is dispensed with.[5]

A joint trial of the two (2) cases thereafter ensued.

The following facts were related by prosecution witnesses who comprised mainly of members of the buy-bust team.

[5] *Id.* at 30-31.

Based on an informant's tip, *Barangay* Captain Doromal of *Barangay* Pitogo called up the Makati City Police Station Anti-Illegal Drug Special Operation – Sub Task Force, to disclose the illegal sale of drugs of an *alias* Beng, who was later identified as appellant in *Barangay* Pinagkaisahan, Makati City. A buy-bust operation was conducted. Makati Anti Drug Abuse Council (MADAC) operative Gerardo Fariñas (Fariñas) acted as the *poseur*-buyer and was backed up by PO2 Rodrigo Igno (PO2 Igno), as the team leader, PO2 Herbert Ibias, and PO2 Tolentino, among others. Two (2) One Hundred Pesos bills were prepared. PO2 Igno placed the markings "C4" above the serial numbers of the bills.[6] Upon reaching Danlig Street in Makati City at around 9:00 p.m., Fariñas and the informant waited at a nearby store for appellant. When the informant called on appellant, the latter came out of her house, which was situated at the corner of Danlig and Tolentino Streets. The informant introduced Fariñas to appellant as the buyer of *shabu*. Appellant even asked informant if it was "okay" to transact with Fariñas, to which the informant answered "*okay yan mare, kaibigan ko yan*." Fariñas gave Two Hundred Pesos (₱200.00) to appellant, who then put the money inside her right pocket while drawing a plastic sachet from her left pocket. Appellant handed the plastic sachet to Fariñas. Thereafter, Fariñas gave the pre-arranged signal of taking off his cap. PO2 Igno and Tolentino immediately approached and arrested appellant. PO2 Tolentino asked appellant to empty her pockets, and the buy-bust money as well as another plastic sachet were recovered from her. The plastic sachet containing *shabu* was marked with appellant's initials "PBT" at the crime scene by Fariñas. Appellant was then brought to the Makati Police Headquarters.[7] The plastic sachets containing *shabu* were brought to the Philippine National Police (PNP) Crime Laboratory for examination.[8] Chemistry Report Number D-959-03 revealed that the specimens submitted yielded positive results for *shabu*.[9]

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[6] *Id.* at 16.

[7] TSN, 13 April 2004, pp. 7-13.

[8] TSN, 19 August 2004, p. 55.

[9] Records, p. 11.

As the lone witness for the defense, appellant testified that she was inside her house on 30 July 2003 in Danlig Street when several men, who claimed to be from the *barangay*, knocked on the door and eventually forced their way into her house. Appellant was dragged out of the house and forcefully boarded her into a vehicle. She was brought to the *barangay* hall of *Barangay* Pitogo where she was brought inside a room, frisked, and asked to undress. Despite the fact that nothing was recovered from her, appellant was brought to the PNP-Criminal Investigation Division where she underwent a drug test. Appellant denied selling *shabu* and any knowledge of a buy-bust operation.[10]

After trial, the RTC rendered a decision finding appellant guilty of violation of Section 5, Article II of Republic Act No. 9165 in Criminal Case No. 03-2795 and sentencing her to suffer life imprisonment and to pay a fine of ₱500,000.00. She was however acquitted of the charge for violation of Section 11, Article II of Republic Act. No. 9165 in Criminal Case No. 03-2796, for insufficiency of evidence. The trial court found the prosecution's evidence as sufficient to prove the elements for illegal sale of *shabu*.

On appeal, the Court of Appeals affirmed the judgment of the RTC. The Court of Appeals vouched for the credibility of the prosecution witnesses and rejected appellant's defense of denial, holding the same as inherently weak.

In appealing her conviction before this Court, appellant opted to adopt the same arguments in her Brief before the Court of Appeals. To prove that her guilt was not proven beyond reasonable doubt, appellant challenges the credibility of the testimony of prosecution witnesses, particularly their contradicting statements regarding whether a surveillance was conducted prior to the buy-bust operation or not. Appellant then questions the non-presentation of the forensic chemist to corroborate the alleged findings that the substance examined was found positive for *shabu*. Finally, appellant disputes the presumption that the MADAC operative had regularly performed their duties. Appellant

[10] TSN, 24 April 2006, pp. 4-10.

claims that certain regulations providing for the chain of custody of seized drugs were not followed. There was no physical inventory nor a photograph of the drugs allegedly confiscated from appellant.

On the contrary, the Office of the Solicitor General (OSG) maintains that appellant's guilt was proven beyond reasonable doubt. The prosecution was able to prove that appellant was arrested in a buy-bust operation and she was positively identified as the person who sold the illegal drugs to the *poseur*-buyer. The OSG justifies the alleged inconsistencies in the testimonies of prosecution witnesses as being minor or trivial which did not detract from the fact that appellant was caught *in flagrante delicto* as a result of the buy-bust operation. The non-presentation of the forensic chemist, the OSG adds, is immaterial because the Chemistry Report revealed that the specimens were found positive for *shabu* and such evidence was not contested by the defense. With respect to the chain of custody, the OSG argues that the contraband items were initialled by Fariñas in appellant's presence and the Chemistry Report confirmed that they were positive for *shabu*. The incident was likewise documented in the Spot Report.

After scouring the records of this case, we do not find any cogent reason to depart from the ruling of the Court of Appeals. Otherwise stated, we agree with the lower courts' finding that the guilt of the appellant was established beyond reasonable doubt.

In every prosecution for illegal sale of *shabu* under Section 5, Art. II of Republic Act No. 9165 or the "*Comprehensive Dangerous Drugs Act of 2002*," the following elements must be sufficiently proved: (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.[11] All these elements were duly established. Appellants were caught in *flagrante delicto*

[11] *People v. Politico*, G.R. No. 191394, 18 October 2010; *People v. Sembrano*, G.R. No. 185848, 16 August 2010; *People v. Mapanle*, G.R. No. 188976, 29 June 2010; *People v. Berdadero*, G.R. No. 179710, 29 June 2010.

selling *shabu* through a buy-bust operation conducted by MADAC operatives.

At the outset, we affirm the findings of the trial court with respect to the credibility of the prosecution witnesses considering that the trial court had the opportunity to observe the conduct and demeanor of the witnesses during the trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary, and unsupported conclusions can be gathered from such findings.[12]

The *poseur*-buyer, MADAC operative Fariñas, positively testified that the sale of *shabu* took place and appellant was caught red-handed, thus:

PROS. BAGAOISAN:

> And, how long did you wait for the accused?

WITNESS:

> We just waited for seconds and then we saw *alias* Beng because the informant called her, sir.

PROS. BAGAOISAN:

> Now, where did the accused come from?

WITNESS:

> Their house is located at the corner of Danlig and Tolentino Streets and their fence is quite low, so the informant just called her, sir.

PROS. BAGAOISAN:

> What did you do after the informant called the accused?

WITNESS:

> *Alias* Beng went out of their house, sir.

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[12] *People v. Pagkalinawan*, G.R. No. 184805, 3 March 2010 citing *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).

PROS. BAGAOISAN:

What happened after *Alias* Beng went out?

WITNESS:

I was introduced by the informant to her, sir.

PROS. BAGAOISAN:

How were you introduced to the accused?

WITNESS:

That I am interested of *shabu* and then I am going to buy *shabu*, sir.

PROS. BAGAOISAN:

And, what did the accused reply, if any?

WITNESS:

*Alias* Beng asked the informant if I am okay, sir.

PROS. BAGAOISAN:

And, what was the reply of the informant if there was any?

WITNESS:

The informant replied: "*Okay yan mare, kaibigan ko yan*."

PROS. BAGAOISAN:

What happened next after that?

WITNESS:

I gave the Two Hundred Pesos to *Alias* Beng and she took it from me, sir.

PROS. BAGAOISAN:

And, what did the accused do after she received the buy bust money?

WITNESS:

She put the money inside her right pocket and then she drew a plastic sachet in her left pocket, sir.

PROS. BAGAOISAN:

> And, what did she do with the plastic sachet which she drew from her pocket?

WITNESS:

> She handed to me the plastic sachet and then she was as if examining it and then I gave the pre-arranged signal, sir.[13]

While it was only Fariñas who testified on the consummated sale transaction, PO2 Igno corroborated Fariñas statements in the Joint Affidavit of Arrest[14] he executed together with Fariñas and PO2 Tolentino. PO2 Igno confirmed that Fariñas was able to buy *shabu* from appellant.

PROS. BAGAOISAN:

> Now, Mr. Witness, in connection with the buy bust operation that you conducted against Bertha Presas *y* Tolentino do you recall having executed an affidavit of arrest?

WITNESS:

> Yes sir.

PROS. BAGAOISAN:

> If that affidavit of arrest will be shown to you, will you be able to identify the same?

WITNESS:

> Yes, sir.

PROS. BAGAOISAN:

> I am showing, Mr. Witness, as Affidavit of Arrest consisting of two pages, will you please go over the same and tell us what relation does this have to affidavit of arrest operation conducted against the accused?

WITNESS:

> This is the Joint Affidavit of Arrest, sir.

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[13] TSN, 13 April 2004, pp. 8-9.

[14] Records, pp. 15-16.

PROS. BAGAOISAN:

> There is a signature above the name Rodrigo Igno, whose signature is this?

WITNESS:

> That is my signature, sir.

PROS. BAGAOISAN:

> May I request, Your Honor, that this Affidavit of Arrest be market as Exhibit J, the signature of the witness, PO2 Igno as Exhibit J-2. Earlier we have marked the signature of MADAC Gerardo Fariñas as Exhibit J-1. Do you still confirm and affirm the truthfulness of your allegations in this affidavit?

WITNESS:

> Yes, sir.

PROS. BAGAOISAN:

> Now, you mentioned in your affidavit that the poseur buyer was able to buy *shabu* from the accused in this case, do your (sic) confirm that statement?

WITNESS:

> Yes, sir.

PROS. BAGAOISAN:

> Were you able to see the *shabu* subject matter of the sale transaction?[15]

Chemistry Report No. D-959-03 confirmed that a qualitative examination conducted on the specimens inside the plastic sachets seized from appellant yielded positive result for *Methylamphetamine Hydrochloride* or *shabu*.[16]

Appellant harps on the non-presentation of the forensic chemist thereby rendering the laboratory findings as hearsay evidence. The Court of Appeals correctly pointed out that appellant agreed

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[15] TSN, 19 August 2004, pp. 6-7.

[16] Records, p. 11.

to dispense with the testimony of the forensic chemist, as stipulated in the Pre-Trial Order, thus:

> Appellant cannot now contend that the non-presentation of the Forensic Chemist was fatal to the prosecution's case. A perusal of the records of the instant case clearly reveals that the Pre-trial Order dated 9 September 2003 issued by the court *a quo* was regular on its face. In fact, the defense counsel and appellant herself had affixed their respective signatures on the Minutes thereof. As such, the stipulations therein are valid and binding between the parties and become judicial admissions of the facts so stipulated.[17]

Assuming *arguendo* that there is no stipulation of facts, the non-presentation of the forensic chemist is not fatal to the prosecution's case. In *People v. Quebral*,[18] this Court explained:

> The *corpus delicti* in dangerous drugs cases constitutes the dangerous drug itself. This means that proof beyond doubt of the identity of the prohibited drug is essential.
>
> Besides, *corpus delicti* has nothing to do with the testimony of the laboratory analyst. In fact, this Court has ruled that the report of an official forensic chemist regarding a recovered prohibited drug enjoys the presumption of regularity in its preparation. Corollarily, under Section 44 of Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts they state.[19]

Appellant's defense, which is predicated on a bare denial, deserves scant consideration in light of the positive testimonies of MADAC operatives. Appellant failed to impute any ill-motives on their part to falsely testify against her. Hence, their testimonies and actuations enjoy the presumption of regularity.

Lastly, appellant contends that the prosecution failed to prove the crucial link in the chain of custody of *shabu* when the MADAC

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[17] *Rollo,* pp. 13-14.

[18] G.R. No. 185379, 27 November 2009, 606 SCRA 247.

[19] *Id.* citing *Malillin v. People*, G.R. No. 172953, 30 April 2008, 553 SCRA 619, 632; *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 586-587 citing *People v. Chua Uy*, 384 Phil. 70, 93-94 (2000).

operatives failed to observe the procedure regarding the custody of seized drugs.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides for the custody and disposition of the confiscated illegal drugs, to wit:

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

This rule was elaborated in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, *viz*:

> a) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, does not automatically render accused's arrest illegal or the items seized from him inadmissible. A *proviso* was added in the implementing rules that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid

such seizures of and custody over said items." The same provision also states that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.[20]

It is no longer necessary to dwell on the justifiable reasons that might have been offered for the failure to comply with the outlined procedure since it was never asked nor raised as an issue by the defense during the trial. Pertinently, it is the preservation of the integrity and evidentiary value of the seized items which must be proven to establish the *corpus delicti*.

In this case, the failure on the part of the MADAC operatives to take photographs and make an inventory of the drugs seized from the appellant was not fatal because the prosecution was able to preserve the integrity and evidentiary value of the said illegal drugs. The concurrence of all elements of the illegal sale of *shabu* was proven by the prosecution. The chain of custody did not appear to be broken. The recovery and handling of the seized drugs were satisfactorily established. Fariñas was able to put the necessary markings on the plastic sachet of *shabu* bought from appellant immediately after the consummation of the drug sale. This was done in the presence of appellant and the other operatives, and while in the crime scene. The seized items were then brought to the PNP Crime Laboratory for examination on the same day.[21] Both prosecution witnesses were able to identify and explain said markings in court.

Based on the foregoing, it has been established by proof beyond reasonable doubt that appellants sold *shabu*. Under Section 5, Article II of Republic Act No. 9165, the penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport

[20] *People v. Rivera*, G.R. No. 182347, 17 October 2008,569 SCRA 879, 898-899.

[21] Records, p. 12.

any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved. Hence, the trial court, as affirmed by the Court of Appeals, correctly imposed the penalty of life imprisonment and a fine of ₱500,000.00.

**WHEREFORE,** the Decision dated 22 October 2007 of the Court of Appeals in CA G.R. CR-H.C. No. 02361, convicting appellant for violation of Section 5, Article II of Republic Act No. 9165 and sentencing her to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 is hereby *AFFIRMED*.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 188705. March 2, 2011]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **FEDERICO LUCERO,** *accused-appellant.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO REMAIN SILENT AND RIGHT TO COUNSEL; VIOLATED IN CASE AT BAR.—** The CA correctly disregarded the confession by accused-appellant Lucero, as well as the evidence gained by searching his room. Among the evidence considered by the RTC during the trial were a blood-stained white t-shirt and knife found in the room of accused-appellant. However,

these items were the result of a search conducted after accused-appellant had been questioned without the presence of counsel, nor had accused-appellant been apprised of his rights. xxx Accused-appellant was not informed of his rights, nor was there a waiver of said rights. Thus, the information elicited is inadmissible, and the evidence garnered as the result of that interrogation is also inadmissible. This parallels *Aballe v. People*, wherein the accused in that case was questioned without the presence of counsel, and later produced the weapon used in killing the victim, also making an extrajudicial confession admitting his guilt. In that particular case, it was held, "Together with the extrajudicial confession, the fatal weapon is but a fruit of a constitutionally infirmed interrogation and must consequently be disallowed." It is clear that the questioning of accused-appellant was made in violation of Section 12(1), Article III of the 1987 Constitution, which reads: Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel. Thus, the trial court erred in considering the knife and bloodied t-shirt when they are inadmissible, which is what the CA correctly concluded.

**2. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; REQUISITES; COMPLIED WITH IN CASE AT BAR.—** Here, there are no direct witnesses to the crime. But even if no one saw the commission of the crime, accused-appellant may still be pinned down as the perpetrator. In this particular case, with this particular crime, it is the circumstantial evidence that comes into play to reach a conclusion. In *People v. Pascual*, it was held: It is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is

usually unavoidable. Under Sec. 4, Rule 133 of the Rules of Court, circumstantial evidence shall be sufficient for conviction when the following requisites are complied with: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

**3. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; WHAT PROSECUTION EVIDENCE SHOULD BE PRESENTED DURING TRIAL DEPENDS SOLELY UPON THE DISCRETION OF THE PROSECUTOR; CASE AT BAR.—** It is not for accused-appellant to determine which evidence or testimony the prosecution should present. In *Loguinsa, Jr. v. Sandiganbayan (5th Division)*, the Court stated, "Section 5, Rule 110 of the Revised Rules on Criminal Procedure expressly provides that all criminal action shall be prosecuted under the direction and control of the fiscal and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor." The DNA test is not essential, while there exists other evidence pinning down accused-appellant as the perpetrator. Indeed, if he honestly thought that the DNA test could have proved his innocence, he could have asked for the conduct of said test during his trial, instead of belatedly raising it on appeal, and attempting to dictate upon the prosecution what course of actions it should have undertaken.

**4. ID.; EVIDENCE; DENIAL; NEGATIVE AND SELF-SERVING EVIDENCE IF UNSUPPORTED BY CLEAR AND CONVINCING EVIDENCE; CASE AT BAR.—** Accused-appellant denies that he committed the crime, and offers up his version of events. He was unable to present any corroborating witnesses to testify that he did, indeed, go to AAA's house after the crime was committed. All accused-appellant presented is his bare denial that he committed the crime. In *People v. Alarcon*, We held, "Denial, if unsupported by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."

**5. ID.; ID.; MOTIVE; ABSENT IN CASE AT BAR.—** The witnesses Jao and Langgoy testified that accused-appellant was the person they saw leaving the scene of the crime. There is no reason for them to falsely identify accused-appellant, no motive presented for them to lie. In *People v. Bringas*, We held, "As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit."

**6. ID.; ID.; CREDIBILITY OF WITNESSES; GENERALLY, TRIAL COURT'S ASSESSMENT IS ACCORDED GREAT WEIGHT.—** In [*People v. Bringas*, the Court] also stated, "In fine, when the credibility of witnesses is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated and which, if properly considered, would alter the results of the case." No facts or circumstances of substance were presented that the trial court overlooked, misunderstood, or misappreciated, which would necessitate a review of the findings of fact.

**7. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE WITH HOMICIDE; ELEMENTS; PRESENT IN CASE AT BAR.—** *People v. Villarino* held, "In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman." The prosecution was able to prove that accused-appellant had carnal knowledge of the victim, as per the *post-mortem* findings of Dr. Rodaje and the vaginal swabbings examined by NBI Regional Chemist Dulay. Dr. Rodaje found hymenal lacerations from his examination of AAA's body. In *People v. Payot, Jr.*, it was held, "Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration." Dulay's findings that there were seminal stains serve to bolster the conclusion that rape was committed. As to the presence of force or intimidation, the several injuries and stab wounds suffered by AAA are mute but eloquent

statements of the violence inflicted upon her, resulting in her death. Thus, the elements of the crime of rape with homicide are all present.

**8. ID.; ID.; ID.; PROPER PENALTY IN CASE AT BAR.—** The RTC correctly convicted accused-appellant of the crime of rape with homicide, which, at the time of the offense, was penalized under Art. 335 of the Code, before it was amended by RA 8353, the *Anti-Rape Law of 1997*, and was punishable by death. The CA correctly modified the penalty in accordance with Sec. 2 of RA 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines," xxx The penalty meted out was thus reduced to *reclusion perpetua*. Furthermore, Sec. 3 of RA 9346 provides, "Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligibile for parole under Act No. 4103, known as the Indeterminate Sentence Law, as amended."

**9. CIVIL LAW; DAMAGES; AWARDED IN CASE AT BAR; DISCUSSED.—** In line with current jurisprudence, We reduce the award of civil indemnity to PhP 75,000 and maintain the award of PhP 75,000 as moral damages, but increase the award of exemplary damages to PhP 30,000. The award of temperate damages is proper, following Art. 2224 of the Civil Code, which states, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty." Furthermore, the damages assessed in this case shall be subject to interest at six percent (6%).

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**VELASCO, JR., *J.*:**

Before this Court on appeal is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00469-MIN dated December 17, 2008, which upheld the conviction of accused Federico Lucero in Criminal Case No. 10849, decided by the Regional Trial Court (RTC), Branch 30 in Tagum City on April 20, 2005.

Before the RTC, the accused was charged with the crime of Rape with Homicide in an Information dated July 31, 1997, which reads as follows:

> That on or about June 7, 1997, in the Municipality of Tagum, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, armed with a knife, did then and there willfully, unlawfully and feloniously have carnal knowledge of AAA,[2] an eighteen (18) year old girl, against her will, and on the occasion of said rape, the said accused, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab the said AAA, thereby inflicting upon her wounds which caused her death, and further causing actual, moral and compensatory damages to the heirs of the victim.
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> CONTRARY TO LAW.[3]

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[1] Penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Romulo V. Borja and Mario V. Lopez.

[2] In accordance with Sec. 44 of Republic Act No. 9262, the *Anti-Violence Against Women and Their Children Act of 2004*, and Sec. 63, Rule XI of the Implementing Rules and Regulations of said Act, which mandate confidentiality, the real name of the victim is withheld to protect her privacy, and fictitious initials are used. The personal circumstances or any other information tending to establish or compromise the identity of the victim, as well as those of the victim's immediate family or household members, shall not be disclosed. *See also* Sec. 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[3] Records, p. 1.

On October 14, 1997, the accused, with the assistance of counsel, pleaded "not guilty" at his arraignment.[4]

**The Case for the Prosecution**

The prosecution presented Alejandro Jao (Jao); Anastacio Langgoy (Langgoy); Police Officer 2 Galileo Gurrea (PO2 Gurrea); Dr. Ricardo M. Rodaje (Dr. Rodaje), National Bureau of Investigation (NBI) Medico-Legal Officer; and Dimpna D. Bermejo-Dulay (Dulay), NBI Regional Chemist as witnesses.

Jao, *Purok* Leader of XXX in Tagum, Davao del Norte, testified that on June 6, 1997, at around 11:00 p.m., he saw the accused and a certain Digoy Tewok drinking outside the Olympic Battery Shop, along the National Highway, where the accused was employed as a cook. He noticed that the accused was wearing green short pants.[5] About 10 meters from where the accused was drinking, Jao saw the victim, AAA, a certain May Laribas, and his daughter looking at pictures in an album, inside the *purok* hut.[6] He then told his daughter and her companions to go home, as there were people drinking in the area, especially since he knew that the accused was attracted to AAA. His daughter and her companions left after that, and Jao and his wife slept in their store.[7]

At around 2 o'clock the next morning, Jao was awakened by his daughter's shouting that someone had entered the room of AAA. He went outside the store and saw his daughter coming from the direction of AAA's house, followed by the accused being chased by a neighbor, Langgoy. Jao's daughter pushed him inside the store, and then the accused, wearing only white briefs, with something covering the top of his head, ran by, at a distance of six feet. The area was lighted by a 40-watt fluorescent lamp, which was about seven meters from accused. Jao did not join the chase, and instead went to check on AAA. AAA's

[4] *Id.* at 32.

[5] *Id.* at 320.

[6] *Id.* at 320-321.

[7] *Id.* at 321.

uncle, BBB, also went into her house and shouted that AAA had a stab wound on her breast.[8] AAA was then brought to the Tagum Doctors Hospital where she was declared "dead on arrival."

At 3:00 a.m. on June 7, 1997, Jao saw the accused come out of the Patalinghug Funeral Homes, after which he proceeded to his room in his place of work. Jao said that the accused was barefoot, his feet were muddy, and he wore the same green short pants Jao saw him wearing the night before.[9] Later on, Jao peeped through a hole in the wall of the room of the accused, and he saw the latter washing his green short pants, all the while looking in different directions. At 11 o'clock that morning, in the Olympic Battery Shop, Jao, along with the police, saw scratches on the back of the accused when he took off his shirt. Half an hour later, Jao accompanied the police and a radio reporter to the room of the accused, where upon questioning, the accused said that the knife he used in killing AAA was at the left side of his bed's headboard. Jao recovered the knife, which he later identified during his testimony in court.[10]

Langgoy testified that, at around 2:30 a.m. on June 7, 1997, he was awakened by a voice calling for help, and that it was from AAA, who lived five meters from his house.[11] He rushed to her house, but when he tried to enter it, his hands were held by someone inside, so he stepped back. Then someone came out of the house, and Langgoy identified him as the accused, Lucero, who was clad only in his underwear, with his green short pants covering the top of his head and his forehead. Langgoy gave chase but was unable to catch the accused, so he went back to the house of the victim, who had by that time been brought to the hospital. Langgoy claimed to have recognized the accused by the light of the 40-watt fluorescent lamp nearby. He was also familiar with the accused and his particular green

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[8] *Id.*

[9] *Id.*

[10] *Id.* at 322.

[11] *Id.*

shorts, since they were close neighbors, with their houses being only four meters apart.[12]

PO2 Gurrea testified that at 8:00 a.m. on June 7, 1997, he was told to investigate an incident at XXX, Tagum, Davao del Norte. When he got to the area, the people he interviewed told him that there had been a commotion in AAA's house, and that the suspect was a short, stout, bowlegged man who wore only briefs and carried a knife. PO2 Gurrea went back to the police station, but told the witnesses to report to him at his office if they saw the suspect. At 11:00 a.m., PO2 Gurrea was told that the suspect had woken up. Along with Senior Police Officer 1 (SPO1) Judil Chavez, SPO1 Wenifredo Rivas, and SPO2 Eric Baloyo, PO2 Gurrea went to the Olympic Battery Shop and saw the accused paring vegetables. He invited the accused to the police station where the accused admitted killing AAA, but denied raping her. They then accompanied the accused back to XXX, where, in the house of the accused, he saw a bloodied white t-shirt. He asked the accused where he had placed the knife used in killing the victim, and the accused pointed to the bottom of his bed. They found the knife after turning the bed over. The accused was then told to take off his shirt, and when he did so, PO2 Gurrea and *Purok* Leader Jao saw scratches on the back and right thigh of the accused.[13]

Dr. Rodaje, NBI Medico Legal Officer, prepared the autopsy on the body of the victim, and found several stab wounds and contusions, with one stab wound penetrating the heart, causing her death.[14] His examination also found hymenal lacerations, after which he performed the vaginal swabbing to see if there was still seminal fluid in the vaginal canal.[15] The findings in the autopsy report indicated the following injuries:

Contusion, temporal region, left, 7.0 x 8.0 cm.

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[12] *Id.* at 323.

[13] *Id.* at 324.

[14] *Id.* at 328.

[15] *Id.* at 329.

Contused-abrasions: nose, left side, 0.9 x 1.0 cm.; face, right side, 0.3 x 0.4 cm.; thigh, middle third, antero-lateral aspect, right, 9.5 x 10.0 cm.

Hematoma, frontal region, right, 2.0 x 2.4 cm.

Incised wound, hand, postero-lateral aspect, left, 4.0 cm.; palmar region, left, 2.3 cm.;

Hymenal laceration, complete at [4:00 and 7:00] position corresponding to the face of a watch, edges are edematous and with clotted blood.

STAB WOUNDS, modified by suturing and embalming.

1. Roughly spindle-shaped, 1.2 cm.; edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt located at the right, shoulder, 26.0 cm. above the right elbow, directed backward, downward and medially, involving the soft tissues only with an approximate depth of 3.0 cm.

2. Roughly spindle-shaped, 3.0 cm., edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt located at the infra-mammary region, 4.5 cm. from anterior median line, directed backward, upward, and medially, involving the soft tissues, cutting the sternum, penetrating the left ventricle with an approximate depth of 4.5 cm.

3. Roughly spindle-shaped, 1.5 cm. edges are clean-cut, oriented horizontally, lateral extremity is sharp, medial extremity is blunt. Located at the supra-mammary region, 20.0 cm. from anterior median line directed backward, upward, and laterally, involving the soft tissues only, with an approximate depth of 2.4 cm.

xxx xxx xxx

CAUSE OF DEATH: STAB WOUNDS[16]

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[16] *Id.* at 18.

He then submitted the swab specimen to Dulay, NBI Regional Chemist, who found the specimen positive for the presence of seminal stains.[17]

**The Case for the Defense**

The accused testified in his defense, saying that he had been a resident of XXX, Tagum, Davao del Norte since February 2, 1997, and that he had been invited by the police for questioning at 11:00 a.m. on June 7, 1997.[18] He had been slicing *ampalaya* in the kitchen when the police arrived, and when he asked what they wanted with him, he was told to just accompany them to the police station. He put down his knife, but PO2 Gurrea picked it up, and then the accused was brought to the police station. He was handcuffed and brought to the comfort room where he was told that if he did not admit to killing AAA, he would be beaten to death. He was also subjected to electric shock. He then confessed to the killing, even if he did not commit the crime. The accused stated that he was not informed of his right to remain silent or to be assisted by counsel. After his confession, he was mauled by AAA's brother and father. He was then brought back to his rented room, which PO2 Gurrea searched, finding a knife which he brought back to the police station, along with the accused. The accused was then locked in a prison cell where the other prisoners beat him up. The next day, he was visited by his elder brother, Dionisio Lucero, to whom he said that he wanted to be medically examined, but Dionisio was told by the police not to interfere in the case.[19]

Dionisio testified that he visited his brother, the accused, on June 8, 1997, and noticed that his brother's face was swollen. The accused told him to go to the Chief of Police so that Dionisio could bring him to a doctor, but Dionisio was not allowed to do so, and instead went home. On cross-examination, Dionisio testified that he did not believe his brother was tortured.[20]

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[17] *Id.* at 330.

[18] *Id.* at 331.

[19] *Id.* at 332.

[20] *Id.* at 333.

**The Ruling of the Trial Court**

The trial court found that there was no proof of maltreatment or torture on the part of the police to elicit the confession of the accused. It further held that enough circumstantial evidence was presented to prove the guilt of the accused.

After deliberating upon the evidence, the trial court rendered its Decision finding the accused guilty in Criminal Case No. 10849, the dispositive portion of which reads:

> In View Of All The Foregoing, the Court finds accused **Federico Lucero guilty beyond reasonable doubt** of the crime of Rape with Homicide and he is hereby sentenced to suffer the penalty of **DEATH** and to pay the heirs of the victim AAA ₱75,000.00 civil indemnity; ₱50,000.00 moral damages and ₱25,000.00 exemplary damages.
>
> Conformably with the Decision promulgated on 7 July 2004 in G.R. No. 147678-87, entitled *People [v.] Efren Mateo y Garcia*, upon finality of this Decision, let all the pertinent records of this case be forthwith forwarded to the Court of Appeals, Cagayan de Oro City for intermediate review.
>
> SO ORDERED.[21]

**The Ruling of the Appellate Court**

In his appeal to the CA, the accused questioned the identification of him made by witnesses Jao and Langgoy, and assailed the trial court's appreciation of the allegedly illegally-obtained evidence.

The CA found that enough circumstantial evidence was present to convict the accused. Even so, it held that the extrajudicial confession made by the accused to PO2 Gurrea was inadmissible since the accused was deprived of his right to counsel when he was questioned. The bloodied shirt and knife that were found in the room of the accused were also held to be inadmissible, being "fruits of the poisonous tree."[22] The CA followed the trial court in finding that there was no proof of maltreatment or

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[21] *Id.* at 347.

[22] *Rollo,* p. 20.

torture, and that the brother of the accused did not believe the allegations of torture.[23]

Even as the CA upheld the accused's conviction, it found it proper to modify the award of damages. The amount of the award of civil indemnity was increased to PhP 100,000 and that of moral damages increased to PhP 75,000, in line with current judicial policy. Temperate damages were awarded, as there was no proof of the actual amount of loss. The dispositive portion of the CA decision reads as follows:

> WHEREFORE, premises considered, the Decision dated April 20, 2005 of the Regional Trial Court, 11th Judicial Region, Branch 30, Tagum City, in Criminal Case No. 10849, is hereby **AFFIRMED with MODIFICATIONS.** As modified, appellant is hereby **SENTENCED** to suffer the penalty of *reclusion perpetua* with no possibility of parole. He is **ORDERED** to indemnify the heirs of AAA the amounts of ₱100,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱25,000.00 as temperate damages; and ₱25,000.00 as exemplary damages. Costs against appellant.
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> SO ORDERED.[24]

Hence, we have this appeal.

**The Ruling of this Court**

In his appeal, Lucero questions the positive identification made by witnesses Jao and Langgoy. He insists that the witnesses were unable to see the face of the perpetrator, and identification was made solely on the basis of the green short pants worn by the suspect. He also claims that Jao did not immediately report the identity of the perpetrator to the police, and that this casts doubt on the witness' credibility. In his defense, he also claims that a DNA test should have been done to match the spermatozoa found in the victim's body to a sample taken from him, and that since no DNA test was done, he cannot be linked to the crime.

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[23] *Id.* at 20-21.

[24] *Id.* at 29.

The appeal is without merit.

The CA correctly disregarded the confession by accused-appellant Lucero, as well as the evidence gained by searching his room.

Among the evidence considered by the RTC during the trial were a blood-stained white t-shirt and knife found in the room of accused-appellant. However, these items were the result of a search conducted after accused-appellant had been questioned without the presence of counsel, nor had accused-appellant been apprised of his rights.

The testimony of PO2 Gurrea is quite informative:

Q It was you who conducted the investigation?
A Yes, sir.

xxx xxx xxx

Q When you investigated the accused, you did not inform the accused that he had the right to remain silent? Did you?
A No, sir. We did not inform him of his right, but we directly questioned him.

Q And also, you did not inform the accused that whatever he would answer to your question that he would give will be used against him in the court of law? Did you?
A I did not tell him.

Q And also, you did not inform the accused at that time that he would have the right to get counsel of his own choice?
A We did not inform him.

Q And also, you did not inform the accused that he would have the right not to be compelled to answer any of your question? Did you?
A No, sir. When we asked, he immediately answered the question.[25]

Accused-appellant was not informed of his rights, nor was there a waiver of said rights. Thus, the information elicited is inadmissible, and the evidence garnered as the result of that

[25] TSN, November 13, 1998, pp. 36-37.

interrogation is also inadmissible. This parallels *Aballe v. People,*[26] wherein the accused in that case was questioned without the presence of counsel, and later produced the weapon used in killing the victim, also making an extrajudicial confession admitting his guilt. In that particular case, it was held, "Together with the extrajudicial confession, the fatal weapon is but a fruit of a constitutionally infirmed interrogation and must consequently be disallowed."[27]

It is clear that the questioning of accused-appellant was made in violation of Section 12(1), Article III of the 1987 Constitution, which reads:

> Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Thus, the trial court erred in considering the knife and bloodied t-shirt when they are inadmissible, which is what the CA correctly concluded.

But even if the confession and evidence gathered as a result of it are disregarded, the evidence that remains still supports the result of the conviction of accused-appellant.

Here, there are no direct witnesses to the crime. But even if no one saw the commission of the crime, accused-appellant may still be pinned down as the perpetrator. As held in *Salvador v. People*:

> Direct evidence of the crime is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. Circumstantial evidence is that evidence which proves a fact or series of facts from which the facts in issue

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[26] G.R. No. 64086, March 15, 1990, 183 SCRA 196.

[27] *Id.* at 202.

may be established by inference. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.[28]

In this particular case, with this particular crime, it is the circumstantial evidence that comes into play to reach a conclusion. In *People v. Pascual*, it was held:

> It is settled that in the special complex crime of rape with homicide, both the rape and the homicide must be established beyond reasonable doubt. In this regard, we have held that the crime of rape is difficult to prove because it is generally unwitnessed and very often only the victim is left to testify for herself. It becomes even more difficult when the complex crime of rape with homicide is committed because the victim could no longer testify. Thus, in crimes of rape with homicide, as here, resort to circumstantial evidence is usually unavoidable.[29]

Under Sec. 4, Rule 133 of the Rules of Court, circumstantial evidence shall be sufficient for conviction when the following requisites are complied with: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proved; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

*Salvador* also held:

> All the circumstances must be consistent with one another, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent. Thus, conviction based on circumstantial evidence can be upheld, provided that the circumstances proven constitute an unbroken chain which leads to one fair and reasonable conclusion that point to the accused, to the exclusion of all others, as the guilty person.[30]

Setting aside the knife and the bloodied t-shirt recovered from the room of accused-appellant, the CA and the RTC relied on several circumstances to justify the conviction, to wit:

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[28] G.R. No. 164266, July 23, 2008, 559 SCRA 461, 469-470.

[29] G.R. No. 172326, January 19, 2009, 576 SCRA 242, 251-252.

[30] *Supra* note 28, at 470.

(1) On June 6, 1997, at around 11:00 p.m., Jao saw accused-appellant, wearing green short pants, and a certain Digoy Tewok drinking outside the Olympic Battery Shop.

(2) On June 7, 1997, at around 2:00 a.m., Jao saw his daughter coming from the direction of AAA's house, followed by accused-appellant, who was being chased by Langgoy. Accused-appellant wore white briefs with something covering his head. Jao recognized accused-appellant from a distance of six feet, and the lighting came from a 40-watt fluorescent lamp about seven meters away from accused-appellant.

(3) At around 3:00 a.m. on June 7, 1997, Jao saw accused-appellant come out of the Patalinghug Funeral Homes and proceed to his place of employment. Accused-appellant was barefoot, his feet were muddy, and he wore the same green short pants he had been wearing the night before. Accused-appellant also asked for water since he was thirsty.

(4) Sometime in the morning of June 7, 1997, through a hole in the wall of the room of accused-appellant, Jao saw accused-appellant washing his green short pants, seemingly restless and wary.

(5) At around 11:00 a.m. on June 7, 1997, Jao saw scratches on the back and right thigh of accused-appellant, after accused-appellant was told to take his shirt off by the police.

(6) Langgoy was awakened by a voice calling for help, and he recognized the voice as that of AAA. When he went to AAA's house, which was five meters from his, and tried to enter it, his hands were held by someone inside the house. When he stepped back, and the one who had held his hands came out, Langgoy recognized the person as accused-appellant, who was wearing only briefs and with green short pants covering his head. Langgoy gave chase, but was unable to catch him.

(7) Langgoy positively identified accused-appellant by the light of a 40-watt fluorescent lamp nearby, and was familiar with accused-appellant as they were neighbors, with their houses only four meters apart.

(8) A *post-mortem* examination of AAA's body revealed that she had had sexual intercourse, as found by NBI Medico-Legal Officer Dr. Rodaje. Dr. Rodaje found hymenal lacerations on AAA's hymen at 4 o'clock and 7 o'clock positions, with the edges of the hymen being swollen and with clotted blood. The conclusion that AAA had had sexual intercourse was supported by the findings of NBI Regional Chemist Dulay, from a vaginal swabbing from AAA that gave positive results for seminal stains.

The aforementioned circumstances lead to the inescapable conclusion that accused-appellant is guilty.

Positive identification of accused-appellant was made by Langgoy, and he remained unshaken in his testimony, even under cross-examination. He related his version of the events of June 7, 1997, as follows:

Q At about 2:30 in the morning of June 7, 1997, please tell the Court where you were and what were you doing?
A I was sleeping at that particular time.

Q In that house which you said situated at [XXX]?
A Yes, sir.

Q While sleeping, tell us if anything transpired?
A During that time and date, somebody called-up for help.

Q Where did that voice come from, if you know?
A The voice came from the residence of [AAA].

xxx xxx xxx

Q What did you do immediately after hearing that voice shouting for help?
A I immediately ran to the door of the house of [AAA] and I noticed that somebody held my two hands.

Q What did you do at the door of the house of [AAA]?
A I wanted to open the door so that I can help her, but I cannot enter.

xxx xxx xxx

Q You said that you noticed somebody was touching your hand when you were trying to open the door of [AAA]'s house, what happened after that?

A When I stepped backward, somebody was rushing out of the house and ran away.

Q What made you [step] backward since your intention was to get inside the house?
A I stepped backward because somebody held my hands.

xxx xxx xxx

Q Alright, you said that somebody went out of the house of [AAA] passing that door in which you wanted to get entrance, what did you do after that?
A I chased the person who went out of the door.

Q What did you do when you were following that person? Were you walking or running?
A I ran, sir.

Q To what direction did that person go?
A Towards [XXX], sir.

Q What can you say on the visibility of that place of that path where that person was running and when you were chasing?
A There was a portion of the path which was lighted and there was also a portion which was dark.

Q Since you said that there was a portion of that path which was lighted, tell us if you can describe to the Court the build or attire of that person?
A I observed that the person whom I chased was robust, no clothing except his brief and with a green short pants placed on his head.

Q What kind of short pants, if you can tell us, that was placed on his head?
A Colored green short pants which is usually being used by basketball players.

Q Can you tell us who that person was?
A He was Lucero.

Q What made you conclude that it was Federico Lucero, the person you chased from inside the house of [AAA]?
A I positively identified that it was Federico Lucero, even if I have not seen his face, because he was wearing that green short pants and he, being bowlegged.

Q You described to the Court the colored green short pants that was placed on his head; tell us if that was the first time you saw that short pants.
A I often saw him wearing that green short pants.

Q Where had you been seeing Federico Lucero usually wear that green short pants, which you said placed on his head?
A I always saw him wearing that short pants almost everyday, because we were just neighbors.[31]

During cross-examination, Langgoy was steadfast in his identification of accused-appellant as the person he chased, in spite of the attempts of the defense to shake him.

The defense claims that Langgoy admitted that he was unable to see the face of accused-appellant, as it was covered by the short pants. Langgoy's testimony under cross-examination belies that. His clarification reads as follows:

Q Did he cover a part of his face?
A On the part of the head.

Q Did he cover his face?
A Yes, sir.

Q Which part of his face was covered?
A Only his forehead.

Q Forehead?
A His forehead, sir.

xxx xxx xxx

Q Are you telling us that you saw the green short pants covering his face, aren't you?
A Yes, sir.

Q But you did not see the face?
A I saw him only once. After that, he ran away.

Q Are you telling us that you saw the face of the accused only once?
A Yes, sir.

[31] TSN, February 5, 1999, pp. 6-10.

Q Do you remember that you testified on direct-examination that you did not see the face? Do you still remember that?
A I did not say that I did not see his face. I was not asked that question.[32]

Langgoy's testimony was that he saw the face of accused-appellant once, at the time when the short pants covered the top of the perpetrator's face, as well as his forehead. At no time during direct examination was the witness asked if he saw Lucero's face. Langgoy made no categorical statement that he had not seen the face of accused-appellant, contrary to what the defense has stated. As to his statement during direct examination, "even if I have not seen his face,"[33] which the defense latched onto as an admission, it cannot be interpreted to mean that he could not recognize the person he chased. In the context of Langgoy's testimony, it means that he could rely on other familiar characteristics for identification, namely the bowleggedness and the green short pants, that it was not necessary for him to see the person's face to identify him. Add to that Langgoy's maintaining that accused-appellant was the perpetrator, and his clarifying description of the person he chased, there was indeed positive identification.

Langgoy's testimony dovetails with that of Jao, and serves to identify accused-appellant as the one who ran from AAA's house. Their descriptions of the man they saw running away match, even if Langgoy was the only one who saw accused-appellant's face. Their testimonies place accused-appellant at the scene of the crime, and pinpoint him as the person leaving the house where AAA's body was found. This identification, along with the condition and actuations of accused-appellant after AAA's body was found, indicates that accused-appellant was the one who raped and killed AAA.

Even as the circumstances lead to the inevitable conclusion that accused-appellant committed the crime, he claims that since spermatozoa was found on the deceased, a DNA test should

[32] TSN, March 5, 1999, pp. 7-8.

[33] TSN, February 5, 1999, p. 10.

have been conducted by the prosecution so as to erase all doubts as to the identity of the perpetrator.

It is not for accused-appellant to determine which evidence or testimony the prosecution should present. In *Loguinsa, Jr. v. Sandiganbayan (5th Division)*, the Court stated, "Section 5, Rule 110 of the Revised Rules on Criminal Procedure expressly provides that all criminal action shall be prosecuted under the direction and control of the fiscal and what prosecution evidence should be presented during the trial depends solely upon the discretion of the prosecutor."[34] The DNA test is not essential, while there exists other evidence pinning down accused-appellant as the perpetrator. Indeed, if he honestly thought that the DNA test could have proved his innocence, he could have asked for the conduct of said test during his trial, instead of belatedly raising it on appeal, and attempting to dictate upon the prosecution what course of actions it should have undertaken.

In support of his argument, accused-appellant would debunk the identification by witnesses by citing *People v. Faustino*, which stated:

> The identification of an accused by an eyewitness is a vital piece of evidence and most decisive of the success or failure of the case for the prosecution. But even while significant, an eyewitness identification, which authors not infrequently would describe to be "inherently suspect," is not as accurate and authoritative as the scientific forms of identification evidence like by fingerprint or by DNA testing.[35] x x x

While a DNA test might have been more conclusive, the cited case did not mandate DNA testing in place of eyewitness testimony. In that particular case, scientific forms of identification were held to be preferable over eyewitness testimony, as pictures of the accused were what were presented for identification, so the testimony of the witness was tainted. The holding of a DNA test was never in issue.

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[34] G.R. No. 146949, February 13, 2009, 579 SCRA 161, 170.

[35] G.R. No. 129220, September 6, 2000, 339 SCRA 718, 739.

In his defense, accused-appellant claims to have been sleeping in the early hours of June 7, 1997.[36] He was awakened by the cry of AAA's aunt at 4:00 a.m.[37] He then went to AAA's house and listened to people around the area talking about who might have killed AAA.[38] He says that he later went to work and was at work when the police arrived and invited him to the police station.[39]

Accused-appellant denies that he committed the crime, and offers up his version of events. He was unable to present any corroborating witnesses to testify that he did, indeed, go to AAA's house after the crime was committed. All accused-appellant presented is his bare denial that he committed the crime. In *People v. Alarcon*, We held, "Denial, if unsupported by clear and convincing evidence, is negative and self-serving evidence, which deserves no weight in law and cannot be given greater evidentiary value over the testimonies of credible witnesses who testify on affirmative matters."[40]

The witnesses Jao and Langgoy testified that accused-appellant was the person they saw leaving the scene of the crime. There is no reason for them to falsely identify accused-appellant, no motive presented for them to lie. In *People v. Bringas*, We held, "As a rule, absent any evidence showing any reason or motive for prosecution witnesses to perjure, the logical conclusion is that no such improper motive exists, and their testimonies are thus worthy of full faith and credit."[41] In the same case, We also stated, "In fine, when the credibility of witnesses is in issue, the trial court's assessment is accorded great weight unless it is shown that it has overlooked a certain fact or circumstance of weight which the lower court may have overlooked,

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[36] TSN, February 7, 2000, p. 6.

[37] *Id.* at 8.

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

[39] *Id.* at 11-12.

[40] G.R. No. 177219, July 9, 2010, 624 SCRA 678, 690.

[41] G.R. No. 189093, April 23, 2010, 619 SCRA 481, 502-503.

misunderstood or misappreciated and which, if properly considered, would alter the results of the case."[42] No facts or circumstances of substance were presented that the trial court overlooked, misunderstood, or misappreciated, which would necessitate a review of the findings of fact.

The elements of rape with homicide are present. Art. 335 of the Revised Penal Code, as amended by Republic Act No. (RA) 7659, reads as follows:

> Art. 335. When and how rape is committed.— Rape is committed by having carnal knowledge of a woman under any of the following circumstances:
>
> 1. By using force or intimidation;
>
> 2. When the woman is deprived of reason or otherwise unconscious; and
>
> 3. When the woman is under twelve years of age or is demented.
>
> The crime of rape shall be punished by *reclusion perpetua.*
>
> xxx xxx xxx
>
> When by reason or on the occasion of the rape, a homicide is committed, the penalty shall be death.
>
> xxx xxx xxx

*People v. Villarino* held, "In the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman."[43]

The prosecution was able to prove that accused-appellant had carnal knowledge of the victim, as per the *post-mortem* findings of Dr. Rodaje and the vaginal swabbings examined by NBI Regional Chemist Dulay. Dr. Rodaje found hymenal

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[42] *Id.* at 506-507.

[43] G.R. No. 185012, March 5, 2010, 614 SCRA 372, 382.

lacerations from his examination of AAA's body. In *People v. Payot, Jr.*, it was held, "Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration."[44] Dulay's findings that there were seminal stains serve to bolster the conclusion that rape was committed.

As to the presence of force or intimidation, the several injuries and stab wounds suffered by AAA are mute but eloquent statements of the violence inflicted upon her, resulting in her death. Thus, the elements of the crime of rape with homicide are all present.

The RTC correctly convicted accused-appellant of the crime of rape with homicide, which, at the time of the offense, was penalized under Art. 335 of the Code, before it was amended by RA 8353, the *Anti-Rape Law of 1997*, and was punishable by death. The CA correctly modified the penalty in accordance with Sec. 2 of RA 9346 or "An Act Prohibiting the Imposition of Death Penalty in the Philippines," said section reading as follows:

**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.

The penalty meted out was thus reduced to *reclusion perpetua.* Furthermore, Sec. 3 of RA 9346 provides, "Persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligibile for parole under Act No. 4103, known as the Indeterminate Sentence Law, as amended."

The CA was correct in modifying the penalty, in accordance with the law.

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[44] G.R. No. 175479, July 23, 2008, 559 SCRA 609, 619.

As to the award of damages, the RTC ordered accused-appellant to pay the heirs of AAA PhP 75,000 as civil indemnity, PhP 50,000 as moral damages, and PhP 25,000 as exemplary damages. The award of damages was modified by the CA, with PhP 100,000 as civil indemnity, PhP 75,000 as moral damages, and PhP 25,000 retained as exemplary damages. In addition, the CA awarded PhP 25,000 as temperate damages.

In line with current jurisprudence,[45] We reduce the award of civil indemnity to PhP 75,000 and maintain the award of PhP 75,000 as moral damages, but increase the award of exemplary damages to PhP 30,000. The award of temperate damages is proper, following Art. 2224 of the Civil Code, which states, "Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty."

Furthermore, the damages assessed in this case shall be subject to interest at six percent (6%).[46]

**WHEREFORE,** the CA Decision dated December 17, 2008 in CA-G.R. CR-H.C. No. 00469-MIN is *AFFIRMED* with *MODIFICATION* as to the damages. Accused-appellant Federico Lucero is ordered to indemnify the heirs of AAA the amounts of PhP 75,000 as civil indemnity; PhP 75,000 as moral damages; PhP 25,000 as temperate damages; and PhP 30,000 as exemplary damages, all with interest at the legal rate of six percent (6%) per annum from the finality of this Decision until fully paid.

**SO ORDERED.**

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

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[45] *People v. Combate,* G.R. No. 189301, December 15, 2010.

[46] See *People v. Tubongbanua,* G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742-743.

**SECOND DIVISION**

[G.R. No. 191261. March 2, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **JENNY TUMAMBING *y* TAMAYO,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; A SUCCESSFUL PROSECUTION OF A CRIMINAL ACTION LARGELY DEPENDS ON PROOF OF TWO THINGS; THE IDENTIFICATION OF THE AUTHOR OF THE CRIME AND HIS ACTUAL COMMISSION OF THE SAME.—** A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.

**2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; AS A RULE, FINDINGS OF THE TRIAL COURT AND THE COURT OF APPEALS THEREON ARE RESPECTED BY THE SUPREME COURT; EXCEPTION APPLIES IN CASE AT BAR.—** [B]oth the RTC and the CA gave credence to DK's testimony. They maintained that DK categorically and positively identified her rapist. The CA invoked *People v. Reyes* where the Court ruled that it would be easy for a person who has once gained familiarity with the appearance of another to identify the latter even from a considerable distance. Ordinarily, the Court would respect the trial court and the CA's findings regarding the credibility of the witnesses. But the courts mentioned appear to have overlooked or misinterpreted certain critical evidence in the case. This compels the Court to take a look at the same. DK's identification of accused Tumambing as her rapist is far from categorical. The Court's reading of her testimony shows that she was quite reluctant at the beginning but eventually pointed to him when it was suggested that it

*might* be him after all. Several witnesses attested to DK's uncertainties regarding the rapist's identity when the *barangay* chairman arranged for her to meet Tumambing. x x x DK's above behavior during her initial confrontation with accused Tumambing gives the Court no confidence that, as she claimed in her testimony, she was familiar with the looks of her rapist because she saw him on the previous day as he passed by her cousin's rented room many times. If this were the case, her natural reaction on seeing Tumambing would have been one of outright fury or some revealing emotion, not reluctance in pointing to him despite the *barangay* chairman's assurance that he would protect her if she identified him. In assessing the testimony of a wronged woman, evidence of her conduct immediately after the alleged assault is of critical value.

**3. ID.; ID.; ID.; TESTIMONY OF RAPE VICTIM MUST BE SUBJECTED TO A MOST RIGID AND CAREFUL SCRUTINY; CASE AT BAR.—** By the nature of rape, the court has to, quite often, rely on the sole testimony of the victim. For this reason, the court is always reminded to subject her testimony to a most rigid and careful scrutiny. It cannot afford to overlook details that are essential to an understanding of the truth. Here, as shown above, DK's testimony is anything but believable and consistent. x x x There is one thing that DK appeared sure of. Her rapist wore a yellow shirt. But this is inconsistent with her testimony that after the stranger in her room was done raping her, "*bigla na lang po siyang lumabas* x x x *sinundan ko siya ng tingin*." Since DK did not say that the man put his clothes back on, it seems a certainty that he collected his clothes and carried this out when he left the room. Since DK then turned on the light for the first time, she had a chance to see him clearly. But, if this were so and he walked out naked, why was she so certain that he wore a yellow shirt? With such serious doubts regarding the true identity of DK's rapist, the Court cannot affirm the conviction of accused Tumambing.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**ABAD, *J.*:**

This case is about how the credibility of the rape victim's identification of her attacker often depends on her spontaneous actions and behavior following the rape.

### The Facts and the Case

The city prosecutor charged the accused Jenny Tumambing (Tumambing) with rape in Criminal Case 04-227897 of the Regional Trial Court (RTC) of Manila.

DK,[1] the complainant, testified that at around 2:00 a.m. on June 26, 2004 she went to sleep, leaving the lights on, at her cousin's rented room. She was startled when somebody entered the room after she had turned off the lights. The intruder, a man, poked a knife at DK and threatened to kill her if she made any noise. He removed DK's clothes and undressed himself. He then succeeded in ravishing her. When the man was about to leave, DK turned the light on and she saw his face. DK recognized him as the same person who passed by her cousin's room several times in the afternoon of the previous day, June 25, 2004. Later, she identified the accused Jenny Tumambing as her rapist.

On June 27, 2004 the doctor who examined DK found no bruises, hematoma, or any sign of resistance on her body but found several fresh lacerations on her genitals.

Tumambing denied committing the crime. He claimed that on June 26, 2004 he slept at the house of his employer, Nestor Ledesma. He went to bed at about 9:00 p.m. and woke up at 6:00 a.m. Tumambing swore that he never left his employer's

[1] Pursuant to Republic Act 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004 and its implementing rules, the real name of the victim, together with the real names of her immediate family members, are withheld and fictitious initials instead are used to represent her. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.

house that night. Ledesma corroborated his story. *Barangay* officials summoned Tumambing and he went, thinking that it had something to do with a bloodletting campaign. He was shocked, however, when he learned that he had been suspected of having committed rape.

On June 27, 2006 the RTC found Tumambing guilty beyond reasonable doubt of the crime charged and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC also ordered him to indemnify DK of ₱50,000.00 and pay her ₱50,000.00 as moral damages.

On November 12, 2009 the Court of Appeals (CA) affirmed in CA-G.R. CR-H.C. 02433 the decision of the RTC in its entirety, prompting Tumambing to appeal to this Court.

**The Issue Presented**

The sole issue presented in this case is whether or not the CA and the trial court erred in finding that accused Tumambing raped DK under the circumstances she mentioned.

**The Ruling of the Court**

A successful prosecution of a criminal action largely depends on proof of two things: the identification of the author of the crime and his actual commission of the same. An ample proof that a crime has been committed has no use if the prosecution is unable to convincingly prove the offender's identity. The constitutional presumption of innocence that an accused enjoys is not demolished by an identification that is full of uncertainties.[2]

Here, both the RTC and the CA gave credence to DK's testimony. They maintained that DK categorically and positively identified her rapist. The CA invoked *People v. Reyes*[3] where the Court ruled that it would be easy for a person who has once gained familiarity with the appearance of another to identify the latter even from a considerable distance.[4] Ordinarily, the

[2] *People v. Galera*, 345 Phil. 731, 745 (1997).

[3] 369 Phil. 61, 76 (1999).

[4] *Rollo*, p. 12.

Court would respect the trial court and the CA's findings regarding the credibility of the witnesses.[5] But the courts mentioned appear to have overlooked or misinterpreted certain critical evidence in the case. This compels the Court to take a look at the same.[6]

DK's identification of accused Tumambing as her rapist is far from categorical. The Court's reading of her testimony shows that she was quite reluctant at the beginning but eventually pointed to him when it was suggested that it *might* be him after all. Several witnesses attested to DK's uncertainties regarding the rapist's identity when the *barangay* chairman arranged for her to meet Tumambing. PO2 Crispulo Frondozo, one of the apprehending officers, testified as follows:

**Q: Now in the *barangay*, do you have any occasion to see whether the complainant pinpointed accused as the person who abused her person?**

**A: No, Sir.**

**Q: What about in any precinct or agency, do you have any occasion to see complainant positively identified the accused?**

**A: No, Sir.**[7]

Pedrito Yacub, Sr., the *Barangay* Chairman to whom DK initially reported the incident testified:

**Q: When the accused enter the *barangay* hall upon invitation, what happened next?**

**A: Correction Sir. Not at the *barangay* hall. In my residence.**

**Q: Then what happened?**

**A: He was surprised and [I] told him that he is a suspect of rape and his reply was *"akala ko pakukunan niyo ako ng dugo."***

**Q: What was the reaction of the accused?**

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[5] *People v. Virrey*, 420 Phil. 713, 720-721 (2001).

[6] *People v. Galera*, *supra* note 2, at 754.

[7] TSN, May 10, 2005, p. 6.

**A: As we sat down in a table, a confrontation ensued. I assured the complainant. Don't be afraid. Tell me. I will protect you. I called her two cousins. Then she stare upon the suspect. I ordered the suspect to turn left, right and backways.**

**Q: After you told the suspect to pose left, right and backways, what happened next?**

**A: The suspect told the complainant *"huwag kang magtuturo. Ninenerbyus na ako."* So she could not pinpoint the suspect. I said, *"Iha, [i]to ba?"* But she cannot point to.**[8] (Underscoring supplied)

DK's above behavior during her initial confrontation with accused Tumambing gives the Court no confidence that, as she claimed in her testimony, she was familiar with the looks of her rapist because she saw him on the previous day as he passed by her cousin's rented room many times. If this were the case, her natural reaction on seeing Tumambing would have been one of outright fury or some revealing emotion, not reluctance in pointing to him despite the *barangay* chairman's assurance that he would protect her if she identified him. In assessing the testimony of a wronged woman, evidence of her conduct immediately after the alleged assault is of critical value.[9]

The *barangay* chairman continued:

**Q: As *barangay* captain who has the duty to enforce law and city ordinances, you came to know that there were other suspect, what did you do?**

**A: I invited the suspect.**

**Q: Do you remember the person whom you invited known as the second suspect?**

**A: His name is Alvin Quiatcho. For confrontation with the complainant. And confrontation ensued between her and the suspect. I asked her is this the suspect?**

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[8] TSN, May 11, 2005, pp. 6-7.

[9] *People v. Galera*, *supra* note 2, at 750.

**Q: What was her answer?**

**A: She said, <u>she could not recall. Chairman *pa doctor kaya natin siya.*</u> It mean[s] *"makunan ng cells."***

**The complainant told me chairman *padoktor natin [sic] na lang natin siy*a.**

**Q: Presumably to get some sperm?**

**A: Yes, Sir.**

**Q: What did you do if any with the suggestion of [DK]?**

**A: I told the complainant, it would be difficult to do.**

**Q: After that what happened?**

**A: <u>So since she could not pinpoint also the other suspect, I released the other suspect. She could not pinpoint.</u>**[10] (Underscoring supplied)

That DK wanted the sperm of Alvin Quiatcho (Quiatcho), the second suspect, tested and presumably compared with that found in her clearly indicates that she entertained the possibility that it was Quiatcho, rather than accused Tumambing, who raped her. The Court cannot thus accept DK's testimony that she had been familiar with the looks of the man who violated her and that she could not possibly be mistaken in identifying him as Tumambing.

Crispin Dizon, the executive officer of the same *barangay*, corroborated the *barangay* chairman's testimony:

**Q: So what was the question?**
**A: The question was that, "Is this the person you saw and who rape you?"**

**Court: Referring to?**
**Interpreter: Referring to Jenny Tumambing.**

**Q: What was the reply of the victim, if any?**
**A: She did not answer, Sir.**

**Q: What happen next when [DK] did not answer?**

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[10] TSN, May 11, 2005, pp. 9-10.

**A: And [DK] was again asked by the Chairman and told her not to fear and tell who raped her and point to him.**

**Q: What was the reply of [DK] if any?**
**A: She did not reply, Sir.**

**Q: Now if you remember how many times did the Chairman asked [DK]?**
**A: Four times, Sir.**[11]

The RTC and the CA thought that DK was quite sure it was Tumambing who sexually attacked her. They pointed out her insistence at the police precinct that it was Tumambing who really raped her and that she positively identified him in open court. But this came about much later. The fact is that she did not refute the testimonies given by neutral witnesses that she could not point to accused Tumambing as her rapist during their initial confrontation at the *barangay* chairman's residence. These witnesses had no motive or reason to fabricate a story for the defense.

By the nature of rape, the court has to, quite often, rely on the sole testimony of the victim. For this reason, the court is always reminded to subject her testimony to a most rigid and careful scrutiny. It cannot afford to overlook details that are essential to an understanding of the truth.[12] Here, as shown above, DK's testimony is anything but believable and consistent.

Although she categorically said on cross-examination that she saw her attacker enter the room,[13] she did not shout or raise an alarming call. Nor did she try to escape.[14] She just lay in bed.[15] In fact, she maintained that position in bed even when her attacker was standing before her and removing his clothes.[16] She did not shout nor struggle when he penetrated her.[17]

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[11] TSN, May 25, 2005, pp. 7-8.

[12] *People v. Salidaga*, G.R. No. 172323, January 29, 2007, 513 SCRA 306, 318.

[13] TSN, March 4, 2008, p. 5.

[14] *Id.* at 12.

[15] *Id.* at 7.

[16] *Id.* at 16.

[17] *Id.* at 17.

There is one thing that DK appeared sure of. Her rapist wore a yellow shirt.[18] But this is inconsistent with her testimony that after the stranger in her room was done raping her, "*bigla na lang po siyang lumabas* x x x *sinundan ko siya ng tingin.*"[19] Since DK did not say that the man put his clothes back on, it seems a certainty that he collected his clothes and carried this out when he left the room. Since DK then turned on the light for the first time, she had a chance to see him clearly. But, if this were so and he walked out naked, why was she so certain that he wore a yellow shirt?

With such serious doubts regarding the true identity of DK's rapist, the Court cannot affirm the conviction of accused Tumambing.

**WHEREFORE,** the Court *SETS ASIDE* the decision of the Court of Appeals dated November 12, 2009 in CA-G.R. CR-H.C. 02433 as well as the decision of the Regional Trial Court of Manila, Branch 27, in Criminal Case 04-227897, and *ACQUITS* the accused-appellant Jenny Tumambing *y* Tamayo of the crime charged on the ground of reasonable doubt. The Court orders his immediate *RELEASE* from custody unless he is being held for some other lawful cause.

The Court further *ORDERS* the Director of the Bureau of Corrections to implement this Decision forthwith and to inform this Court, within five days from receipt hereof, of the date appellant was actually released from confinement. Costs *de oficio.*

**SO ORDERED.**

*Carpio (Chairperson), Velasco, Jr.,*[*] *del Castillo,*[**] and *Mendoza, JJ.*, concur.

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[18] *Id.* at 35-36.

[19] *Id.* at 19.

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 954 dated February 21, 2011.

**SECOND DIVISION**

[G.R. No. 191361. March 2, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **MARIANITO TERIAPIL *y* QUINAWAYAN,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; CANNOT BE APPRECIATED WHEN THE KILLING IS NOT PREMEDITATED OR WHEN THE ACCUSED DID NOT DELIBERATELY CHOOSE THE MEANS EMPLOYED FOR COMMITTING THE CRIME; CASE AT BAR.—** True, an assailant uses treachery when he suddenly and unexpectedly attacks his unsuspecting victim and denies him any real chance to defend himself. By this, the assailant ensures the success of his attack with no risk to his person. In numerous cases, however, the Court held that the idea of treachery does not apply when the killing is not premeditated or when the accused did not deliberately choose the means he employed for committing the crime. Here, the clash between the Montero group and the accused Teriapil and Balonga developed spontaneously. The Montero group suspected the two of having cheated them in the pigeon race. Arevalo testified that when he told Balonga of his suspicion, the latter ran away. At this point, the Montero group decided to proceed with haste to where accused Teriapil and Balonga were to get their bet money back. On getting there, however, they were met with crude explosives called pillboxes. From the succession of events, it can hardly be said that accused Teriapil had planned to attack Montero or the other members of his group. The clash between the two groups and the slaying of Montero followed a continuous relay of events that began with the accusation that accused Teriapil and Balonga had cheated the victim and his companions in the pigeon race. Although accused Teriapil was positioned inside his house, there is no evidence that he deliberately hid there to surprise and ambush Montero. Montero's group was fully alerted when pillboxes met them. They knew they had to

defend themselves from aggression that awaited them. Besides, based on the records, the march of events did not afford accused Teriapil and Balonga the time to plan and prepare how they were to resist the Montero group that came in number to get their money back from those who, they thought, cheated them.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES IN THE TESTIMONIES OF THE WITNESSES DID NOT IMPAIR THEIR POSITIVE IDENTIFICATION OF THE ACCUSED.—** Accused Teriapil assails the inconsistencies in the testimonies of the prosecution witnesses that impaired their supposed positive identification of him. But those inconsistencies, mainly about the number and types of ammunitions used, do not depart from the core theory of the prosecution. The Court believes that the witnesses referred to were present during the clash between the two groups and were proximate to where Teriapil shot Montero. Moreover, the incident happened at 11:00 in the morning which made it easy for the witnesses to identify Teriapil.

**APPEARANCES OF COUNSEL**

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

**D E C I S I O N**

**ABAD, *J.*:**

This case is about the alleged attendance of the qualifying circumstance of treachery in connection with a killing that occurred shortly after one group charged another with cheating in bet.

**The Facts and the Case**

The public prosecutor charged the accused Marianito Q. Teriapil (Teriapil) and Ricardo P. Balonga (Balonga) of murder attended by treachery and evident premeditation before the Regional Trial Court (RTC) of Caloocan City in Criminal Case C-69686.[1] Trial

[1] Records, p. 2.

took place only with respect to Teriapil because Balonga died of cardio respiratory arrest while in detention.[2]

The prosecution evidence, culled from the essentially identical narration of the RTC and the Court of Appeals (CA), shows that at around 11:00 a.m. of November 29, 2003 in Bagong Silang, Caloocan City, two groups of men engaged in a pigeon race. One group consisted of the victim Joel Montero (Montero), Ramil Rama (Rama), Randy Conje, and Eduardo Arevalo (Arevalo), collectively referred to as the Montero group. The other group consisted of the accused Teriapil and Balonga. The latter approached the Montero group and challenged it to a pigeon race. When the Montero group lost, it thought that accused Teriapil and Balonga cheated them. Losing no time, the Montero group went to look for the two to get back their bet money of ₱450.00. But pillboxes met them. Nonoy, a brother of the accused Balonga, threw the pillboxes. For his part, accused Teriapil shot Montero with a pen gun or "*paltik*." Montero was rushed to a hospital but he was dead on arrival.[3]

Accused Teriapil denied killing Montero. He testified that he was at home at the time of the shooting. When he heard an explosion, he looked out the window and saw Rama and two other men on board a tricycle. As the tricycle stopped in front of Teriapil's house, the driver pointed at him.[4] The defense did not offer any proof of impossibility of Teriapil's presence at the crime scene.[5]

On August 3, 2007 the RTC found accused Teriapil guilty of murder and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC also ordered him to pay ₱50,000.00 as indemnity to the victim's heirs and ₱50,000.00 as exemplary damages.

The RTC rejected accused Teriapil's defense of alibi in the face of his having been positively identified by Rama and Arevalo

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[2] *Id.* at 60-63.

[3] *Rollo,* pp. 4-5.

[4] *Id.* at 6.

[5] CA *rollo,* p. 47.

as Montero's assailant. Since accused Teriapil shot Montero while the latter was in a position where he could not defend himself, the RTC appreciated the qualifying circumstance of treachery against the accused. The RTC held, however, that the prosecution failed to prove the elements of evident premeditation: 1) the time when the offender decided to commit the crime; 2) an act indicating that he clung to his decision; and 3) sufficient lapse of time between his decision to commit the crime and its execution to allow for reflection on the consequences of the act he had decided on.[6] Accused Teriapil appealed to the CA.

On September 30, 2009 the CA affirmed the RTC Decision with modifications. It reduced the exemplary damages to ₱25,000.00, deleted the award of indemnity, but in its place directed accused Teriapil to pay ₱25,000.00 as temperate damages to the victim's heirs.

**The Issues Presented**

The case presents two issues:

1. Whether or not the CA erred in finding that accused Teriapil killed Montero with the attendant qualifying circumstance of treachery as to make him liable for murder; and

2. Whether or not the CA erred in giving credence to the testimonies of the prosecution witnesses.

**Ruling of the Court**

**One**. Agreeing with the prosecution, the CA held that treachery attended accused Teriapil's shooting of Montero since the latter was inside his house at that time. This mode of attack, claimed the CA, rendered Montero incapable of defending himself.[7]

True, an assailant uses treachery when he suddenly and unexpectedly attacks his unsuspecting victim and denies him any real chance to defend himself. By this, the assailant ensures

[6] *Id.* at 46, citing *People v. Magsombol*, 322 Phil. 196, 212 (1996).

[7] *Id.* at 126.

the success of his attack with no risk to his person. In numerous cases, however, the Court held that the idea of treachery does not apply when the killing is not premeditated or when the accused did not deliberately choose the means he employed for committing the crime.[8]

Here, the clash between the Montero group and the accused Teriapil and Balonga developed spontaneously. The Montero group suspected the two of having cheated them in the pigeon race. Arevalo testified that when he told Balonga of his suspicion, the latter ran away. At this point, the Montero group decided to proceed with haste to where accused Teriapil and Balonga were to get their bet money back. On getting there, however, they were met with crude explosives called pillboxes. From the succession of events, it can hardly be said that accused Teriapil had planned to attack Montero or the other members of his group. The clash between the two groups and the slaying of Montero followed a continuous relay of events that began with the accusation that accused Teriapil and Balonga had cheated the victim and his companions in the pigeon race.

Although accused Teriapil was positioned inside his house, there is no evidence that he deliberately hid there to surprise and ambush Montero. Montero's group was fully alerted when pillboxes met them. They knew they had to defend themselves from aggression that awaited them. Besides, based on the records, the march of events did not afford accused Teriapil and Balonga the time to plan and prepare how they were to resist the Montero group that came in number to get their money back from those who, they thought, cheated them.

**Two**. Accused Teriapil assails the inconsistencies in the testimonies of the prosecution witnesses that impaired their supposed positive identification of him. But those inconsistencies, mainly about the number and types of ammunitions used, do not depart from the core theory of the prosecution. The Court

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[8] *People v. Macaso*, 159-A Phil. 917, 929 (1975); *People v. Cadad*, 112 Phil. 314, 319 (1961); *People v. Abalos*, 84 Phil. 771, 773 (1949).

believes that the witnesses referred to were present during the clash between the two groups and were proximate to where Teriapil shot Montero. Moreover, the incident happened at 11:00 in the morning which made it easy for the witnesses to identify Teriapil.

**WHEREFORE,** the Court *MODIFIES* the decision of the Court of Appeals in CA-G.R. CR-H.C. 03046 dated September 30, 2009 and *FINDS* the accused Marianito Teriapil *y* Quinawayan guilty beyond reasonable doubt of homicide and *SENTENCES* him to suffer the penalty of 6 years and 1 day of *prision mayor* as minimum to 12 years and 1 day of *reclusion temporal* as maximum. The Court *ORDERS* him to pay Joel Montero's heirs ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as temperate damages.

**SO ORDERED.**

*Carpio (Chairperson), Velasco, Jr.,*[*] *del Castillo,*[**] and *Mendoza, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 192217. March 2, 2011]

**DANILO L. PAREL,** *petitioner, vs.* **HEIRS OF SIMEON PRUDENCIO,** *respondents.*

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[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 933 dated January 24, 2011.

[**] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order 954 dated February 21, 2011.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION OF JUDGMENTS; EXECUTION IS A MATTER OF RIGHT ONCE A JUDGMENT BECOMES FINAL AND EXECUTORY.—** Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality. Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right.

**2. ID.; ID.; ID.; ID.; ID.; INSTANCES WHERE WRIT OF EXECUTION MAY BE APPEALED; CASE AT BAR.—** *Banaga v. Majaducon*, however, enumerates the instances where a writ of execution may be appealed: 1)the writ of execution varies the judgment; 2)there has been a change in the situation of the parties making execution inequitable or unjust; 3) execution is sought to be enforced against property exempt from execution; 4) it appears that the controversy has never been subject to the judgment of the court; 5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or 6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority; In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or *certiorari*), or by a special civil action of *certiorari*, prohibition, or *mandamus*. The instant case falls under one of the exceptions cited above. The fact that Danilo has left the property under dispute is a change in the situation of the parties that would make execution inequitable or unjust.

**3. ID.; ID.; EXCEPTIONS MERITING A RELAXATION OF THE RULES IN ORDER TO SERVE SUBSTANTIAL JUSTICE; CASE AT BAR.—** [T]here are exceptions that have been previously considered by the Court as meriting a relaxation of the rules in order to serve substantial justice. These are: (1) matters of life, liberty, honor or property; (2) the existence

of special or compelling circumstances; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is merely frivolous and dilatory; and (6) the other party will not be unjustly prejudiced thereby. We find that Danilo's situation merits a relaxation of the rules since special circumstances are involved; to determine if his allegation were true would allow a final resolution of the case.

**4. ID.; COURTS; INHERENT POWERS; TO AMEND AND CONTROL ITS PROCESS AND ORDERS SO AS TO MAKE THEM CONFORMABLE TO LAW AND JUSTICE; APPLIES IN CASE AT BAR.—** Applicable, too, is what Sec. 5, Rule 135 of the Rules of Court states as one of the powers of a court: Section 5. *Inherent powers of the courts.*—Every court shall have power: x x x (g) To amend and control its process and orders so as to make them conformable to law and justice. The writ of execution sought to be implemented does not take into consideration the circumstances that merit a modification of judgment. Given that there is a pending issue regarding the execution of judgment, the RTC should have afforded the parties the opportunity to adduce evidence to determine the period within which Danilo should pay monthly rentals before issuing the writ of execution in the instant case. Should Danilo be unable to substantiate his claim that he vacated the premises in April 1994, the period to pay monthly rentals should be until June 19, 2007, the date he informed the CA that he had already left the premises.

**APPEARANCES OF COUNSEL**

*E.L. Gayo & Associates* for petitioner.

*Padilla Law Office* for respondents.

## D E C I S I O N

**VELASCO, JR., *J.*:**

This Petition for Review on *Certiorari* under Rule 45 assails the February 4, 2010 Decision[1] and April 22, 2010 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105709, which affirmed the Orders dated February 15, 2008 and July 31, 2008, respectively, of the Regional Trial Court (RTC), Branch 60 in Baguio City, in Civil Case No. 2493-R for recovery of possession and damages.

### The Facts

A complaint for recovery of possession and damages was filed by Simeon Prudencio (Simeon) against Danilo Parel (Danilo) with the RTC in Baguio City.

Simeon alleged that he was the owner of a two-story house at No. 61 Forbes Park National Reservation in Baguio City. Simeon allowed Danilo and his parents to live on the ground floor of the house since his wife was the elder sister of Danilo's father, Florentino.[3]

In November 1985, Simeon needed the whole house back and thus informed Danilo and his parents that they had to vacate the place. Danilo's parents acceded to Simeon's demand. Danilo, however, remained in the house with his family despite repeated demands on him to surrender the premises. This development drove Simeon to institute an action for recovery of possession and damages.[4]

Danilo offered a different version of events. He maintained that the land on which Simeon's house was constructed was in

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[1] *Rollo*, pp. 20-27. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Rebecca de Guia-Salvador and Estela M. Perlas-Bernabe.

[2] *Id.* at 33.

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

[4] *Id.*

his father Florentino's name. He explained that his father Florentino, who had by then passed away, did not have enough funds to build a house and thus made a deal with Simeon for them to just contribute money for the construction of a house on Florentino's land. Florentino and Simeon were, thus, co-owners of the house of which Simeon claims sole ownership.[5]

**The Ruling of the Trial Court**

On December 15, 1993, the RTC ruled in favor of Danilo. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, the Court hereby declares that the house erected at [No.] 61 DPS Compound, Baguio City is owned in common by the late Florentino Parel and herein plaintiff Simeon Prudencio and as such the plaintiff cannot evict the defendant as heirs of the deceased Florentino Parel from said property, nor to recover said premises from herein defendant.
>
> Likewise, the plaintiff is ordered to:
>
> (a) pay the defendant in the total sum of ₱20,000.00 for moral and actual damages;
>
> (b) pay the defendant ₱20,000.00 in Attorney's fees and ₱3,300 in appearance fees;
>
> (c) pay the costs of this suit.
>
> SO ORDERED.[6]

**The Ruling of the Appellate Court**

On March 31, 2000, the CA, on Simeon's appeal, rendered a Decision[7] reversing the RTC Decision as follows:

> WHEREFORE, the decision appealed from is hereby SET ASIDE and a new one is entered declaring plaintiff-appellant as the new owner of the residential building at 61 Forbes Park National

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[5] *Id.*

[6] *Rollo*, p. 22. Penned by Judge Pastor V. de Guzman.

[7] *Id.* at 103-112. Penned by Associate Justice Corona Ibay-Somera and concurred in by Associate Justices Portia Aliño Hormachuelos and Elvi John Asuncion.

Reservation, near DPD Compound, Baguio City; appellee is ordered to surrender possession of the ground floor thereof to appellant immediately.

Further, appellee is hereby ordered to pay appellant ₱2,0000/ month [sic] for use or occupancy thereof from April 1988 until the former actually vacates the same, and the sum of ₱50,000.00 as attorney's fees. And costs of suit.

SO ORDERED.

Danilo challenged the CA Decision before this Court via an appeal by *certiorari* under Rule 45 of the Rules of Court.

On April 19, 2006, this Court issued its Decision[8] in G.R. No. 146556, affirming the CA Decision.

On May 9, 2007, Simeon sought to enforce this Court's April 19, 2006 Decision and thus filed a Motion for Issuance of Writ of Execution.[9]

On June 19, 2007, Danilo filed his Comment[10] on Simeon's Motion for Issuance of Writ of Execution. He prayed that the PhP 2,000 monthly rental he was ordered to pay be computed from April 1988 to March 1994 only since he had vacated the premises by April 1994.

On February 15, 2008, the RTC ruled as quoted below:

WHEREFORE, premises considered, let a Writ of Execution be issued to enforce the decision of the Court in the above-entitled case.[11]

A Motion for Reconsideration of the February 15, 2008 RTC Order was filed by Danilo.

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[8] *Id.* at 129; 487 SCRA 405. Penned by then Associate Justice Ma. Alicia Austria-Martinez and concurred in by then Chief Justice Artemio V. Panganiban and then Associate Justices Consuelo Ynares-Santiago, Romeo S. Callejo, Sr. and Minita V. Chico-Nazario.

[9] *Id.* at 48-50.

[10] *Id.* at 51-54.

[11] *Id.* at 63.

On July 31, 2008, the RTC issued another Order[12] denying the motion. The dispositive portion of the Order is quoted below:

> WHEREFORE, premises duly considered, the Motion for Reconsideration is hereby denied for lack of merit. Let a Writ of Execution be issued to enforce the decision of the Court in the above-entitled case.
>
> SO ORDERED.

On February 5, 2009, the RTC ordered the following:

> Furthermore, the decision in the above-entitled case has already become final and executory. To reiterate, this Court, much less the defendant, cannot modify the decision of the higher courts which has now become final and executory. The defendant is bound by the said decision and he cannot alter the same nor substitute his own interpretation thereof.
>
> WHEREFORE, the foregoing premises considered, the Motion filed by the defendant is DENIED. The Court reiterates its order dated July 31, 2008 for the issuance of a Writ of Execution to enforce the decision of the Court in the instant case.
>
> SO ORDERED.[13]

On February 23, 2009, Danilo filed a Supplemental Petition with Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction to enjoin the RTC from enforcing the judgment against Danilo for him to pay PhP 2,000 in monthly rentals from April 1994 onwards.

On August 23, 2010, this Court issued a Resolution requiring Simeon to file his Comment on Danilo's Petition for Review on *Certiorari*.

On October 28, 2010, Simeon filed his Comment before Us. He argued that the RTC and CA correctly ruled that the prayer for a reduction of back rentals should be denied, since Danilo never turned over possession of the subject premises to him.

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[12] *Id.* at 69-70. Penned by Judge Edilberto T. Claravall.

[13] *Id.* at 92.

**The Issues**

I

Whether the CA committed an error of law in upholding the RTC Order dated February 15, 2008.

II

Whether the Court of Appeals committed an error of law in upholding the RTC Order dated July 31, 2008

**The Ruling of This Court**

Danilo questions the following order of the CA:

> Further, appellee is hereby ordered to pay appellant ₱2,0000/ month [sic] for use or occupancy thereof from April 1988 until the former actually vacates the same, and the sum of ₱50,000.00 as attorney's fees. And costs of suit.[14]

We resolve to grant the petition.

Danilo argues that he vacated the subject premises in April 1994 and claims that he stated this fact in his Comment on Simeon's Motion for Issuance of Writ of Execution dated May 9, 2007 and in his Motion for Reconsideration before this Court on June 12, 2006. He, thus, argues that the monthly rentals he should pay should only be from April 1988 to March 1994. He alleges that the CA committed an error in law in upholding the RTC Orders dated February 15, 2008 and July 31, 2008.

The questioned February 15, 2008 RTC Order stated:

> x x x The defendant should have filed his comment on any appropriate pleading before the Court or in the Supreme Court at the time when he actually vacated the premises, but he did not. Perhaps, still hoping that the decision of the higher courts would be in his favor. All told, the defendant never intended to surrender the premises to the plaintiff even after he vacated it in April 1994. For this reason, he should now suffer the consequences.

[14] *Supra* note 7.

It must be reiterated that this Court cannot now modify the decision of the higher courts which has now become final and executory.[15]

On July 31, 2008, the RTC ruled:

While the alleged supervening facts and circumstances which changed the situation of the parties in the instant case occurred before finality of the judgment, as in *Morta vs. Bagagnan*, the factual backdrop in the aforecited jurisprudence does not call for its application in the present case. In the cited case, the complainants have been ousted from the subject premises pursuant to the decision of the DARAB in two cases involving the same parcel of lot before the decision of the Supreme Court attained finality. In the case at bar, defendant claims to have vacated the subject premises as early as April 1994. This allegation however was belied by the fact that he did not turn[over] the premises to the plaintiff, a fact which has been stipulated by the parties. Defendant did not effectively and completely relinquish possession of the subject premises to the plaintiff thereby depriving the latter of effective possession and beneficial use thereof. To reiterate, defendant never intended to surrender the premises to the plaintiff even after he vacated it in 1994. Defendant's failure to seasonably bring to the attention of either the Court of Appeals or the Supreme Court of the supposed change in the circumstances of the parties cannot be excused. Had the Court of Appeals or the Supreme Court been seasonably informed of such fact, the appellate Courts would have considered the same in their respective decisions. It must be noted that defendant had more than enough time from April 1994 to June 2006, a total of 12 years, within which he could have informed the two appellate Courts of the supposed change in the circumstances of the parties, but he did not. He only belatedly informed the Supreme Court in its motion for reconsideration after the latter Court issued it decision, in the hope of reducing the full payment of back rentals.[16]

It is true that Danilo should have brought to the Court's attention the date he actually left the subject premises at an earlier time. The RTC is also correct in ruling that the judgment involved was already final and executory. However, it would be inequitable to order him to pay monthly rentals "until he

[15] *Rollo*, p. 63.

[16] *Id.* at 69.

actually vacates" when it has not been determined when he actually vacated the ground floor of Simeon's house. He would be paying monthly rentals indefinitely.

The RTC should have determined via hearing if Danilo's allegation were true and accordingly modified the period Danilo is to be held accountable for monthly rentals.

Unjustified delay in the enforcement of a judgment sets at naught the role of courts in disposing justiciable controversies with finality.[17] Once a judgment becomes final and executory, all the issues between the parties are deemed resolved and laid to rest. All that remains is the execution of the decision which is a matter of right.[18]

*Banaga v. Majaducon*,[19] however, enumerates the instances where a writ of execution may be appealed:

1) the writ of execution varies the judgment;

2) there has been a change in the situation of the parties making execution inequitable or unjust;

3) execution is sought to be enforced against property exempt from execution;

4) it appears that the controversy has never been subject to the judgment of the court;

5) the terms of the judgment are not clear enough and there remains room for interpretation thereof; or

6) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority;

In these exceptional circumstances, considerations of justice and equity dictate that there be some mode available to the party aggrieved

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[17] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 382.

[18] *National Power Corporation v. Laohoo*, G.R. No. 151973, July 23, 2009, 593 SCRA 564, 580.

[19] G.R. No. 149051, June 30, 2006, 494 SCRA 153, 162-163.

of elevating the question to a higher court. That mode of elevation may be either by appeal (writ of error or *certiorari*), or by a special civil action of *certiorari*, prohibition, or *mandamus*.

The instant case falls under one of the exceptions cited above. The fact that Danilo has left the property under dispute is a change in the situation of the parties that would make execution inequitable or unjust.

Moreover, there are exceptions that have been previously considered by the Court as meriting a relaxation of the rules in order to serve substantial justice. These are: (1) matters of life, liberty, honor or property; (2) the existence of special or compelling circumstances; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is merely frivolous and dilatory; and (6) the other party will not be unjustly prejudiced thereby.[20] We find that Danilo's situation merits a relaxation of the rules since special circumstances are involved; to determine if his allegation were true would allow a final resolution of the case.

Applicable, too, is what Sec. 5, Rule 135 of the Rules of Court states as one of the powers of a court:

Section 5. *Inherent powers of the courts.*—Every court shall have power:

xxx xxx xxx

(g) To amend and control its process and orders so as to make them conformable to law and justice.

Thus, the Court ruled in *Mejia v. Gabayan*:[21]

x x x **The inherent power of the court carries with it the right to determine every question of fact and law which may be involved in the execution.** The court may stay or suspend the execution of its judgment if warranted by the higher interest of justice. It has the

[20] *PCI Leasing and Finance v. Milan*, G.R. No. 151215, April 5, 2010, 617 SCRA 258, 279.

[21] G.R. No. 149765, April 12, 2005, 455 SCRA 499, 512.

authority to cause a modification of the decision when it becomes imperative in the higher interest of justice or when supervening events warrant it. The court is also vested with inherent power to stay the enforcement of its decision based on antecedent facts which show fraud in its rendition or want of jurisdiction of the trial court apparent on the record. (Emphasis supplied.)

The writ of execution sought to be implemented does not take into consideration the circumstances that merit a modification of judgment. Given that there is a pending issue regarding the execution of judgment, the RTC should have afforded the parties the opportunity to adduce evidence to determine the period within which Danilo should pay monthly rentals before issuing the writ of execution in the instant case. Should Danilo be unable to substantiate his claim that he vacated the premises in April 1994, the period to pay monthly rentals should be until June 19, 2007, the date he informed the CA that he had already left the premises.

**WHEREFORE,** the petition is *GRANTED*. The CA Decision in CA-G.R. SP No. 105709 is hereby *SET ASIDE*. The RTC, Branch 60 in Baguio City is *ORDERED* to determine the actual date petitioner left the subject premises before issuing the writ of execution in Civil Case No. 2493-R that will be based on the resolution of said issue.

**SO ORDERED.**

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

**THIRD DIVISION**

[G.R. No. 193482. March 2, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee*, *vs.* **NILO ROCABO,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT HAS NO REASON TO REVERSE OR MODIFY THE FINDINGS OF THE TRIAL COURT WHICH WERE AFFIRMED BY THE COURT OF APPEALS.—** We have examined the records and we entertain no doubt that the appellant raped AAA. We find AAA's testimony convincing and straightforward. We, therefore, have no reason to reverse or modify the findings of the RTC on the credibility of AAA's testimony, more so in the present case where the said findings were affirmed by the CA.

**2. ID.; ID.; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF THE OFFENDED PARTY.—** As the RTC and the CA did, we reject the appellant's denial. Not only is denial an inherently weak defense, it cannot also prevail over the positive testimony of the offended party.

**3. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; APPLICABLE LAWS IN CASE AT BAR.—** Since the rape incidents happened on April 27 and May 1, 1999, the applicable laws are Article 266-A and Article 266-B of the Revised Penal Code, as amended, which provide: ART. 266-A. *Rape: When and How Committed*. – Rape is committed: x x x d) **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present. x x x ART. 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*. x x x The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances: 1) **When the victim is under eighteen (18) years of age and the offender**

**is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

**4. ID.; ID.; ID.; QUALIFIED RAPE; CRIME COMMITTED IN CASE AT BAR, MINORITY AND RELATIONSHIP HAVING BEEN ALLEGED AND DULY PROVEN.—** [W]ith the basic elements of the crime charged, AAA's minority and her relationship to the appellant having been alleged in the Informations and duly proven, we find the appellant guilty of two counts of qualified rape, as the lower courts did.

**5. ID.; ID.; ID.; ID.; PENALTY IN CASE AT BAR.—** In view of the enactment of Republic Act No. 9346, the penalty of death that should have been meted out to the appellant under Articles 266-A and 266-B of the Revised Penal Code, shall now be *reclusion perpetua* for each count of qualified rape, without eligibility for parole.

**6. CIVIL LAW; DAMAGES; AWARDED IN CASE AT BAR.—** [W]e modify the appellant's civil liability to include civil indemnity and to increase the exemplary damages awarded. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender. Under prevailing jurisprudence, the offended party is entitled to ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages to deter other persons with perverse or aberrant sexual behavior from sexually abusing their children.

**APPEARANCES OF COUNSEL**

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

## D E C I S I O N

**BRION,[*] *J.*:**

We decide the appeal filed by the accused Nilo Rocabo (*appellant*) from the May 31, 2010 decision of the Court Appeals (*CA*) in CA-G.R. CEB-CR-H.C. No. 00730.[1]

## THE FACTUAL ANTECEDENTS

On August 18, 1999, the appellant was charged[2] in the Regional Trial Court (*RTC*), Branch 10, Abuyog, Leyte, with 3 counts of incestuous rape[3] committed against his 11-year old daughter AAA[4] on April 27[5] and 29,[6] 1999 and May 1, 1999.[7] The appellant

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[*] Designated Acting Chairperson of the Third Division per Special Order No. 925 dated January 24, 2011.

[1] Penned by Associate Justice Edwin D. Sorongon, and concurred in by Associate Justices Socorro B. Inting and Eduardo B. Peralta, Jr. of the Twentieth Division; *rollo*, pp. 3-16.

[2] Except for the dates of the commission of the crime, the Informations were identically worded, thus:

"That on or about the 27th day of April 1999, in the Municipality of La Paz, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of [AAA], his 11-year old daughter, against her will and without consent." (CA *rollo*, p. 26.)

[3] See REVISED PENAL CODE, Article 266-A, as amended by Republic Act No. 8353, otherwise known as the Anti-Rape Law of 1997, which became effective on October 22, 1997.

[4] Consistent with *People v. Cabalquinto* (G.R. No. 167693, September 19, 2006, 502 SCRA 419) the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed.

[5] Docketed as Criminal Case No. 1857.

[6] Docketed as Criminal Case No. 1856.

[7] Docketed as Criminal Case No. 1855.

pleaded not guilty to all the charges against him. In the joint trial that followed, AAA testified on the details of the crimes.

On April 27, 1999, while AAA was sleeping in the living room of her grandmother's house, her father (the appellant) woke her up and told her to go to their house at the back of her grandmother's house.[8] On reaching their house, the appellant told her to go to the room.[9] While inside the room, the appellant removed her shorts and underwear, and told her to lie down.[10] The appellant then undressed himself, kissed her, and inserted his private organ into her vagina.[11] Two days later, on April 29, 1999, while AAA was watching television at her grandmother's house, the appellant told her to go home.[12] The appellant once again told AAA to go inside the room.[13] The appellant then kissed her on the neck.[14] Two days later, on May 1, 1999, while AAA was playing in the street, the appellant called her home and told her again to go to the room.[15] The appellant then undressed her, made her lie down, kissed her, and inserted his private organ into her vagina.[16] When BBB, AAA's mother, discovered what happened, she brought AAA on May 27, 1999 to the Burauen District Hospital for a medical examination.[17] The medical examination revealed an old healed hymenal laceration.[18]

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[8] TSN, September 2, 2004, pp. 5-6.

[9] *Id.* at 7.

[10] *Id.* at 8-11.

[11] *Id.* at 11-14.

[12] *Id.* at 15.

[13] *Ibid.*

[14] *Id.* at 15-16.

[15] *Id.* at 16-18.

[16] *Ibid.*

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

[18] TSN, July 29, 2004, pp. 4-5; Exhibit "A", original records (Criminal Case No. 1857), p. 50.

The appellant denied the charges against him, claiming that he was roasting pig for the fiesta on April 27, 1999 with Ernie Dagami, and that he was at home with BBB and their children on April 29 and May 1, 1999.[19] He alleged that BBB instigated the case against him because she was afraid that he would file an adultery case against her.[20]

## THE RTC RULING

In its January 12, 2007 Decision, the RTC acquitted the appellant for the alleged rape committed on April 29, 1999, but found him guilty of 2 counts of incestuous rape committed on April 27 and May 1, 1999.[21] It gave full credence to AAA's testimony and rejected the appellant's denial. It noted that AAA cried while narrating in court her father's monstrous acts, and that no child would fabricate a rape charge against her own father. The RTC sentenced the appellant to *reclusion perpetua* for two counts of rape and ordered him to pay AAA ₱75,000

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[19] TSN, July 27, 2006, pp. 4-10 and 18-21.

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

[21] The dispositive portion of the decision reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 1855, the accused NILO ROCABO is found guilty beyond reasonable doubt of the crime as charge [*sic*], and to suffer the penalty of *RECLUSION PERPETUA*, and is ordered to pay the offended party the amount of Seventy Five Thousand Pesos (₱75,000.00) as Moral Damages and Twenty Five Thousand Pesos (₱25,000.00) as Exemplary Damages and to pay the costs.
2. In Criminal Case No. 1856, the accused NILO ROCABO is ACQUITTED, for failure of the prosecution to prove his guilt beyond reasonable doubt.
3. In Criminal Case No. 1857, the accused NILO ROCABO is found guilty beyond reasonable doubt of the crime as charge [*sic*], and to suffer the penalty of *RECLUSION PERPETUA*, and is ordered to pay the offended party the amount of Seventy Five Thousand Pesos (₱75,000.00) as Moral Damages and Twenty Five Thousand Pesos (₱25,000.00) as Exemplary Damages and to pay the costs. (CA *rollo*, p. 50.)

as moral damages and ₱25,000 as exemplary damages for each count.[22]

**THE CA RULING**

On intermediate appellate review, the CA affirmed the appellant's conviction. It rejected the appellant's attack on AAA's credibility, noting that it was improbable for a child of tender years to concoct a tale of sexual molestation committed by her own father just because she was persuaded to do so by her mother; that inconsistencies on minor details proved that AAA's testimony was not rehearsed; that the delay in reporting the rape incidents did not affect AAA's credibility because there was no uniform reaction for rape victims. The CA noted that the absence of fresh hymenal lacerations does not negate that rape was committed since hymenal lacerations are not an element of rape.[23]

From the CA, the case is now with us for final review.

**OUR RULING**

***We affirm the appellant's conviction.***

We have examined the records and we entertain no doubt that the appellant raped AAA. We find AAA's testimony convincing and straightforward. We, therefore, have no reason to reverse or modify the findings of the RTC on the credibility of AAA's testimony, more so in the present case where the said findings were affirmed by the CA. As the RTC and the CA did, we reject the appellant's denial. Not only is denial an inherently weak defense, it cannot also prevail over the positive testimony of the offended party.[24]

While we affirm the factual findings of the RTC and the CA, we note that neither court fully appreciated nor discussed the penalty properly imposable on the appellant.

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[22] Original records (Criminal Case No. 1857), pp. 122-132.

[23] *Supra* note 1.

[24] *People v. Pelagio*, G.R. No. 173052, December 16, 2008, 574 SCRA 53, 62; and *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168, 185.

Since the rape incidents happened on April 27 and May 1, 1999, the applicable laws are Article 266-A and Article 266-B of the Revised Penal Code, as amended,[25] which provide:

ART. 266-A. *Rape: When and How Committed*. – Rape is committed:

xxx xxx xxx

d) **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

xxx xxx xxx

ART. 266-B. *Penalty*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

xxx xxx xxx

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) **When the victim is under eighteen (18) years of age and the offender is a parent**, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim[.]

In the present case, the Informations charging the appellant with the crimes of rape clearly alleged that the appellant had carnal knowledge of his daughter, AAA, who was only 11 years old when the rapes were committed on April 27 and May 1, 1999.[26] The prosecution's evidence clearly shows AAA's age and filiation by the appellant; AAA's duly presented Certificate of Live Birth showed that she was born on June 7, 1987 to spouses Nilo Rocabo and BBB.[27]

With the basic elements of the crime charged, AAA's minority and her relationship to the appellant having been alleged in the

[25] *Supra* note 3.

[26] Original records (Criminal Case No. 1857), p. 1; original records (Criminal Case No. 1855), p. 1.

[27] Exhibit "B", original records (Criminal Case No. 1857), p. 69.

Informations and duly proven, we find the appellant guilty of two counts of qualified rape, as the lower courts did. In view of the enactment of Republic Act No. 9346,[28] the penalty of death that should have been meted out to the appellant under Articles 266-A and 266-B of the Revised Penal Code, shall now be *reclusion perpetua* for each count of qualified rape, without eligibility for parole.[29]

Lastly, we modify the appellant's civil liability to include civil indemnity and to increase the exemplary damages awarded. Civil indemnity is automatically awarded upon proof of the commission of the crime by the offender.[30] Under prevailing jurisprudence, the offended party is entitled to ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages to deter other persons with perverse or aberrant sexual behavior from sexually abusing their children.[31]

**WHEREFORE,** the May 31, 2010 Decision of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00730 is hereby *AFFIRMED* with *MODIFICATION*. Appellant Nilo Rocabo is found guilty beyond reasonable doubt of two (2) counts of Qualified Rape and sentenced to suffer the penalty of *reclusion perpetua* for each count, without eligibility for parole. He is also ordered to pay AAA ₱75,000 as civil indemnity, ₱75,000 as moral damages, and ₱30,000 as exemplary damages for each count of rape.

**SO ORDERED.**

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[28] Entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," took effect on June 30, 2006.

[29] 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.

[30] *People v. Amatorio*, G.R. No. 175837, August 9, 2010; and *People v. Baun*, G.R. No. 167503, August 20, 2008, 562 SCRA 584, 602.

[31] *People v. Sambahon*, G.R. No. 182789, August 3, 2010; and *People v. Sobusa*, G.R. No. 181083, January 21, 2010, 610 SCRA 538, 559.

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

*Carpio Morales, J. (Chairperson),* on wellness leave.

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**THIRD DIVISION**

[G.R. No. 172011. March 7, 2011]

**REPUBLIC OF THE PHILIPPINES,** *petitioner, vs.* **TEODORO P. RIZALVO, JR.,** *respondent.*

**SYLLABUS**

**1. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REGISTRATION OF TITLE; REQUISITES.—** Existing law and jurisprudence provides that an applicant for judicial confirmation of imperfect title must prove compliance with Section 14 of Presidential Decree (P.D.) No. 1529 or the Property Registration Decree. xxx Under Section 14 (1), applicants for registration of title must sufficiently establish *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and *third*, that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

**2. ID.; ID.; ID.; ID.; REQUISITE THAT THE SUBJECT LAND FORMS PART OF THE DISPOSABLE AND ALIENABLE LANDS OF THE PUBLIC DOMAIN, SATISFIED IN CASE AT BAR; CERTIFICATION FROM THE DENR-CENRO ENJOYS THE PRESUMPTION OF REGULARITY AND**

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[**] Designated additional Member of the Third Division per Special Order No. 926 dated January 24, 2011.

**IS SUFFICIENT PROOF TO SHOW THE CLASSIFICATION OF THE LAND THEREIN DESCRIBED.—** The first requirement was satisfied in this case. The certification and report dated July 17, 2001 submitted by Special Investigator I Dionisio L. Picar of the CENRO of San Fernando City, La Union, states that the entire land area in question is within the alienable and disposable zone, certified as such since January 21, 1987. In *Limcoma Multi-Purpose Cooperative v. Republic*, we have ruled that a certification and report from the DENR-CENRO enjoys the presumption of regularity and is sufficient proof to show the classification of the land described therein.

**3. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE TRIAL COURT AND THE COURT OF APPEALS ARE BINDING UPON THE SUPREME COURT ABSENT ANY SHOWING THAT THE LOWER COURTS COMMITTED GLARING MISTAKES OR THAT THE ASSAILED JUDGMENT IS BASED ON A MISAPPREHENSION OF FACTS.—**Respondent has likewise met the second requirement as to ownership and possession. The MTC and the CA both agreed that respondent has presented sufficient testimonial and documentary evidence to show that he and his predecessors-in-interest were in open, continuous, exclusive and notorious possession and occupation of the land in question. Said findings are binding upon this Court absent any showing that the lower courts committed glaring mistakes or that the assailed judgment is based on a misapprehension of facts.

**4. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REGISTRATION OF TITLE; THIRD REQUISITE, NOT SATISFIED; EXPLAINED.—** [T]he third requirement, that respondent and his predecessors-in-interest be in open, continuous, exclusive and notorious possession and occupation of the subject property *since June 12, 1945 or earlier*, has not been satisfied. Respondent only managed to present oral and documentary evidence of his and his mother's ownership and possession of the land since 1958 through a photocopy of the Deed of Absolute Sale dated July 8, 1958 between Eufrecina Navarro and Bibiana P. Rizalvo. He presented Tax Declaration No. 11078 for the year 1948 in the name of Eufrecina Navarro and real property tax receipts beginning in 1952. In *Llanes v. Republic*, the Court held that tax declarations

are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. However, even assuming that the 1948 Tax Declaration in the name of Eufrecina Navarro and the tax payment receipts could be taken in this case as proof of a claim of ownership, still, respondent lacks proof of occupation and possession beginning June 12, 1945 or earlier. What is categorically required by law is open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of ownership since June 12, 1945 or earlier.

**5. ID.; PROPERTY; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION; REGISTRATION OF LAND BY MEANS OF PRESCRIPTION MAY BE ALLOWED UNDER EXISTING LAWS.—** An applicant may be allowed to register land by means of prescription under existing laws. The laws on prescription are found in the Civil Code and jurisprudence. It is well settled that prescription is one of the modes of acquiring ownership and that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty years.

**6. ID.; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); REGISTRATION OF TITLE; THIRTY-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 14(2), ELUCIDATED; NO BASIS FOR THE APPLICATION THEREOF IN CASE AT BAR.—** [I]t is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14(2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. In the case at bar, respondent merely presented a certification and report from the DENR-CENRO dated July 17, 2001 certifying that the land in question entirely falls within the alienable and disposable zone since January 21, 1987; that it has not been earmarked for public use; and that it does not encroach any area devoted to general public use. Unfortunately, such certification and report is not enough in order to commence

the thirty (30)-year prescriptive period under Section 14 (2). There is no evidence in this case indicating any express declaration by the state that the subject land is no longer intended for public service or the development of the national wealth. Thus, there appears no basis for the application of the thirty (30)-year prescriptive period in this case.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Raymundo P. Sanglay* for respondent.

**D E C I S I O N**

**VILLARAMA, JR., *J.*:**

On appeal under Rule 45 of the 1997 Rules of Civil Procedure, as amended, is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 73647 which affirmed the Decision[2] of the Municipal Trial Court (MTC) of Bauang, La Union, in LRC Case No. 58-MTCBgLU, approving respondent's application for registration of an 8,957-square meter parcel of land located in Brgy. Taberna, Bauang, La Union.

The facts are undisputed.

On December 7, 2000, respondent Teodoro P. Rizalvo, Jr. filed before the MTC of Bauang, La Union, acting as a land registration court, an application for the registration[3] of a parcel of land referred to in Survey Plan Psu-200706,[4] located in Bauang, La Union and containing an area of 8,957 square meters.

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[1] *Rollo*, pp. 99-109. Dated March 14, 2006. Penned by Associate Justice Vicente Q. Roxas, with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring.

[2] Records, pp. 183-189. Dated November 29, 2001. Penned by Judge Romeo V. Perez.

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

[4] *Id.* at 4.

Respondent alleged that he is the owner in fee simple of the subject parcel of land, that he obtained title over the land by virtue of a Deed of Transfer[5] dated December 31, 1962, and that he is currently in possession of the land. In support of his claim, he presented, among others, Tax Declaration No. 22206[6] for the year 1994 in his name, and Proof of Payment[7] of real property taxes beginning in 1952 up to the time of filing of the application.

On April 20, 2001, the Office of the Solicitor General (OSG) filed an Opposition alleging that neither respondent nor his predecessors-in-interest had been in open, continuous, exclusive and notorious possession and occupation of the subject property since June 12, 1945 or earlier and that the tax declarations and tax payment receipts did not constitute competent and sufficient evidence of ownership. The OSG also asserted that the subject property was a portion of public domain belonging to the Republic of the Philippines and hence not subject to private acquisition.

At the hearing of the application, no private oppositor came forth. Consequently, the trial court issued an Order of Special Default against the whole world except the Republic of the Philippines and entered the same in the records of the case.

At the trial, respondent testified that he acquired the subject property by purchase from his mother, Bibiana P. Rizalvo, as evidenced by a Deed of Transfer dated December 31, 1962.[8] He also testified that he was in adverse, open, exclusive and notorious possession of the subject property; that no one was questioning his ownership over the land; and that he was the one paying the real property tax thereon, as evidenced by the bundle of official receipts covering the period of 1953 to 2000. He also stated that he was the one who had the property surveyed; that no one opposed the survey; and that during said survey, they placed concrete markers on the boundaries of the property.

[5] *Id.* at 72-73.

[6] *Id.* at 76.

[7] *Id.* at 91-173.

[8] *Supra* note 5.

Further, he stated that he was not aware of any person or entity which questioned his mother's ownership and possession of the subject property.

Respondent's mother, Bibiana P. Rizalvo, was also presented during the trial. She stated that she purchased the lot from Eufrecina Navarro, as evidenced by the Absolute Deed of Sale[9] dated July 8, 1952. She confirmed that before she sold the property to her son, she was the absolute owner of the subject property and was in possession thereof, without anyone questioning her status as owner. She further stated that she was the one paying for the real property taxes at that time and that she even installed improvements on the subject property.

After conducting an investigation and verification of the records involving the subject land, Land Investigator/Inspector Dionisio L. Picar of the Community Environment and Natural Resources Office (CENRO) of San Fernando, La Union submitted a report[10] on July 17, 2001. Aside from the technical description of the land, the report certified that indeed the subject parcel of land was within the alienable and disposable zone and that the applicant was indeed in actual occupation and possession of the land.

On the part of the Republic, the OSG did not present any evidence.

As stated above, the MTC of Bauang, La Union, acting as a land registration court, rendered its Decision[11] on November 29, 2001, approving respondent's application. The dispositive portion of the trial court's decision reads—

> WHEREFORE, this Court, confirming the Order of Special Default, hereby approves the application and orders the adjudication and registration of the land described in Survey Plan No. PSU-200706 (Exh. "A") and the Technical Description of the land (Exh. "B") situated at Brgy. Taberna, Bauang, La Union containing an area of Eight Thousand Nine Hundred Fifty Seven (…8,957) square meters.

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[9] *Id.* at 175-176. The date appearing on the Deed is July 8, 1952 but was referred to as July 8, 1958 in the TSN and other parts of the records.

[10] *Id.* at 181-182.

[11] *Supra* note 2.

Once this decision becomes final and executory let the corresponding decree be issued.

SO ORDERED.[12]

On December 21, 2001 the Republic of the Philippines through the OSG filed a Notice of Appeal. In its Brief,[13] the OSG argued that the trial court erred in ruling that the applicant proved a registrable title to the property. However, the CA found no merit in the appeal and promulgated the assailed Decision[14] on March 14, 2006, affirming the trial court's decision.

The Republic of the Philippines through the OSG now comes to this Court by way of petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, to seek relief.

In its petition, the OSG argues that the Republic of the Philippines has dominion over all lands of public domain and that the grant to private individuals of imperfect title by the Republic over its alienable and disposable lands is a mere privilege. Hence, judicial confirmation proceeding is strictly construed against the grantee/applicant.[15]

The OSG further contends that respondent failed to show indubitably that he has complied with all the requirements showing that the property, previously part of the public domain, has become private property by virtue of his acts of possession in the manner and length of time required by law. The OSG maintains that respondent and his predecessors-in-interest failed to show convincingly that he or they were in open, continuous, adverse, and public possession of the land of the public domain as required by law. The OSG points out that there is no evidence showing that the property has been fenced, walled, cultivated or otherwise improved. The OSG argues that without these

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[12] *Id.* at 189.

[13] CA *rollo*, pp. 20-32.

[14] *Supra* note 1.

[15] *Id.* at 81.

indicators which demonstrate clear acts of possession and occupation, the application for registration cannot be allowed.[16]

On the other hand, respondent counters that he has presented sufficient proof that the subject property was indeed part of the alienable and disposable land of the public domain. He also asserts that his title over the land can be traced by documentary evidence wayback to 1948 and hence, the length of time required by law for acquisition of an imperfect title over alienable public land has been satisfied.[17]

Further, he argues that although not conclusive proof of ownership, tax declarations and official receipts of payment of real property taxes are at least proof of possession of real property. In addition, he highlights the fact that since the occupancy and possession of his predecessors-in-interest, there has been no question about their status as owners and possessors of the property from adjoining lot owners, neighbors, the community, or any other person. Because of this, he claims that his possession of the land is open, continuous, adverse, and public — sufficient for allowing registration.

Verily, the main issue in this case is whether respondent and his predecessors-in-interest were in open, continuous, adverse, and public possession of the land in question in the manner and length of time required by law as to entitle respondent to judicial confirmation of imperfect title.

We answer in the negative.

Existing law and jurisprudence provides that an applicant for judicial confirmation of imperfect title must prove compliance with Section 14 of Presidential Decree (P.D.) No. 1529[18] or the Property Registration Decree. The pertinent portions of Section 14 provide:

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[16] *Id.* at 81, 87-89.

[17] *Id.* at 180-181.

[18] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, which took effect on June 11, 1978.

**SEC. 14.** *Who may apply*.—The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

(2) Those who have acquired ownership of private lands by prescription under the provisions of existing laws.

xxx xxx xxx

Under Section 14 (1), applicants for registration of title must sufficiently establish *first*, that the subject land forms part of the disposable and alienable lands of the public domain; *second*, that the applicant and his predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the same; and *third*, that it is under a *bona fide* claim of ownership since June 12, 1945, or earlier.

The first requirement was satisfied in this case. The certification and report[19] dated July 17, 2001 submitted by Special Investigator I Dionisio L. Picar of the CENRO of San Fernando City, La Union, states that the entire land area in question is within the alienable and disposable zone, certified as such since January 21, 1987.

In *Limcoma Multi-Purpose Cooperative v. Republic*,[20] we have ruled that a certification and report from the DENR-CENRO enjoys the presumption of regularity and is sufficient proof to show the classification of the land described therein. We held:

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[19] *Supra* note 10.

[20] G.R. No. 167652, July 10, 2007, 527 SCRA 233, 243-244, citing *Republic v. Carrasco*, G.R. No. 143491, December 6, 2006, 510 SCRA 150; *Bureau of Forestry v. Court of Appeals*, No. L-37995, August 31, 1987, 153 SCRA 351, 357 and *Republic v. Court of Appeals*, 440 Phil. 697 (2002).

In the recent case of *Buenaventura v. Republic*,[21] we ruled that said Certification is sufficient to establish the true nature or character of the subject property as public and alienable land. We similarly ruled in *Republic v. Court of Appeals*[22] and intoned therein that the certification enjoys a presumption of regularity in the absence of contradictory evidence.

Both the DENR-CENRO Certification and Report constitute a positive government act, an administrative action, validly classifying the land in question. As adverted to by the petitioner, the classification or re-classification of public lands into alienable or disposable, mineral, or forest lands is now a prerogative of the Executive Department of the government. Clearly, the petitioner has overcome the burden of proving the alienability of the subject lot.

Respondent has likewise met the second requirement as to ownership and possession. The MTC and the CA both agreed that respondent has presented sufficient testimonial and documentary evidence to show that he and his predecessors-in-interest were in open, continuous, exclusive and notorious possession and occupation of the land in question. Said findings are binding upon this Court absent any showing that the lower courts committed glaring mistakes or that the assailed judgment is based on a misapprehension of facts. In *Buenaventura v. Pascual*,[23] we reiterated,

Time and again, this Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, the findings of the trial court must be accorded the highest respect, even finality, by this Court. x x x.

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[21] G.R. No. 166865, March 2, 2007, 517 SCRA 271, 284-285.

[22] *Supra* note 20, at 711.

[23] G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.

However, the third requirement, that respondent and his predecessors-in-interest be in open, continuous, exclusive and notorious possession and occupation of the subject property *since June 12, 1945 or earlier*, has not been satisfied. Respondent only managed to present oral and documentary evidence of his and his mother's ownership and possession of the land since 1958 through a photocopy of the Deed of Absolute Sale[24] dated July 8, 1958 between Eufrecina Navarro and Bibiana P. Rizalvo. He presented Tax Declaration No. 11078[25] for the year 1948 in the name of Eufrecina Navarro and real property tax receipts beginning in 1952.[26] In *Llanes v. Republic*,[27] the Court held that tax declarations are good *indicia* of possession in the concept of an owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession.[28] However, even assuming that the 1948 Tax Declaration in the name of Eufrecina Navarro and the tax payment receipts could be taken in this case as proof of a claim of ownership, still, respondent lacks proof of occupation and possession beginning June 12, 1945 or earlier. What is categorically required by law is open, continuous, exclusive, and notorious possession and occupation under a *bona fide* claim of ownership since June 12, 1945 or earlier.[29]

But given the fact that respondent and his predecessors-in-interest had been in possession of the subject land since 1948, is respondent nonetheless entitled to registration of title under Section 14 (2) of P.D. No. 1529? To this question we likewise answer in the negative.

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[24] Records, pp. 175-176.

[25] *Id.* at 90.

[26] *Id.* at 91.

[27] G.R. No. 177947, November 27, 2008, 572 SCRA 258.

[28] *Id.* at 270-271, citing *Consolidated Rural Bank (Cagayan Valley), Inc. v. Court of Appeals*, G.R. No. 132161, January 17, 2005, 448 SCRA 347, 369.

[29] *Republic v. Enciso*, G.R. No. 160145, November 11, 2005, 474 SCRA 700, 712.

An applicant may be allowed to register land by means of prescription under existing laws. The laws on prescription are found in the Civil Code and jurisprudence. It is well settled that prescription is one of the modes of acquiring ownership and that properties classified as alienable public land may be converted into private property by reason of open, continuous and exclusive possession of at least thirty years.[30]

On this basis, respondent would have been eligible for application for registration because his claim of ownership and possession over the subject property even exceeds thirty (30) years. However, it is jurisprudentially clear that the thirty (30)-year period of prescription for purposes of acquiring ownership and registration of public land under Section 14 (2) of P.D. No. 1529 only begins from the moment the State expressly declares that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial.[31] In *Heirs of Mario Malabanan v. Republic*, the Court ruled,

> Accordingly, there must be an express declaration by the State that the public dominion property is no longer intended for public service or the development of the national wealth or that the property has been converted into patrimonial. Without such express declaration, the property, even if classified as alienable or disposable, remains property of the public dominion, pursuant to Article 420(2),[32] and thus incapable of acquisition by prescription. It is only when such alienable and disposable lands are expressly declared by the State to be no longer intended for public service or for the development of the national wealth that the period of acquisitive prescription can begin to run. Such declaration shall be in the form of a law duly

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[30] *Heirs of Mario Malabanan v. Republic*, G.R. No. 179987, April 29, 2009, 587 SCRA 172, 197, citing Art. 1113, CIVIL CODE; *Director of Lands v. Intermediate Appellate Court*, G.R. No. 65663, October 16, 1992, 214 SCRA 604, 611; *Republic v. Court of Appeals*, G.R. No. 108998, August 24, 1994, 235 SCRA 567, 576; *Group Commander, Intelligence and Security Group, Philippine Army v. Dr. Malvar*, 438 Phil. 252, 275 (2002).

[31] *Heirs of Mario Malabanan v. Republic*, *id.* at 203.

[32] Article 420, CIVIL CODE.

enacted by Congress or a Presidential Proclamation in cases where the President is duly authorized by law.[33]

In the case at bar, respondent merely presented a certification and report from the DENR-CENRO dated July 17, 2001 certifying that the land in question entirely falls within the alienable and disposable zone since January 21, 1987; that it has not been earmarked for public use; and that it does not encroach any area devoted to general public use.[34] Unfortunately, such certification and report is not enough in order to commence the thirty (30)-year prescriptive period under Section 14 (2). There is no evidence in this case indicating any express declaration by the state that the subject land is no longer intended for public service or the development of the national wealth. Thus, there appears no basis for the application of the thirty (30)-year prescriptive period in this case.

Indeed, even assuming *arguendo* that the DENR-CENRO certification and report is enough to signify that the land is no longer intended for public service or the development of the national wealth, respondent is still not entitled to registration because the land was certified as alienable and disposable in 1987, while the application for registration was filed on December 7, 2000, a mere thirteen (13) years after and far short of the required thirty (30) years under existing laws on prescription.

Although we would want to adhere to the State's policy of encouraging and promoting the distribution of alienable public lands to spur economic growth and remain true to the ideal of social justice[35] we are constrained by the clear and simple requisites of the law to disallow respondent's application for registration.

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[33] *Supra* note 31.

[34] Records, pp. 181-182.

[35] *Republic v. Bibonia*, G.R. No. 157466, June 21, 2007, 525 SCRA 268, 277, citing *Menguito v. Republic*, G.R. No. 134308, December 14, 2000, 348 SCRA 128, 141.

**WHEREFORE,** the petition is *GRANTED*. The Decision dated March 14, 2006 of the Court of Appeals in C.A.-G.R. CV No. 73647 affirming the Decision dated November 29, 2001 of the Municipal Trial Court of Bauang, La Union, in LRC Case No. 58-MTCBgLU is *REVERSED and SET ASIDE*. Respondent's application for registration is *DENIED*.

No costs.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. No. 191389. March 7, 2011]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **LUISITO LALICAN *y* ARCE,** *appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; THE TESTIMONY OF RAPE VICTIM MUST BE EXAMINED CAREFULLY BY THE COURTS.—** Courts have to be cautious in assessing the evidence of rape. By the nature of rape, it is hardly committed before the eyes of witnesses. In true cases of rape, witnesses are shut out either because the offender has put enough terror and fear of death in his victim such that, psychologically, she has lost the will to resist or, the place of commission being far remote from people who can hear and rescue his victim, the offender uses brute force to overcome her resistance. In false cases of rape, prompted by some ill motive, the supposed victim claims rape when it did not happen

[*] Designated additional member per Special Order No. 940 dated February 7, 2011.

or when she cooperated with the offender the supposed rape. Whether it is true rape or false rape, the victim usually testifies alone. Consequently, care is taken in examining what she says.

**2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT DEFERS TO THE TRIAL COURT'S APPRECIATION OF THE CREDIBILITY OF WITNESSES EXCEPT WHEN THE TRIAL JUDGE'S ERROR IS SO OBVIOUS.—** What is important is that the core of SHINE's testimony that Lalican, her lessor, barged into her room, threatened to butcher her with a knife if she resisted, and forced himself into her, had remained unchanged. Perfect testimonies, repeated with precision in the same language, in the course of cross-examination usually indicate coaching and rehearsals. It is here that the trial judge's face-to-face appreciation of the complainant's testimony makes a lot of difference. He can see the movement of the eyes, the tremor of the lips, or the turn of the head that only the sum total of human experience brought to bear can interpret. The Court is robbed of that opportunity. Consequently, except where the trial judge's error is so obvious, the Court will, as in this case, defer to his appreciation of the credibility of the witness.

**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 public prosecutor charged the accused Luisito Lalican *y* Arce with rape before the Regional Trial Court (RTC) of Manila[1] in Criminal Case 05-238386. The prosecution presented the testimonies of SHINE,[2] the private complainant; SPO2 Manuel

[1] Branch 21.

[2] Pursuant to Republic Act 9262, otherwise known as the "*Anti-Violence Against Women and Their Children Act of 2004*" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent

Castro III, the arresting officer; and Dr. Anabelle L. Soliman, the medico-legal officer.

SHINE worked as guest relations officer in a club in Tondo, Manila. She had been renting a room in accused Lalican's two-storey house in Tayuman for the past seven months. SHINE stayed at the ground floor while Lalican and his family occupied the second floor.

SHINE testified that at around 9:00 to 10:00 a.m. on July 10, 2005 she heard Lalican knock on her door. Hesitant at first, she eventually opened the door to find Lalican imploring her help because he and his wife supposedly had gotten into a fight. SHINE declined to intervene, however, afraid of the wife's ire. She started to close the door on him but Lalican resisted and forced it open. He closed the door and pulled a knife, pointing it at SHINE's neck. Shocked, she was unable to scream for help. Lalican grabbed and undressed her, using his right hand. He then put down the knife and removed his clothes. He pushed SHINE down on the floor and successfully had his way with her, keeping his hand on the knife that lay on the floor.

After ravishing SHINE, Lalican stood up but remained in the room. Although Lalican would not let her go to the bathroom at first, he eventually let her. She hid there and later left the house for a nearby store and bought prepaid credits for her mobile phone so she could call her brother-in-law, a policeman, for help. When she could not contact him, she went to the police station to report the matter. Some policemen went with her to Lalican's house but SHINE declined to enter it. After arresting Lalican, they all went back to the police station.

SPO2 Castro testified that at around 10:00 a.m. on July 10, 2005, SHINE arrived at the Police Station 7 in Tayuman and complained that Lalican had raped her. SPO2 Castro and three other officers went with SHINE to Lalican's house. Upon entering it, SHINE pointed to Lalican as the man who raped her. The

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her, both to protect her privacy (*People v. Cabalquinto*, G.R. No. 167693, 502 SCRA 419, 421-426 [2006]).

officers then invited Lalican to come to the police station for investigation.

Dr. Soliman testified having examined SHINE. She noted (1) no extragenital physical injuries on her body; (2) that the hymen was reduced to *carunculae myrtiformis*; and (3) that succeeding sexual intercourse may not produce any new hymenal injury.

Lalican denied raping SHINE. He recounted that on the previous day, July 9, 2005, he attended the wake of a friend's mother. He returned to his house at around 6:00 a.m. on the following day. After cooking food, he went to the bathroom. Before he could fully shut the door close, the door of SHINE's room opened. Her boyfriend, Francis, walked out and left the house. After taking a bath, Lalican went upstairs to sleep but because it was humid hot, he went down and slept on a make-shift bed near the door of SHINE's room. At around 10:00 a.m., some policemen woke him up and invited him to go to the police station.

Genie Suarez corroborated Lalican's testimony. Suarez said that he was with the accused at a wake on the previous day. Suarez accompanied Lalican home and left him to sleep on a make-shift bed on the ground floor of the house. Suarez then went to a nearby store. At 7:00 a.m. he saw Francis go out of the house and around 10:00 a.m. he saw SHINE leave the house and later return in the company of policemen.

The RTC found Lalican guilty of raping SHINE and sentenced him to suffer the penalty of *reclusion perpetua* with the accessory penalties provided by law.[3] The RTC ordered him to pay ₱50,000.00 as indemnity to SHINE without subsidiary imprisonment in case of insolvency and to pay the cost.

On October 28, 2009 the Court of Appeals (CA) rendered judgment in the case,[4] affirming the decision of the RTC with modifications. The CA affirmed the finding of guilt of the RTC

[3] Decision dated March 10, 2008, records, pp. 256-261.

[4] Docketed as CA-G.R. CR-H.C. 03382.

but included the payment of an additional ₱50,000.00 as moral damages. Lalican appealed to this Court.

**The Issue Presented**

The sole issue in this case is whether or not the CA erred in finding accused Lalican guilty beyond reasonable doubt of raping SHINE.

**The Court's Ruling**

Courts have to be cautious in assessing the evidence of rape. By the nature of rape, it is hardly committed before the eyes of witnesses. In true cases of rape, witnesses are shut out either because the offender has put enough terror and fear of death in his victim such that, psychologically, she has lost the will to resist or, the place of commission being far remote from people who can hear and rescue his victim, the offender uses brute force to overcome her resistance. In false cases of rape, prompted by some ill motive, the supposed victim claims rape when it did not happen or when she cooperated with the offender in the supposed rape. Whether it is true rape or false rape, the victim usually testifies alone. Consequently, care is taken in examining what she says.[5]

Here, SHINE testified on direct that when Lalican forced her door open and entered, he poked a knife on her neck, grabbed her, undressed her, took his own clothes off, pushed her down the floor, and violated her.[6] Lalican points out that SHINE cannot be believed since this version is inconsistent with her testimony on cross that he made her lie down first before he undressed her.[7] Lalican also assailed the inconsistencies in her statements concerning where he placed the knife that he threatened her with during the time he was abusing her.

But must the victim's testimony dovetail in every respect regarding the precise movement of the offender from beginning

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[5] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481, 495.

[6] TSN, September 14, 2005, pp. 6-7.

[7] TSN, September 28, 2005, p. 9.

to end such as which foot he used in stepping into the victim's room or what hand he used for undressing her and himself? Violent crimes usually fill their victims with dread and terrible fear for their lives. Rarely would they mentally record details of the startling events as they happen with the expectation that they would get some subpoena in some future time to testify in some future court. Reality is not like that.

What is important is that the core of SHINE's testimony that Lalican, her lessor, barged into her room, threatened to butcher her with a knife if she resisted, and forced himself into her, had remained unchanged. Perfect testimonies, repeated with precision in the same language, in the course of cross-examination usually indicate coaching and rehearsals. It is here that the trial judge's face-to-face appreciation of the complainant's testimony makes a lot of difference. He can see the movement of the eyes, the tremor of the lips, or the turn of the head that only the sum total of human experience brought to bear can interpret. The Court is robbed of that opportunity. Consequently, except where the trial judge's error is so obvious, the Court will, as in this case, defer to his appreciation of the credibility of the witness.

It does not help the case of Lalican that he has not shown proof that SHINE was prompted by some sinister motive in accusing him of rape. She had been his tenant the last seven months. Admittedly, he had been observing her since he even spoke of seeing SHINE's boyfriend come out of her rented room that morning. And Lalican admittedly chose to sleep on a make-shift bed near her door. An opportunity for lechery clearly presented itself.

What is more, it was quite unlikely that SHINE would spontaneously walk to the police station shortly after to voice her outrage and convince the policemen to come with her to investigate the matter if she had no genuine cause to gripe about.

**WHEREFORE,** the Court *AFFIRMS* in its entirety the decision of the Court of Appeals in CA-G.R. CR-H.C. 03382 dated October 28, 2009 which affirmed with modification the trial court's conviction of the accused Luisito Lalican *y* Arce of the crime of rape.

**SO ORDERED.**

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

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**THIRD DIVISION**

**[**G.R. No. 191561. March 7, 2011**]**

**BANK OF COMMERCE,** *petitioner, vs.* **GOODMAN FIELDER INTERNATIONAL PHILIPPINES, INC.,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; EVIDENCE; INTERPRETATION OF DOCUMENTS; INTERPRETATION ACCORDING TO CIRCUMSTANCES; A CONSIDERATION OF THE CIRCUMSTANCES UNDER WHICH THE LETTER CERTIFICATIONS WERE ISSUED WOULD SHOW THAT PETITIONER BANK COULD NOT HAVE CONVEYED THAT IT WAS ISSUING A BANK GUARANTY IN FAVOR OF ITS CLIENT.—** Section 13, Rule 130, Rules of Court on interpretation of an instrument provides: SEC. 13. *Interpretation according to circumstances* – For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown so that the judge may be placed in the position of those whose language he is to interpret. A consideration of the circumstances under which Aragon's letter-certifications were issued is thus in order. Amarnani's letter-request of August 21, 2000 for a *conditional* certification from Aragon was granted two days later when Aragon issued

[*] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order 967 dated February 28, 2011.

the letter-certification addressed to respondent. Within that period, it could not have been possible for petitioner to even process the application, given that Amarnani had not even complied with the requirements as he, himself, indicated in his letter-request to Aragon to "please tell [him] the requirements for the credit line so [he] c[ould] apply." The Distributorship Agreement between respondent and Keraj was forged on October 2, 2000 or 39 days after the issuance of the letter-certification, long enough for respondent to verify if indeed a bank guaranty was, to its impression, granted. By respondent's finance manager Leonora Armi Salvador's testimony, upon receipt of the two letter-certifications, she concluded that they were bank guarantees considering their similarity with other bank guarantees in favor of respondent by other distributors; and she made inquiries with petitioner only *after* Keraj defaulted in the payment of its obligation to respondent. In light of the foregoing circumstances, petitioner could not have conveyed that it was issuing a bank guaranty in favor of Amarnani. Respondent's reliance on Aragon's use of a "check writer," a machine used to input a numerical or written value impression in the "payment amount field" of a check that is very difficult to alter, on the left side of each letter-certification, was misplaced, what prevails being the wordings of the letter-certifications.

**APPEARANCES OF COUNSEL**

*Rodrigo Berenguer & Guno* for petitioner.
*Policarpio Pangulayan & Azura Law Office* for respondent.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Goodman Fielder International Philippines, Inc. (respondent), a corporation duly registered and existing under the laws of the Republic of the Philippines, is engaged in marketing of fats and oil shortening.[1]

[1] Records, Vol. 3, TSN taken on March 3, 2004, p. 553.

Keraj Marketing Company (Keraj), represented by its purported owner Sunil K. Amarnani (Amarnani), sought a distributorship agreement from respondent. As a pre-requisite to respondent's consent, a credit line/bank guaranty in the amount of ₱500,000.00 was required from Keraj. Amarnani thus applied for a credit line/bank guaranty with the Bacolod branch of Bank of Commerce (petitioner).

Pending submission of the required documents for processing and approval of the credit line, Amarnani, by letter of August 21, 2000,[2] requested the issuance of a *conditional* certification from petitioner's branch manager Eli Aragon (Aragon) in this wise:

> Earlier I mentioned that one of my big suppliers is Goodman Fielder International where I get my baking supplies.
>
> They are requiring from me a certification issued by my bank that I am arranging for a credit line with my bank to be used if I cannot pay them. Please tell me the requirements for the credit line so I can apply. **All I need is a *conditional* certification that I am arranging for a credit line from our bank. I will prepare the necessary documents you mentioned to me in your letter.**
>
> I can offer you a property here in Bacolod as collateral for said credit line application.
>
> Please advi[s]e. (emphasis, italics and underscoring supplied)

Replying to Amarnani's request, Aragon sent respondent a letter of August 23, 2000[3] reading:

> Gentlemen:
>
> At the request of our client, KERAJ MARKETING COMPANY with postal address at Door No. 2 Goldenfields Commercial Complex, Singcang, Bacolod City, we are pleased to inform you that said Corporation has **arranged for a credit line** in the amount of FIVE HUNDRED THOUSAND PESOS ONLY (₱500,000.00), **subject to the compliance** by said client of the policies, terms and conditions imposed by the bank on said credit line. The said credit line will be

[2] *Rollo*, p. 74.

[3] *Id.* at 75.

used exclusively for settling any obligations of our client, KERAJ MARKETING COMPANY (sic), against your company.

This certification is issued at the request of the client for whatever legal purpose it may serve them best. (emphasis and underscoring supplied)

On October 2, 2000, respondent and Keraj entered into a Distributorship Agreement.

Aragon subsequently issued a similar letter (dated October 18, 2000[4]) in favor of Bacolod RK Distributors and Co., (Bacolod RK), an entity also allegedly owned by Amarnani, attesting to the arrangement by Keraj for a credit line in the amount of ₱2,000,000.00, to be utilized for the settlement of Keraj's accounts with respondent.

Both letters of Aragon contain a "check write" on the left side indicating the amount applied for as credit line. Keraj and Bacolod RK did not pursue their application for a credit line, however, despite follow-up advice from petitioner.

A year later, respondent informed petitioner, by letter of October 24, 2001,[5] its intent to claim against the bank guaranty issued to settle Keraj and Bacolod RK's unpaid accounts. By another letter dated November 20, 2001,[6] respondent advised petitioner its intent to collect the amount of ₱1,817,691.30 representing Keraj and Bacolod RK's unpaid obligations.

Negotiations for the settlement of Keraj and Bacolod RK's obligations having failed, respondent filed a complaint for collection of sum of money against Keraj, Amarnani, Bacolod RK, and petitioner and its manager Aragon before the Regional Trial Court (RTC) of Pasig.

In defense, petitioner and Aragon claimed that the letters merely certified that Keraj and Bacolod RK applied for the issuance of a bank guaranty, but no actual bank guaranty was

[4] *Id.* at 78.

[5] *Id.* at 79.

[6] *Id.* at 80.

approved, both companies having failed to present the required documents for processing the application.

Bacolod RK, on the other hand, denied any involvement in the transaction between Keraj and respondent.

Only petitioner presented evidence.

By Decision of July 20, 2007, Branch 268 of the Pasig RTC absolved Bacolod RK from liability, but faulted Keraj, Amarnani, Aragon and petitioner, disposing as follows:

> WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff [respondent herein] and against defendants SUNIL AMARNANI, KERAJ MARKETING CO., ELI ARAGON and BANK OF COMMERCE, ordering the latter, jointly and severally, to pay the former the following sums:
>
> 1. Php1,700,250.66 as actual damages plus interest at the legal rate from the date of extrajudicial demand and satisfaction of judgment;
>
> 2. The sum equivalent to 25% of the total amount due as and by way of attorney's fees, and;
>
> 3. The cost of suits.
>
> SO ORDERED.[7] (capitalization in the original)

In holding petitioner jointly and severally liable with Amarnani, Keraj and Aragon, the trial court held:

> From the evidence adduced by the plaintiff [Goodman], defendant bank is **estopped** from denying its liability relative to the subject bank guarantees. Defendant Bank of Commerce failed to sufficiently prove the foregoing defenses. Plaintiff relied on the **apparent** authority of its branch manager in issuing the subject documents. Defendant Bank is bound by the acts of its branch manager. The Supreme Court ruled*: "What transpires in the corporate board room is entirely an internal matter. Hence, petitioner may not impute negligence on the part of respondent's representative in failing to find out the scope of authority of petitioner's Branch Manager. Indeed, the public has the right to rely on the*

[7] *Id.* at 121.

*trustworthiness of bank managers and their acts. Obviously, confidence in the banking system, which necessarily includes reliance on bank managers, is vital in the economic life of our society."* (*BPI Family Savings Bank, Inc. versus First Metro Investment Corporation*, G.R. No. 132390, May 21, 2004).[8] (italics in the original; emphasis supplied)

The Court of Appeals, by the assailed Decision of June 17, 2009,[9] opined that Aragon's letters clearly showed approval by petitioner of the application for a credit line:

> The word "guaranty" is not strictly required to appear in the said document to be able to say that it is as such. If the words of the contract appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. In the case at bench, it was clearly shown that the intention of the document was to guarantee the obligations that would be incurred by [herein petitioner's] clients, defendants Keraj and Becolod (sic) RK. Such intention was expressed in the last phrase of the first paragraph and its limitations were specifically limited to Php500,000.00 and 2,000,000.00 respectively. There is nothing more left to doubt the intention of the parties included in the said bank guaranty.[10] (underscoring supplied)

The appellate court accordingly affirmed the trial court's decision, with modification by deleting the award of attorney's fees.

Petitioner's motion for reconsideration having been denied by Resolution of March 8, 2010, it filed the present petition for review, faulting the appellate court as follows:

I.

THE COURT OF APPEALS ERRONEOUSLY INTERPRETED THE NOTICE/CERTIFICATION ISSUED BY DEFENDANT ARAGON AS A BANK GUARANTEE AND NOT MERELY AS A LETTER-CERTIFICATION OF A PENDING CREDIT LINE APPLICATION;

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[8] *Id.* at 120.

[9] Penned by Associate Justice Jose L. Sabio, Jr., with the concurrence of Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, *id.* at 43-62.

[10] *Id.* at 54.

II.

THE DOCTRINE OF APPARENT AUTHORITY DOES NOT APPLY IN THIS CASE;

III.

DEFENDANT BANCOMMERCE (SIC) IS NOT ESTOPPED FROM DENYING LIABILITY ON THE PURPORTED BANK GUARANTEES. (underscoring supplied)

The resolution of the case hinges on what Aragon's statement in the letters sent to respondent that "… we are pleased to inform you that said Corporation has **arranged for a credit line**" conveys.

Section 13, Rule 130, Rules of Court on interpretation of an instrument provides:

SEC. 13. *Interpretation according to circumstances* – For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown so that the judge may be placed in the position of those whose language he is to interpret. (underscoring supplied)

A consideration of the circumstances under which Aragon's letter-certifications were issued is thus in order.

Amarnani's letter-request of August 21, 2000 for a *conditional* certification from Aragon was granted two days later when Aragon issued the letter-certification addressed to respondent. Within that period, it could not have been possible for petitioner to even process the application, given that Amarnani had not even complied with the requirements as he, himself, indicated in his letter-request to Aragon to "please tell [him] the requirements for the credit line so [he] c[ould] apply."

The Distributorship Agreement between respondent and Keraj was forged on October 2, 2000 or 39 days after the issuance of the letter-certification, long enough for respondent to verify if indeed a bank guaranty was, to its impression, granted.

By respondent's finance manager Leonora Armi Salvador's testimony, upon receipt of the two letter-certifications,[11] she concluded that they were bank guarantees considering their similarity with other bank guarantees in favor of respondent by other distributors; and she made inquiries with petitioner only *after* Keraj defaulted in the payment of its obligation to respondent.[12]

In light of the foregoing circumstances, petitioner could not have conveyed that it was issuing a bank guaranty in favor of Amarnani.

Respondent's reliance on Aragon's use of a "check writer," a machine used to input a numerical or written value impression in the "payment amount field" of a check that is very difficult to alter, on the left side of each letter- certification, was misplaced, what prevails being the wordings of the letter-certifications.[13]

**WHEREFORE,** the challenged Court of Appeals Decision of June 17, 2009 is *REVERSED* and *SET ASIDE*. The complaint of respondent, Goodman Fielder International Philippines, Inc. is, with respect to petitioner, Bank of Commerce, *DISMISSED.*

**SO ORDERED.**

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

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[11] Records, Vol. 3, TSN of March 3, 2004, pp. 583-584.

[12] *Id.* at 644.

[13] http://en.wikipedia.org/wiki/Checkwriter citing http://www.google.com search?q=history+of+paymaster+ribbon+writer&hl=en&tbs=tl:1&tbo=u&ei=e1JkS665K46H8QaOstyaAw&sa=X&oi=timeline_result&ct=title&resnum=11&ved=0CDEQ5wIwCg (visited February 24, 2011).

[*] Designated member per Special Order No. 940 dated February 7, 2011 in lieu of Associate Justice Arturo D. Brion.

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